



# **Income Tax Assessment Act 1997**

## **Act No. 38 of 1997 as amended**

This compilation was prepared on 2 July 2009  
taking into account amendments up to Act No. 62 of 2009

**Volume 1** includes: Table of Contents  
Sections 1-1 to 36-55

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated  
may be affected by application provisions that are set out in  
the Notes section

**Volume 2** includes: Table of Contents  
Sections 40-1 to 55-10

**Volume 3** includes: Table of Contents  
Sections 58-1 to 122-205

**Volume 4** includes: Table of Contents  
Sections 124-1 to 152-430

**Volume 5** includes: Table of Contents  
Sections 164-1 to 220-800

**Volume 6** includes: Table of Contents  
Sections 230-1 to 410-5

**Volume 7** includes: Table of Contents  
Sections 700-1 to 727-910

**Volume 8** includes: Table of Contents  
Sections 768-100 to 995-1

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**Volume 9** includes:      Note 1  
                                    Table of Acts  
                                    Act Notes  
                                    Table of Amendments  
                                    Notes 2 – 11  
                                    Table A

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# Contents

<b>Chapter 1—Introduction and core provisions</b>	1
<b>Part 1-1—Preliminary</b>	1
<b>Division 1—Preliminary</b>	1
1-1 Short title [ <i>see</i> Note 1].....	1
1-2 Commencement.....	1
1-3 Differences in style not to affect meaning.....	1
1-7 Administration of this Act.....	2
<b>Part 1-2—A Guide to this Act</b>	3
<b>Division 2—How to use this Act</b>	3
<b>Subdivision 2-A—How to find your way around</b>	3
2-1 The design.....	3
<b>Subdivision 2-B—How the Act is arranged</b>	4
2-5 The pyramid.....	4
<b>Subdivision 2-C—How to identify defined terms and find the definitions</b>	5
2-10 When defined terms are identified.....	5
2-15 When terms are <i>not</i> identified.....	5
2-20 Identifying the defined term in a definition.....	6
<b>Subdivision 2-D—The numbering system</b>	6
2-25 Purposes.....	6
2-30 Gaps in the numbering.....	7
<b>Subdivision 2-E—Status of Guides and other non-operative material</b>	7
2-35 Non-operative material.....	7
2-40 Guides.....	7
2-45 Other material.....	8
<b>Division 3—What this Act is about</b>	9
3-1 What this Act is about.....	9
3-5 Annual income tax.....	9
3-10 Your other obligations as a taxpayer.....	10
3-15 Your obligations <i>other than</i> as a taxpayer.....	11
<b>Part 1-3—Core provisions</b>	12
<b>Division 4—How to work out the income tax payable on your taxable income</b>	12
4-1 Who must pay income tax.....	12
4-5 Meaning of <i>you</i> .....	12

---

4-10	How to work out how much income tax you must pay.....	12
4-15	How to work out your taxable income.....	14
4-25	Special provisions for working out your basic income tax liability .....	16
<b>Division 6—Assessable income and exempt income</b>		17
<b>Guide to Division 6</b>		17
6-1	Diagram showing relationships among concepts in this Division .....	17
<b>Operative provisions</b>		18
6-5	Income according to ordinary concepts ( <i>ordinary income</i> ) .....	18
6-10	Other assessable income ( <i>statutory income</i> ).....	19
6-15	What is <i>not</i> assessable income.....	19
6-20	Exempt income.....	20
6-23	Non-assessable non-exempt income.....	21
6-25	Relationships among various rules about ordinary income .....	21
<b>Division 8—Deductions</b>		22
8-1	General deductions .....	22
8-5	Specific deductions.....	23
8-10	No double deductions .....	23
<b>Part 1-4—Checklists of what is covered by concepts used in the core provisions</b>		24
<b>Division 9—Entities that must pay income tax</b>		24
9-1A	Effect of this Division .....	24
9-1	List of entities.....	24
9-5	Entities that work out their income tax by reference to something other than taxable income .....	25
<b>Division 10—Particular kinds of assessable income</b>		28
10-1	Effect of this Division .....	28
10-5	List of provisions about assessable income .....	28
<b>Division 11—Particular kinds of non-assessable income</b>		42
<b>Subdivision 11-A—Lists of classes of exempt income</b>		42
11-1A	Effect of this Subdivision .....	42
11-1	Overview .....	42
11-5	Entities that are exempt, no matter what kind of ordinary or statutory income they have .....	43
11-10	Ordinary or statutory income which is exempt, no matter whose it is.....	44
11-15	Ordinary or statutory income which is exempt only if it is derived by certain entities.....	45

---



---

<b>Subdivision 11-B—Particular kinds of non-assessable non-exempt income</b>	52
11-50 Effect of this Subdivision .....	52
11-55 List of non-assessable non-exempt income provisions .....	53
<b>Division 12—Particular kinds of deductions</b>	58
12-1 Effect of this Division .....	58
12-5 List of provisions about deductions [ <i>see</i> Note 4].....	58
<b>Division 13—Tax offsets</b>	74
13-1A Effect of this Division .....	74
13-1 List of tax offsets.....	74
<b>Chapter 2—Liability rules of general application</b>	80
<b>Part 2-1—Assessable income</b>	80
<b>Division 15—Some items of assessable income</b>	80
<b>Guide to Division 15</b>	80
15-1 What this Division is about .....	80
<b>Operative provisions</b>	81
15-2 Allowances and other things provided in respect of employment or services .....	81
15-3 Return to work payments.....	81
15-5 Accrued leave transfer payments.....	81
15-10 Bounties and subsidies .....	82
15-15 Profit-making undertaking or plan.....	82
15-20 Royalties.....	82
15-22 Payments made to members of a copyright collecting society .....	82
15-25 Amount received for lease obligation to repair.....	83
15-30 Insurance or indemnity for loss of assessable income .....	83
15-35 Interest on overpayments and early payments of tax .....	83
15-40 Providing mining, quarrying or prospecting information .....	83
15-45 Amounts paid under forestry agreements .....	84
15-46 Amounts paid under forestry managed investment schemes .....	84
15-50 Work in progress amounts.....	84
15-55 Certain amounts paid under funeral policy.....	85
15-60 Certain amounts paid under scholarship plan .....	85
15-65 Sugar industry exit grants .....	86
15-70 Reimbursed car expenses.....	86
15-75 Bonuses .....	87
15-80 Employer FHSA contributions etc.....	87

---

---

<b>Division 17—Effect of GST etc. on assessable income</b>	88
<b>Guide to Division 17</b>	88
17-1 What this Division is about .....	88
17-5 GST and increasing adjustments .....	88
17-10 Certain decreasing adjustments .....	88
17-15 Elements in calculation of amounts .....	89
17-20 GST groups and GST joint ventures.....	89
17-30 Special credits because of indirect tax transition .....	89
17-35 Certain sections not to apply to certain assets or expenditure.....	90
<b>Division 20—Amounts included to reverse the effect of past deductions</b>	91
<b>Guide to Division 20</b>	91
20-1 What this Division is about .....	91
20-5 Other provisions that reverse the effect of deductions.....	91
<b>Subdivision 20-A—Insurance, indemnity or other recoupment for deductible expenses</b>	93
<b>Guide to Subdivision 20-A</b>	93
20-10 What this Subdivision is about .....	93
20-15 How to use this Subdivision .....	94
<b>What is an assessable recoupment?</b>	95
20-20 Assessable recoupments .....	95
20-25 What is <i>recoupment</i> ? .....	95
20-30 Tables of deductions for which recoupments are assessable .....	97
<b>How much is included in your assessable income?</b>	101
20-35 If the expense is deductible in a single income year .....	101
20-40 If the expense is deductible over 2 or more income years .....	102
20-45 Effect of balancing charge .....	104
20-50 If the expense is only partially deductible .....	105
20-55 Meaning of <i>previous recoupment law</i> .....	105
<b>What if you can deduct a loss or outgoing incurred by another entity?</b>	106
20-60 If you are the only entity that can deduct an amount for the loss or outgoing .....	106
20-65 If 2 or more entities can deduct amounts for the loss or outgoing.....	107
<b>Subdivision 20-B—Disposal of a car for which lease payments have been deducted</b>	108
<b>Guide to Subdivision 20-B</b>	108
20-100 What this Subdivision is about .....	108
20-105 Map of this Subdivision.....	110

---

---

<b>The usual case</b>	110
20-110 Disposal of a leased car for profit.....	110
20-115 Working out the profit on the disposal .....	112
20-120 Meaning of <i>notional depreciation</i> .....	113
<b>The associate case</b>	114
20-125 Disposal of a leased car for profit.....	114
<b>Successive leases</b>	116
20-130 Successive leases .....	116
<b>Previous disposals of the car</b>	116
20-135 No amount included if earlier disposal for market value .....	116
20-140 Reducing the amount to be included if there has been an earlier disposal.....	116
<b>Miscellaneous rules</b>	118
20-145 No amount included if you inherited the car .....	118
20-150 Reducing the amount to be included if another provision requires you to include an amount for the disposal.....	118
20-155 Exception for particular cars taken on hire .....	118
20-157 Exception for small business entities.....	118
<b>Disposals of interests in a car: special rules apply</b>	119
20-160 Disposal of an interest in a car.....	119
<b>Part 2-5—Rules about deductibility of particular kinds of amounts</b>	120
<b>Division 25—Some amounts you can deduct</b>	120
<b>Guide to Division 25</b>	120
25-1 What this Division is about .....	120
<b>Operative provisions</b>	121
25-5 Tax-related expenses .....	121
25-7 Advice about family tax benefit .....	123
25-10 Repairs.....	124
25-15 Amount paid for lease obligation to repair .....	124
25-20 Lease document expenses.....	124
25-25 Borrowing expenses .....	125
25-30 Expenses of discharging a mortgage .....	127
25-35 Bad debts .....	128
25-40 Loss from profit-making undertaking or plan.....	131
25-45 Loss by theft etc. ....	131
25-47 Misappropriation where a balancing adjustment event occurs .....	132
25-50 Payments of pensions, gratuities or retiring allowances .....	133
25-55 Payments to associations .....	133

---

---

25-60	Parliament election expenses.....	134
25-65	Local government election expenses.....	134
25-70	Deduction for election expenses does not extend to entertainment.....	135
25-75	Rates and land taxes on premises used to produce mutual receipts.....	136
25-85	Certain returns in respect of debt interests.....	137
25-90	Deduction relating to foreign non-assessable non-exempt income.....	138
25-95	Deduction for work in progress amounts.....	138
25-105	Deductions for United Medical Protection Limited support payments.....	139
25-100	Travel between workplaces.....	139
25-110	Capital expenditure to terminate lease etc.....	140

**Division 26—Some amounts you cannot deduct, or cannot  
deduct in full** 142

**Guide to Division 26** 142

26-1	What this Division is about.....	142
------	----------------------------------	-----

**Operative provisions** 143

26-5	Penalties.....	143
26-10	Leave payments.....	143
26-15	Franchise fees windfall tax.....	144
26-17	Commonwealth places windfall tax.....	144
26-20	Assistance to students.....	144
26-25	Interest or royalty.....	145
26-26	Non-share distributions and dividends.....	146
26-30	Relative's travel expenses.....	146
26-35	Reducing deductions for amounts paid to related entities.....	148
26-40	Maintaining your family.....	149
26-45	Recreational club expenses.....	149
26-47	Non-business boating activities.....	150
26-50	Expenses for a leisure facility.....	153
26-52	Bribes to foreign public officials.....	154
26-53	Bribes to public officials.....	157
26-54	Expenditure relating to illegal activities.....	158
26-55	Limit on deductions.....	159
26-60	Superannuation contributions surcharge.....	159
26-65	Termination payments surcharge.....	160
26-68	Loss from disposal of eligible venture capital investments.....	160
26-70	Loss from disposal of venture capital equity.....	161
26-75	Excess contributions tax cannot be deducted.....	161
26-80	Financing costs on loans to pay superannuation contribution.....	161
26-85	Borrowing costs on loans to pay life insurance premiums.....	161

---

---

26-90	Superannuation supervisory levy.....	162
26-95	Superannuation guarantee charge.....	162
<b>Division 27—Effect of input tax credits etc. on deductions</b>		<b>163</b>
<b>Guide to Division 27</b>		<b>163</b>
27-1	What this Division is about .....	163
<b>Subdivision 27-A—General</b>		<b>163</b>
27-5	Input tax credits and decreasing adjustments.....	163
27-10	Certain increasing adjustments.....	164
27-15	GST payments.....	164
27-20	Elements in calculation of amounts.....	165
27-25	GST groups and GST joint ventures.....	165
27-35	Certain sections not to apply to certain assets or expenditure.....	165
<b>Subdivision 27-B—Effect of input tax credits etc. on capital allowances</b>		<b>166</b>
27-80	Cost or opening adjustable value of depreciating assets reduced for input tax credits.....	166
27-85	Cost or opening adjustable value of depreciating assets reduced: decreasing adjustments.....	168
27-87	Certain decreasing adjustments included in assessable income.....	169
27-90	Cost or opening adjustable value of depreciating assets increased: increasing adjustments.....	169
27-92	Certain increasing adjustments can be deducted.....	170
27-95	Balancing adjustment events.....	170
27-100	Pooling.....	171
27-105	Other Division 40 expenditure.....	175
27-110	Input tax credit etc. relating to 2 or more things.....	176
<b>Division 28—Car expenses</b>		<b>177</b>
<b>Guide to Division 28</b>		<b>177</b>
28-1	What this Division is about .....	177
28-5	Map of this Division.....	178
<b>Subdivision 28-A—Deductions for car expenses</b>		<b>178</b>
28-10	Application of Division 28.....	178
28-12	Car expenses.....	179
28-13	Meaning of <i>car expense</i> .....	179
<b>Subdivision 28-B—Choosing which method to use</b>		<b>180</b>
<b>Guide to Subdivision 28-B</b>		<b>180</b>
28-14	What this Subdivision is about .....	180
28-15	Choosing among the 4 methods.....	180
<b>Operative provision</b>		<b>182</b>
28-20	Rules governing choice of method.....	182

---

---

<b>Subdivision 28-C—The “cents per kilometre” method</b>	182
28-25 How to calculate your deduction .....	182
28-30 Capital allowances .....	183
28-35 Substantiation .....	183
<b>Subdivision 28-D—The “12% of original value” method</b>	183
28-45 How to calculate your deduction .....	183
28-50 Eligibility .....	184
28-55 Capital allowances .....	184
28-60 Substantiation .....	185
<b>Subdivision 28-E—The “one-third of actual expenses” method</b>	185
28-70 How to calculate your deduction .....	185
28-75 Eligibility .....	185
28-80 Substantiation .....	186
<b>Subdivision 28-F—The “log book” method</b>	186
28-90 How to calculate your deduction .....	186
28-95 Eligibility .....	188
28-100 Substantiation .....	188
<b>Subdivision 28-G—Keeping a log book</b>	189
<b>Guide to Subdivision 28-G</b>	189
28-105 What this Subdivision is about .....	189
28-110 Steps for keeping a log book .....	189
<b>Operative provisions</b>	189
28-115 Income years for which you need to keep a log book .....	189
28-120 Choosing the 12 week period for a log book .....	190
28-125 How to keep a log book .....	191
28-130 Replacing one car with another .....	192
<b>Subdivision 28-H—Odometer records for a period</b>	192
<b>Guide to Subdivision 28-H</b>	192
28-135 What this Subdivision is about .....	192
<b>Operative provision</b>	193
28-140 How to keep odometer records for a car for a period .....	193
<b>Subdivision 28-I—Retaining the log book and odometer records</b>	193
28-150 Retaining the log book for the retention period .....	194
28-155 Retaining odometer records .....	195
<b>Subdivision 28-J—Situations where you cannot use, or don’t need to use, one of the 4 methods</b>	195
<b>Guide to Subdivision 28-J</b>	195
28-160 What this Subdivision is about .....	195
<b>Operative provisions</b>	196
28-165 Exception for particular cars taken on hire .....	196

---

---

28-170	Exception for particular cars used in particular ways .....	196
28-175	Further miscellaneous exceptions .....	198
28-180	Car expenses related to award transport payments .....	199
28-185	Application of Subdivision 28-J to recipients and payers of certain withholding payments .....	199
<b>Division 30—Gifts or contributions</b>		<b>201</b>
<b>Guide to Division 30</b>		<b>201</b>
30-1	What this Division is about .....	201
30-5	How to find your way around this Division .....	202
30-10	Index .....	203
<b>Subdivision 30-A—Deductions for gifts or contributions</b>		<b>203</b>
30-15	Table of gifts or contributions that you can deduct .....	203
30-17	Requirements for certain recipients .....	217
<b>Subdivision 30-B—Tables of recipients for deductible gifts</b>		<b>218</b>
<b>Health</b>		<b>220</b>
30-20	Health .....	220
<b>Education</b>		<b>222</b>
30-25	Education .....	222
30-30	Gifts that must be for certain purposes .....	226
30-35	Gifts to a public fund established to benefit a rural school hostel building must satisfy certain requirements .....	227
30-37	Scholarship etc. funds [ <i>see</i> Note 5] .....	227
<b>Research</b>		<b>228</b>
30-40	Research .....	228
<b>Welfare and rights</b>		<b>229</b>
30-45	Welfare and rights .....	229
30-45A	Australian disaster relief funds—declarations by Minister .....	233
30-46	Australian disaster relief funds—declarations under State and Territory law .....	234
<b>Defence</b>		<b>235</b>
30-50	Defence .....	235
<b>Environment</b>		<b>237</b>
30-55	The environment .....	237
30-60	Gifts to a National Parks body or conservation body must satisfy certain requirements .....	239
<b>Industry, trade and design</b>		<b>239</b>
30-65	Industry, trade and design .....	239
<b>The family</b>		<b>240</b>
30-70	The family .....	240
30-75	Marriage education organisations must be approved .....	241

---

---

<b>International affairs</b>	241
30-80 International affairs .....	241
30-85 Developing country relief funds .....	243
30-86 Developed country disaster relief funds .....	244
<b>Sports and recreation</b>	245
30-90 Sports and recreation .....	245
<b>Philanthropic trusts</b>	245
30-95 Philanthropic trusts .....	245
<b>Cultural organisations</b>	246
30-100 Cultural organisations .....	246
<b>Fire and emergency services</b>	247
30-102 Fire and emergency services .....	247
<b>Other recipients</b>	248
30-105 Other recipients .....	248
<b>Subdivision 30-BA—Endorsement of deductible gift recipients</b>	250
<b>Guide to Subdivision 30-BA</b>	250
30-115 What this Subdivision is about .....	250
<b>Endorsement as a deductible gift recipient</b>	251
30-120 Endorsement by Commissioner .....	251
30-125 Entitlement to endorsement .....	251
30-130 Maintaining a gift fund .....	253
<b>Government entities treated like entities</b>	254
30-180 How this Subdivision applies to government entities .....	254
<b>Subdivision 30-C—Rules applying to particular gifts of property</b>	255
<b>Valuation requirements</b>	255
30-200 Getting written valuations .....	255
30-205 Proceeds of the sale would have been assessable .....	256
30-210 Approved valuers .....	256
30-212 Valuations by the Commissioner .....	256
<b>Working out the amount you can deduct for a gift of property</b>	257
30-215 How much you can deduct .....	257
30-220 Reducing the amount you can deduct .....	258
<b>Joint ownership of property</b>	259
30-225 Gift of property by joint owners .....	259
<b>Subdivision 30-CA—Administrative requirements relating to ABNs</b>	259
<b>Guide to Subdivision 30-CA</b>	259
30-226 What this Subdivision is about .....	259

---



---

<b>Requirements</b>	260
30-227 Entities to which this Subdivision applies .....	260
30-228 Content of receipt for gift or contribution.....	260
30-229 Australian Business Register must show deductibility of gifts to deductible gift recipient.....	262
<b>Subdivision 30-D—Testamentary gifts under the Cultural Bequests Program</b>	263
30-230 Testamentary gifts of property.....	263
30-235 Getting a certificate .....	264
30-240 Limit on total value of gifts for an income year .....	265
<b>Subdivision 30-DA—Donations to political parties and independent candidates and members</b>	265
<b>Guide to Subdivision 30-DA</b>	265
30-241 What this Subdivision is about .....	265
<b>Operative provisions</b>	266
30-242 Deduction for political contributions and gifts .....	266
30-243 Amount of the deduction .....	267
30-244 When an individual is an independent candidate.....	267
30-245 When an individual is an independent member.....	268
<b>Subdivision 30-DB—Spreading certain gift and covenant deductions over up to 5 income years</b>	269
<b>Guide to Subdivision 30-DB</b>	269
30-246 What this Subdivision is about .....	269
<b>Operative provisions</b>	269
30-247 Gifts and covenants for which elections can be made .....	269
30-248 Making an election .....	270
30-249 Effect of election .....	270
30-249A Requirements—environmental property gifts.....	271
30-249B Requirements—heritage property gifts.....	271
30-249C Requirements—certain cultural property gifts.....	271
30-249D Requirements—conservation covenants.....	272
<b>Subdivision 30-E—Register of environmental organisations</b>	272
<b>Guide to Subdivision 30-E</b>	272
30-250 What this Subdivision is about .....	272
<b>Operative provisions</b>	273
30-255 Establishing the register.....	273
30-260 Meaning of <i>environmental organisation</i> .....	273
30-265 Its principal purpose must be protecting the environment .....	273
30-270 Other requirements it must satisfy .....	274
30-275 Further requirement for a body corporate or a co-operative society .....	274

---

---

30-280	What must be on the register .....	275
30-285	Removal from the register .....	275
<b>Subdivision 30-EA—Register of harm prevention charities</b>		275
<b>Guide to Subdivision 30-EA</b>		275
30-286	What this Subdivision is about .....	275
<b>Operative provisions</b>		276
30-287	Establishing the register.....	276
30-288	Meaning of <i>harm prevention charity</i> .....	276
30-289	Principal activity—promoting the prevention or control of harm or abuse .....	276
30-289A	Other requirements .....	277
30-289B	What must be on the register .....	277
30-289C	Removal from the register .....	278
<b>Subdivision 30-F—Register of cultural organisations</b>		278
<b>Guide to Subdivision 30-F</b>		278
30-290	What this Subdivision is about .....	278
<b>Operative provisions</b>		278
30-295	Establishing the register.....	278
30-300	Meaning of <i>cultural organisation</i> .....	279
30-305	What must be on the register .....	279
30-310	Removal from the register .....	280
<b>Subdivision 30-G—Index to this Division</b>		280
30-315	Index.....	280
30-320	Effect of this Subdivision .....	291
<b>Division 31—Conservation covenants</b>		292
<b>Guide to Division 31</b>		292
31-1	What this Division is about .....	292
<b>Operative provisions</b>		292
31-5	Deduction for entering into conservation covenant .....	292
31-10	Requirements for fund, authority or institution .....	294
31-15	Valuations by the Commissioner.....	294
<b>Division 32—Entertainment expenses</b>		295
<b>Guide to Division 32</b>		295
32-1	What this Division is about .....	295
<b>Subdivision 32-A—No deduction for entertainment expenses</b>		295
32-5	No deduction for entertainment expenses.....	295
32-10	Meaning of <i>entertainment</i> .....	296
32-15	No deduction for property used for providing entertainment.....	296

---

---

<b>Subdivision 32-B—Exceptions</b>	296
32-20 The main exception—fringe benefits .....	297
32-25 The tables set out the other exceptions .....	297
32-30 Employer expenses .....	297
32-35 Seminar expenses .....	300
32-40 Entertainment industry expenses .....	300
32-45 Promotion and advertising expenses.....	301
32-50 Other expenses .....	301
<b>Subdivision 32-C—Definitions relevant to the exceptions</b>	302
32-55 In-house dining facility (employer expenses table items 1.1 and 1.2).....	302
32-60 Dining facility (employer expenses table item 1.3) .....	302
32-65 Seminars (seminar expenses table item 2.1) .....	303
<b>Subdivision 32-D—In-house dining facilities (employer expenses             table item 1.2)</b>	304
32-70 \$30 is assessable for each meal provided to non-employee in an in-house dining facility .....	304
<b>Subdivision 32-E—Anti-avoidance</b>	305
32-75 Commissioner may treat you as having incurred entertainment expense .....	305
<b>Subdivision 32-F—Special rules for companies and partnerships</b>	305
32-80 Company directors.....	306
32-85 Directors, employees and property of wholly-owned group company .....	306
32-90 Partnerships .....	307
<b>Division 34—Non-compulsory uniforms</b>	308
<b>Guide to Division 34</b>	308
34-1 What this Division is about .....	308
34-3 What you need to read.....	308
<b>Subdivision 34-A—Application of Division 34</b>	309
34-5 This Division applies to employees and others.....	309
34-7 This Division applies to employers and others .....	310
<b>Subdivision 34-B—Deduction for your non-compulsory uniform</b>	310
34-10 What you can deduct .....	310
34-15 What is a <i>non-compulsory</i> uniform?.....	311
34-20 What are <i>occupation specific clothing and protective                 clothing?</i> .....	311
<b>Subdivision 34-C—Registering the design of a non-compulsory             uniform</b>	312
34-25 Application to register the design .....	312
34-30 Industry Secretary’s decision on application .....	313
34-33 Written notice of decision.....	314

---

---

34-35	When uniform becomes registered .....	315
<b>Subdivision 34-D—Appeals from Industry Secretary’s decision</b>		315
34-40	Review of decisions by the Administrative Appeals Tribunal.....	315
<b>Subdivision 34-E—The Register of Approved Occupational Clothing</b>		315
34-45	Keeping of the Register .....	315
34-50	Changes to the Register .....	316
<b>Subdivision 34-F—Approved occupational clothing guidelines</b>		316
34-55	Approved occupational clothing guidelines.....	316
<b>Subdivision 34-G—The Industry Secretary</b>		317
34-60	Industry Secretary to give Commissioner information about entries .....	317
34-65	Delegation of powers by Industry Secretary .....	317
<b>Division 35—Deferral of losses from non-commercial business activities</b>		318
<b>Guide to Division 35</b>		318
35-1	What this Division is about .....	318
<b>Operative provisions</b>		319
35-5	Object .....	319
35-10	Deferral of deductions from non-commercial business activities .....	319
35-15	Modification if you have exempt income .....	322
35-20	Modification if you become bankrupt .....	322
35-25	Application of Division to certain partnerships .....	323
35-30	Assessable income test .....	323
35-35	Profits test.....	323
35-40	Real property test.....	324
35-45	Other assets test.....	325
35-50	Apportionment.....	326
35-55	Commissioner’s discretion .....	326
<b>Division 36—Tax losses of earlier income years</b>		328
<b>Guide to Division 36</b>		328
36-1	What this Division is about .....	328
<b>Subdivision 36-A—Deductions for tax losses of earlier income years</b>		328
36-10	How to calculate a tax loss for an income year.....	328
36-15	How to deduct tax losses of entities other than corporate tax entities .....	329
36-17	How to deduct tax losses of corporate tax entities.....	330
36-20	Net exempt income.....	333
36-25	Special rules about tax losses .....	334

---

---

<b>Subdivision 36-B—Effect of you becoming bankrupt</b>	338
<b>Guide to Subdivision 36-B</b>	338
36-30 What this Subdivision is about .....	338
<b>Operative provisions</b>	338
36-35 No deduction for tax loss incurred before bankruptcy .....	338
36-40 Deduction for amounts paid for debts incurred before bankruptcy .....	339
36-45 Limit on deductions for amounts paid .....	340
<b>Subdivision 36-C—Excess franking offsets</b>	341
<b>Guide to Subdivision 36-C</b>	341
36-50 What this Subdivision is about .....	341
<b>Operative provision</b>	341
36-55 Converting excess franking offsets into tax loss.....	341



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# An Act about income tax and related matters

## Chapter 1—Introduction and core provisions

### Part 1-1—Preliminary

#### Division 1—Preliminary

##### Table of sections

1-1	Short title
1-2	Commencement
1-3	Differences in style not to affect meaning
1-7	Administration of this Act

##### **1-1 Short title** *[see Note 1]*

This Act may be cited as the *Income Tax Assessment Act 1997*.

##### **1-2 Commencement**

This Act commences on 1 July 1997.

##### **1-3 Differences in style not to affect meaning**

- (1) This Act contains provisions of the *Income Tax Assessment Act 1936* in a rewritten form.
- (2) If:
  - (a) that Act expressed an idea in a particular form of words; and
  - (b) this Act appears to have expressed the same idea in a different form of words in order to use a clearer or simpler style;the ideas are not to be taken to be different just because different forms of words were used.

Note: A public or private ruling about a provision of the *Income Tax Assessment Act 1936* is taken also to be a ruling about the corresponding provision of this Act, so far as the 2 provisions express the same ideas: see section 357-85 in Schedule 1 to the *Taxation Administration Act 1953*.

**Chapter 1** Introduction and core provisions

**Part 1-1** Preliminary

**Division 1** Preliminary

Section 1-7

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**1-7 Administration of this Act**

The Commissioner has the general administration of this Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---



## **Part 1-2—A Guide to this Act**

### **Division 2—How to use this Act**

#### **Table of Subdivisions**

2-A	How to find your way around
2-B	How the Act is arranged
2-C	How to identify defined terms and find the definitions
2-D	The numbering system
2-E	Status of Guides and other non-operative material

#### **Subdivision 2-A—How to find your way around**

##### **2-1 The design**

This Act is designed to help you identify accurately and quickly the provisions that are relevant to your purpose in reading the income tax law.

The Act contains tables, diagrams and signposts to help you navigate your way.

You can start at Division 3 (What this Act is about) and follow the signposts as far into the Act as you need to go. You may also encounter signposts to several areas of the law that are relevant to you. Each one should be followed.

Sometimes they will lead down through several levels of detail. At each successive level, the rules are structured in a similar way. They will often be preceded by a Guide to the rules at that level. The rules themselves will usually deal first with the general or most common case and then with the more particular or special cases.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

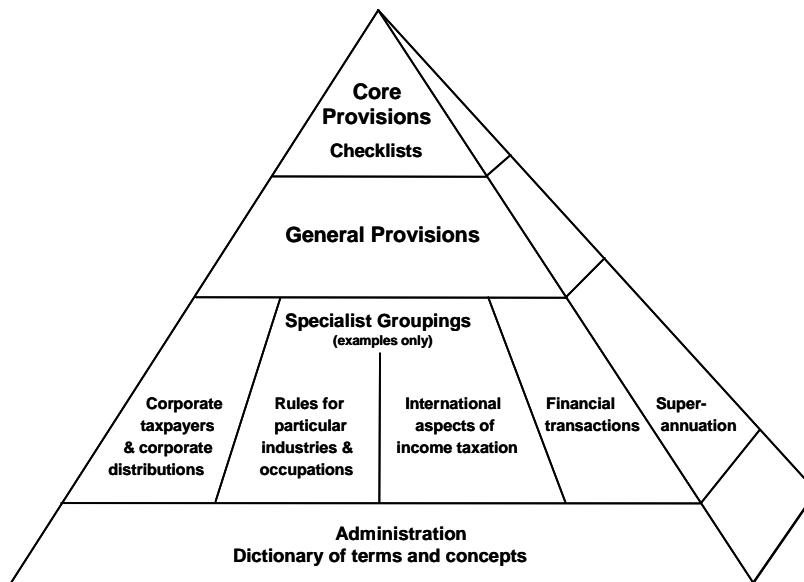
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## **Subdivision 2-B—How the Act is arranged**

### **2-5 The pyramid**

This Act is arranged in a way that reflects the principle of moving from the general case to the particular.

In this respect, the conceptual structure of the Act is something like a pyramid. The pyramid shape illustrates the way the income tax law is organised, moving down from the central or core provisions at the top of the pyramid, to general rules of wide application and then to the more specialised topics.



Note: The *Taxation Administration Act 1953* contains the provisions on collection and recovery of tax and provisions on administration.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 2-C—How to identify defined terms and find the definitions

### Table of sections

2-10	When defined terms are identified
2-15	When terms are <i>not</i> identified
2-20	Identifying the defined term in a definition

### 2-10 When defined terms are identified

- (1) Many of the terms used in the income tax law are defined.
- (2) Most defined terms in this Act are identified by an asterisk appearing at the start of the term: as in “\*business”. The footnote that goes with the asterisk contains a signpost to the Dictionary definitions starting at section 995-1.

### 2-15 When terms are *not* identified

- (1) Once a defined term has been identified by an asterisk, later occurrences of the term in the same subsection are *not* usually asterisked.
- (2) Terms are *not* asterisked in the non-operative material contained in this Act.  
Note: The non-operative material is described in Subdivision 2-E.
- (3) The following basic terms used throughout the Act are *not* identified with an asterisk. They fall into 2 groups:

#### *Key participants in the income tax system*

Item	This term:	is defined in:
1.	Australian resident	section 995-1
2.	Commissioner	section 995-1
3.	company	section 995-1
4.	entity	section 960-100
4A.	foreign resident	section 995-1

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-2** A Guide to this Act

**Division 2** How to use this Act

Section 2-20

---

<b>Item</b>	<b>This term:</b>	<b>is defined in:</b>
5.	individual	section 995-1
6.	partnership	section 995-1
7.	person	section 995-1
8.	trustee	section 995-1
9.	you	section 4-5

*Core concepts*

<b>Item</b>	<b>This term:</b>	<b>is defined in:</b>
1.	amount	section 995-1
2.	assessable income	Division 6
3.	assessment	section 995-1
4.	deduct, deduction	Division 8
5.	income tax	section 995-1
6.	income year	section 995-1
7.	taxable income	section 4-15
8.	this Act	section 995-1

**2-20 Identifying the defined term in a definition**

Within a definition, the defined term is identified by *bold italics*.

**Subdivision 2-D—The numbering system**

**Table of sections**

2-25	Purposes
2-30	Gaps in the numbering

**2-25 Purposes**

Two main purposes of the numbering system in this Act are:

- To indicate the relationship between units at different levels.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

For example, the number of Part 2-15 indicates that the Part is in Chapter 2. Similarly, the number of section 165-70 indicates that the section is in Division 165.

- To allow for future expansion of the Act. The main technique here is leaving gaps between numbers.

## **2-30 Gaps in the numbering**

There are gaps in the numbering system to allow for the insertion of new Divisions and sections.

## **Subdivision 2-E—Status of Guides and other non-operative material**

### **Table of sections**

2-35	Non-operative material
2-40	Guides
2-45	Other material

## **2-35 Non-operative material**

In addition to the operative provisions themselves, this Act contains other material to help you identify accurately and quickly the provisions that are relevant to you and to help you understand them.

This other material falls into 2 main categories.

## **2-40 Guides**

The first is the “Guides”. A *Guide* consists of sections under a heading indicating that what follows is a Guide to a particular Subdivision, Division etc.

Guides form part of this Act but are kept separate from the operative provisions. In interpreting an operative provision, a Guide may only be considered for limited purposes. These are set out in section 950-150.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 1** Introduction and core provisions

**Part 1-2** A Guide to this Act

**Division 2** How to use this Act

Section 2-45

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## **2-45 Other material**

The other category consists of material such as notes and examples. These also form part of the Act. They are distinguished by type size from the operative provisions, but are not kept separate from them.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 3—What this Act is about

### Table of sections

3-1	What this Act is about
3-5	Annual income tax
3-10	Your other obligations as a taxpayer
3-15	Your obligations <i>other than</i> as a taxpayer

### 3-1 What this Act is about

This Act is mainly about income tax, and this Division is concerned only with income tax.

However, this Act also deals with a variety of other topics that may affect you:

Item	For a guide to this topic:	See:
1.	Medicare levy	Division 785

### 3-5 Annual income tax

- (1) Income tax is payable for each year by each individual and company, and by some other entities.

Note 1: Individuals who are Australian residents, and some trustees, are also liable to pay Medicare levy for each year. See Division 785.

Note 2: Income tax is imposed by the *Income Tax Act 1986* and the other Acts referred to in the definition of *income tax* in section 995-1.

- (2) Most entities have to pay *instalments* of income tax before the income tax they *actually* have to pay can be worked out.

- (3) This Act answers these questions:

1. What instalments of income tax do you have to pay? When and how do you pay them?

See Schedule 1 to the *Taxation Administration Act 1953*.

2. How do you work out how much income tax you must pay?

See Division 4, starting at section 4-1.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 3-10

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3. What happens if your income tax is *more* than the instalments you have paid? When and how must you pay the rest?

See sections 204, 213 and 219 of the *Income Tax Assessment Act 1936* and Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

4. What happens if your income tax is *less* than the instalments you have paid? How do you get a refund?

See Division 3A of Part IIB of the *Taxation Administration Act 1953*.

5. What are your *other* obligations as a taxpayer, besides paying instalments and the rest of your income tax?

See section 3-10.

6. Do you have any other obligations under the income tax law?

See section 3-15.

7. If a dispute between you and the Commissioner of Taxation cannot be settled by agreement, what procedures for objection, review and appeal are available?

See Part IVC (sections 14ZL to 14ZZS) of the *Taxation Administration Act 1953*.

**3-10 Your other obligations as a taxpayer**

- (1) Besides paying instalments and the rest of your income tax, your main obligations as a taxpayer are:

- (a) to keep records and provide information as required by:

- the *Income Tax Assessment Act 1936*; and
- Division 900 (which sets out substantiation rules) of this Act; and

- (b) to lodge income tax returns as required by:

- the *Income Tax Assessment Act 1936*.

*Tax file numbers*

- (2) Under Part VA of the *Income Tax Assessment Act 1936*, a tax file number can be issued to you. You are not obliged to apply for a tax file number. However, if you do not quote one in certain situations:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- you may become liable for instalments of income tax that would not otherwise have been payable;
- the amount of certain of your instalments of income tax may be increased.

### **3-15 Your obligations *other than* as a taxpayer**

Your main obligations under the income tax law, other than as a taxpayer are:

- in certain situations, to deduct from money you owe to another person, and to remit to the Commissioner, instalments of income tax payable by that person.

See Part 4-5 (Collection of income tax instalments), starting at section 750-1.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Part 1-3—Core provisions

### Division 4—How to work out the income tax payable on your taxable income

#### Table of sections

4-1	Who must pay income tax
4-5	Meaning of <i>you</i>
4-10	How to work out how much income tax you must pay
4-15	How to work out your taxable income
4-25	Special provisions for working out your basic income tax liability

#### 4-1 Who must pay income tax

Income tax is payable by each individual and company, and by some other entities.

Note: The actual amount of income tax payable may be nil.

For a list of the entities that must pay income tax, see Division 9, starting at section 9-1.

#### 4-5 Meaning of *you*

If a provision of this Act uses the expression *you*, it applies to entities generally, unless its application is expressly limited.

Note 1: The expression *you* is not used in provisions that apply only to entities that are not individuals.

Note 2: For circumstances in which the identity of an entity that is a managed investment scheme for the purposes of the *Corporations Act 2001* is not affected by changes to the scheme, see Subdivision 960-E of the *Income Tax (Transitional Provisions) Act 1997*.

#### 4-10 How to work out how much income tax you must pay

- (1) You must pay income tax for each <sup>\*</sup>financial year.
- (2) Your income tax is worked out by reference to your taxable income for the *income year*. The income year is the same as the <sup>\*</sup>financial year, except in these cases:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) for a company, the income year is the *previous* financial year;
- (b) if you have an accounting period that is not the same as the financial year, each such accounting period or, for a company, each previous accounting period is an income year.

Note 1: The Commissioner can allow you to adopt an accounting period ending on a day other than 30 June. See section 18 of the *Income Tax Assessment Act 1936*.

Note 2: An accounting period ends, and a new accounting period starts, when a partnership becomes, or ceases to be, a VCLP, an ESVCLP, an AFOF or a VCMP. See section 18A of the *Income Tax Assessment Act 1936*.

- (3) Work out your income tax for the \*financial year as follows:

$$\text{Income tax} = \left( \text{Taxable income} \times \text{Rate} \right) - \text{Tax offsets}$$

*Method statement*

Step 1. Work out your taxable income for the income year.

To do this, see section 4-15.

Step 2. Work out your basic income tax liability on your taxable income using:

- (a) the income tax rate or rates that apply to you for the income year; and
- (b) any special provisions that apply to working out that liability.

See the *Income Tax Rates Act 1986* and section 4-25.

Step 3. Work out your tax offsets for the income year. A ***tax offset*** reduces the amount of income tax you have to pay.

For the list of tax offsets, see section 13-1.

Step 4. Subtract your \*tax offsets from your basic income tax liability. The result is how much income tax you owe for the \*financial year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-3** Core provisions

**Division 4** How to work out the income tax payable on your taxable income

Section 4-15

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Note: Division 63 explains what happens if your tax offsets exceed your basic income tax liability. How the excess is treated depends on the type of tax offset.

*Income tax worked out on another basis*

- (4) For some entities, some or all of their income tax for the \*financial year is worked out by reference to something other than taxable income for the income year.

See section 9-5.

**4-15 How to work out your taxable income**

- (1) Work out your *taxable income* for the income year like this:

Taxable income = Assessable income – Deductions

*Method statement*

Step 1. Add up all your assessable income for the income year.

To find out about your assessable income, see Division 6.

Step 2. Add up your deductions for the income year.

To find out what you can deduct, see Division 8.

Step 3. Subtract your deductions from your assessable income (unless they exceed it). The result is your taxable income. (If the deductions equal or exceed the assessable income, you don't have a taxable income.)

Note: If the deductions exceed the assessable income, you may have a tax loss which you may be able to deduct in a later income year: see Division 36.

- (2) There are cases where taxable income is worked out in a special way:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1.	A company does not maintain continuity of ownership and control during the income year and does not satisfy the same business test	Subdivision 165-B
1B.	An entity is a *member of a *consolidated group at any time in the income year	Part 3-90
2.	A company becomes a PDF (pooled development fund) during the income year, and the PDF component for the income year is a nil amount	section 124ZTA of the <i>Income Tax Assessment Act 1936</i>
3.	A shipowner or charterer: <ul style="list-style-type: none"> <li>• has its principal place of business outside Australia; and</li> <li>• carries passengers, freight or mail shipped in Australia</li> </ul>	section 129 of the <i>Income Tax Assessment Act 1936</i>
4.	An insurer who is a foreign resident enters into insurance contracts connected with Australia	sections 142 and 143 of the <i>Income Tax Assessment Act 1936</i>
5.	The Commissioner makes a default or special assessment of taxable income	sections 167 and 168 of the <i>Income Tax Assessment Act 1936</i>
6.	The Commissioner makes a determination of the amount of taxable income to prevent double taxation in certain treaty cases	section 24 of the <i>International Tax Agreements Act 1953</i>
Note:	A life insurance company can have a taxable income of the complying superannuation/FHSA class and/or a taxable income of the ordinary class for the purposes of working out its income tax for an income year: see Subdivision 320-D.	

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-3** Core provisions

**Division 4** How to work out the income tax payable on your taxable income

Section 4-25

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**4-25 Special provisions for working out your basic income tax liability**

Subsection 392-35(3) may increase your basic income tax liability beyond the liability worked out simply by applying the income tax rates to your taxable income.

Note: Subsection 392-35(3) increases some primary producers' tax liability by requiring them to pay extra income tax on their averaging components worked out under Subdivision 392-C.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 6—Assessable income and exempt income

### Guide to Division 6

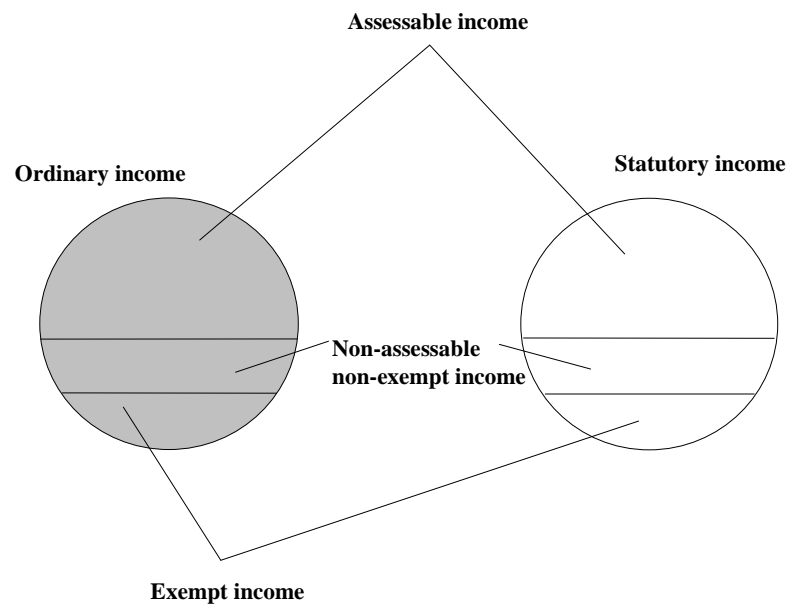
#### Table of sections

6-1 Diagram showing relationships among concepts in this Division

#### Operative provisions

6-5 Income according to ordinary concepts (*ordinary income*)  
6-10 Other assessable income (*statutory income*)  
6-15 What is *not* assessable income  
6-20 Exempt income  
6-23 Non-assessable non-exempt income  
6-25 Relationships among various rules about ordinary income

#### 6-1 Diagram showing relationships among concepts in this Division



(1) Assessable income consists of ordinary income and statutory income.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 6-5

---

- (2) Some ordinary income, and some statutory income, is exempt income.
- (3) Exempt income is not assessable income.
- (4) Some ordinary income, and some statutory income, is neither assessable income nor exempt income.

For the effect of the GST in working out assessable income, see Division 17.

- (5) An amount of ordinary income or statutory income can have only one status (that is, assessable income, exempt income or non-assessable non-exempt income) in the hands of a particular entity.

## Operative provisions

### 6-5 Income according to ordinary concepts (*ordinary income*)

- (1) Your *assessable income* includes income according to ordinary concepts, which is called *ordinary income*.

Note: Some of the provisions about assessable income listed in section 10-5 may affect the treatment of ordinary income.

- (2) If you are an Australian resident, your assessable income includes the \*ordinary income you \*derived directly or indirectly from all sources, whether in or out of Australia, during the income year.
- (3) If you are a foreign resident, your assessable income includes:
  - (a) the \*ordinary income you \*derived directly or indirectly from all \*Australian sources during the income year; and
  - (b) other \*ordinary income that a provision includes in your assessable income for the income year on some basis other than having an \*Australian source.
- (4) In working out whether you have *derived* an amount of \*ordinary income, and (if so) when you *derived* it, you are taken to have received the amount as soon as it is applied or dealt with in any way on your behalf or as you direct.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---



### 6-10 Other assessable income (*statutory income*)

- (1) Your *assessable income* also includes some amounts that are *not* \*ordinary income.

Note: These are included by provisions about assessable income.  
For a summary list of these provisions, see section 10-5.

- (2) Amounts that are *not* \*ordinary income, but are included in your assessable income by provisions about assessable income, are called *statutory income*.

Note 1: Although an amount is statutory income because it has been included in assessable income under a provision of this Act, it may be made exempt income or non-assessable non-exempt income under another provision: see sections 6-20 and 6-23.

Note 2: Many provisions in the summary list in section 10-5 contain rules about ordinary income. These rules do not change its character as ordinary income.

- (3) If an amount would be \*statutory income apart from the fact that you have not received it, it becomes statutory income as soon as it is applied or dealt with in any way on your behalf or as you direct.
- (4) If you are an Australian resident, your assessable income includes your \*statutory income from all sources, whether in or out of Australia.
- (5) If you are a foreign resident, your assessable income includes:
- (a) your \*statutory income from all \*Australian sources; and
  - (b) other \*statutory income that a provision includes in your assessable income on some basis other than having an \*Australian source.

### 6-15 What is *not* assessable income

- (1) If an amount is *not* \*ordinary income, and is *not* \*statutory income, it is not *assessable income* (so you do not have to pay income tax on it).
- (2) If an amount is \*exempt income, it is not *assessable income*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 6-20

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- Note: If an amount is exempt income, there are other consequences besides it being exempt from income tax. For example:
- the amount may be taken into account in working out the amount of a tax loss (see section 36-10);
  - you cannot deduct as a general deduction a loss or outgoing incurred in deriving the amount (see Division 8);
  - capital gains and losses on assets used solely to produce exempt income are disregarded (see section 118-12).

- (3) If an amount is \*non-assessable non-exempt income, it is not **assessable income**.

Note 1: You cannot deduct as a general deduction a loss or outgoing incurred in deriving an amount of non-assessable non-exempt income (see Division 8).

Note 2: Capital gains and losses on assets used to produce *some* types of non-assessable non-exempt income are disregarded (see section 118-12).

**6-20 Exempt income**

- (1) An amount of \*ordinary income or \*statutory income is **exempt income** if it is made exempt from income tax by a provision of this Act or another \*Commonwealth law.

For summary lists of provisions about exempt income, see sections 11-5, 11-10 and 11-15.

- (2) \*Ordinary income is also **exempt income** to the extent that this Act excludes it (expressly or by implication) from being assessable income.
- (3) By contrast, an amount of \*statutory income is **exempt income** only if it is made exempt from income tax by a provision of this Act outside this Division or another \*Commonwealth law.
- (4) If an amount of \*ordinary income or \*statutory income is \*non-assessable non-exempt income, it is not **exempt income**.

Note: An amount of non-assessable non-exempt income is not taken into account in working out the amount of a tax loss.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **6-23 Non-assessable non-exempt income**

An amount of \*ordinary income or \*statutory income is ***non-assessable non-exempt income*** if a provision of this Act or of another \*Commonwealth law states that it is not assessable income and is not \*exempt income.

Note: Capital gains and losses on assets used to produce *some* types of non-assessable non-exempt income are disregarded (see section 118-12).

For a summary list of provisions about non-assessable non-exempt income, see Subdivision 11-B.

### **6-25 Relationships among various rules about ordinary income**

(1) Sometimes more than one rule includes an amount in your assessable income:

- the same amount may be \*ordinary income and may also be included in your assessable income by one or more provisions about assessable income; or
- the same amount may be included in your assessable income by more than one provision about assessable income.

For a summary list of the provisions about assessable income, see section 10-5.

However, the amount is included only once in your assessable income for an income year, and is then not included in your assessable income for any other income year.

(2) Unless the contrary intention appears, the provisions of this Act (outside this Part) prevail over the rules about \*ordinary income.

Note: This Act contains some specific provisions about how far the rules about ordinary income prevail over the other provisions of this Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 8—Deductions

### Table of sections

8-1	General deductions
8-5	Specific deductions
8-10	No double deductions

### 8-1 General deductions

- (1) You can **deduct** from your assessable income any loss or outgoing to the extent that:
- (a) it is incurred in gaining or producing your assessable income; or
  - (b) it is necessarily incurred in carrying on a \*business for the purpose of gaining or producing your assessable income.

Note: Division 35 prevents losses from non-commercial business activities that may contribute to a tax loss being offset against other assessable income.

- (2) However, you cannot deduct a loss or outgoing under this section to the extent that:
- (a) it is a loss or outgoing of capital, or of a capital nature; or
  - (b) it is a loss or outgoing of a private or domestic nature; or
  - (c) it is incurred in relation to gaining or producing your \*exempt income or your \*non-assessable non-exempt income; or
  - (d) a provision of this Act prevents you from deducting it.

For a summary list of provisions about deductions, see section 12-5.

- (3) A loss or outgoing that you can deduct under this section is called a **general deduction**.

For the effect of the GST in working out deductions, see Division 27.

Note If you receive an amount as insurance, indemnity or other recoupment of a loss or outgoing that you can deduct under this section, the amount may be included in your assessable income: see Subdivision 20-A.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **8-5 Specific deductions**

- (1) You can also *deduct* from your assessable income an amount that a provision of this Act (outside this Division) allows you to deduct.
- (2) Some provisions of this Act prevent you from deducting an amount that you could otherwise deduct, or limit the amount you can deduct.
- (3) An amount that you can deduct under a provision of this Act (outside this Division) is called a *specific deduction*.

Note: If you receive an amount as insurance, indemnity or other recoupment of a deductible expense, the amount may be included in your assessable income: see Subdivision 20-A.

For a summary list of provisions about deductions, see section 12-5.

### **8-10 No double deductions**

If 2 or more provisions of this Act allow you deductions in respect of the same amount (whether for the same income year or different income years), you can deduct only under the provision that is most appropriate.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 9** Entities that must pay income tax

Section 9-1A

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## **Part 1-4—Checklists of what is covered by concepts used in the core provisions**

### **Division 9—Entities that must pay income tax**

#### **Table of sections**

9-1A	Effect of this Division
9-1	List of entities
9-5	Entities that work out their income tax by reference to something other than taxable income

#### **9-1A Effect of this Division**

This Division is a \*Guide.

#### **9-1 List of entities**

Income tax is payable by the entities listed in the table.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

<b>Item</b>	<b>Income tax is payable by this kind of entity:</b>	<b>because of this provision:</b>
1	An individual	section 4-1
2	A company, that is: <ul style="list-style-type: none"><li>• a body corporate; or</li><li>• an unincorporated body (except a partnership)</li></ul>	section 4-1
3	A company that was a member of a wholly-owned group if a former subsidiary in the group is treated as having disposed of leased plant and does not pay all of the income tax resulting from that treatment	section 45-25

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Item</b>	<b>Income tax is payable by this kind of entity:</b>	<b>because of this provision:</b>
4	A superannuation provider in relation to a complying superannuation fund	sections 295-5 and 295-605
5	A superannuation provider in relation to a non-complying superannuation fund	sections 295-5 and 295-605
6	A superannuation provider in relation to a complying approved deposit fund	section 295-5
7	A superannuation provider in relation to a non-complying approved deposit fund	section 295-5
8	The trustee of a pooled superannuation trust	section 295-5
8A	An FHSA provider in relation to an FHSA trust	section 345-5
9	A corporate limited partnership	<b>section 94J</b>
10	A mutual insurance association (as described in section 121)	<b>section 121</b>
11	A trustee (except one covered by another item in this table), but only in respect of some kinds of income of the trust	<b>sections 98, 99, 99A and 102</b>
12	The trustee of a corporate unit trust	<b>section 102K</b>
13	The trustee of a public trading trust	<b>section 102S</b>

### 9-5 Entities that work out their income tax by reference to something other than taxable income

- (1) For some entities, some or all of their income tax for the \*financial year is worked out as described in the table. Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 9** Entities that must pay income tax

Section 9-5

---

<b>Item</b>	<b>This kind of entity is liable to pay income tax worked out by reference to:</b>	<b>See:</b>
1	A company that was a member of a wholly-owned group is jointly and severally liable to pay an amount of income tax if a former subsidiary in the group is treated as having disposed of leased plant and does not pay all of the income tax resulting from that treatment.	section 45-25
2	A superannuation provider in relation to a complying superannuation fund is to be assessed and is liable to pay income tax on no-TFN contributions income as well as on taxable income.	sections 295-5 and 295-605
3	A superannuation provider in relation to a non-complying superannuation fund is to be assessed and is liable to pay income tax on no-TFN contributions income as well as on taxable income.	sections 295-5 and 295-605
4	An RSA provider is to be assessed and is liable to pay income tax on no-TFN contributions income as well as on taxable income.	sections 295-5, 295-605 and 320-155
5	An Australian resident individual with: <ul style="list-style-type: none"><li>• eligible foreign remuneration under section 23AF; or</li><li>• foreign earnings under section 23AG;</li></ul> (from working in a foreign country) is liable to pay income tax worked out by reference to his or her assessable income less some of his or her deductions.	<b>section 23AF or 23AG</b>
6	A trustee covered by item 11 in the table in section 9-1 is liable to pay income tax worked out by reference to the net income of the trust for the income year.	<b>sections 98, 99 and 99A</b>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



<b>Item</b>	<b>This kind of entity is liable to pay income tax worked out by reference to:</b>	<b>See:</b>
7	The trustee of a corporate unit trust is liable to pay income tax worked out by reference to the net income of the trust for the income year.	<b>section 102K</b>
8	The trustee of a public trading trust is liable to pay income tax worked out by reference to the net income of the trust for the income year.	<b>section 102S</b>
9	An entity that is liable to pay income tax (worked out by reference to taxable income or otherwise) is also liable to pay income tax worked out by reference to diverted income or diverted trust income for the income year.	<b>section 121H</b>
10	An Australian insurer that re-insures overseas can elect to pay, as agent for the re-insurer, income tax worked out by reference to the amount of the re-insurance premiums.	<b>section 148</b>

- (2) For entities covered by an item in the table in subsection (1), the **income year** is the same as the \*financial year, except in these cases:
- (a) for a company, or an entity covered by item 2 or 3 in the table, the income year is the *previous* financial year;
  - (b) if an entity has an accounting period that is not the same as the financial year, each such accounting period or, for a company, each previous accounting period is an income year.

Note 1: The Commissioner can allow an entity to adopt an accounting period ending on a day other than 30 June. See section 18 of the *Income Tax Assessment Act 1936*.

Note 2: An accounting period ends, and a new accounting period starts, when a partnership becomes, or ceases to be, a VCLP, an ESVCLP, an AFOF or a VCMP. See section 18A of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Division 10—Particular kinds of assessable income

### 10-1 Effect of this Division

This Division is a \*Guide.

### 10-5 List of provisions about assessable income

The provisions set out in the table:

- include in your assessable income amounts that are *not* \*ordinary income; and
- vary or replace the rules that would otherwise apply for certain kinds of \*ordinary income.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

<b>Accrued leave transfer payments</b>	
.....	15-5
<b>alienated personal services income</b>	
.....	86-15
<b>allowances</b>	
<i>see employment</i>	
<b>annual leave</b>	
<i>see leave payments</i>	
<b>annuities</b>	
.....	<b>27H</b>
<b>approved deposit fund (ADFs)</b>	
<i>see superannuation</i>	
<b>attributable income</b>	
<i>see controlled foreign corporations and foreign investment funds</i>	

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>avoidance of tax</b>	
general .....	177F
diversion of income .....	121H
profits shifted out of Australia .....	136AD, 136AE
see also <i>transfers of income</i>	
<b>bad debts</b>	
see <i>recoupment</i>	
<b>balancing adjustment</b>	
see <i>capital allowances, industrial property, investments, research &amp; development, scientific research and tax exempt entities</i>	
<b>banking</b>	
offshore banking activities, income from .....	121EG(1)
offshore banking unit, deemed interest on payments to by owner .....	121EK
<b>barter transactions</b>	
.....	21, 21A, 15-2
<b>beneficiaries</b>	
see <i>trusts</i>	
<b>benefits</b>	
business, non-cash .....	21A
consideration, non-cash .....	21
meals you provide in an in-house dining facility .....	32-70
see also <i>employment and superannuation</i>	
<b>bonus shares</b>	
see <i>shares</i>	
<b>bounties</b>	
.....	15-10
<b>capital allowances</b>	
excess of termination value over adjustable value	
generally .....	40-285
for some cars.....	40-370
depreciating asset in low-value pool .....	40-445(2)
expenditure in software development pool.....	40-460
recovery of petroleum resource rent tax .....	40-750(3)

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 10** Particular kinds of assessable income

Section 10-5

---

<b>capital gains</b>	
.....	102-5
see also <i>insurance</i>	
<b>car expenses</b>	
cents per kilometres reimbursement of .....	15-70
<b>carried interests</b>	
carried interests, not ordinary income .....	118-21
<b>CFCs</b>	
see <i>controlled foreign corporations</i>	
<b>charters</b>	
see <i>shipping</i>	
<b>child</b>	
non-trust income of, unearned .....	<b>102AE</b>
trust income of, unearned .....	<b>102AG</b>
<b>company</b>	
see <i>controlled foreign corporations, co-operative company, directors, dividends, liquidation, shareholders and shares</i>	
<b>compensation</b>	
live stock or trees, recoveries for loss of .....	385-130
profits or income, insurance or indemnity for loss of.....	15-30
received by lessor for lessee's non-compliance with lease obligation to repair.....	15-25
trading stock, insurance or indemnity for loss of .....	70-115
see also <i>insurance, live stock, recoupment and scientific research</i>	
<b>consideration</b>	
see <i>benefits</i>	
<b>consolidated groups and MEC groups</b>	
Assets in relation to Division 230 financial arrangement...	701-61(3)
<b>controlled foreign corporations (CFCs)</b>	
attributable income of .....	<b>456 to 459A</b>
see also <i>dividends and taxes</i>	
<b>co-operative company</b>	
receipts of .....	<b>119</b>
<b>credit union</b>	
see <i>co-operative company</i>	

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>currency gains</b>	
<i>see foreign exchange</i>	
<b>currency losses</b>	
<i>see recoupment</i>	
<b>death</b>	
<i>see trusts</i>	
<b>debt/equity swap</b>	
<i>see shares and units</i>	
<b>defence forces</b>	
allowances and benefits for service as a member of .....	15-2
<b>depreciation</b>	
<i>see capital allowances</i>	
<b>directors</b>	
excessive remuneration or retirement payment from company .....	<b>109</b>
<b>distributions</b>	
<i>see dividends</i>	
<b>dividends</b>	
benefit of LIC capital gain through a trust or partnership .....	115-280
general .....	<b>44(1)</b>
distribution from a controlled foreign corporation .....	<b>47A(1)</b>
franked dividends, credits on.....	207-20(1), 207-35(1), 207-35(3)
<i>see also liquidation</i>	
<b>elections</b>	
local government, reimbursement of expenses of .....	25-65
<i>see also recoupment</i>	
<b>electricity connections</b>	
<i>see recoupment</i>	
<b>employees</b>	
<i>see shares</i>	

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 10** Particular kinds of assessable income

Section 10-5

---

**employment**

allowances and benefits in relation to employment or rendering services .....	15-2
employment termination payment .....	82-10 82-65 82-70
other payments for employment termination .....	83-295
return to work payments .....	15-3
see <i>accrued leave transfer payments, leave payments, superannuation</i> and sections 82-10A and 82-10C of the <i>Income Tax (Transitional Provisions) Act 1997</i>	

**environment**

see *recoupment*

**farm management deposits**

repayments of .....	<b>393-1 of Schedule 2G</b>
---------------------	---------------------------------

**FIFs**

see *foreign investment funds*

**films**

Australian, proceeds of investment in .....	<b>26AG</b>
---	-------------

**financial arrangements**

gains from.....	230-15(1)
-----------------	-----------

**first home saver accounts**

employer FHSA contributions etc. ....	15-80
---------------------------------------	-------

**foreign exchange**

gains .....	775-15
see also <i>recoupment</i>	

**foreign investment funds (FIFs)**

attributable income of .....	<b>529</b>
see also <i>taxes</i>	

**forestry agreement**

amount where section 82KZMG of the 1936 Act applies ..	15-45
CGT event in relation to forestry interest in agreement .....	82KZMGB

**forestry managed investment schemes**

forestry manager's receipts under scheme.....	15-46
CGT event in relation to forestry interest in scheme for initial participant.....	394-25(2)

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

CGT event in relation to forestry interest in scheme for subsequent participant.....	394-30(2)
<b>franked dividends</b>	
<i>see dividends</i>	
<b>funeral policy</b>	
benefit under.....	15-55
<b>general insurance</b>	
gross premiums.....	<b>321-45 of Schedule 2J</b>
reduction in value of outstanding claims liability.....	<b>321-10 and 323-5 of Schedule 2J</b>
reduction in value of unearned premium reserve .....	<b>321-50 of Schedule 2J</b>
<b>grapevines</b>	
<i>see recoupment</i>	
<b>horticultural plants</b>	
<i>see recoupment</i>	
<b>improvements</b>	
<i>see leases</i>	
<b>imputation</b>	
<i>see dividends</i>	
<b>indemnity</b>	
<i>see compensation and recoupment</i>	
<b>industrial property</b>	
consideration for disposal of unit relating to copyright in Australian film.....	<b>124P</b>
<i>see also intellectual property and research and development</i>	
<b>infrastructure borrowings</b>	
<i>see interest</i>	
<b>insurance</b>	
bonuses .....	<b>26AH, 15-75</b>
company, demutualisation of .....	<b>121AT</b>
foreign life assurance policy .....	<b>529</b>
life insurance, transfer of contributions by superannuation fund or approved deposit fund to .....	295-260

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 10** Particular kinds of assessable income

Section 10-5

---

payments from a non-resident reinsurer in respect of a loss .....	<b>148</b>
premiums in respect of Australian business received by non-resident insurers .....	<b>143</b>
premiums paid to a non-resident for reinsurance .....	<b>148</b>
premiums paid to mutual insurance association .....	<b>121</b>
premiums payable to a non-resident for insurance of property in Australia .....	<b>142(1)</b>
premiums payable to a non-resident for insuring an event that can only happen in Australia .....	<b>142(1)</b>
premiums payable to a non-resident under an insurance contract with a resident .....	<b>142(2)</b>
rebates and premiums refunded to a superannuation fund trustee .....	295-320 (table item 4)
see also <i>compensation, life insurance companies and recoupment</i>	

**interest**

infrastructure borrowings, on .....	<b>159GZZZZG</b>
loans raised in Australia by foreign governments, on .....	<b>27</b>
overpaid tax, on .....	15-35
qualifying securities, on .....	<b>159GQ,</b> <b>159GW(1)</b>

see also *co-operative companies and leases*

**investments**

non-interest bearing Commonwealth securities, gains on disposal or redemption of .....	<b>26C</b>
prizes from investment-related lotteries .....	<b>26AJ</b>
qualifying securities, payments to partial residents made under .....	<b>159GW(2)</b>
qualifying securities, amount assessable to issuer of .....	<b>159GT(1B)</b>
qualifying securities, balancing adjustment on the transfer of .....	<b>159GS</b>
securities, variation in terms of .....	<b>159GV(2)</b>
securities lending arrangements .....	<b>26BC</b>
traditional securities, gains on the disposal or redemption of .....	<b>26BB</b>
see also <i>films and interest</i>	

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**landcare operations**

*see recoupment*

**leased plant** ..... Division 45

**leases**

- amounts received by lessor from lessee for
  - non-compliance with lease obligation to repair ..... 15-25
- interest component of payments under non-leveraged
  - finance leases ..... **159GK**
- partnership leasing property under non-leveraged
  - finance lease, new partner or contribution of capital
    - since 14 May 1985 ..... **159GO**
- premiums relating to assignment of a lease granted
  - before 20 September 1985 ..... **26AB**
- profit on disposal of previously leased motor vehicles ..... Subdivision 20-B

**leases of luxury cars**

- accrual amounts ..... **Schedule 2E**  
(42A-35(1))
- adjustment amounts (lessee) ..... **Schedule 2E**  
(42A-70(2))
- adjustment amounts (lessor) ..... **Schedule 2E**  
(42A-65(2))
- profit on actual sale ..... **Schedule 2E**  
(42A-35(3))
- profit on notional sale ..... **Schedule 2E**  
(42A-35(2))

**leave payments**

- accrued leave transfer payment ..... 15-5
  - unused annual leave payment ..... 83-10
  - unused long service leave payment ..... 83-80
- see employment*

**life insurance companies**

Subdivision 320-B

**limited recourse debt**

- excessive deduction amount (debtor) ..... 243-40
- excessive deduction amount (partner) ..... 243-65

**liquidation**

- distribution to a shareholder in winding up a company ..... **47(1)**

**live stock**

- death or destruction of ..... Subdivision 385-E

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 10** Particular kinds of assessable income

Section 10-5

---

departing Australia and .....	385-160, 385-163
insolvency, and .....	385-160, 385-163
profits on death or disposal of .....	Subdivision 385-E, 385-160

see also *compensation* and *trading stock*

**long service leave**

see *leave payments*

**losses**

see *compensation*

**lotteries**

see *investments*

**meals**

see *benefits*

**Mining**

providing mining, quarrying or prospecting information .. 15-40

**minors**

see *child*

**motor vehicles**

see *car expenses* and *leases*

**mutual insurance**

see *insurance*

**non-cash benefits**

see *benefits* and *employment*

**notional sales and loans**

adjustment amounts (lessee).....	240-110(2)
adjustment amounts (lessor).....	240-105(2)
notional interest.....	240-35(1)
profit on actual sale.....	240-35(3)
profit on notional sale.....	240-35(2)

**offshore banking units**

see *banking*

**partnerships**

net income of, partner's interest in ..... **92(1)**

uncontrolled partnership income, effect of ..... **94**

see also *leases*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**payments to members of copyright collecting societies**

payments by copyright collecting societies ..... 15-22

**petroleum**

resource rent tax, recovery of ..... 20-30(1)

see also *capital allowances*

**premiums**

see *insurance, leases and superannuation*

**primary production**

see *recoupment*

**prizes**

see *investments*

**profits**

profit-making undertaking or plan..... 15-15

sale of property acquired before 20 September 1985 for  
profit-making by sale ..... **25A**

see also *avoidance of tax*

**Project pools**

An amount received for the abandonment, sale or other  
disposal of a project ..... 40-830, 40-832

**property**

see *profits and trusts*

**quarrying**

see *mining and recoupment*

**rates**

see *recoupment*

**recoupment**

insurance or indemnity for deductible losses or  
outgoings ..... Subdivision 20-A

other recoupment for certain deductible losses or  
outgoings ..... Subdivision 20-A

see also *car expenses, compensation, elections and  
petroleum*

**reimbursements**

see *car expenses, dividends, elections, first home saver  
accounts, petroleum and recoupment*

**reinsurance**

see *insurance*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 10** Particular kinds of assessable income

Section 10-5

---

**research & development**

consideration for loss or disposal etc. of plant, assets or buildings used for .....	<b>73B(23) to (27C), 73BF, 73BM, 73G(4)</b>
return on .....	<b>73B(27A), (27C), 73BF(4), (6), 73BM(4), (6)</b>
transferee of property used for, effect of disposal etc. or change of use by .....	<b>73F(10)</b>

**residual value**

see *industrial property*

**retirement payments**

see *directors, leave payments and shareholders*

**rights to income**

see *transfers of income*

**roads**

see *timber*

**royalties**

..... 15-20

**schemes**

see *avoidance of tax*

**scholarship plan**

benefit under..... 15-60

**scientific research**

consideration for disposal or destruction of buildings acquired for scientific research .....	<b>73A(4)</b>
--	---------------

**securities**

see *investments*

**services**

see *co-operative companies, employment, loans and trusts*

**shareholders**

excessive remuneration or retirement payment from company .....	<b>109</b>
loans, payments and credits from company .....	<b>Division 7A of Part III</b>
see also <i>dividends</i>	

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**shares**

acquired in a debt/equity swap, profit on the disposal	
cancellation or redemption of .....	<b>63E(4)</b>
bonus shares, cost of .....	<b>6BA</b>
buy-backs .....	<b>159GZZZJ to 159GZZZT</b>
employee share acquisition schemes .....	<b>26AAC, 139 to 139GH</b>
holding company shares held by a subsidiary, cancellation of .....	<b>159GZZZC to 159GZZZI</b>
small-medium enterprise, profit on disposal of shares in ..	<b>128TG to 128TL</b>
see also <i>dividends</i>	

**shipping**

goods shipped in Australia, amounts paid to foreign shipowners and charterers for .....	<b>129</b>
--	------------

**small-medium enterprises (SMEs)**

see *shares*

**subsidies**

.....	15-10
-------	-------

**sugar industry exit grants**

.....	15-65
-------	-------

**superannuation**

benefits generally .....	Divisions 301 to 306
benefits in breach of legislative requirements .....	Division 304
benefits received from older superannuation funds .....	<b>26AF, 26AFA</b>
complying fund becomes non-complying, effect of .....	295-320 (table item 2)
contributions to an approved deposit fund .....	Subdivisions 295- C and 295-D
contributions to an RSA .....	Subdivision 295-C
contributions to a superannuation fund .....	Subdivisions 295- C and 295-D
death benefits .....	302-75 302-85 302-90 302-145

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 10** Particular kinds of assessable income

Section 10-5

---

foreign superannuation funds and schemes, benefits	
from .....	305-70
member benefits .....	301-20
	301-25
	301-35
	301-40
	Subdivision 301-C
foreign fund becoming Australian, effect of .....	295-320 (table
	item 3)
no-TFN contributions income .....	295-605
returned contributions .....	290-100
trustee's liability to pay tax .....	295-5(2) and (3)
see <i>insurance</i>	
<b>tax avoidance</b>	
see <i>avoidance of tax and transfers of income</i>	
<b>tax exempt entities</b>	
treatment of income and gains on becoming taxable .....	<b>Schedule 2D</b>
<b>taxes</b>	
see <i>dividends, foreign investment funds, interest and</i>	
<i>recoupment</i>	
<b>termination of employment</b>	
see <i>directors, eligible termination payments, leave</i>	
<i>payments and shareholders</i>	
<b>theft</b>	
see <i>recoupment</i>	
<b>trading stock</b>	
change in interests in .....	70-100
death of trader and .....	70-105
difference between opening and closing value of .....	70-35
disposal not at arm's length.....	70-20
disposal of outside ordinary course of business .....	70-90, 70-95
see also <i>compensation and tax exempt entities</i>	
<b>transfers of income</b>	
consideration for transfer of right to income .....	<b>102CA</b>
payments for transfer or disposal of property .....	<b>262</b>
transferee, effect on of transfer of right to income .....	<b>102C</b>
transferor, effect on of transfer of right to income .....	<b>102B</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**travel expenses**

see *car expenses*

**trusts**

beneficiary under legal disability or with a vested and indefeasible interest in trust income .....	<b>100</b>
deceased estates, income of .....	<b>101A</b>
discretionary trusts .....	<b>101</b>
net income of a trust estate, your present entitlement to	<b>97, 101</b>
non-resident beneficiaries, liability to tax of .....	<b>98A</b>
non-resident trust estates to which you have transferred property or services, income of .....	<b>102AAZD</b>
property of applied for benefit of beneficiaries .....	<b>99B</b>
trust estate includes income from another trust estate	<b>94(5)</b>
trustees' liability to tax .....	<b>98, 99, 99A, 102, 102K, 102S</b>

see also *avoidance of tax* and *superannuation*

**unearned income**

see *child*

**units**

acquired in a debt/equity swap, profit on the disposal, cancellation or redemption of .....	<b>63E(4)</b>
--	---------------

**water conservation**

see *recoupment*

**winding-up**

see *insurance* and *liquidation*

**wool clips**

double wool clips, treatment of .....	385-135, 385-155
---------------------------------------	------------------

**work in progress**

receipt of a work in progress amount .....	15-50
--	-------

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 11** Particular kinds of non-assessable income

Section 11-1A

---

**Division 11—Particular kinds of non-assessable income**

**Table of Subdivisions**

- 11-A Lists of classes of exempt income
- 11-B Particular kinds off non-assessable non-exempt income

**Subdivision 11-A—Lists of classes of exempt income**

**Table of sections**

- 11-1A Effect of this Subdivision
- 11-1 Overview
- 11-5 Entities that are exempt, no matter what kind of ordinary or statutory income they have
- 11-10 Ordinary or statutory income which is exempt, no matter whose it is
- 11-15 Ordinary or statutory income which is exempt only if it is derived by certain entities

**11-1A Effect of this Subdivision**

This Subdivision is a \*Guide.

**11-1 Overview**

Ordinary income or statutory income which is exempt from income tax can be divided into 3 main classes:

- (a) ordinary or statutory income of entities that are exempt, no matter what kind of ordinary or statutory income they have (see table in section 11-5);
- (b) ordinary or statutory income which is exempt, no matter whose it is (see table in section 11-10);
- (c) ordinary or statutory income which is exempt only if it is \*derived by certain entities (see table in section 11-15).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## 11-5 Entities that are exempt, no matter what kind of ordinary or statutory income they have

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

Note: Special rules apply to entities that cease to be exempt. See Schedule 2D to the *Income Tax Assessment Act 1936*.

<b>charity, education, religion or science</b>	
charitable fund, public .....	50-5
charitable institution .....	50-5
educational institution, public.....	50-5
religious institution.....	50-5
scientific institution .....	50-5
scientific research fund.....	50-5
scientific society etc. ....	50-5
<b>community service</b>	
community service society etc.....	50-10
<b>employees and employers</b>	
employee association.....	50-15
employer association .....	50-15
trade union .....	50-15
<b>film</b>	
Australian Film Finance Corporation .....	50-45
<b>funds established by will or trust</b>	
contributions to other funds.....	50-20
<b>government</b>	
constitutionally protected fund .....	50-25
local governing body .....	50-25
municipal corporation.....	50-25
public authority.....	50-25
state/territory bodies .....	<b>24AK to 24AZ</b>
<b>health</b>	
health benefits organisation .....	50-30
hospital .....	50-30
medical benefits organisation .....	50-30

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 11** Particular kinds of non-assessable income

Section 11-10

---

**HIH rescue package**

HIH Claims Support Trust .....	322-10
--------------------------------	--------

**mining**

British Phosphate Commissioners Banaba Contingency Fund .....	50-35
Phosphate Mining Company of Christmas Island .....	50-35

**primary or secondary resources, and tourism**

agricultural society etc. ....	50-40
aviation society etc. ....	50-40
horticultural society etc. ....	50-40
industrial society etc. ....	50-40
manufacturing society etc. ....	50-40
pastoral society etc. ....	50-40
tourism society etc. ....	50-40
viticultural society etc. ....	50-40

**sports, culture or recreation**

animal racing society etc. ....	50-45
art society etc. ....	50-45
game society etc. ....	50-45
literature society etc. ....	50-45
music society etc. ....	50-45
sport society etc. ....	50-45

**11-10 Ordinary or statutory income which is exempt, no matter whose it is**

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

**dividends or shares**

pooled development fund company dividend .....	<b>124ZM</b>
pooled development fund company shares, income from sale of .....	<b>124ZN</b>

**financial arrangements**

gains related to exempt income .....	230-30
--------------------------------------	--------

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>financial transactions</b>	
infrastructure borrowings, income in relation to .....	<b>159GZZZZE</b>
pooled development fund company dividends .....	<b>124ZM</b>
pooled development fund company shares, income from sale of .....	<b>124ZN</b>
<b>foreign aspects of income taxation</b>	
Australian-American Education Foundation, grant from ...	51-10
<b>interest</b>	
judgment debt, personal injury .....	51-57
<b>non-cash benefits</b>	
business benefit .....	<b>23L(2)</b>
exempt fringe benefit.....	<b>23L(1A)</b>
<b>prizes</b>	
Prime Minister's Prize for Australian History .....	51-60
Prime Minister's Prize for Science .....	51-60
Prime Minister's Literary Awards .....	51-60
<b>superannuation</b>	
benefits from non-complying funds .....	305-5

### **11-15 Ordinary or statutory income which is exempt only if it is derived by certain entities**

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

<b>agricultural industry exit grants</b>	
sugar industry exit grants.....	53-10
tobacco industry exit grants.....	53-10
<b>copyright collecting societies</b>	
copyright income .....	51-43(2)(a)
non-copyright income up to certain limits.....	51-43(2)(b)
<b>credit unions</b>	
interest .....	<b>23G</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 11** Particular kinds of non-assessable income

Section 11-15

---

**defence**

Defence Force member, allowances .....	51-5
Defence Force member, compensation payments for loss of deployment allowance for warlike service .....	51-5
F-111 Deseal/Reseal Ex-gratia Lump Sum Payments .....	51-5
Former Reserve Defence Force member, compensation payments for loss of pay and/or allowances.....	51-5
Reserve Defence Force member, pay and allowances.....	51-5

**education and training**

Apprenticeship Wage Top-Up payment, recipient of .....	51-10
bursary, educational allowance etc. ....	51-10 and 51-35
Commonwealth Trade Learning Scholarship, recipient of .....	51-10
CRAFT scheme, employer's income from .....	51-10
early completion bonuses for apprentices.....	51-10 and 51-42
Endeavour Awards, research fellowship under .....	51-10
Endeavour Executive Award .....	51-10
foreign student, scholarship and bursary to .....	842-105
full-time student, income from a scholarship, bursary, other educational allowance or educational assistance .....	51-10 and 51-35
isolated child, income for the provision of education of....	51-10 and 51-40
secondary student, income for the provision of education of .....	51-10 and 51-40
Skills for Sustainability for Australian Apprentices payment, recipient of .....	51-10
Tools for Your Trade payment (under the program known as the Australian Apprenticeships Incentives Program), recipient of .....	51-10

**family assistance**

baby bonus.....	52-150
child care benefit .....	52-150
child care rebate.....	52-150
family tax benefit .....	52-150
maternity immunisation allowance.....	52-150
one-off payment to families .....	52-150

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

payments to families under the scheme determined under Schedule 3 to the <i>Family Assistance Legislation Amendment (More Help for Families— One-off Payments) Act 2004</i> .....	52-150
economic security strategy payment to families .....	52-150
payments to families under the scheme determined under Schedule 4 to the <i>Social Security and Other Legislation Amendment (Economic Security Strategy) Act 2008</i> .....	52-160
back to school bonus or single income family bonus .....	52-150
payments under the scheme determined under Schedule 4 to the <i>Household Stimulus Package Act (No. 2) 2009</i> .....	52-165
<b>foreign aspects of income taxation</b>	
approved overseas project, income from .....	<b>23AF</b>
Commonwealth of Nations country officer, official salary and foreign income .....	768-100
consul and official staff member, official salary and foreign income .....	768-100
Defence Force member, pay and allowances from being on eligible duty .....	<b>23AD</b>
Defence Force member, foreign resident, pay and allowances of .....	842-105
Defence Force member, pay and allowances from performing duties in operational areas .....	<b>23AC</b>
defence of Australia, overseas person's income from assisting in Australia's defence .....	842-105
diplomat and official staff member, official salary and foreign income .....	768-100
educational, scientific, religious or philanthropic society, income of a visiting representative of .....	842-105
expert, foreign resident, remuneration of .....	842-105
foreign society or association representative, income of ...	842-105
government representative and members of the entourage, foreign resident, income of .....	842-105
OBU off-shore investment trusts, income to which subsection <b>121D(6)</b> applies .....	<b>121EL</b>
OBU investment trusts for overseas charitable institutions.....	<b>121EL(2)</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 11** Particular kinds of non-assessable income

Section 11-15

---

overseas charitable institutions, income from OBUs.....	<b>121ELA(1)</b>
overseas employment income, resident, income of .....	<b>23AG</b>
persecution victim, payments to .....	768-105
press representative, foreign, income of .....	842-105
resistance fighter and victim of wartime persecution, payments to .....	768-105
Territory resident, income from sources in a prescribed Territory .....	<b>24G</b>
Territory resident company or trust, income from sources outside Australia .....	<b>24F</b>
United Nations, income from service with .....	<b>23AB</b>
United States projects, income from approved overseas projects .....	<b>23AA</b>
<b>life insurance companies</b>	Subdivision 320-B
<b>small business retirement exemption</b>	
payment by company or trust, arising from CGT event ....	152-310(2)
<b>social security or like payments</b>	
ABSTUDY scheme, payment under.....	Subdivision 52-E
carer adjustment payment.....	53-10
carer supplement.....	52-10
child disability assistance .....	Subdivision 52-A
Commonwealth education or training payment.....	Subdivision 52-F
DFISA bonus and DFISA bonus bereavement payment ....	52-65
disability services payment .....	53-10
economic security strategy payment under the <i>Social Security Act 1991</i> .....	52-10
economic security strategy payment under the <i>Veterans’ Entitlements Act 1986</i> .....	52-65
education entry payment supplement under the <i>Social Security Act 1991</i> .....	52-10
exceptional circumstances relief, payment for .....	53-10 and 53-15
farmers hardship bonus under the <i>Social Security Act 1991</i> .....	52-10
farm help income support.....	53-10 and 53-15
2006 one-off payment to older Australians under the <i>Social Security Act 1991</i> .....	52-10

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

payments under the scheme determined under item 1 of Schedule 2 to the <i>Social Security and Veterans’ Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Act 2006</i> .....	52-10
2007 one-off payment to older Australians under the <i>Social Security Act 1991</i> .....	52-10
payments under a scheme determined under item 1 of Schedule 2 to the <i>Social Security and Veterans’ Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Act 2007</i> .....	52-10
2008 one-off payment to older Australians under the <i>Social Security Act 1991</i> .....	52-10
payments under a scheme determined under item 1 of Schedule 2 to the <i>Social Security and Veterans’ Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008</i> .....	52-10
payments under the scheme determined under Schedule 4 to the <i>Household Stimulus Package Act (No. 2) 2009</i> .....	52-165
payments under the scheme determined under Schedule 4 to the <i>Social Security and Other Legislation Amendment (Economic Security Strategy) Act 2008</i> .....	52-160
2008 one-off payment to older Australians under the <i>Veterans’ Entitlements Act 1986</i> .....	52-65
payments under the scheme determined under item 2 of Schedule 2 to the <i>Social Security and Veterans’ Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008</i> .....	52-65
one-off payment to carers (carer allowance related) or one-off payment to carers (carer payment related) .....	52-10
payments to carers under the scheme determined under Schedule 3 to the <i>Family Assistance Legislation Amendment (More Help for Families—One-off Payments) Act 2004</i> .....	52-10
2005 one-off payment to carers (carer payment related), 2005 one-off payment to carers (carer service pension related) or 2005 one-off payment to carers (carer allowance related).....	52-10

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 11** Particular kinds of non-assessable income

Section 11-15

---

payments under the scheme determined under Schedule 2 to the <i>Social Security Legislation Amendment (One-off Payments for Carers) Act 2005</i> ...	52-10
2006 one-off payment to carers (carer payment related), 2006 one-off payment to carers (wife pension related), 2006 one-off payment to carers (partner service pension related), 2006 one-off payment to carers (carer service pension related) or 2006 one-off payment to carers (carer allowance related) .....	52-10
payments under the scheme determined under Schedule 4 to the <i>Social Security and Veterans’ Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Act 2006</i> .....	52-10
2007 one-off payment to carers (carer payment related), 2007 one-off payment to carers (wife pension related), 2007 one-off payment to carers (partner service pension related), 2007 one-off payment to carers (carer service pension related) or 2007 one-off payment to carers (carer allowance related).....	52-10
payments under the scheme determined under Schedule 4 to the <i>Social Security and Veterans’ Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Act 2007</i> .....	52-10
2008 one-off payment to carers (carer payment related), 2008 one-off payment to carers (wife pension related), 2008 one-off payment to carers (partner service pension related), 2008 one-off payment to carers (carer service pension related) or 2008 one-off payment to carers (carer allowance related).....	52-10
payments under the scheme determined under Schedule 4 to the <i>Social Security and Veterans’ Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008</i> .....	52-10
pension bonus and pension bonus bereavement payment...	52-10 and 52-65
persecution victim, payments to .....	768-105
private health insurance .....	52-125
resistance fighter and victim of wartime persecution, payments to .....	768-105
social security payments .....	Subdivision 52-A

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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training and learning bonus under the <i>Social Security Act 1991</i> .....	52-10
travelling expenses for Australian participants in British nuclear tests .....	Subdivision 52-CB
veteran, Australian and United Kingdom, payment to .....	53-20
veteran, payment to .....	Subdivisions 52-B and 52-C
wounds and disability pension .....	53-10
see also <i>welfare</i>	
<b>structured settlements and structured orders</b>	
annuities and lump sums .....	Subdivisions 54-B, 54-C and 54-D
<b>student</b>	
see <i>education and training</i>	
<b>superannuation and related business</b>	
approved deposit fund, continuously complying fixed interest, income from 25 May 1988 deposits .....	295-390 of the <i>Income Tax (Transitional Provisions) Act 1997</i>
approved deposit fund, income from a grant of financial assistance under Part 23 of the <i>Superannuation Industry (Supervision) Act 1993</i> .....	295-405 (table item 1)
approved deposit fund, non-reversionary bonuses on policies of life assurance .....	295-335 (table item 1)
pooled superannuation trust, income from constitutionally protected funds .....	295-335 (table item 2)
pooled superannuation trust, income from current pension liabilities of complying superannuation funds .....	295-400
pooled superannuation trust, non-reversionary bonuses on policies of life assurance .....	295-335 (table item 1)
superannuation fund, income from other assets used to meet current pension liabilities .....	295-390
superannuation fund, income from segregated current pensions assets .....	295-385
superannuation fund, non-reversionary bonuses on policies of life assurance .....	295-335 (table item 1)

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 11** Particular kinds of non-assessable income

Section 11-50

---

superannuation fund, regulated, income from a grant of financial assistance under Part 23 of the *Superannuation Industry (Supervision) Act 1993* ..... 295-405 (table item 1)

**United Nations**

Australian Federal Police member in Cambodia, pay and allowance ..... **23ADA**

United Nations Service, income from ..... **23AB**

**venture capital**

eligible venture capital investments, gain or profit from realisation of ..... 51-54

eligible venture capital investments by ESVCLPs, income derived from ..... 51-52

venture capital equity, gain or profit from realisation of .... 51-55

**welfare**

Income Recovery Subsidy for the North Queensland floods of January and February 2009 ..... 51-30

Income Recovery Subsidy for the Victorian bushfires of January and February 2009 ..... 51-30

maintenance payment ..... 51-30 and 51-50

see also *social security or like payments*

Note: The following provisions of the *Income Tax Assessment Act 1936* give rise to *notional* exempt income and *not* exempt income. For this reason the provisions do not appear in the lists of kinds of exempt income.

The provisions are: paragraphs 384(1)(b) and 385(1)(b), subsection 402(2) and sections 403 and 404.

**Subdivision 11-B—Particular kinds of non-assessable non-exempt income**

**Table of sections**

11-50	Effect of this Subdivision
11-55	List of non-assessable non-exempt income provisions

**11-50 Effect of this Subdivision**

This Subdivision is a \*Guide.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## 11-55 List of non-assessable non-exempt income provisions

The provisions set out in the list make amounts non-assessable non-exempt income.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

<b>alienated personal services income</b>	
associate, non-deductible payment or obligation to.....	85-20(3)
entitlements to a share of net income that is personal services income already assessable to an individual .....	86-35(2)
payments by personal services entity or associate of personal services income already assessable to an individual .....	86-35(1)
personal services entity, amounts of personal services income assessable to an individual .....	86-30
<b>bonds</b>	
see <i>securities</i>	
<b>capital gains tax</b>	
payments made by an interposed entity in relation to the small business retirement exemption .....	152-310(3)
<b>demutualisation of private health insurers</b>	
market value of shares and rights at time of issue .....	315-310
payments received in exchange for cancellation or variation of interests under the demutualisation	315-310
<b>disasters</b>	
2009 Victorian bushfires—Clean-up and Restoration Grants for primary producers .....	59-50
2009 Victorian bushfires—Clean-up and Restoration Grants for small businesses .....	59-50
<b>dividends</b>	
demerger dividends.....	<b>44(4)</b>
later dividend set off against amount taken to be dividend.	<b>109ZC(3)</b>
<b>employment</b>	
early retirement scheme payment, tax free amount of .....	83-170

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 11** Particular kinds of non-assessable income

Section 11-55

---

employment termination payment .....	82-10 82-65 82-70
foreign termination payment .....	83-235 83-240
genuine redundancy payment, tax free amount of .....	83-170
unused long service leave payment, pre-16/8/78 period ....	83-80
see <i>superannuation</i> and sections 82-10A and 82-10C of the <i>Income Tax (Transitional Provisions) Act 1997</i>	
<b>financial arrangements</b>	
gains related to non-assessable non-exempt income .....	230-30
<b>firearms surrender arrangements</b>	
compensation under .....	59-10
<b>first home saver accounts</b>	
credits to and payments from .....	345-50
tax paid by providers .....	345-30
<b>foreign aspects of income taxation</b>	
attributed controlled foreign company income .....	<b>23AI</b>
attributed foreign investment fund income .....	<b>23AK</b>
dividend from a foreign country, non-portfolio .....	<b>23AJ</b>
branch profits of Australian companies .....	<b>23AH</b>
distributions of conduit foreign income .....	802-20
income derived by temporary residents .....	768-910
interest paid by temporary residents .....	768-980
managed investment trust withholding tax, amount subject to .....	840-815
superannuation fund, foreign, interest and dividend income of .....	<b>128B(3)(jb)</b>
withholding tax, dividend royalty or interest subject to .....	<b>128D</b>
<b>GST</b>	
GST payable on a taxable supply .....	17-5(a)
increasing adjustments .....	17-5(b) and (c)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>life insurance companies</b> .....	Subdivision 320-B
<b>mining</b>	
withholding tax, payments to Aboriginals and distributing bodies subject to.....	59-15
<b>mutual receipts</b>	
amounts that would be mutual receipts but for prohibition on distributions to members.....	59-35
<b>National Rental Affordability Scheme</b>	
payments made, and non-cash benefits provided, by a State or Territory governmental body in relation to participation in the National Rental Affordability Scheme.....	380-35
<b>non-cash benefits</b>	
fringe benefits .....	<b>23L(1)</b>
<b>notional sale and loan</b>	
arrangement payments a notional seller receives or is entitled to receive .....	240-40
luxury car leases, lease payments that the lessor receives or is entitled to receive .....	<b>42A-40 in Schedule 2E</b>
deemed loan treatment for financial benefits provided for tax preferred use of asset.....	250-160
<b>offshore banking units</b>	
assessable OB income other than eligible fraction .....	<b>121EG</b>
<b>related entities</b>	
amounts from, where deduction reduced for .....	26-35(4)
<b>repayable amounts</b>	
previously assessable amounts .....	59-30
<b>rights to acquire shares or units</b>	
market value of at time of issue .....	59-40
<b>securities</b>	
securities acquired at a discount on or before 30 June 1982, amount received on sale or redemption of .....	<b>23J</b>
special bond, amount received on redemption of .....	<b>23E</b>
<b>small business assets</b>	
income arising from CGT event, company or trust owned asset continuously for 15 years .....	152-110(2)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 11** Particular kinds of non-assessable income

Section 11-55

---

**social security or like payments**

older Australians, bonus payments made to ..... 59-5

**superannuation**

benefits generally ..... Divisions 301  
to 306

commutation of income stream, under 25 years ..... 303-5

death benefits ..... 302-60  
302-65  
302-70  
302-140

departing Australia superannuation benefits ..... 301-175

foreign superannuation funds, lump sum benefits ..... 305-60  
305-65  
305-70

member benefits ..... 301-10  
301-15  
301-30  
301-225

release authorities, payments from ..... 304-15

roll-over superannuation benefits ..... 306-5

superannuation lump sum for recipient having terminal  
medical condition ..... 303-10

unclaimed money payment ..... 306-20

**tax bonus**

payments in accordance with the *Tax Bonus for Working  
Australians Act (No. 2) 2009* ..... 59-45

**tax loss transfers**

consideration received by loss company from income  
company, generally ..... 170-25(1)

consideration received by loss company from income  
company, net capital loss ..... 170-125(1)

**temporary residents**

see *foreign aspects of income taxation*

**trading stock**

disposal outside ordinary course of business, amounts  
received upon ..... 70-90(2)

**trusts**

attributable income, amounts representing ..... **99B(2A)**

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

family trust distribution tax, amounts subject to.....	<b>271-105(3) in Schedule 2F</b>
<b>windfall amounts</b>	
business franchise fees, refund of when invalid .....	59-20
State tax on Commonwealth place, refund of when invalid	59-25
<b>withholding taxes</b>	
<i>see foreign aspects of income taxation and mining</i>	

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 12—Particular kinds of deductions

### 12-1 Effect of this Division

This Division is a \*Guide.

### 12-5 List of provisions about deductions [see Note 4]

The provisions set out in the table contain rules about specific types of deduction.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

<b>accrued leave transfer payments</b>	26-10
<b>advance expenditure</b>	
generally	<b>82KZL to 82KZO</b>
avoidance arrangements	<b>82KJ</b>
when deductible	<b>82KZM to 82KZN</b>
<b>bad debts</b>	
deduction reduced because of forgiveness of debt if debtor and creditor are companies under common ownership and agree on the reduction	<b>245-90 of Schedule 2C</b>
general	25-35, <b>63F</b>
companies	Subdivisions 165-C, 166-C and 175-C
debt/equity swaps	<b>63E, 63F</b> , 709-220
deduction of a debt that used to be owed to a member of a consolidated group or MEC group by an entity that used to be a member of the group	Subdivisions 709-D and 719-I
money lenders, listed country branches, no deduction for	<b>63D</b>
see also <i>losses</i>	

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**balancing adjustment**

see *buildings, capital allowances, industrial property, research & development and tax exempt entities*

**banks**

foreign banks, Australian branches of ..... **160ZZVA to 160ZZZJ**

**boats**

deferral of deductions ..... 26-47

**borrowing expenses**

..... 25-25

**bribes to foreign public officials** ..... 26-52

**bribes to public officials** ..... 26-53

**buildings**

income producing buildings, capital allowances ..... Division 43

see also *heritage conservation work*

**capital allowances**

generally ..... Division 40

balancing adjustments ..... 40-285(2), 40-370

business related costs ..... 40-880

electricity and telephone lines ..... 40-645

environmental protection activities ..... 40-755

exploration or prospecting ..... 40-80(1), 40-730

in-house software ..... 40-335, 40-455

intellectual property ..... Subdivisions 40-B and 40-I

IRUs ..... Subdivision 40-B

landcare operations ..... 40-630

low-value and software development pools ..... Subdivision 40-E

mining and quarrying ..... Subdivision 40-H and Subdivision 40-I

new business investment, additional deduction ..... Division 41

Petroleum Resource Rent Tax ..... 40-750

project pools ..... 40-830, 40-832

reducing deductions ..... 40-25, 40-290

spectrum licences ..... Subdivision 40-B

tax preferred use of asset..... Division 250

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 12** Particular kinds of deductions

Section 12-5

---

telecommunications site access rights .....	Subdivision 40-B
trees in carbon sink forests .....	Subdivision 40-J
water facilities and horticultural plants .....	Subdivision 40-F
<b>capital gains</b>	
beneficiary whose assessable income includes share of net income of trust with net capital gain.....	115-215
no deduction for an amount that would otherwise be deductible only because a net capital gain is included in assessable income.....	<b>51AAA</b>
see also <i>foreign residents</i>	
<b>capital loss</b>	
net capital loss, no deduction for .....	102-10
net capital loss, transfer within company group .....	Subdivision 170-B
<b>car disposal</b>	
see <i>capital allowances</i>	
<b>car expenses</b>	
generally .....	Division 28
“cents per kilometre” method .....	Subdivision 28-C
“log book” method .....	Subdivisions 28-F and 28-G
“one-third of actual expenses” method .....	Subdivision 28-E
substantiation of car expenses .....	Division 900
“12% of original value” method .....	Subdivision 28-D
see also <i>transport expenses</i>	
<b>car expenses of employee</b>	
employee’s car expenses where car provided by employer can be used for private purposes, no deduction for .....	<b>51AF</b>
<b>carried interests</b>	
carried interests, no deduction for.....	118-21
<b>car parking</b>	
employee’s car parking expenses, no deduction for .....	<b>51AGA</b>
<b>children’s income</b>	
generally .....	<b>102AA to 102AH</b>
taxable income of a child, deductions taken into consideration in calculating .....	<b>102AD</b>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

<b>club fees</b>	
club fees, no deduction for .....	26-45
see also <i>subscriptions to associations</i>	
<b>Commonwealth places windfall tax</b>	
.....	26-17
<b>companies, co-operative and mutual</b>	
generally .....	<b>117 to 121</b>
distributions of assessable income .....	<b>120</b>
<b>companies, private</b>	
excessive payments to shareholders directors and associates, reduced deduction .....	<b>109</b>
<b>conservation covenants</b>	
.....	Division 31
<b>financial arrangements</b>	
Assets in relation to Division 230 financial arrangement ...	701-61(4)
<b>controlled foreign companies</b>	
generally .....	<b>316 to 468</b>
bad debts .....	<b>399A</b>
decline in value of depreciating assets .....	<b>398</b>
finance share dividends .....	<b>394</b>
taxes paid .....	<b>393</b>
<b>convertible notes</b>	
see <i>interest</i>	
<b>copyrights</b>	
expenditure in obtaining registration .....	Subdivisions 40-B and 40-I
<b>currency exchange gains and losses</b>	
see <i>foreign exchange</i>	
<b>death of timber owner</b>	
see <i>timber</i>	
<b>debt interests</b>	
certain returns in respect of debt interests .....	25-85
<b>depreciation</b>	
see <i>capital allowances</i>	
<b>designs</b>	
expenditure in obtaining or extending registration .....	Subdivisions 40-B and 40-I

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 12** Particular kinds of deductions

Section 12-5

---

**disposal of depreciating assets**

see *capital allowances*

**dividends**

dividends including LIC capital gain component .....	115-280
franking credits, companies and foreign residents .....	207-95(2), 207-95(3), 220-405(3)
franking credits, pooled development funds (PDFs) .....	<b>124ZM</b>
non-share equity interests, no deduction for return in respect of .....	26-26
unfranked non-portfolio dividends.....	<b>46FA</b>

**education expenses**

Higher Education Contribution Scheme, no deduction unless provided as fringe benefit .....	26-20
limit on deduction .....	<b>82A</b>

**election expenses**

Federal and State Parliament election expenses .....	25-60, 25-70
local government election expenses, limited deduction for .....	25-65, 25-70

**electricity connections**

see *capital allowances*

**embezzlement**

see *theft*

**employees**

pensions, gratuities or retiring allowances for ex-employees .....	25-50
see also <i>shares</i>	

**entertainment**

expenditure, no deduction for some .....	Division 32
meal entertainment, calculation of deductible amount .....	<b>51AEA to 51AEC</b>

**environment**

see *capital allowances*

**excess contributions tax**

no deduction .....	26-75
--------------------	-------

**exploration and prospecting**

see *capital allowances*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>family</b>	
no deduction for maintaining spouse or child .....	26-40
<b>family tax benefit</b>	
fee or commission for advice .....	25-7
<b>farm management deposits</b>	
see <i>primary production</i>	
<b>film income</b>	
Australian films .....	<b>124ZAA to 124ZAP</b>
see also <i>tax losses</i>	
<b>film licensed investment companies (FLICs)</b>	
see <i>shares</i>	
<b>financial arrangements</b>	
losses from .....	230-15(2) and (3)
see also <i>borrowing expenses, infrastructure borrowings,     interest, leases and securities</i>	
<b>foreign exchange</b>	
losses .....	775-30
<b>foreign financial entities' Australian permanent establishments</b>	
generally .....	<b>Part IIIB</b>
thin capitalisation .....	Subdivision 820-FB
transfer of losses .....	Subdivisions 170-A and 170-B
<b>foreign investment funds (FIFs)</b>	
generally .....	<b>469 to 624</b>
loss under cash surrender values method .....	<b>533</b>
loss under market value method .....	<b>532</b>
notional deductions .....	<b>567 to 574</b>
<b>foreign life assurance policies</b>	
see <i>foreign investment funds</i>	
<b>forestry managed investment schemes</b>	
payments under scheme .....	394-10(1)
<b>franchise fees windfall tax</b>	
.....	26-15

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 12** Particular kinds of deductions

Section 12-5

---

**freight**

freight for shipped goods ..... **135A**

**fringe benefits**

contributions for private component, no deduction for ..... **51AJ**

employee's car expenses where car provided by  
employer can be used for private purposes, no  
deduction for ..... **51AF**

employee's car parking expenses, no deduction for ..... **51AGA**

expense payment fringe benefits, reduced deduction ..... **51AH**

**general insurance**

claims paid ..... **321-25 and  
323-20 of  
Schedule 2J**

increase in value of outstanding claims liability ..... **321-15 and  
323-10 of  
Schedule 2J**

increase in value of unearned premium reserve ..... **321-55 of  
Schedule 2J**

**gifts**

general ..... Division 30

limit on deduction ..... 26-55

see also *tax avoidance schemes*

**horticultural plants**

see *capital allowances*

**higher education assistance** ..... 26-20

**illegal activities** ..... 26-54

**income equalisation deposits**

see *primary production*

**industrial property**

unit relating to copyright in Australian film..... **124K to 124Z**

see also *intellectual property* and *research and  
development*

**infrastructure borrowings**

generally ..... **159GZZZZD to  
159GZZZZH**

no deduction for ..... **159GZZZZE**

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

<b>insurance with non-residents</b>	
generally .....	<b>141 to 148</b>
insurance premiums, no deduction unless arrangement to pay tax .....	<b>145</b>
reinsurance, no deduction for resident carrying on insurance business in Australia for reinsurance premiums paid to a non-resident .....	<b>148</b>
<b>intellectual property</b>	
<i>see capital allowances</i>	
<b>interest</b>	
convertible notes, interest on, generally .....	<b>82L to 82T</b>
foreign residents, debt creation involving, generally .....	<b>159GZY to 159GZZF</b>
foreign residents, delayed deduction for interest paid to until withholding tax payable has been paid .....	26-25
life assurance premiums, interest etc. on loans to finance, no deduction for .....	26-85
superannuation contributions, interest etc. on loans to finance, no deduction for .....	26-80
underpayment or late payment of tax, interest for .....	25-5
<i>see also infrastructure borrowings</i>	
<b>international agreements</b>	
<i>see transfer pricing</i>	
<b>international profit shifting</b>	
<i>see transfer pricing</i>	
<b>investment company</b>	
<i>see shares</i>	
<b>IRUs</b>	
<i>see capital allowances</i>	
<b>land degradation</b>	
<i>see primary production</i>	
<b>lease document expenses</b>	
.....	25-20
<b>leases</b>	
finance leases and arrangements, use of property if end-user an exempt public body or use outside Australia to produce exempt income .....	<b>159GE to 159GO</b>
leases of assets being put to tax preferred use.....	Division 250

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 12** Particular kinds of deductions

Section 12-5

---

leveraged arrangements, property used:

- other than to produce assessable income; or
- by a non-resident outside Australia; or
- by a previous owner

..... **51AD**

payment for failure to comply with lease obligation to  
repair premises ..... 25-15

**leases of luxury cars**

accrual amounts ..... **Schedule 2E  
(42A-50)**

adjustment amounts (lessee) ..... **Schedule 2E  
(42A-70(1))**

adjustment amounts (lessor)..... **Schedule 2E  
(42A-65(3))**

lease payments not deductible..... **Schedule 2E  
(42A-55)**

payments to acquire car not deductible..... **Schedule 2E  
(42A-85 and  
42A-100)**

**leave payments**

accrued leave transfer payments ..... 26-10

no deduction for leave payments until paid ..... 26-10

**leisure facilities**

no deduction for ..... 26-50

**life insurance companies** ..... Subdivision 320-C

**limited recourse debt**

later payments ..... 243-45

later payments (replacement debt) ..... 243-50

**loans**

see *borrowing expenses, interest and securities*

**losses**

foreign exchange ..... 775-30

profit-making undertaking or scheme ..... 25-40

property sale ..... 25-40

traditional securities, loss on disposal or redemption of .... **70B**

see also *tax losses*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>management and investment company shares</b>	
<i>see shares</i>	
<b>membership of associations</b>	
<i>see subscriptions to associations</i>	
<b>mining</b>	
<i>see capital allowances</i>	
<b>misappropriation</b>	
by employee or agent .....	25-47
<b>mortgage</b>	
expenses of discharging a mortgage .....	25-30
<b>motor vehicles</b>	
<i>see car expenses and leases</i>	
<b>non-cash transactions</b>	
non-cash business benefits .....	<b>51AK</b>
non-cash consideration, money value deemed to have been paid or given .....	<b>21</b>
<b>non-commercial business activities</b>	
deferral of non-commercial losses .....	Division 35
<b>non-resident trust estates</b>	
generally .....	<b>102AAA to 102AAZG</b>
modified application of depreciation provisions .....	<b>102AAZ</b>
modified application of trading stock provisions .....	<b>102AAZ</b>
no deductions allowable under Division 36 .....	<b>102AAZC</b>
<b>notional sales and loans</b>	
adjustment amounts (lessee) .....	240-110(1)
adjustment amounts (lessor).....	240-105(3)
arrangement payments, no deduction for .....	240-55
notional interest.....	240-50, 250-155
deemed loan treatment for financial benefits provided for tax preferred use of asset.....	Subdivision 250-C
payments to acquire property, no deduction for.....	240-85
<b>offshore banking units</b>	
generally .....	<b>121A to 121EL</b>
deductions for .....	<b>121EG</b>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 12** Particular kinds of deductions

Section 12-5

---

**partnerships**

foreign hybrid loss exposure adjustment.....	830-50
losses, partner's share of partnership loss .....	<b>90, 92</b>

**patents**

expenditure relating to grant of patents, etc. ....	Subdivisions 40-B and 40-I
---	-------------------------------

**penalties**

no deduction for penalties .....	26-5
----------------------------------	------

**personal services income**

alienated personal services income .....	Subdivision 86-B
general.....	Division 85

**political parties**

contributions to .....	Division 30
------------------------	-------------

**pooled development funds (PDFs)**

.....	<b>124ZM to 124ZZD</b>
-------	----------------------------

**prepaid expenditure**

see *advance expenditure*

**primary production**

farm management deposits.....	<b>393-1 to 393-65 of Schedule 2G</b>
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see also *capital allowances* and *timber*

**property**

arrangements relating to assets being put to tax preferred use .....	Division 250
---	--------------

arrangements relating to use of property if end-user an exempt public body or use outside Australia to produce exempt income .....	<b>159GE to 159GO</b>
--	-----------------------

leveraged arrangements, property used:

- other than to produce assessable income; or
- by a non-resident outside Australia; or
- by a previous owner

.....	<b>51AD</b>
-------	-------------

sale of property, profit or loss .....	<b>82(2)</b>
--	--------------

see also *capital allowances* and *losses*

**public trading trusts**

generally .....	<b>102M to 102T</b>
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>qualifying securities</b>	
<i>see securities</i>	
<b>rates and land taxes</b>	
premises used to produce mutual receipts.....	25-75
<b>regional headquarters (RHQs)</b>	
.....	<b>82C to 82CE</b>
<b>reimbursements</b>	
expense payment fringe benefits, reduced deduction .....	<b>51AH</b>
<b>reinsurance</b>	
<i>see insurance with non-residents</i>	
<b>related entities (including relatives)</b>	
reduction of deduction for payment or liability to .....	26-35, <b>65(1B) and (1C)</b>
<b>repairs</b>	
general .....	25-10
repair covenants, payment for non-compliance with covenant to repair under lease .....	25-15
<b>research &amp; development</b>	
generally .....	<b>73B to 73G</b>
scientific research .....	<b>73A</b>
175% deduction .....	<b>73P to 73Z</b>
<b>roads</b>	
<i>see timber</i>	
<b>royalties</b>	
royalty, no deduction for royalty paid to a foreign resident until the withholding tax payable has been paid.....	26-25
<b>scientific research</b>	
<i>see research &amp; development</i>	
<b>securities</b>	
qualifying securities .....	<b>159GP to 159GZ</b>
substituted securities .....	<b>23K</b>
traditional securities, loss on disposal or redemption of ....	<b>70B</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 12** Particular kinds of deductions

Section 12-5

---

**shares**

buy-backs .....	<b>159GZZZJ to 159GZZZT</b>
cancellation of subsidiary's shares in holding company ....	<b>159GZZZC to 159GZZZI</b>
employee share acquisition schemes, deduction for provider of qualifying shares or rights .....	<b>139DC</b>
film licensed investment companies, deduction for subscription for shares in .....	Subdivision 375-H
small-medium enterprise, loss on disposal of shares in .....	<b>128TG to 128TL</b>
see also <i>dividends and securities</i>	

**small-medium enterprises (SMEs)**

see *shares*

**Software**

see *capital allowances*

**spectrum licences**

see *capital allowances*

**State or Territory bodies (STBs)**

body ceasing to be STB, some deductions not allowed .....	<b>24AW to 24AYA</b>
---	----------------------

**subscriptions to associations**

.....	25-55
-------	-------

**substantiation**

work, travel and car expenses .....	Division 900
-------------------------------------	--------------

**superannuation**

see *insurance and annuity business and interest*

**superannuation and related business**

generally .....	Part 3-30
asset disposals .....	295-85
death or disability benefits, deduction for future service element .....	295-470
death or disability cover, premiums for .....	295-465
detriment payments .....	295-485
financial assistance levy .....	295-490(1) (table item 3)

**superannuation contributions surcharge**

no deduction .....	26-60
--------------------	-------

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**superannuation—deductibility of contributions**

generally .....	Division 290
contributions for employees etc. ....	Subdivision 290-B
contributions to non-complying funds .....	sections 290-10 and 290-75
limit on deduction .....	26-55
no deduction under any other provision of the Act .....	section 290-10
personal contributions .....	Subdivision 290-C

**superannuation guarantee charge**

no deduction for .....	26-95
late contribution offset, no deduction for .....	290-95

**superannuation supervisory levy**

late lodgment amount, no deduction for.....	26-90
---	-------

**tax agent's fees**

*see tax related expenses*

**tax avoidance schemes**

companies, use of tax losses or deductions to avoid tax ....	Division 175
diverted assessable income .....	<b>121F to 121L</b>
dividend stripping .....	<b>177E</b>
gifts .....	<b>78A</b>
imputation, manipulation of.....	207-150(2), 207-150(3)
international profit shifting, transfer pricing .....	<b>136AA to 136AF</b>
prepaid outgoings to avoid tax .....	<b>82KJ</b>
recouped expenditure .....	<b>82KH to 82KL</b>
tax avoidance scheme, no deduction allowable where deduction the result of .....	<b>177A to 177G</b>
trading stock .....	70-20, <b>52A</b>

**tax exempt entities**

treatment of losses and outgoings on becoming taxable ....	<b>Schedule 2D</b>
--	--------------------

**tax losses**

bad debts, companies .....	165-120
change of ownership or control of a company	
generally .....	Division 165
for earlier income years .....	Subdivision 165-A
for income year of the change .....	Subdivision 165-B

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 12** Particular kinds of deductions

Section 12-5

---

earlier income years .....	Division 36
film losses .....	Subdivision 375-G
life insurance companies.....	Subdivision 320-D
pooled development funds .....	Subdivision 195-A
transfer between companies in same wholly-owned group .....	Subdivision 170-A
<b>tax preferred asset financing</b>	
generally.....	Division 250
denial of capital allowance deductions in relation to asset being put to tax preferred use .....	250-145
reduction in capital allowance deductions in relation to asset being put to tax preferred use .....	250-150
<b>tax related expenses</b>	
.....	25-5
<b>telecommunications site access rights</b>	
<i>see capital allowances</i>	
<b>telephone lines</b>	
<i>see primary production</i>	
<b>termination payments surcharge</b>	
no deduction .....	26-65
<b>theft</b>	
by employee or agent .....	25-45
<b>thin capitalisation</b>	
disallowing of deductions .....	Division 820
<b>timber</b>	
death of owner of land carrying trees, deduction of the part of land cost attributable to trees .....	70-120
disposal of land carrying trees, deduction of the part of land cost attributable to trees.....	70-120
felling trees, deduction of cost of land attributable to trees felled or of cost of right to fell trees.....	70-120
<i>see also capital allowances</i>	
<b>trading ships</b>	
<i>see capital allowancesn</i>	
<b>trading stock</b>	
Commissioner may determine whether consideration paid for chose in action is reasonable .....	<b>52A</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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excess of opening stock over closing value .....	70-35(3)
expenditure deemed not to be of a capital nature .....	70-25
prepayments, when stock becomes trading stock on hand .....	70-15
<i>see also tax avoidance schemes and timber</i>	
<b>traditional securities</b>	
<i>see securities</i>	
<b>training guarantee</b>	
training guarantee charge, no deduction for .....	51(7)
<b>transfer pricing</b>	
generally .....	<b>136AA to 136AF</b>
adjustments to deductions .....	<b>136AF</b>
<b>transport expenses</b>	
incurred in travel between workplaces .....	25-100
<b>travel expenses</b>	
accompanying relatives, no deduction for some travel expenses .....	26-30
<i>see also substantiation</i>	
<b>trees in carbon sink forests</b>	
<i>see capital allowances</i>	
<b>trusts</b>	
trust income, deductions considered in calculating .....	<b>95 to 102</b>
unit trusts .....	<b>102D to 102L</b>
<i>see also foreign residents, non-resident trust estates and public trading trusts</i>	
<b>uniforms</b>	
non-compulsory uniforms .....	Division 34
<b>United Medical Protection Limited support payments</b>	
.....	25-105
<b>uranium mining</b>	
<i>see mining</i>	
<b>water facilities</b>	
<i>see capital allowances</i>	
<b>work expenses</b>	
<i>see substantiation</i>	
<b>work in progress</b>	
payment of a work in progress amount .....	25-95

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Division 13—Tax offsets**

### **13-1A Effect of this Division**

This Division is a \*Guide.

#### **13-1 List of tax offsets**

The provisions set out in the list allow you a tax offset.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

**Aboriginal study assistance**

see *social security* and *other benefit payments*

**annual leave**

see *leave payments*

**annuity**

see *superannuation*

**approved deposit funds (ADFs)**

see *dividends*

**averaging**

see *primary production*

**bonuses**

see *life assurance*

**child**

child care ..... Subdivision  
61-IA

first child..... Subdivision 61-I

increased tax payable under Part III Division 6AA,  
unreasonable ..... **102AH**

trust income ..... **100(2)**

**child/housekeeper**

see *dependants*

**corporate unit trusts**

see *dividends*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



<b>Cyclone Larry or Cyclone Monica income support payment</b>	
<i>see social security and other benefit payments</i>	
<b>defence force</b>	
members serving overseas .....	<b>79B</b>
<b>dependants</b>	
child of person keeping house for the person .....	<b>159J</b>
housekeeper, caring for child, invalid relative or disabled spouse .....	<b>159L</b>
invalid relative .....	<b>159J</b>
parents/parents in law .....	<b>159J</b>
spouse .....	<b>159J</b>
<i>see also medical expenses</i>	
<b>dividends</b>	
general .....	207-20(2), 207-45, 207-110(2)(c), 210-170(1)
<b>education expenses</b>	
payment of .....	Subdivision 61-M
<b>employment termination</b>	
employment termination payments .....	82-10 82-70
<i>see leave payments, superannuation and sections 82-10A and 82-10C of the Income Tax (Transitional Provisions) Act 1997</i>	
<b>entrepreneurs' tax offset</b>	
<i>see small business entities</i>	
<b>Equine Workers Hardship Wage Supplement Payment</b>	
<i>see social security and other benefit payments</i>	
<b>exceptional circumstances relief</b>	
<i>see social security and other benefit payments</i>	
<b>farm help income support</b>	
<i>see social security and other benefit payments</i>	
<b>foreign income tax</b>	
foreign income tax paid, tax offset for .....	Division 770
<b>franking deficit tax</b>	
liabilities to pay .....	205-70

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 13** Tax offsets

Section 13-1

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<b>franked dividends</b>	
<i>see dividends</i>	
<b>hardship</b>	
<i>see child</i>	
<b>housekeeper</b>	
<i>see dependants</i>	
<b>housing</b>	
National Rental Affordability Scheme.....	Division 380
<b>imputation</b>	
<i>see dividends and franking deficit tax</i>	
<b>inter-corporate dividends</b>	
<i>see dividends</i>	
<b>interest</b>	
tax paid on by company .....	<b>127</b>
<b>interim income support payment</b>	
<i>see social security and other benefit payments</i>	
<b>invalid relative</b>	
<i>see dependants</i>	
<b>land transport facilities borrowings</b>	
.....	Division 396
<b>leave payments</b>	
unused annual leave payment .....	83-15
unused long service leave payment .....	83-85
<i>see employment termination</i>	
<b>legal disability</b>	
<i>see trusts</i>	
<b>life assurance</b>	
bonus, receipt of .....	<b>160AAB</b>
<b>long service leave</b>	
<i>see leave payments</i>	
<b>low income earner</b>	
aged beneficiary, trustee liable to be assessed for beneficiary's share of net income of trust estate .....	<b>160AAAB</b>
aged person .....	<b>160AAAA</b>
general .....	<b>159N</b>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>lump sum income arrears</b>	
receipt of .....	<b>159ZRA, 159ZRB,</b> Subdivision 61-L
<b>mature age workers</b>	
.....	Subdivision 61-K
<b>medical expenses</b>	
payment of .....	<b>159P</b>
<b>non-resident beneficiary</b>	
see <i>trusts</i>	
<b>non-resident trust estate</b>	
see <i>trusts</i>	
<b>overseas defence force service</b>	
see <i>defence force</i>	
<b>parent/parent-in-law</b>	
see <i>dependants</i>	
<b>partnerships</b>	
see <i>dividends, housing and small business entities</i>	
<b>pension</b>	
see <i>social security and other benefit payments</i>	
<b>pooled superannuation trusts (PSTs)</b>	
see <i>dividends</i>	
<b>primary production</b>	
averaging of income, trustees .....	<b>156</b>
averaging of tax liability, individuals .....	392-35(2)
exceptional circumstances relief payments see <i>social security and other benefit payments</i>	
farm help income support payments see <i>social security and other benefit payments</i>	
farm household support see <i>social security and other benefit payments</i>	
interim income support payments see <i>social security and other benefit payments</i>	
<b>private health insurance</b>	
.....	Subdivision 61-G
<b>public trading trust</b>	
see <i>dividends</i>	

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 1** Introduction and core provisions

**Part 1-4** Checklists of what is covered by concepts used in the core provisions

**Division 13** Tax offsets

Section 13-1

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<b>public unit trust</b>	
<i>see dividends</i>	
<b>research and development</b>	
.....	<b>73I</b>
<b>residents of isolated areas</b>	
<i>see zone</i>	
<b>sickness benefits</b>	
<i>see social security and other benefit payments</i>	
<b>small business entities</b>	
25% entrepreneurs' tax offset.....	Subdivision 61-J
<b>social security and other benefit payments</b>	
Aboriginal study assistance scheme .....	<b>160AAA(3)</b>
children, assistance for isolated .....	<b>160AAA(3)</b>
Cyclone Larry or Cyclone Monica income support payment .....	<b>160AAA(3)</b>
Equine Workers Hardship Wage Supplement Payment ....	<b>160AAA(3)</b>
exceptional circumstances relief under the <i>Farm     Household Support Act 1992</i> .....	<b>160AAA(3)</b>
farm help income support under the <i>Farm Household     Support Act 1992</i> .....	<b>160AAA(3)</b>
interim income support payment .....	<b>160AAA(3)</b>
pension, social security pension and veteran's pension ....	<b>160AAA(2)</b>
textile, clothing and footwear allowance .....	<b>160AAA(3)</b>
unemployment, sickness and other benefit payments under the <i>Social Security Act 1991</i> .....	<b>160AAA(3)</b>
<b>spouse</b>	
<i>see dependants</i>	
<b>superannuation</b>	
generally .....	Divisions 301 and 302
spouse contributions .....	Subdivision 290-D
death benefits .....	302-75 302-85 302-145

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 13-1

member benefits .....	301-20
	301-25
	301-35
	301-40
	301-95
	301-100
	301-105
	301-115
TFN quoted to superannuation or RSA provider after no-TFN contributions tax paid .....	295-675
<b>termination payments</b>	
<i>see employment termination, leave payments and superannuation</i>	
<b>trustee</b>	
<i>see dividends, low income earner and trusts</i>	
<b>trusts</b>	
beneficiary in a foreign trust.....	<b>98B</b>
non-resident beneficiary .....	<b>98A(2)(a)</b>
trust income of beneficiary with legal disability .....	<b>100(2)</b>
<i>see also dividends, housing and small business entities</i>	
<b>United Nations forces</b>	
salary, wages and allowances from service as a member of .....	<b>23AB(7)</b>
<b>unemployment benefits</b>	
<i>see social security and other benefit payments</i>	
<b>unit trusts</b>	
<i>see dividends</i>	
<b>water</b>	
urban water tax offset .....	Subdivision 402-W
<b>winding-up of non-resident trust estates</b>	
<i>see trusts</i>	
<b>zone</b>	
residents of isolated areas .....	<b>79A</b>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Chapter 2—Liability rules of general application**

### **Part 2-1—Assessable income**

#### **Division 15—Some items of assessable income**

##### **Guide to Division 15**

###### **15-1 What this Division is about**

This Division sets out some items that are included in your assessable income. Remember that the general rules about assessable income in Division 6 apply to these items.

###### **Table of sections**

###### **Operative provisions**

15-2	Allowances and other things provided in respect of employment or services
15-3	Return to work payments
15-5	Accrued leave transfer payments
15-10	Bounties and subsidies
15-15	Profit-making undertaking or plan
15-20	Royalties
15-22	Payments made to members of a copyright collecting society
15-25	Amount received for lease obligation to repair
15-30	Insurance or indemnity for loss of assessable income
15-35	Interest on overpayments and early payments of tax
15-40	Providing mining, quarrying or prospecting information
15-45	Amounts paid under forestry agreements
15-46	Amounts paid under forestry managed investment schemes
15-50	Work in progress amounts
15-55	Certain amounts paid under funeral policy
15-60	Certain amounts paid under scholarship plan
15-65	Sugar industry exit grants
15-70	Reimbursed car expenses

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- 15-75 Bonuses  
15-80 Employer FHSA contributions etc.

## **Operative provisions**

### **15-2 Allowances and other things provided in respect of employment or services**

- (1) Your assessable income includes the value to you of all allowances, gratuities, compensation, benefits, bonuses and premiums \*provided to you in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by you (including any service as a member of the Defence Force).
- (2) This is so whether the things were \*provided in money or in any other form.
- (3) However, the value of the following are not included in your assessable income under this section:
  - (a) a \*superannuation lump sum or an \*employment termination payment;
  - (b) an \*unused annual leave payment or an \*unused long service leave payment;
  - (c) a \*dividend or \*non-share dividend;
  - (d) an amount that is assessable as \*ordinary income under section 6-5.

Note: Section 23L of the *Income Tax Assessment Act 1936* provides that fringe benefits are non-assessable non-exempt income.

### **15-3 Return to work payments**

Your assessable income includes an amount you receive under an \*arrangement that an entity enters into for a purpose of inducing you to resume working for, or providing services to, any entity.

### **15-5 Accrued leave transfer payments**

Your assessable income includes an \*accrued leave transfer payment that you receive.

To find out if the payment is deductible to the payer, see section 26-10.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 15-10

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**15-10 Bounties and subsidies**

Your assessable income includes a bounty or subsidy that:

- (a) you receive in relation to carrying on a \*business; and
- (b) is not assessable as \*ordinary income under section 6-5.

**15-15 Profit-making undertaking or plan**

- (1) Your assessable income includes profit arising from the carrying on or carrying out of a profit-making undertaking or plan.
- (2) This section does not apply to a profit that:
  - (a) is assessable as \*ordinary income under section 6-5; or
  - (b) arises in respect of the sale of property acquired on or after 20 September 1985.

Note: If you sell property you acquired *before* 20 September 1985 for profit-making by sale, your assessable income includes the profit: see section 25A of the *Income Tax Assessment Act 1936*.

**15-20 Royalties**

- (1) Your assessable income includes an amount that you receive as or by way of royalty within the ordinary meaning of “royalty” (disregarding the definition of *royalty* in subsection 995-1(1)) if the amount is not assessable as \*ordinary income under section 6-5.
- (2) Subsection (1) does not apply to an amount of a payment to which section 15-22 applies.

**15-22 Payments made to members of a copyright collecting society**

- (1) This section, instead of Division 6 of Part III of the *Income Tax Assessment Act 1936*, applies to a payment that a \*copyright collecting society, to which section 51-43 applies, makes to you as a \*member of the society.
- (2) Your assessable income includes the amount of the payment, except to the extent that the payment represents an amount on which the directors of the society are or have been assessed, and are liable to pay tax, under section 98, 99 or 99A of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: Section 410-5 of this Act requires a copyright collecting society to give you a notice at the time of payment.

### **15-25 Amount received for lease obligation to repair**

Your assessable income includes an amount you receive from an entity if:

- (a) you receive it as a lessor or former lessor of premises; and
- (b) the entity pays you the amount for failing to comply with a lease obligation to make repairs to the premises; and
- (c) the entity uses or has used the premises for the \*purpose of producing assessable income; and
- (d) the amount is not assessable as \*ordinary income under section 6-5.

Note: The entity can deduct the amount: see section 25-15.

### **15-30 Insurance or indemnity for loss of assessable income**

Your assessable income includes an amount you receive by way of insurance or indemnity for the loss of an amount (the *lost amount*) if:

- (a) the lost amount would have been included in your assessable income; and
- (b) the amount you receive is not assessable as \*ordinary income under section 6-5.

### **15-35 Interest on overpayments and early payments of tax**

Your assessable income includes interest payable to you under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*. The interest becomes assessable when it is paid to you or applied to discharge a liability you have to the Commonwealth.

### **15-40 Providing mining, quarrying or prospecting information**

Your assessable income includes an amount you receive for providing \*mining, quarrying or prospecting information to another entity if:

- (a) you continue to \*hold the information; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 15-45

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- (b) the amount you receive is not assessable as \*ordinary income under section 6-5.

**15-45 Amounts paid under forestry agreements**

- (1) Your assessable income includes an amount you receive under an agreement for the planting and tending of trees for felling if:
  - (a) you are the manager of the agreement as mentioned in section 82KZMG of the *Income Tax Assessment Act 1936*; and
  - (b) the amount satisfies, for the entity that paid it, the requirements of that section.

The amount is included for the income year in which the entity can claim a deduction for the amount.

- (2) No part of an amount included under subsection (1) is included in your assessable income for a later income year.

**15-46 Amounts paid under forestry managed investment schemes**

- (1) Your assessable income includes an amount you receive under a \*forestry managed investment scheme if:
  - (a) you are the \*forestry manager of the scheme, or an \*associate of the forestry manager; and
  - (b) the entity that paid the amount can deduct or has deducted the amount under section 394-10 in relation to the scheme (disregarding subsection 394-10(5)).

The amount is included for the income year for which the entity that paid the amount can or has claimed a deduction for it (disregarding subsection 394-10(5)).

- (2) No part of an amount included under subsection (1) is included in your assessable income for a later income year.

**15-50 Work in progress amounts**

Your assessable income includes a \*work in progress amount that you receive.

Note: To find out whether the amount is deductible to the payer, see section 25-95.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **15-55 Certain amounts paid under funeral policy**

- (1) Your assessable income includes the amount of a benefit provided to you by a \*life insurance company under a \*funeral policy issued after 31 December 2002 to pay for the funeral of the insured person, reduced by:
  - (a) the amount of the premium or premiums of the policy that is reasonably related to the benefit; and
  - (b) the amount of the fees and charges included in the company's assessable income for any income year under paragraph 320-15(1)(k) that is reasonably related to the benefit.
- (2) This section does not apply if the benefit is included in your assessable income as:
  - (a) \*ordinary income under section 6-5; or
  - (b) \*statutory income under a section of this Act other than this section.

### **15-60 Certain amounts paid under scholarship plan**

- (1) Your assessable income includes the amount of a benefit provided to you, or on your behalf, by a \*life insurance company under a \*scholarship plan covered by subsection (2) or (3), reduced by the amount worked out under subsection (4), if:
  - (a) the benefit is provided on or after 1 January 2003; and
  - (b) you are nominated in the plan as a beneficiary whose education is to be helped by the benefit.
- (2) This subsection covers a \*scholarship plan issued by the \*life insurance company after 31 December 2002.
- (3) This subsection covers a \*scholarship plan if:
  - (a) the plan was issued by the \*life insurance company before 1 January 2003; and
  - (b) no amount received by the company on or after 1 January 2003 and attributable to the plan is \*non-assessable non-exempt income of the company under paragraph 320-37(1)(d).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 15-65

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- (4) The amount of the reduction is the sum of:
- (a) the amount of the premium or premiums of the plan that is reasonably related to the benefit; and
  - (b) the amount of the fees and charges included in the company's assessable income for any income year under paragraph 320-15(1)(k) that is reasonably related to the benefit.

**15-65 Sugar industry exit grants**

- (1) Your assessable income includes the amount of a sugar industry exit grant that you receive under the program known as the Sugar Industry Reform Program if, as a condition of receiving the grant, you entered into an undertaking not to become the owner or operator of a sugar industry \*enterprise within 5 years after receiving the grant.
- (2) Your assessable income also includes the amount of a sugar industry exit grant that you receive under that program if:
- (a) as a condition of receiving the grant, you entered into an undertaking not to become the owner or operator of any agricultural \*enterprise within 5 years after receiving the grant; and
  - (b) you become the owner or operator of an agricultural enterprise (except a sugar industry enterprise) within that period.
- (3) The amount is included for the income year in which you receive it.

Note: You will be required to repay the grant if you re-enter the sugar industry within the 5 year period. If you repay the grant in an income year after the year in which you receive it, section 59-30 will exclude the grant from your assessable income.

**15-70 Reimbursed car expenses**

Your assessable income includes a reimbursement mentioned in section 22 of the *Fringe Benefits Tax Assessment Act 1986* (about exempt car expense payment benefits) that, but for that section, would be a \*fringe benefit \*provided to you.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **15-75 Bonuses**

Your assessable income includes any amount you receive as or by way of bonus on a \*life insurance policy, other than a reversionary bonus.

Note: Reversionary bonuses are covered by section 6-5 of this Act if they are ordinary income and, if not, by section 26AH of the *Income Tax Assessment Act 1936*.

### **15-80 Employer FHSAs contributions etc.**

Your assessable income includes a contribution or expense payment benefit of a kind mentioned in paragraph (hd) of the definition of *fringe benefit* in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986* that, but for that paragraph, would be a \*fringe benefit \*provided to you.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 17—Effect of GST etc. on assessable income

### Guide to Division 17

#### 17-1 What this Division is about

This Division sets out the effect of the GST in working out assessable income. Generally speaking, GST, input tax credits and adjustments under the GST Act are disregarded.

#### Table of sections

17-5	GST and increasing adjustments
17-10	Certain decreasing adjustments
17-15	Elements in calculation of amounts
17-20	GST groups and GST joint ventures
17-30	Special credits because of indirect tax transition
17-35	Certain sections not to apply to certain assets or expenditure

#### 17-5 GST and increasing adjustments

An amount is not assessable income, and is not \*exempt income, to the extent that it includes an amount relating to:

- (a) \*GST payable on a \*taxable supply; or
- (b) an \*increasing adjustment that relates to a \*supply; or
- (c) an \*increasing adjustment that:
  - (i) relates to an \*acquisition; and
  - (ii) arises in circumstances that also give rise to a \*recoupment that is included in assessable income.

#### 17-10 Certain decreasing adjustments

- (1) An amount of a \*decreasing adjustment that arises under Division 129 or 132 of the \*GST Act is *assessable income*, unless the entity that has the adjustment is an \*exempt entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) However, the amount is not *assessable income* to the extent that, because it becomes a component of a \*net input tax credit, a reduction is made under section 103-30 (reduction of cost base etc. by net input tax credits).

### **17-15 Elements in calculation of amounts**

In calculating an amount that may be included in assessable income:

- (a) an element in the calculation that is an amount received or receivable is treated as not including an amount equal to any \*GST payable on a \*taxable supply related to the amount received or receivable, or any \*increasing adjustment related to that amount; and
- (b) an element in the calculation that is an amount paid or payable is treated as not including an amount equal to any \*input tax credit for an \*acquisition related to the amount paid or payable, or any \*decreasing adjustment related to that amount.

### **17-20 GST groups and GST joint ventures**

- (1) A \*member of a \*GST group is to be treated, for the purposes of this Division, as if Subdivision 48-B of the \*GST Act (other than paragraph 48-40(2)(a) and subsection 48-40(3)) did not apply to that member.
- (2) A \*participant in a \*GST joint venture is to be treated, for the purposes of this Division, as if Subdivision 51-B of the \*GST Act (other than subsections 51-30(2) and (3)) did not apply to that participant.

### **17-30 Special credits because of indirect tax transition**

A special credit under section 19A of the *A New Tax System (Goods and Services Tax Transition) Act 1999* is assessable income at the time it is attributed to a \*tax period (for a credit under section 19A).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 17-35

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**17-35 Certain sections not to apply to certain assets or expenditure**

Sections 17-5, 17-10 and 17-15 do not apply to assets, or to expenditure, for which you can deduct amounts under Division 40 or Division 328.

Note: See instead Subdivision 27-B.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 20—Amounts included to reverse the effect of past deductions**

### **Table of Subdivisions**

	Guide to Division 20
20-A	Insurance, indemnity or other recoupment for deductible expenses
20-B	Disposal of a car for which lease payments have been deducted

### **Guide to Division 20**

#### **20-1 What this Division is about**

This Division includes amounts in your assessable income to reverse the effect of certain kinds of deductions.

### **Table of sections**

20-5	Other provisions that reverse the effect of deductions
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#### **20-5 Other provisions that reverse the effect of deductions**

The table lists other provisions that reverse the effect of certain kinds of deductions.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

<b>Provisions that adjust your tax position in respect of deductions</b>		
<b>Item</b>	<b>In this situation:</b>	<b>See:</b>
1	A balancing adjustment for a depreciating asset is included in your assessable income.	40-285(1) and 40-445(2)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-1** Assessable income

**Division 20** Amounts included to reverse the effect of past deductions

Section 20-5

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<b>Provisions that adjust your tax position in respect of deductions</b>		
<b>Item</b>	<b>In this situation:</b>	<b>See:</b>
2	An amount you receive by way of insurance or indemnity for a loss of trading stock is included in your assessable income.	70-115
2A	Limited recourse debt that was used to finance expenditure deductible under a capital allowance (or on property for which you have deducted or can deduct amounts under a capital allowance) terminates: an amount is included in your assessable income	243-40
3	Because of: <ul style="list-style-type: none"><li>• petroleum resource rent tax; or</li><li>• an instalment of petroleum resource rent tax;</li></ul> that you have deducted or can deduct, an amount is refunded, credited, paid or applied: the amount is included in your assessable income.	40-750(3)
4	You receive a fringe benefit by way of reimbursement or payment of a loss or outgoing you incurred: your deduction for the loss or outgoing is reduced.	<b>51AH</b>
5	A company receives (or becomes entitled to) an amount: <ul style="list-style-type: none"><li>• in respect of the results of research and development activities on which it incurred deductible expenditure; or</li><li>• attributable to it having incurred deductible expenditure on research and development activities.</li></ul> The amount is included in its assessable income.	<b>73B(27A), 73BF(4), 73BM(4)</b>
6	You receive an amount as recoupment of expenditure on research and development activities that you have deducted at the rate of 150%: the rate of deduction is reduced to 100%.	<b>73C</b>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Provisions that adjust your tax position in respect of deductions</b>		
<b>Item</b>	<b>In this situation:</b>	<b>See:</b>
7	You receive an amount as recoupment for your local governing body election expenses: an amount is included in your assessable income.	<b>74A(4)</b>
8	You receive superannuation benefits as a result of someone's deductible contributions: the benefits are included in your assessable income.	290-100

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### **Subdivision 20-A—Insurance, indemnity or other recoupment for deductible expenses**

#### **Guide to Subdivision 20-A**

##### **20-10 What this Subdivision is about**

*Recoupment of expenses you incurred and can deduct*

Your assessable income may include an amount that you receive by way of insurance, indemnity or other recoupment if:

- it is for a deductible expense; and
- it is *not* otherwise assessable income.

*Recoupment of expenses you did not incur but can deduct*

Your assessable income may include an amount that another entity receives by way of insurance, indemnity or other recoupment if:

- it is for an expense that you can deduct; and
- it is *not* otherwise your assessable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 20-15

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**Table of sections**

20-15 How to use this Subdivision

**What is an *assessable recoupment*?**

20-20 Assessable recoupments

20-25 What is *recoupment*?

20-30 Tables of deductions for which recoupments are assessable

**How much is included in your assessable income?**

20-35 If the expense is deductible in a single income year

20-40 If the expense is deductible over 2 or more income years

20-45 Effect of balancing charge

20-50 If the expense is only partially deductible

20-55 Meaning of *previous recoupment law*

**What if you can deduct a loss or outgoing incurred by another entity?**

20-60 If you are the only entity that can deduct an amount for the loss or outgoing

20-65 If 2 or more entities can deduct amounts for the loss or outgoing

**20-15 How to use this Subdivision**

*If you incurred the deductible loss or outgoing*

- (1) First, read sections 20-20 to 20-30 to work out whether you have received an assessable recoupment. If not, you do not need to read the rest of the Subdivision.
- (2) If you *have* received one or more assessable recoupments, sections 20-35 to 20-55 tell you how much is included in your assessable income for an income year.

*If another entity incurred a loss or outgoing you can deduct*

- (3) Sections 20-60 and 20-65 tell you how to apply this Subdivision.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## What is an *assessable recoupment*?

### 20-20 Assessable recoupments

#### *Exclusion*

- (1) An amount is *not* an ***assessable recoupment*** to the extent that it is \*ordinary income, or it is \*statutory income because of a provision outside this Subdivision.

#### *Insurance or indemnity*

- (2) An amount you have received as \*recoupment of a loss or outgoing is an ***assessable recoupment*** if:
  - (a) you received the amount by way of insurance or indemnity; and
  - (b) you can deduct an amount for the loss or outgoing for the \*current year, or you have deducted or can deduct an amount for it for an earlier income year, under any provision of this Act.

#### *Other recoupment*

- (3) An amount you have received as \*recoupment of a loss or outgoing (*except* by way of insurance or indemnity) is an ***assessable recoupment*** if:
  - (a) you can deduct an amount for the loss or outgoing for the \*current year; or
  - (b) you have deducted or can deduct an amount for the loss or outgoing for an earlier income year;under a provision listed in section 20-30.

### 20-25 What is *recoupment*?

#### *General*

- (1) ***Recoupment*** of a loss or outgoing includes:
  - (a) any kind of recoupment, reimbursement, refund, insurance, indemnity or recovery, however described; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 20-25

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- (b) a grant in respect of the loss or outgoing.

*Amount paid for you*

- (2) If some other entity pays an amount for you in respect of a loss or outgoing that you incur, you are taken to receive the amount as **recoupment** of the loss or outgoing.

*Remission of general interest charge or shortfall interest charge*

- (2A) If:

- (a) you have incurred expenditure that consists of \*general interest charge or \*shortfall interest charge; and
- (b) the Commissioner remits any of that charge;

then you are taken to receive the remitted amount as **recoupment** of that expenditure.

*Amount for disposing of right to recoupment*

- (3) If you dispose of your right to receive an amount as \*recoupment of a loss or outgoing you are taken to receive as **recoupment** of the loss or outgoing any amount you receive for disposing of that right. (The disposal need not be to another entity.)

*Amount received that is recoupment to an unspecified extent*

- (4) If you receive an amount that is, to an unspecified extent, \*recoupment of a loss or outgoing, the amount is taken to be **recoupment** of the loss or outgoing to whatever extent is reasonable.

*Balancing adjustments not covered*

- (5) If a balancing adjustment is required for property on which you incurred a loss or outgoing, no part of the \*termination value of the property is an amount you receive as **recoupment** of the loss or outgoing.

Note: The termination value is usually the amount you receive because of disposal, loss or destruction of the property.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## 20-30 Tables of deductions for which recoupments are assessable

(1) This table shows the deductions under the *Income Tax Assessment Act 1997* for which recoupments are assessable.

Note: References are to section numbers except where otherwise indicated.

<b>Provisions of the <i>Income Tax Assessment Act 1997</i></b>		
<b>Item</b>	<b>Provision</b>	<b>Description of expense</b>
1.1	8-1 (so far as it allows you to deduct a bad debt, or part of a debt that is bad)	bad debts
1.2	8-1 (so far as it allows you to deduct rates or taxes)	rates or taxes
1.3	25-5	tax-related expenses
1.4	25-35	bad debts
1.5	25-45	embezzlement or larceny by an employee
1.5A	25-47	misappropriation by an employee or agent
1.6	25-60	election expenses, Commonwealth and State elections
1.6A	25-65	election expenses, local governing body
1.7	25-75	rates and land taxes on premises used to produce mutual receipts
1.8	The former 25-80	upgrading assets to meet GST obligations etc.
1.8A	25-95	work in progress amount
1.8B	item 7 of the table in section 30-15	contributions relating to fund-raising events
1.8C	item 8 of the table in section 30-15	contributions relating to fund-raising auctions
1.9	Division 40	capital allowances
1.10	The former Division 42 (as it applied to *software because of the former Subdivision 46-B)	expenditure on software
1.11	The former Subdivision 46-C	expenditure on software

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-1** Assessable income

**Division 20** Amounts included to reverse the effect of past deductions

Section 20-30

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**Provisions of the *Income Tax Assessment Act 1997***

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<b>Item</b>	<b>Provision</b>	<b>Description of expense</b>
1.12	The former Subdivision 46-D	expenditure on software, pooled
1.13	The former Division 42 (as it applied to *IRUs because of Division 44)	expenditure on IRUs
1.14	The former 330-15	exploration or prospecting expenditure
1.15	The former 330-80	allowable capital expenditure relating to mining or quarrying
1.16	The former 330-350	petroleum resource rent tax
1.17	The former 330-370	transport capital expenditure relating to mining or quarrying
1.18	The former 330-435	rehabilitation expenditure relating to mining or quarrying
1.19	The former 330-485	balancing adjustment deduction for expenditure relating to mining or quarrying
1.20	The former Subdivisions 380-A and 380-C	capital expenditure incurred in obtaining a spectrum licence
1.21	The former Subdivision 387-A	landcare operations expenditure
1.22	The former Subdivision 387-B	expenditure on facilities to conserve or convey water
1.23	The former Subdivision 387-D	grapevine establishment expenditure
1.24	The former Subdivision 387-C	horticultural plant establishment expenditure
1.25	The former Subdivision 387-E	mains electricity connection expenditure
1.26	The former Subdivision 400-A	expenditure on environmental impact assessment
1.27	The former Subdivision 400-B	expenditure on environmental protection activities
1.28	775-30	forex realisation loss

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(2) This table shows the deductions under the *Income Tax Assessment Act 1936* for which recoupments are assessable.

Note: References are to section numbers except where otherwise indicated.

<b>Provisions of the Income Tax Assessment Act 1936</b>		
<b>Item</b>	<b>Provision</b>	<b>Description of expense</b>
2.1	Former <b>51(1)</b> (so far as it allowed you to deduct a bad debt, or part of a debt that is bad)	bad debts
2.2	Former <b>51(1)</b> (so far as it allowed you to deduct rates or taxes)	rates or taxes
2.3	<b>63</b>	bad debts
2.4	Former <b>69</b>	tax-related expenses
2.5	Former <b>70A(3)</b>	mains electricity connection expenditure
2.6	Former <b>71</b>	embezzlement or larceny by an employee
2.7	Former <b>72</b>	rates and land tax
2.7A	Former <b>72A</b>	a payment of petroleum resource rent tax, or an instalment of petroleum resource rent tax, or a credit under paragraph 99(d) of the <i>Petroleum Resource Rent Tax Assessment Act 1987</i> in respect of a payment of such an instalment
2.8	<b>73B, 73BA or 73BH</b>	research and development activity expenditure
2.9	Former <b>74</b>	election expenses, Commonwealth and State elections
2.9A	Former <b>74A</b>	election expenses, local governing body
2.10	Former <b>75AA(1) or (6)</b>	grape vine establishment expenditure

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-1** Assessable income

**Division 20** Amounts included to reverse the effect of past deductions

Section 20-30

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<b>Provisions of the Income Tax Assessment Act 1936</b>		
<b>Item</b>	<b>Provision</b>	<b>Description of expense</b>
2.11	Former <b>75B(2) or (3A)</b>	water conservation or conveyance expenditure
2.12	Former <b>75D(2)</b>	land degradation prevention expenditure
2.13	Former <b>82AB</b>	development allowance expenditure
2.14	Former <b>82BB</b>	environmental impact study expenditure
2.15	Former <b>82BK</b>	environmental protection expenditure
2.17	Former <b>Division 10 of Part III</b>	mining and quarrying expenditure
2.18	Former <b>Division 10AAA of Part III</b>	expenditure on transport of minerals and quarry materials
2.19	Former <b>Division 10AA of Part III</b>	expenditure on prospecting and mining for petroleum
2.20	Former <b>124BA</b>	expenditure on rehabilitating mining, quarrying and petroleum sites
2.21	Former <b>124ZZF</b>	horticultural plant establishment expenditure (effective life of the plant less than 3 years)
2.22	Former <b>124ZZG</b>	horticultural plant establishment expenditure (effective life of the plant more than 3 years)
2.23	Former <b>628</b>	drought mitigation property expenditure by a primary producer
2.24	Former <b>636</b>	drought mitigation property expenditure by a leasing company

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## How much is included in your assessable income?

### 20-35 If the expense is deductible in a single income year

- (1) Your assessable income includes an \*assessable recoupment of a loss or outgoing if:
- (a) you can deduct the whole of the loss or outgoing for the \*current year; or
  - (b) you have deducted or can deduct the whole of the loss or outgoing for an earlier income year.

Note 1: The operation of this section may be affected if a balancing charge has been included in your assessable income because of a deduction for the loss or outgoing: see section 20-45.

Note 2: Recoupment of a loss or outgoing for which you can deduct amounts over more than one income year is covered by section 20-40.

Note 3: Recoupment of a loss or outgoing that is only partially deductible is covered by section 20-50.

*Total assessed not to exceed the loss or outgoing*

- (2) The total of all amounts that subsection (1) includes in your assessable income for one or more income years in respect of a loss or outgoing cannot exceed the amount of the loss or outgoing.

*Recoupment received before income year of the deduction*

- (3) If:
- (a) you can deduct the whole of a loss or outgoing for the \*current year; and
  - (b) before the current year you received an \*assessable recoupment of the loss or outgoing;
- your assessable income for the current year includes so much of the recoupment as subsection (1) would have included if you had instead received the recoupment at the start of the current year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 20-40

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**20-40 If the expense is deductible over 2 or more income years**

- (1) This section includes an amount in your assessable income if:
- (a) you receive in the \*current year an \*assessable recoupment of a loss or outgoing for which you can deduct amounts over 2 or more income years; or
  - (b) you received in an *earlier* income year an \*assessable recoupment of a loss or outgoing of that kind (unless all of the recoupment has already been included in your assessable income for one or more earlier income years by this section or a \*previous recoupment law).

(This section applies even if the recoupment was received before the first of those income years.)

Note: Recoupment of a loss or outgoing that is only partially deductible is covered by section 20-50.

- (2) Work out as follows how much is included in your assessable income for the \*current year because of one or more \*assessable recoupments of the loss or outgoing.

Note: The method statement ensures that assessable recoupments are included:

- only so far as they have not already been included for an earlier income year; and
- only to the extent of your total deductions to date for the loss or outgoing.

*Method statement*

- Step 1. Add up all the \*assessable recoupments of the loss or outgoing that you have received (in the \*current year or earlier). The result is the ***total assessable recoupment***.
- Step 2. Add up the amounts (if any) included in your assessable income for earlier income years, in respect of the loss or outgoing, by this section or a \*previous recoupment law. The result is the ***recoupment already assessed***. (If no amount was included, the ***recoupment already assessed*** is nil.)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- Step 3. Subtract the recoupment already assessed from the total assessable recoupment. The result is the ***unassessed recoupment***.
- Step 4. Add up each amount that you can deduct for the loss or outgoing for the \*current year, or you have deducted or can deduct for the loss or outgoing for an earlier income year. The result is the ***total deductions for the loss or outgoing***.
- Note: The total deductions may be reduced if an amount has been included in your assessable income because of a balancing adjustment: see section 20-45.
- Step 5. Subtract the recoupment already assessed from the total deductions for the loss or outgoing. The result is the ***outstanding deductions***.
- Step 6. The unassessed recoupment is included in your assessable income, unless it is greater than the outstanding deductions. In that case, the amount of the outstanding deductions is included instead.

Example: At the start of the 2002-03 income year, a company incurs \$100,000 to start to hold a depreciating asset. The company uses the prime cost method, and the effective life is 10 years. \$10,000 is deductible for the 2002-03 income year and for each of the following 9 income years under section 40-25.

In the 2002-03 income year, the company receives \$20,000 as recoupment. How much is assessable for the 2002-03 income year?

Applying the method statement:

After step 1: the total assessable recoupment is \$20,000.

After step 2: the recoupment already assessed is nil.

After step 3: the unassessed recoupment is:  
total assessable recoupment minus recoupment already assessed,  
i.e. \$20,000 minus 0 = \$20,000.

After step 4: the total deductions for the loss or outgoing are \$10,000.

After step 5: the outstanding deductions are:  
total deductions for the loss or outgoing minus recoupment already assessed, i.e. \$10,000 minus 0 = \$10,000.

After step 6: the unassessed recoupment (step 3) is greater than outstanding deductions (step 5), so the amount of the outstanding deductions is included in assessable income, i.e. \$10,000.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-1** Assessable income

**Division 20** Amounts included to reverse the effect of past deductions

Section 20-45

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Applying the method statement to the 2003-04 income year: a further \$10,000 is included in the company's assessable income.

**20-45 Effect of balancing charge**

- (1) This section may affect the operation of section 20-35 or 20-40 (as appropriate) if:
  - (a) a balancing adjustment is required for the \*current year (or for an earlier income year) because you have deducted or can deduct an amount for an income year for the loss or outgoing; and
  - (b) an amount (the *balancing charge*) is included in your assessable income for the \*current year (or for the earlier income year) because of the balancing adjustment.

To find out about balancing adjustments, see Subdivision 40-D.

*Effect on section 20-35*

- (2) In applying section 20-35, treat each of the following as reduced by the balancing charge:
  - (a) the amount of the loss or outgoing;
  - (b) the total of what you can deduct for the loss or outgoing for the \*current year, or have deducted or can deduct for an earlier income year.

*Effect on section 20-40*

- (3) In applying the method statement in subsection 20-40(2), reduce the *total deductions for the loss or outgoing* by the balancing charge.

Example: Continuing the example in subsection 20-40(2): at the start of the 2005-06 income year, the company:

- receives a further \$10,000 as recoupment; and
- sells the depreciating asset for \$75,000.

As a result of the sale, a balancing adjustment of \$5,000 is included under section 40-285 in the company's assessable income for that income year.

How much of the recoupment amount received in the 2005-06 income year is assessable for that income year?

Applying the method statement in subsection 20-40(2):

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

After step 1: the total assessable recoupment is \$30,000 (received during 2002-03 and 2005-06).

After step 2: the recoupment already assessed is \$20,000 (for 2002-03 and 2003-04).

After step 3: the unassessed recoupment is:  
total assessable recoupment minus recoupment already assessed,  
i.e. \$30,000 minus \$20,000 = \$10,000.

After step 4: the total deductions for the loss or outgoing are \$30,000 (\$10,000 for each of 2002-03, 2004-04 and 2004-05), reduced by \$5,000 (the amount included in assessable income for the balancing adjustment), i.e. \$25,000.

After step 5: the outstanding deductions are:  
total deductions for the loss or outgoing minus recoupment already assessed, i.e. \$25,000 minus \$20,000 = \$5,000.

After step 6: the unassessed recoupment (step 3) is greater than outstanding deductions (step 5), so the amount of the outstanding deductions is included in assessable income, i.e. \$5,000.

### **20-50 If the expense is only partially deductible**

- (1) This section extends the operation of section 20-35 or 20-40 (as appropriate) to a case where the total of what you can deduct under a provision (the *deduction provision*) for a loss or outgoing is limited to a proportion of the loss or outgoing.
- (2) If you receive an \*assessable recoupment of the loss or outgoing, section 20-35 or 20-40 applies as if:
  - (a) you had incurred *only* that proportion of the loss or outgoing, but could deduct the *whole* of that proportion under the deduction provision; and
  - (b) you had received only that proportion of the recoupment.

Example: You incur expenditure of \$500. A provision listed in section 20-30 entitles you to deduct 10% of the expenditure (\$50) over 5 years. This means you can deduct \$10 in each of the 5 years.

You recoup \$300 of the expenditure. This section treats you as receiving only 10% of the recoupment. Therefore, \$30 is dealt with by section 20-40.

### **20-55 Meaning of *previous recoupment law***

- (1) *Previous recoupment law* means a provision of the *Income Tax Assessment Act 1936* listed in this table.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-1** Assessable income

**Division 20** Amounts included to reverse the effect of past deductions

Section 20-60

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<b>Previous recoupment law</b>		
<b>Item</b>	<b>Provision</b>	<b>What kind of expense the provision relates to:</b>
1	former <b>26(j)</b> (so far as it relates to an amount received for or in respect of a loss or outgoing that is a deduction)	a loss or outgoing that is a deduction
2	former <b>26(k)</b>	embezzlement or larceny by an employee
3	former <b>63(3)</b>	bad debts
4	former <b>69(8)</b>	tax-related expenses
5	former <b>70A(5)</b>	mains electricity connection expenditure
6	former <b>72(2)</b> (so far as it relates to a refund of an amount you have deducted or can deduct)	rates or taxes
6A	former <b>72A(4)(a) and (aa)</b>	petroleum resource rent tax
7	former <b>74(2)</b>	election expenses, Commonwealth and State elections

- (2) Former section 330-350 of this Act is also a *previous recoupment law*.

**What if you can deduct a loss or outgoing incurred by another entity?**

**20-60 If you are the only entity that can deduct an amount for the loss or outgoing**

This Subdivision applies in a different way if:

- (a) an entity (other than you) incurs a loss or outgoing; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) you can deduct the whole of the loss or outgoing for an income year, or you can deduct amounts for the loss or outgoing over 2 or more income years; and
- (c) no other entity can deduct an amount for the loss or outgoing; and
- (d) the entity that incurred the loss or outgoing receives one or more amounts as \*recoupment of the loss or outgoing.

This Subdivision (except this section and section 20-65) applies as if you had incurred the loss or outgoing and had also received the \*recoupment.

### **20-65 If 2 or more entities can deduct amounts for the loss or outgoing**

- (1) Special rules apply if:
  - (a) an entity (the *first entity*) incurs a loss or outgoing; and
  - (b) 2 or more entities (the *deducting entities*, which may include the first entity) have deducted or can deduct amounts for the loss or outgoing (whether for the same income year or for different income years); and
  - (c) the first entity receives one or more amounts as \*recoupment of the loss or outgoing.
- (2) This Subdivision (except this section and section 20-60) applies as if the first entity and the deducting entities together constituted a single entity (the *notional entity*) that had:
  - (a) incurred the loss or outgoing; and
  - (b) received the amount or amounts as \*recoupment; and
  - (c) included in its assessable income any amount included in the assessable income of any of the deducting entities under a \*previous recoupment law or this Subdivision (except this section).
- (3) If because of subsection (2) the notional entity's assessable income for an income year (the *assessment year*) would include an amount under this Subdivision (the *assessable amount*), the amount reverses in the assessment year the deductions for the loss or outgoing, in accordance with the rules in subsection (5).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 20-100

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- (4) The assessable income of each deducting entity for the assessment year includes the total amounts (if any) by which that entity's actual deductions for the loss or outgoing are reversed in that income year.
- (5) Deductions for the loss or outgoing are reversed in the assessment year as follows:
  - (a) the amounts by which deductions are reversed total the assessable amount (unless all the deductions have been reversed);
  - (b) a deduction for an income year is not reversed until all deductions for earlier income years have been reversed;
  - (c) a deduction is not reversed in the assessment year to the extent that it has already been reversed in an earlier year;
  - (d) if each of 2 or more entities can deduct an amount for the loss or outgoing for the same income year, those deductions are reversed in the assessment year by amounts proportionate to the amounts of the deductions.

**Subdivision 20-B—Disposal of a car for which lease payments have been deducted**

**Guide to Subdivision 20-B**

**20-100 What this Subdivision is about**

This Subdivision reverses the effect of deductions for lease payments for a car leased to you (or to your associate), but only if you make a profit by disposing of the car after acquiring it from the lessor. The *smallest* of these amounts is included in your assessable income:

- your profit on the disposal;
- the total deductible lease payments for the period of the lease;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- the total amounts you could have deducted for the car's decline in value if, instead of leasing it, you had owned it and used it solely for the purpose of producing assessable income.

### **Table of sections**

20-105 Map of this Subdivision

#### **The usual case**

20-110 Disposal of a leased car for profit

20-115 Working out the profit on the disposal

20-120 Meaning of *notional depreciation*

#### **The associate case**

20-125 Disposal of a leased car for profit

#### **Successive leases**

20-130 Successive leases

#### **Previous disposals of the car**

20-135 No amount included if earlier disposal for market value

20-140 Reducing the amount to be included if there has been an earlier disposal

#### **Miscellaneous rules**

20-145 No amount included if you inherited the car

20-150 Reducing the amount to be included if another provision requires you to include an amount for the disposal

20-155 Exception for particular cars taken on hire

20-157 Exception for small business entities

#### **Disposals of interests in a car: special rules apply**

20-160 Disposal of an interest in a car

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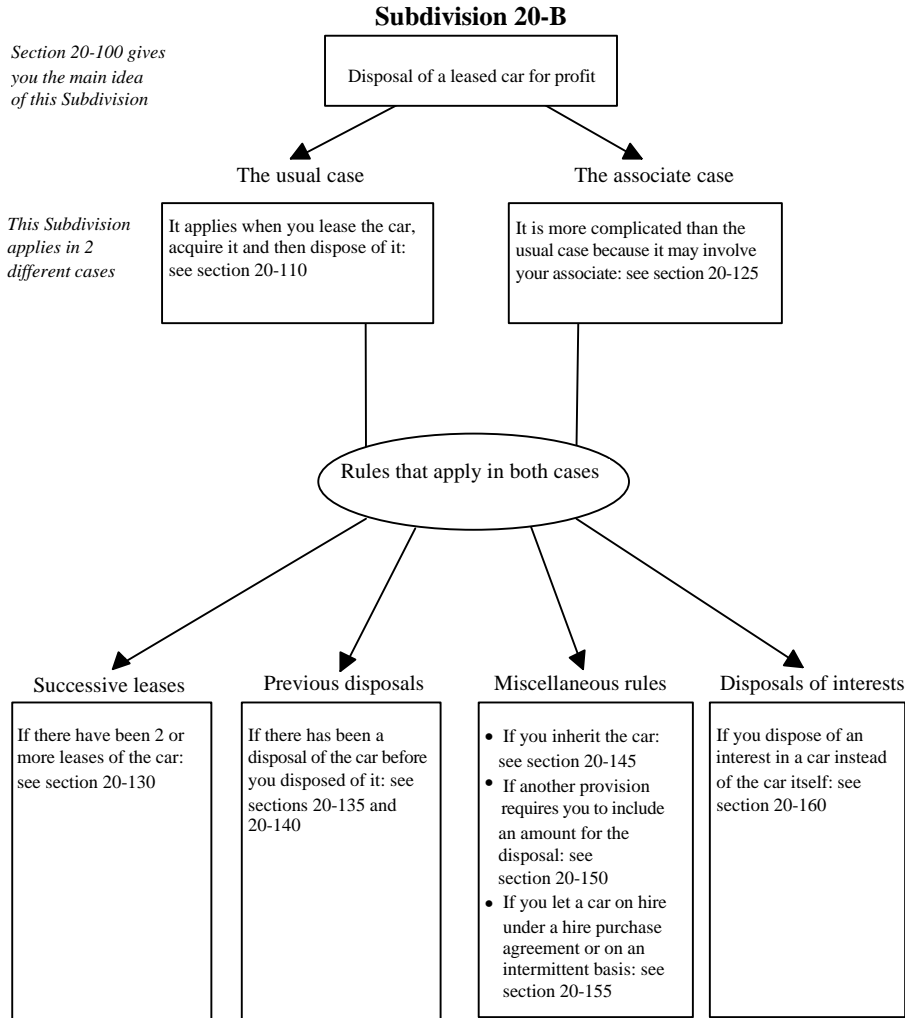
\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 20-105

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**20-105 Map of this Subdivision**



**The usual case**

**20-110 Disposal of a leased car for profit**

- (1) Your assessable income includes the \*profit you make on disposing of a \*car if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the car was designed mainly for carrying passengers; and
- (b) the car was leased to you and has been leased to no-one else; and
- (c) you or another entity can deduct for the income year any of the lease payments paid or payable by you, or have deducted or can deduct any of them for an earlier income year, under this Act; and
- (d) you acquired the car from the lessor.

Note 1: Even if subsection (1) does not apply, an amount may still be included in your assessable income:

- under section 20-125 (which deals with more complicated cases that may involve your associate); or
- if you disposed of an interest in a car (rather than the car itself): see section 20-160.

Note 2: In some cases you do not include an amount in your assessable income:

- if there has been an earlier disposal of the car for market value: see section 20-135; or
- if you inherited the car: see section 20-145; or
- if the car was let on hire in the circumstances set out in section 20-155.

(2) However, the amount included cannot exceed the smaller of these limits:

- (a) the total lease payments for the lease that you or another entity have deducted or can deduct under this Act for an income year;
- (b) the amount of \*notional depreciation for the lease period.

Note 1: If, because of more than one lease of the car, there is more than one way to work out the amount to be included, you only include the largest amount: see section 20-130.

Note 2: In some cases you reduce the amount to be included:

- if there has been an earlier disposal of the car, or of an interest in it: see section 20-140; or
- if another provision requires you to include an amount because of the disposal: see section 20-150.

(3) You increase those limits if you have previously leased the \*car from the same lessor, or from an \*associate of that lessor.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 20-115

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You increase the first limit by the total lease payments for each previous lease of that kind that you or another entity have deducted or can deduct under this Act for an income year.

You increase the second limit by the amount of \*notional depreciation for the period of each previous lease of that kind.

**20-115 Working out the profit on the disposal**

(1) The *profit* on the disposal is the amount by which the \*consideration receivable for the disposal exceeds:

- the amount it cost you to acquire the \*car;

plus:

- any capital expenditure you incurred on the car after acquiring it.

(2) The *consideration receivable* is worked out using this table:

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<b>Consideration receivable for the disposal of the car</b>		
<b>Item</b>	<b>In this situation:</b>	<b>the consideration receivable is:</b>
1	you sell the *car for an amount specific to it	the proceeds of the sale, less the expenses of the sale
2	you sell the *car with other property without a specific amount being allocated to it	the part of the total proceeds of the sale that is reasonably attributable to the car less the part of the reasonably attributable expenses of the sale
3	you trade the *car in and buy another car	the value of the trade-in, plus any other consideration you receive
4	you sell the *car and another entity buys another car	the amount by which the cost of the other car is reduced by the sale, plus any other consideration you receive
5	you dispose of the *car to an insurer because it is lost or destroyed	the amount or value received or receivable under the insurance policy

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) However, if the disposal of the \*car is a \*taxable supply, the **consideration receivable** does not include an amount equal to the \*GST payable on the supply.

### 20-120 Meaning of *notional depreciation*

This is how to work out the **notional depreciation** for a lease period:

*Method statement*

Step 1. Compare:

- the \*car's \*cost to the lessor for the purposes of Subdivision 40-C (which is about working out the cost of \*depreciating assets);

with:

- the car's \*termination value for the purposes of section 40-300 when the lessor disposed of it.

Step 2. If the car's cost exceeds the car's termination value, multiply the excess by:

- the number of days in the lease period;

divided by:

- the number of days the lessor owned the car.

Step 3. The result is the **notional depreciation** for the lease period.

Step 4. If the car's cost does *not* exceed the car's termination value, the **notional depreciation** for the lease period is zero.

Note 1: The notional depreciation for the lease period represents:

- the amount you could have deducted for the car's decline in value if, instead of leasing it, you had owned it and used it solely for the purpose of producing assessable income for that period;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-1** Assessable income

**Division 20** Amounts included to reverse the effect of past deductions

Section 20-125

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adjusted by:

- the balancing adjustment you would have made if you had disposed of the car at the end of that period.

Note 2: The car's cost to the lessor is worked out differently if the lessor acquired it in the 1996-97 income year or an earlier income year: see section 20-105 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 3: The car's termination value is worked out differently if the lessor disposed of it in the 1996-97 income year or an earlier income year: see section 20-110 of the *Income Tax (Transitional Provisions) Act 1997*.

**The associate case**

**20-125 Disposal of a leased car for profit**

- (1) Your assessable income includes the \*profit you make on disposing of a \*car if:
- (a) section 20-110 does *not* include an amount in your assessable income because of the disposal; and
  - (b) the car was designed mainly for carrying passengers; and
  - (c) the car was leased to you or your \*associate; and
  - (d) you, your associate or another entity can deduct for the income year any of the lease payments paid or payable by the lessee, or have deducted or can deduct any of them for an earlier income year, under this Act; and
  - (e) either:
    - (i) you, your associate, or entities including you or your associate, acquired the car from the lessor; or
    - (ii) another entity acquired the car from the lessor under an \*arrangement that enabled you or your associate to acquire the car.

Note 1: Even if subsection (1) does not apply, an amount may be included in your assessable income if you disposed of an interest in a car (rather than the car itself): see section 20-160.

Note 2: In some cases you do *not* include an amount in your assessable income:

- if there has been an earlier disposal of the car for market value: see section 20-135; or
- if you inherited the car: see section 20-145; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- if the car was let on hire in the circumstances set out in section 20-155.

(2) However, the amount included cannot exceed the smallest of these limits:

- (a) the total lease payments for the lease that you, your \*associate or another entity have deducted or can deduct under this Act for an income year;
- (b) the amount of \*notional depreciation for the lease period;
- (c) if an entity other than you, or if entities including you, acquired the \*car from the lessor—the amount by which the \*consideration receivable for the disposal of the car by you exceeds the total of:
  - (i) the car's cost to that entity, or those entities; and
  - (ii) any capital expenditure that entity, or any of those entities, incurred on the car after that acquisition and before you acquired it.

Note 1: If, because of more than one lease of the car, there is more than one way to work out the amount to be included, you only include the largest amount: see section 20-130.

Note 2: In some cases you reduce the amount to be included:

- if there has been an earlier disposal of the car, or of an interest in it: see section 20-140; or
- if another provision requires you to include an amount because of the disposal: see section 20-150.

Example: Your associate leases a car for 5 years and then acquires it from the lessor for \$4,000. Your associate sells it to you for \$3,000. You sell it for \$10,000.

Your profit is \$10,000 (the consideration receivable) less \$3,000 (the car's cost to you) = \$7,000.

The first 2 limits on the amount to be included in your assessable income are \$9,000 (total deductible lease payments for the lease) and \$8,000 (notional depreciation for the lease period).

Since your associate acquired the car from the lessor, the third limit is \$10,000 (the consideration receivable by you) less \$4,000 (the car's cost to the associate) = \$6,000.

The amount you include in your assessable income *cannot* exceed the smallest of the limits. So, you do not include your profit of \$7,000. Instead, you include \$6,000 (the smallest of the limits).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 20-130

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- (3) You increase the first 2 limits if you, or your associate, have previously leased the \*car from the same lessor, or from an associate of that lessor.

You increase the first limit by the total lease payments for each previous lease of that kind that you, your \*associate or another entity have deducted or can deduct under this Act for an income year.

You increase the second limit by the amount of \*notional depreciation for the period of each previous lease of that kind.

**Successive leases**

**20-130 Successive leases**

If, because of 2 or more leases of the \*car, there are different amounts that could be included in your assessable income because of the disposal, only the largest of those amounts is included.

**Previous disposals of the car**

**20-135 No amount included if earlier disposal for market value**

You do *not* include an amount in your assessable income because of the disposal if, after the lessor disposed of the \*car and before you disposed of it, an entity other than you disposed of the car and:

- (a) the \*consideration receivable for that disposal was at least the \*market value of the car at the time of that disposal; or
- (b) because of that disposal, that market value was included, or an amount worked out using that market value was included, in the entity's assessable income under this Act.

**20-140 Reducing the amount to be included if there has been an earlier disposal**

Each limit on the amount to be included in your assessable income because of your disposal of the \*car is reduced if, after the lease period began and before your disposal, the car, or an interest in it, was disposed of in one of these situations:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Reducing each limit on the amount to be included**

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<b>Item</b>	<b>In this situation:</b>	<b>reduce each limit by:</b>
1	Section 20-110 or 20-125 included an amount in your assessable income in respect of such an earlier disposal by you	that amount
2	Section 20-110 or 20-125 included an amount in another entity's assessable income in respect of such an earlier disposal by the other entity	that amount
3	Section 20-110 or 20-125 would have included an amount in your assessable income in respect of such an earlier disposal by you but for the operation of section 20-145	that amount
4	Section 20-110 or 20-125 would have included an amount in another entity's assessable income in respect of such an earlier disposal by the other entity but for the operation of section 20-145	that amount
5	Section 20-150 reduced the amount to be included in your assessable income in respect of such an earlier disposal by you	the amount of the reduction
6	Section 20-150 reduced the amount to be included in another entity's assessable income in respect of such an earlier disposal by the other entity	the amount of the reduction

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Examples: Your associate leases a car for 5 years and then acquires it. Your associate disposes of it to you and section 20-110 includes \$500 in your associate's assessable income.

You later dispose of the car.

In working out the amount to include in your assessable income for your disposal, you can reduce each limit in subsection 20-125(2) by \$500 because the disposal by your associate occurred after the lease period began.

Contrast this case:

You lease a car for 5 years and then acquire it. You dispose of it to another entity and section 20-110 includes \$1,000 in your assessable income.

You lease the car from that entity for 2 years and then acquire it. You later dispose of it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-1** Assessable income

**Division 20** Amounts included to reverse the effect of past deductions

Section 20-145

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In working out the amount to include in your assessable income in respect of the second lease, you cannot reduce each limit in subsection 20-110(2) by \$1,000 because the first disposal did not occur after the start of that lease.

Note: If the earlier disposal occurred in the 1996-97 income year or an earlier income year, each limit may be able to be reduced by a further amount: see section 20-115 of the *Income Tax (Transitional Provisions) Act 1997*.

**Miscellaneous rules**

**20-145 No amount included if you inherited the car**

You do *not* include an amount in your assessable income because of the disposal if you inherited the \*car.

**20-150 Reducing the amount to be included if another provision requires you to include an amount for the disposal**

The amount to be included in your assessable income because of the disposal is reduced by any amount that another provision of this Act (except sections 40-285 and 40-370) requires you to include in your assessable income because of the disposal.

Note: sections 40-285 and 40-370 are about including an amount after making a balancing adjustment on the disposal of a car.

**20-155 Exception for particular cars taken on hire**

This Subdivision does not apply to these kinds of leases:

- (a) letting a \*car on hire under a \*hire purchase agreement; or
- (b) letting a \*car on hire under an agreement of a kind ordinarily entered into by people who take cars on hire intermittently on an hourly, daily, weekly or monthly basis.

**20-157 Exception for small business entities**

This Subdivision does not apply to you if, at any time in the income year in which you disposed of the \*car, it was allocated to a pool of yours under Division 328.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Disposals of interests in a car: special rules apply**

### **20-160 Disposal of an interest in a car**

- (1) This Subdivision applies to the disposal of an interest in a \*car in almost the same way as it does to the disposal of the car itself. The differences are set out below.
- (2) Your assessable income includes so much of your \*profit on the disposal as is reasonable. The limits in subsections 20-110(2) and 20-125(2) do *not* apply.
- (3) The cost of the interest to you is taken to be a reasonable amount.
- (4) Sections 20-135 and 20-140 do *not* apply to the disposal.
  - Note 1: Section 20-135 says that you do not include an amount if there has been an earlier disposal of the car for market value.
  - Note 2: Section 20-140 allows you to reduce the amount to be included if there has been an earlier disposal of the car.
- (5) Section 20-145 applies to the disposal if you inherited either the interest or the \*car itself.
  - Note: Section 20-145 says that you do not include an amount if you inherited the car.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Part 2-5—Rules about deductibility of particular kinds of amounts**

### **Division 25—Some amounts you can deduct**

#### **Guide to Division 25**

##### **25-1 What this Division is about**

This Division sets out some amounts you can deduct. Remember that the general rules about deductions in Division 8 (which is about general deductions) apply to this Division.

#### **Table of sections**

##### **Operative provisions**

25-5	Tax-related expenses
25-7	Advice about family tax benefit
25-10	Repairs
25-15	Amount paid for lease obligation to repair
25-20	Lease document expenses
25-25	Borrowing expenses
25-30	Expenses of discharging a mortgage
25-35	Bad debts
25-40	Loss from profit-making undertaking or plan
25-45	Loss by theft etc.
25-47	Misappropriation where a balancing adjustment event occurs
25-50	Payments of pensions, gratuities or retiring allowances
25-55	Payments to associations
25-60	Parliament election expenses
25-65	Local government election expenses
25-70	Deduction for election expenses does not extend to entertainment

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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25-75	Rates and land taxes on premises used to produce mutual receipts
25-85	Certain returns in respect of debt interests
25-90	Deduction relating to foreign non-assessable non-exempt income
25-95	Deduction for work in progress amounts
25-105	Deductions for United Medical Protection Limited support payments
25-100	Travel between workplaces
25-110	Capital expenditure to terminate lease etc.

## Operative provisions

### 25-5 Tax-related expenses

- (1) You can deduct expenditure you incur to the extent that it is for:
- (a) managing your \*tax affairs; or
  - (b) complying with an obligation imposed on you by a \*Commonwealth law, insofar as that obligation relates to the \*tax affairs of an entity; or
  - (c) the \*general interest charge or the \*shortfall interest charge; or
  - (ca) a penalty under Subdivision 162-D of the \*GST Act; or
  - (d) obtaining a valuation in accordance with section 30-212 or 31-15.

Note 1: To find out whether a trustee of a deceased estate can deduct expenditure under this section, see subsection 69(7) of the *Income Tax Assessment Act 1936*.

Note 2: If you receive an amount as recoupment of the expenditure, the amount may be included in your assessable income: see Subdivision 20-A.

#### *No deduction for certain expenditure*

- (2) You cannot deduct under subsection (1):
- (a) \*tax; or
  - (b) an amount withheld or payable under Part 2-5 or Part 2-10 in Schedule 1 to the *Taxation Administration Act 1953*; or
  - (c) expenditure for \*borrowing money (including payments of interest) to pay an amount covered by paragraph (a) or (b); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 25-5

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- (d) expenditure for a matter relating to the commission (or possible commission) of an offence against an \*Australian law or a \*foreign law; or
- (e) a fee or commission for advice about the operation of a \*Commonwealth law relating to taxation, unless that advice is provided by a \*recognised tax adviser.

*No deduction for expenditure excluded from general deductions*

- (3) You cannot deduct expenditure under subsection (1) to the extent that a provision of this Act (except section 8-1) expressly prevents or limits your deducting it under section 8-1 (about general deductions). It does not matter whether the provision specifically refers to section 8-1.

*No deduction for capital expenditure*

- (4) You cannot deduct capital expenditure under subsection (1). However, for this purpose, expenditure is not capital expenditure merely because the \*tax affairs concerned relate to matters of a capital nature.

Example: Under this section, you can deduct expenditure you incur in applying for a private ruling on whether you can depreciate an item of property.

*Use of property taken to be for income producing purpose*

- (5) Under some provisions of this Act it is important to decide whether you used property for the \*purpose of producing assessable income. For provisions of that kind, your use of property is taken to be for that purpose insofar as you use the property for:
  - (a) managing your \*tax affairs; or
  - (b) complying with an obligation imposed on you by a \*Commonwealth law, insofar as that obligation relates to the \*tax affairs of another entity.

Example: You buy a computer to prepare your tax returns. The expenditure you incur in buying the computer is capital expenditure and cannot be deducted under this section.

However, to the extent that you use the computer in preparing your income tax return, you will be able to deduct the decline in value of your computer under Division 40. That is because, under this

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



subsection, the computer is property that you are taken to use for the purpose of producing assessable income.

- (6) If another provision of this Act expressly provides that a particular use of property is not taken to be for the \*purpose of producing assessable income, that provision overrides subsection (5).

*No double deduction for general interest charge on a running balance account*

- (7) If you deduct \*general interest charge that applies to an RBA deficit debt, you can't also deduct the corresponding general interest charge on tax debts that have been allocated to the RBA.

Note: RBAs (running balance accounts) are dealt with in Part IIB of the *Taxation Administration Act 1953*.

*Expenditure by trustee of deceased estate*

- (8) If:
- (a) after you die, the trustee of your deceased estate incurs expenditure; and
  - (b) had you incurred the expenditure before you died, you could have deducted it under subsection (1);

for the purposes of assessing the trustee for the income year in which you died, the expenditure is a deduction under that subsection.

### **25-7 Advice about family tax benefit**

You can deduct a fee or commission you incur, to the extent that the fee or commission is for advice in relation to a claim for family tax benefit under the *A New Tax System (Family Assistance) (Administration) Act 1999*, if:

- (a) the advice is provided by a \*recognised tax adviser; and
- (b) you lodge the claim for family tax benefit with an officer of the Australian Taxation Office (within the meaning of that Act) for determination by such an officer.

Note: Under Part 8 of the *A New Tax System (Family Assistance) (Administration) Act 1999* the Secretary to the Department of Family and Community Services may delegate powers under that Act (including the power to determine claims for family tax benefit).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 25-10

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**25-10 Repairs**

- (1) You can deduct expenditure you incur for repairs to premises (or part of premises) or a \*depreciating asset that you held or used *solely* for the \*purpose of producing assessable income.

*Property held or used partly for that purpose*

- (2) If you held or used the property only *partly* for that purpose, you can deduct so much of the expenditure as is reasonable in the circumstances.

*No deduction for capital expenditure*

- (3) You cannot deduct capital expenditure under this section.

**25-15 Amount paid for lease obligation to repair**

You can deduct an amount that you pay for failing to comply with a lease obligation to make repairs to premises if you use or have used the premises for the \*purpose of producing assessable income.

Note: The amount is assessable income of the entity to which you pay it: either as ordinary income under section 6-5 or because it is included by section 15-25.

**25-20 Lease document expenses**

- (1) You can deduct expenditure you incur for preparing, registering or stamping:
- (a) a lease of property; or
  - (b) an assignment or surrender of a lease of property;
- if you have used or will use the property *solely* for the \*purpose of producing assessable income.

*Property used partly for that purpose*

- (2) If you have used, or will use, the leased property only *partly* for that purpose, you can deduct the expenditure to the extent that you have used, or will use, the leased property for that purpose.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## 25-25 Borrowing expenses

- (1) You can deduct expenditure you incur for \*borrowing money, to the extent that you use the money for the \*purpose of producing assessable income. In most cases the deduction is spread over the \*period of the loan.

For the cases where the deduction is *not* spread, see subsection (6).

Note: Your deductions under this section may be reduced if any of your commercial debts have been forgiven in the income year: see Subdivision 245-E of Schedule 2C to the *Income Tax Assessment Act 1936*.

*Income year when money used solely for the purpose of producing assessable income*

- (2) You can deduct for an income year the maximum amount worked out under subsection (4) if you use the \*borrowed money during that income year *solely* for the \*purpose of producing assessable income.

Example: In 1997-98 you borrow \$100,000 and incur expenditure of \$1,500 for the borrowing. You use the money to buy a house. Throughout 1998-99 you rent the house to a tenant. You can deduct for the expenditure for 1998-99 the maximum amount worked out under subsection (4).

*Income year when borrowed money used partly for that purpose*

- (3) If you use the money only *partly* for that purpose during that income year, you can deduct the proportion of that maximum amount that is appropriate having regard to the extent that you used the \*borrowed money for that purpose.

Note: You cannot deduct anything for that income year if you do not use the money for that purpose at all during that income year.

*Maximum deduction for an income year*

- (4) You work out as follows the maximum amount that you can deduct for the expenditure for an income year:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 25-25

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*Method statement*

Step 1. Work out the *remaining expenditure* as follows:

- For the income year in which the \*period of the loan begins, it is the amount of the expenditure.
- For a later income year, it is the amount of the expenditure reduced by the the maximum amount that you can deduct for the expenditure for each earlier income year.

Step 2. Work out the *remaining loan period* as follows:

- For the income year in which the \*period of the loan begins, it is the period of the loan (as determined at the end of the income year).
- For a later income year, it is the period from the start of the income year until the end of the period of the loan (as determined at the end of the income year).

Step 3. Divide the remaining expenditure by the number of days in the remaining loan period.

Step 4. Multiply the result from Step 3 by the number of days in the remaining loan period that are in the income year.

Example: To continue the example in subsection (2): suppose the original period of the loan is 4 years starting on 1 September 1997. What is the maximum amount you can deduct for the expenditure for 1997-98?

Applying the method statement:

After Step 1: the remaining expenditure is \$1,500 (the amount of the expenditure).

After Step 2: the remaining loan period is 4 years from 1 September 1997 (1,461 days).

After Step 3: the result is \$1,500 divided by 1,461 = \$1.03.

After Step 4: the result is \$1.03 multiplied by 302 days = \$310.06.

Suppose you repay the loan early, on 31 December 1998. What is the maximum amount you can deduct for the expenditure for 1998-99?

Applying the method statement:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

After Step 1: the remaining expenditure is \$1,500 (the amount of the expenditure) reduced by \$310.06 (the maximum amount you can deduct for 1997-98) = \$1,189.94.

After Step 2: the remaining loan period is the period from 1 July 1998 to 31 December 1998 (183 days).

After Step 3: the result is \$1,189.94 divided by 183 days = \$6.50.

After Step 4: the result is \$6.50 multiplied by 183 days = \$1,189.94.

*Meaning of period of the loan*

- (5) The **period of the loan** is the shortest of these periods:
- (a) the period of the loan as specified in the original loan contract;
  - (b) the period starting on the first day on which the money was borrowed and ending on the day the loan is repaid;
  - (c) 5 years starting on the first day on which the money was borrowed.

*When deduction not spread*

- (6) If the total of the following is \$100 or less:
- (a) each amount of expenditure you incur in an income year for <sup>\*</sup>borrowing money you use during that income year *solely* for the <sup>\*</sup>purpose of producing assessable income;
  - (b) for each amount of expenditure you incur in that income year for borrowing money you use during that income year only *partly* for that purpose—the proportion of that amount that is appropriate having regard to the extent that you use the money during that income year for that purpose;
- you can deduct for the income year:
- (c) each amount covered by paragraph (a); and
  - (d) each proportion covered by paragraph (b).

**25-30 Expenses of discharging a mortgage**

*Mortgage for borrowed money*

- (1) You can deduct expenditure you incur to discharge a mortgage that you gave as security for the repayment of money that you

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 25-35

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\*borrowed if you used the money *solely* for the \*purpose of producing assessable income.

*Mortgage for property bought*

- (2) You can deduct expenditure you incur to discharge a mortgage that you gave as security for the payment of the whole or part of the purchase price of property that you bought if you used the property *solely* for the \*purpose of producing assessable income.

*Money or property used partly for that purpose*

- (3) If you used the money you \*borrowed, or the property you bought, only *partly* for the \*purpose of producing assessable income, you can deduct the expenditure to the extent that you used the money or property for that purpose.

*No deduction for payments of principal or interest*

- (4) You cannot deduct payments of principal or interest under this section.

**25-35 Bad debts**

- (1) You can deduct a debt (or part of a debt) that you write off as bad in the income year if:
- (a) it was included in your assessable income for the income year or for an earlier income year; or
  - (b) it is in respect of money that you lent in the ordinary course of your \*business of lending money.

Note: If a bad debt is in respect of a payment that is required to be made under a qualifying security (within the meaning of Division 16E of Part III of the *Income Tax Assessment Act 1936*): see subsection 63(1A) of that Act.

*Writing off a debt you have bought*

- (2) You can deduct a debt that you write off as bad in the income year if you bought the debt in the ordinary course of your \*business of lending money. However, you cannot deduct more than the expenditure you incurred in buying the debt.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Writing off part of a debt you have bought*

- (3) You can deduct a part of a debt if:
- (a) you write off that part as bad in the income year; and
  - (b) you bought the debt in the ordinary course of your \*business of lending money.
- (4) However, the maximum that you can deduct under subsection (3) for one or more income years is the amount (if any) by which:
- the expenditure you incurred in buying the debt; exceeds:
  - so much of the debt as has not yet been written off as bad.

*Limit on deductions for bad debts under leases of luxury cars*

- (4A) There is a limit to how much you can deduct under this section for debts you write off that relate to lease payments that have become or will become liable to be made under a lease of a \*car to which Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936* applies.
- (4B) The most you can deduct for an income year is:
- the finance charge for the notional loan you are taken to have made to the lessee;
- reduced by:
- each amount that you have deducted, or can deduct, for an earlier income year under this section (or section 63 of the *Income Tax Assessment Act 1936*) for debts relating to lease payments that have become or will become liable to be made under the lease.
- (4C) An expression (except *car*) has the same meaning in subsection (4A) or (4B) as in Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936*.

*Special rules affecting deductions under this section*

- (5) The rules described in the table may affect your entitlement to deductions under this section, or may result in a deduction being reversed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 25** Some amounts you can deduct

Section 25-35

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Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

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<b>Rules affecting deductions for bad debts</b>		
<b>Item</b>	<b>For the rules about this situation:</b>	<b>See:</b>
1	A company cannot deduct a bad debt if there has been a change in ownership or control of the company and the company has not satisfied the same business test.	Subdivisions 165-C and 166-C
2	A company cannot deduct a bad debt in various other cases that may involve trafficking in bad debts.	Subdivision 175-C and <b>section 63D</b>
3	A deduction under this section is reduced if the debt is forgiven and the debtor and creditor are companies under common ownership and agree for the creditor to forgo the deduction to a specified extent.	<b>section 245-90 of Schedule 2C</b>
4	If you receive an amount as recoupment of a bad debt that you can deduct under this section, the amount may be included in your assessable income.	Subdivision 20-A
5	Certain trusts cannot deduct a bad debt if there has been a change in ownership or control or an abnormal trading in their units	<b>Divisions 266 and 267 of Schedule 2F</b>
6	An entity that used to be a member of a consolidated group or MEC group can deduct a bad debt that used to be owed to a member of the group only if certain conditions are met	Subdivisions 709-D and 719-I
Note:	Subsections 230-180(3), (5) and (6) and 230-195(3), (5) and (6) provide that in certain circumstances a deduction for a loss in relation to a financial arrangement is to be treated, for the purposes of this Act, as a deduction of a bad debt. The rules referred to in this subsection apply to that deduction.	

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **25-40 Loss from profit-making undertaking or plan**

- (1) You can deduct a loss arising from the carrying on or carrying out of a profit-making undertaking or plan if any profit from that plan would have been included in your assessable income by section 15-15 (which is about profit-making undertakings and plans).

*When section does not apply*

- (2) You cannot deduct a loss under subsection (1) if the loss arises in respect of the sale of property acquired on or after 20 September 1985.

Note: If you sell property you acquired *before* 20 September 1985 for profit-making by sale, you may be able to deduct a loss on the sale: see section 52 of the *Income Tax Assessment Act 1936*.

*Notice to Commissioner*

- (3) You can deduct a loss under subsection (1), insofar as it arises in respect of property, only if:
- (a) you notified the Commissioner that you acquired the property for the purpose of profit-making by sale or for the carrying on or carrying out of any profit-making undertaking or plan (however described); or
  - (b) the Commissioner is satisfied that you acquired the property for either of those purposes.

*When notice must have been given*

- (4) The notice must have been given at or before the time you lodged your <sup>\*</sup>income tax return:
- (a) for the income year in which you acquired the property; or
  - (b) if you were not required to lodge an income tax return for that income year—for the first income year after that income year for which you *were* required to lodge one.

### **25-45 Loss by theft etc.**

You can deduct a loss in respect of money if:

- (a) you discover the loss in the income year; and

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<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 25** Some amounts you can deduct

**Section 25-47**

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- (b) the loss was caused by theft, stealing, embezzlement, larceny, defalcation or misappropriation by your employee or \*agent (other than an individual you employ solely for private purposes); and
- (c) the money was included in your assessable income for the income year, or for an earlier income year.

Note: If you receive an amount as recoupment of the loss, the amount may be included in your assessable income: see Subdivision 20-A.

**25-47 Misappropriation where a balancing adjustment event occurs**

- (1) You can deduct an amount if:
  - (a) a \*balancing adjustment event occurs for a \*depreciating asset you \*held; and
  - (b) your employee or \*agent misappropriates (whether by theft, embezzlement, larceny or otherwise) all or part of the amount applicable to you under:
    - (i) item 8 of the table in subsection 40-300(2); or
    - (ii) item 1, 3, 4 or 6 of the table in subsection 40-305(1);in relation to the balancing adjustment event.

Note 1: The amount applicable to you under subsection 40-300(2) or 40-305(1) may be the market value of an asset or of a non-cash benefit.

Note 2: If you receive an amount as recoupment of the amount misappropriated, the amount may be included in your assessable income: see Subdivision 20-A.

- (2) The amount you can deduct is so much of the amount misappropriated as represents an amount applicable to you under item 8 of the table in subsection 40-300(2) or item 1, 3, 4 or 6 of the table in subsection 40-305(1) in relation to the \*balancing adjustment event.
- (3) You can deduct the amount for the income year in which the misappropriation happens.
- (4) You must reduce the amount you can deduct under this section if your deductions for the asset have been reduced under section 40-25 because of use for a purpose other than a \*taxable

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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purpose. The reduction is by the same proportion you reduce the balancing adjustment amount for the asset under section 40-290.

- (5) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this section for an income year if:
- (a) you discover the misappropriation after you lodged your \*income tax return for the income year; and
  - (b) the amendment is made at any time during the period of 4 years starting immediately after you discover the misappropriation.

### **25-50 Payments of pensions, gratuities or retiring allowances**

- (1) You can deduct a payment of a pension, gratuity or retiring allowance that you make to:
- (a) an employee; or
  - (b) a former employee; or
  - (c) a dependant of an employee or a former employee.
- (2) However, you can deduct it only to the extent that it is made in good faith in consideration of the past services of the employee, or former employee, in any \*business that you carried on for the purpose of gaining or producing assessable income.
- (3) You cannot deduct a payment under this section if you can deduct it under any other provision of this Act.

### **25-55 Payments to associations**

- (1) You can deduct a payment you make for membership of a trade, business or professional association.

Note: Alternatively, you can deduct the expense under section 8-1 (which is about general deductions) if you satisfy the requirements of that section.

*Maximum amount—\$42*

- (2) However, \$42 is the maximum amount you can deduct under this section for the payments that you make in the income year to any one association.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 25-60

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*If you deduct under section 8-1*

- (3) If you deduct a payment under section 8-1 (which is about general deductions) instead of this section:
- (a) the payment does *not* count towards the \$42 limit; and
  - (b) the amount that you can deduct for the payment is *not* limited to \$42.

**25-60 Parliament election expenses**

- (1) You can deduct expenditure you incur in contesting an election for membership of:
- (a) the Parliament of the Commonwealth; or
  - (b) the Parliament of a State; or
  - (c) the Legislative Assembly for the Australian Capital Territory; or
  - (d) the Legislative Assembly of the Northern Territory of Australia.

Note 1: Entertainment expenses are excluded: see section 25-70.

Note 2: If you receive an amount as recoupment of the expenditure, the amount may be included in your assessable income: see Subdivision 20-A.

**25-65 Local government election expenses**

- (1) You can deduct expenditure you incur in contesting an election for membership of a \*local governing body, but you cannot deduct more than \$1,000 per election. You deduct the expenditure for the income year in which you incur it.
- (2) However, you can deduct more than the \$1,000 limit if:
- (a) you have received an amount as \*recoupment of the expenditure; and
  - (b) some or all of that amount is included in your assessable income for an income year; and
  - (c) the total of your deductions for the election would be less than the \$1,000 limit if you disregarded so much (the ***assessed recoupment***) of the expenditure as equals the amount so included in your assessable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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In that case:

- (d) the assessed recoupment is disregarded in applying the \$1,000 limit; and
- (e) the further amount that you can deduct because of paragraph (d) is deducted for the income year referred to in paragraph (b).

**Example:** Chris is elected to the Bunyip Shire Council. In the 2007-08 income year he incurs expenditure of \$1,200 in contesting the election, of which he deducts \$1,000 (the limit under subsection (1)).

In 2008-09, Chris receives \$360 as an assessable recoupment of the expenditure. \$300 of that is included in his assessable income by section 20-35 (as extended by section 20-50).

Because of the assessable recoupment, \$300 of the expenditure is disregarded under paragraph (2)(d) in applying the \$1,000 limit. As a result, Chris's deductions are treated as being only \$700, which is less than the limit. This does not affect his original deduction for 2007-2008, but it means he can deduct the previously undeducted \$200, for 2008-09 (see paragraph (2)(e)).

This triggers a further application of section 20-35 (as extended by section 20-50) to include the remaining \$60 of the assessable recoupment in Chris's assessable income for 2008-09. His total deductions (net of recoupment included in assessable income) come to \$840, which is the same as his original expenditure (net of recoupment).

**Note:** An amount you receive as recoupment of expenditure may be included in your assessable income as an assessable recoupment under Subdivision 20-A, as ordinary income under section 6-5 or as statutory income under some other provision.

### **25-70 Deduction for election expenses does not extend to entertainment**

- (1) To the extent that you incur expenditure in respect of providing \*entertainment, you cannot deduct it under section 25-60 or 25-65.
- (2) However, subsection (1) does not stop you deducting expenditure to the extent that you incur it in respect of:
  - (a) providing \*entertainment that is available to the public generally; or
  - (b) providing food or drink to yourself, unless it would be concluded that you have a purpose of enabling or facilitating \*entertainment to be provided to someone else.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 25-75

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**25-75 Rates and land taxes on premises used to produce mutual receipts**

- (1) An entity can deduct these amounts it pays for premises:
- (a) rates which are annually assessed;
  - (b) land tax imposed under a \*State law or \*Territory law.
- But only if it uses the premises:
- (c) for the purpose of producing mutual receipts; or
  - (d) in carrying on a \*business for the purpose of producing mutual receipts; or
  - (e) for the purpose of producing amounts to which section 59-35 applies (amounts that would be mutual receipts but for prohibition on distributions to members); or
  - (f) in carrying on a \*business for the purpose of producing amounts to which section 59-35 applies.

Note: If the entity receives an amount as recoupment of the rates or land tax, the amount may be included in its assessable income: see Subdivision 20-A

*When premises used only for deductible purposes*

- (2) The entity can deduct the *whole* of the rates or land tax if it uses the premises *only* in one or more of these ways:
- (a) for the purpose of producing mutual receipts;
  - (b) in carrying on a \*business for the purpose of producing mutual receipts;
  - (c) for the \*purpose of producing assessable income.

*When premises used partly for deductible purposes*

- (3) If the entity uses the premises *partly* in one or more of the ways referred to in subsection (2) and partly in some other way, it can deduct the rates or land tax to the extent that it uses the premises in one or more of the ways referred to in that subsection.

*No deduction under section 8-1*

- (4) The entity cannot deduct the rates or land tax under section 8-1 (which is about general deductions).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **25-85 Certain returns in respect of debt interests**

- (1) This section deals with a \*return that an entity pays or provides on a \*debt interest.
- (2) The \*return is not prevented from being a \*general deduction for an income year under section 8-1 merely because:
  - (a) the return is \*contingent on the economic performance (whether past, current or future) of:
    - (i) the entity or a part of the entity's activities; or
    - (ii) a \*connected entity of the entity or a part of the activities of a connected entity of the entity; or
  - (b) the return secures a permanent or enduring benefit for the entity or a connected entity of the entity.
- (3) If the \*return is a \*dividend, the entity can deduct the return to the extent to which it would have been a \*general deduction under section 8-1 if:
  - (a) the payment of the return were the incurring by the entity of a liability to pay the same amount as interest; and
  - (b) that interest were incurred in respect of the finance raised by the entity and in respect of which the return was paid or provided; and
  - (c) the \*debt interest retained its character as a debt interest for the purposes of subsection (2).
- (4) Subsections (2) and (3) do not apply to a \*return to the extent to which it would be a \*general deduction under section 8-1 apart from this section.
- (4A) Subsections (2) and (3) do not apply to a \*return on a \*debt interest that is a \*Division 230 financial arrangement.
- (5) Subject to regulations made for the purposes of subsection (6), subsections (2) and (3) do not apply to the return to the extent to which the annually compounded internal rate of return exceeds the \*benchmark rate of return for the interest increased by 150 basis points.
- (6) The regulations may provide that subsection (5) applies in the circumstances specified in the regulations as if the reference to 150

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 25-90

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basis points were a reference to a greater or lesser number of basis points.

**25-90 Deduction relating to foreign non-assessable non-exempt income**

An \*Australian entity can deduct an amount of loss or outgoing from its assessable income for an income year if:

- (a) the amount is incurred by the entity in deriving income from a foreign source; and
- (b) the income is \*non-assessable non-exempt income under section 23AI, 23AJ or 23AK of the *Income Tax Assessment Act 1936*; and
- (c) the amount is a cost in relation to a \*debt interest issued by the entity that is covered by paragraph (1)(a) of the definition of **debt deduction**.

Note: This section does not apply to a Division 230 financial arrangement.

**25-95 Deduction for work in progress amounts**

- (1) You can deduct a \*work in progress amount that you pay for the income year in which you pay it to the extent that, as at the end of that income year:
  - (a) a recoverable debt has arisen in respect of the completion or partial completion of the work to which the amount related; or
  - (b) you reasonably expect a recoverable debt to arise in respect of the completion or partial completion of that work within the period of 12 months after the amount was paid.
- (2) You can deduct the remainder (if any) of the \*work in progress amount for the following income year.
- (3) An amount is a **work in progress amount** to the extent that:
  - (a) an entity agrees to pay the amount to another entity (the **recipient**); and
  - (b) the amount can be identified as being in respect of work (but not goods) that has been partially performed by the recipient for a third entity but not yet completed to the stage where a

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



recoverable debt has arisen in respect of the completion or partial completion of the work.

- (4) An amount does not stop being a *work in progress amount* merely because it is paid after a recoverable debt has arisen in respect of the completion or partial completion of the work to which the amount related.

### **25-105 Deductions for United Medical Protection Limited support payments**

- (1) You can deduct an amount that you pay for the income year in which you pay it to the extent that it consists of a \*United Medical Protection Limited support payment.
- (2) A *United Medical Protection Limited support payment* is an amount payable under Division 1 of Part 3 of the *Medical Indemnity Act 2002*.
- (3) You cannot deduct an amount under this section if you can deduct it under any other provision of this Act.

### **25-100 Travel between workplaces**

*When a deduction is allowed*

- (1) If you are an individual, you can deduct a \*transport expense to the extent that it is incurred in your \*travel between workplaces.

*Travel between workplaces*

- (2) Your *travel between workplaces* is travel directly between 2 places, to the extent that:
- (a) while you were at the first place, you were:
- (i) engaged in activities to gain or produce your assessable income; or
- (ii) engaged in activities in the course of carrying on a \*business for the purpose of gaining or producing your assessable income; and
- (b) the purpose of your travel to the second place was to:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 25-110

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- (i) engage in activities to gain or produce your assessable income; or
  - (ii) engage in activities in the course of carrying on a business for the purpose of gaining or producing your assessable income;
- and you engaged in those activities while you were at the second place.
- (3) Travel between 2 places is not *travel between workplaces* if one of the places you are travelling between is a place at which you reside.
  - (4) Travel between 2 places is not *travel between workplaces* if, at the time of your travel to the second place:
    - (a) the arrangement under which you gained or produced assessable income at the first place has ceased; or
    - (b) the \*business in respect of which you engaged in activities at the first place has ceased.

*No deduction for capital expenditure*

- (5) You cannot deduct expenditure under subsection (1) to the extent that the expenditure is capital, or of a capital nature.

**25-110 Capital expenditure to terminate lease etc.**

- (1) You can deduct an amount for capital expenditure you incur to terminate a lease or licence (including an authority, permit or quota) that results in the termination of the lease or licence if the expenditure is incurred:
  - (a) in the course of \*carrying on a \*business; or
  - (b) in connection with ceasing to carry on a business.
- (2) The amount you can deduct is 20% of the expenditure:
  - (a) for the income year in which the lease or licence is terminated; and
  - (b) for each of the next 4 income years.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Exceptions*

- (3) You cannot deduct any amount for expenditure you incur to terminate a lease that, in accordance with \*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, is classified as a finance lease.
- (4) If you incurred the expenditure under an \*arrangement and:
  - (a) there is at least one other party to the arrangement with whom you did not deal at \*arm's length; and
  - (b) apart from this subsection, the amount of the expenditure would be more than the \*market value of what it was for (assuming the termination did not occur and was never proposed to occur);the amount of expenditure you take into account is that market value.
- (5) You cannot deduct any amount for expenditure you incur to terminate a lease or licence if:
  - (a) after the termination, you or an \*associate of yours enters into another lease or licence with the same party or an associate of that party; and
  - (b) the other lease or licence is of the same kind as the original one.
- (6) You cannot deduct any amount for expenditure you incur to terminate a lease or licence to the extent that the expenditure is for the granting or receipt of another lease or licence in relation to the asset that was the subject of the original lease or licence.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 26—Some amounts you cannot deduct, or cannot deduct in full**

### **Guide to Division 26**

#### **26-1 What this Division is about**

This Division sets out some amounts that you *cannot* deduct, or that you cannot deduct in full.

#### **Table of sections**

##### **Operative provisions**

26-5	Penalties
26-10	Leave payments
26-15	Franchise fees windfall tax
26-17	Commonwealth places windfall tax
26-20	Assistance to students
26-25	Interest or royalty
26-26	Non-share distribution and dividends
26-30	Relative's travel expenses
26-35	Reducing deductions for amounts paid to related entities
26-40	Maintaining your family
26-45	Recreational club expenses
26-47	Non-business boating activities
26-50	Expenses for a leisure facility
26-52	Bribes to foreign public officials
26-53	Bribes to public officials
26-54	Expenditure relating to illegal activities
26-55	Limit on deductions
26-60	Superannuation contributions surcharge
26-65	Termination payments surcharge
26-68	Loss from disposal of eligible venture capital investments
26-70	Loss from disposal of venture capital equity
26-75	Excess contributions tax cannot be deducted
26-80	Financing costs on loans to pay superannuation contribution
26-85	Borrowing costs on loans to pay life insurance premiums

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- 26-90 Superannuation supervisory levy
- 26-95 Superannuation guarantee charge

## Operative provisions

### 26-5 Penalties

- (1) You cannot deduct under this Act:
  - (a) an amount (however described) payable, by way of penalty, under an \*Australian law or a \*foreign law; or
  - (b) an amount ordered by a court to be paid on the conviction of an entity for an offence against an \*Australian law or a \*foreign law.
- (2) This section does not apply to an amount payable, by way of penalty, under Subdivision 162-D of the \*GST Act.

Note: See paragraph 25-5(1)(ca) for the deductibility of penalties that arise under Subdivision 162-D of the GST Act.

### 26-10 Leave payments

- (1) You cannot deduct under this Act a loss or outgoing for long service leave, annual leave, sick leave or other leave except:
  - (a) an amount paid in the income year to the individual to whom the leave relates (or, if that individual has died, to that individual's dependant or \*legal personal representative); or
  - (b) an \*accrued leave transfer payment that is made in the income year.
- (2) An *accrued leave transfer payment* is a payment that an entity makes:
  - (a) in respect of an individual's leave (some or all of which accrued while the entity was required to make payments in respect of the individual's leave, or leave the individual might take); and
  - (b) when the entity is no longer required (or is about to stop being required) to make payments in respect of such leave; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 26** Some amounts you cannot deduct, or cannot deduct in full

Section 26-15

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- (c) to another entity when the other entity has begun (or is about to begin) to be required to make payments in respect of such leave; and
- (d) under (or for the purposes of facilitating the provisions of) an \*Australian law, or an award, order, determination or industrial agreement under an \*Australian law.

It does not matter whether the leave accrues to the individual as an employee or for some other reason.

Example: Your employee goes to a new employer. You pay the new employer \$2,000 for the employee's unused long service leave because an industrial agreement requires you to make that payment.

Note: An accrued leave transfer payment is included in the assessable income of the entity to which it is made: see section 15-5.

**26-15 Franchise fees windfall tax**

You cannot deduct under this Act any tax that is imposed by the *Franchise Fees Windfall Tax (Imposition) Act 1997*.

**26-17 Commonwealth places windfall tax**

You cannot deduct under this Act any tax that is imposed by the *Commonwealth Places Windfall Tax (Imposition) Act 1998*.

**26-20 Assistance to students**

- (1) You cannot deduct under this Act:
  - (a) a contribution made under Chapter 4 of the *Higher Education Funding Act 1988*; or
  - (b) a basic charge within the meaning of Chapter 5 of that Act; or
  - (c) a payment made to reduce a debt to the Commonwealth under Chapter 5A of that Act; or
  - (ca) a student contribution amount within the meaning of the *Higher Education Support Act 2003* paid to a higher education provider (within the meaning of that Act); or
  - (cb) a payment made to reduce a debt to the Commonwealth under Chapter 4 of that Act; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) a payment made to reduce a debt to the Commonwealth, or to a participating corporation, under Chapter 2B of the *Social Security Act 1991* or Part 4A of the *Student Assistance Act 1973*.

*Exception when you provide a fringe benefit*

- (2) Subsection (1) does not stop you deducting expenditure you incur in \*providing a \*fringe benefit.

**26-25 Interest or royalty**

- (1) You cannot deduct under this Act interest (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936*) or a \*royalty if:
- (a) Subdivision 12-F in Schedule 1 to the *Taxation Administration Act 1953* requires you to withhold an amount from the interest or royalty; and
  - (b) either:
    - (i) you fail to withhold the amount; or
    - (ii) after withholding the amount, you fail to comply with section 16-70 in that Schedule in relation to that amount.
- (2) You cannot deduct under this Act interest (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936*), or a \*royalty, that is in the form of a \*non-cash benefit if:
- (a) section 14-5 or 14-10 in Schedule 1 to the *Taxation Administration Act 1953* requires you to pay an amount to the Commissioner before providing the benefit, because of Subdivision 12-F in that Schedule; and
  - (b) you fail to pay the amount as required by that section.
- (3) If:
- (a) apart from subsection (1) or (2), you can deduct interest (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936*) or a \*royalty for an income year; and
  - (b) the \*withholding tax payable for the interest or the royalty is paid;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 26-26

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you can deduct the interest or royalty for that income year.

**26-26 Non-share distributions and dividends**

- (1) A company cannot deduct under this Act:
  - (a) a \*non-share distribution; or
  - (b) a return that has accrued on a \*non-share equity interest.
- (2) A company cannot deduct a \*dividend paid on an \*equity interest in the company as a \*general deduction under this Act.

**26-30 Relative's travel expenses**

- (1) You cannot deduct under this Act a loss or outgoing you incur, insofar as it is attributable to your \*relative's travel, if:
  - (a) you travelled in the course of performing your duties as an employee, or in the course of carrying on a \*business for the purpose of gaining or producing your assessable income; and
  - (b) your relative accompanied you while you travelled.

*Exception to subsection (1)*

- (2) Subsection (1) does not stop you deducting a loss or outgoing if:
  - (a) your \*relative, while accompanying you, performed substantial duties as your employer's employee, or as your employee; and
  - (b) it is reasonable to conclude that your relative would still have accompanied you even if he or she had not had a personal relationship with you.

*Exception when you provide a fringe benefit*

- (3) Subsection (1) does not stop you deducting expenditure you incur in \*providing a \*fringe benefit.

*This section also applies to individuals who are not employees*

- (4) If an individual is *not* an employee, but receives, or is entitled to receive, \*withholding payments covered by subsection (6), this section applies to the individual as if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (a) he or she were an employee; and
- (b) the entity, who pays (or is liable to pay) \*withholding payments covered by subsection (6) that result in the individual being in receipt of, or entitled to receive, such payments, were the individual's employer; and
- (c) any other individual who receives (or is entitled to receive) \*withholding payments covered by subsection (6):
  - (i) that result in that other individual being in receipt of, or entitled to receive, such payments; and
  - (ii) that the entity pays (or is liable to pay) to that other individual;were an employee of the entity.

*This section also applies to entities who are not employers*

- (5) If an entity is *not* an employer, but pays (or is liable to pay) \*withholding payments covered by subsection (6), this section applies to the entity as if:
  - (a) it were an employer; and
  - (b) an individual to whom the entity pays (or is liable to pay) such withholding payments were the entity's employee.

*Withholding payments covered*

- (6) This subsection covers:
  - (a) a \*withholding payment covered by any of the provisions in Schedule 1 to the *Taxation Administration Act 1953* listed in the table; and
  - (b) a withholding payment covered by section 12-47 in Schedule 1 to the *Taxation Administration Act 1953* where:
    - (i) the payment is made to a religious practitioner by a religious institution; and
    - (ii) the activity, or series of activities, for which the payment is made is done by the religious practitioner as a member of the religious institution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 26-35

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<b>Withholding payments covered</b>		
<b>Item</b>	<b>Provision</b>	<b>Subject matter</b>
1	Section 12-40	Payment to company director
2	Section 12-45	Payment to office holder
3	Section 12-50	Return to work payment
4	Subdivision 12-D	Benefit, training and compensation payments

**26-35 Reducing deductions for amounts paid to related entities**

*You can only deduct reasonable amounts paid to related entities*

- (1) If, under another provision of this Act, you can deduct an amount for a payment you make, or for a liability you incur, to a \*related entity, then you can only deduct so much of the amount as the Commissioner considers reasonable.

Note: This section has a special operation if the payment is made, or the liability is incurred, by a partnership in which a private company is a partner: see section 65 (Payments to associated persons and relatives) of the *Income Tax Assessment Act 1936*.

*Meaning of related entity*

- (2) A **related entity** is any of the following:
- (a) your \*relative; or
  - (b) a partnership in which your relative is a partner.
- (3) In the case of a partnership, a **related entity** is any of the following:
- (a) a \*relative of a partner in the partnership;
  - (b) an individual who is or has been a director of a company that is a partner in the partnership and is a \*private company for the income year;
  - (c) an entity that is or has been a shareholder in a company of that kind;
  - (d) a \*relative of an individual who is or has been a director or shareholder of a company of that kind;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (e) a beneficiary of a trust if the trustee is a partner in the partnership;
- (f) a \*relative of a beneficiary of a trust if the trustee is a partner in the partnership;
- (g) another partnership, if a partner in the other partnership is a \*relative of a partner in the first partnership.

However, a partner in a partnership is *not* a **related entity** of the partnership.

*If you can't deduct, then related entity doesn't include amount as income*

- (4) To the extent that subsection (1) stops you deducting an amount, the amount is neither assessable income, nor exempt income, of the \*related entity.

*Amendments of assessments*

- (5) The Commissioner can amend an assessment at any time for the purpose of giving effect to subsection (4).

Example: An amount was not included in the related entity's assessable income because at the time you could not deduct the amount. At a later time you discover that you could deduct the amount and your assessment is amended. The Commissioner can amend the entity's assessment so that the amount is included in the entity's assessable income.

## **26-40 Maintaining your family**

You cannot deduct under this Act expenditure you incur for maintaining:

- (a) your \*spouse (except a spouse permanently living separately and apart from you); or
- (b) your \*child who is under 16 years.

Example: A farmer cannot deduct an amount for food or lodgings that the farmer provides to his or her child who is under 16 years for the work the child performs on the farm.

## **26-45 Recreational club expenses**

- (1) You cannot deduct under this Act a loss or outgoing to the extent you incur it to obtain or maintain:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 26** Some amounts you cannot deduct, or cannot deduct in full

Section 26-47

---

- (a) membership of a \*recreational club; or
- (b) rights to enjoy (otherwise than as a \*member) facilities provided by a \*recreational club for the use or benefit of its \*members;

whether for yourself or someone else.

*Meaning of recreational club*

- (2) A **recreational club** is a company that was established or is carried on mainly to provide facilities, for the use or benefit of its \*members, for drinking, dining, \*recreation or entertainment.

*Exception when you provide a fringe benefit*

- (3) Subsection (1) does not stop you deducting expenditure you incur in \*providing a \*fringe benefit.

**26-47 Non-business boating activities**

*Object*

- (1) The object of this section is to improve the integrity of the taxation system by preventing deductions from boating activities that are not carried on as a \*business being offset against other assessable income.

*Rule*

- (2) This Act applies to you as if so much of the amounts relating to using or \*holding boats that you could otherwise deduct for an income year as exceeds your assessable income from using or holding boats for that year:
  - (a) were not deductible for that income year; and
  - (b) were an amount (a **quarantined amount**) relating to using or holding boats that you can deduct for the next income year.

Note: A quarantined amount may be reduced under subsection (5) (for boat capital gains), reduced under subsection (7) (where you deduct part of a quarantined amount under subsection (6) for boat business profits), reduced under subsection (8) (about exempt income) or affected by subsection (10) (about bankruptcy).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Example: Ian does not use his boat in a business. In Year 1, Ian would be able to claim \$100,000 in deductions for the boat (but for this subsection), including interest, depreciation and running costs. He earns only \$40,000 of income from the boat. He can only deduct \$40,000. He carries the remaining \$60,000 forward to Year 2 (the quarantined amount).

In Year 2, Ian has \$95,000 of expenses and \$30,000 of income for the boat. He can deduct \$30,000. The quarantined amount is now \$125,000: the quarantined amount from Year 1 plus the excess of expenses over income from Year 2.

In Year 3, Ian has \$60,000 of expenses and \$150,000 of income from the boat. The expenses from Year 3 plus the quarantined amount is \$185,000. Therefore, Ian claims a deduction of \$150,000 and carries forward \$35,000 to Year 4.

*Exception: business use*

- (3) The rule in subsection (2) does not apply to amounts that are attributable to one or more of the following:
- (a) \*holding a boat as your \*trading stock;
  - (b) using a boat (or holding it) mainly for letting it on hire in the ordinary course of a \*business that you \*carry on;
  - (c) using a boat (or holding it) mainly for transporting the public or goods for payment in the ordinary course of a business that you carry on;
  - (d) using a boat for a purpose that is essential to the efficient conduct of a business that you carry on.

Note: Even if this exception applies to you, you may still have to quarantine losses under Division 35 (deferral of losses from non-commercial business activities).

*Exception: fringe benefits*

- (4) The rule in subsection (2) does not apply to so much of an amount you incur in \*providing a \*fringe benefit.

*Modification if you have boat capital gains*

- (5) You reduce a quarantined amount you have for an income year by so much of that amount as is applied under section 118-80 to reduce a \*capital gain you have for the year in relation to a boat.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 26-47

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You make this reduction before you deduct an amount under subsection (6).

*Deduction if you have boat business profits*

- (6) You can deduct all or part of your remaining quarantined amount for an income year if your assessable income for the year from activities of a kind referred to in subsection (3) exceeds your deductions for the year relating to those activities. The amount you can deduct is the lesser of that excess and that remaining quarantined amount.
- (7) You reduce your quarantined amount for the year by the amount you deduct. You make this reduction before a reduction under subsection (8).

*Modification if you have exempt income*

- (8) You reduce any remaining quarantined amount you have for an income year by so much of your \*net exempt income as is not applied for that income year under section 35-15 (about non-commercial business activities) or section 36-10 or 36-15 (about tax losses).

*Modification if you become bankrupt*

- (9) The modification in subsection (10) has effect if:
  - (a) in an income year (the **current year**) you become bankrupt or are released from a debt by the operation of an Act relating to bankruptcy; or
  - (b) you became bankrupt before the current year and:
    - (i) the bankruptcy is annulled in the current year under section 74 of the *Bankruptcy Act 1966* because your creditors have accepted a proposal for a composition or scheme of arrangement; and
    - (ii) under the composition or scheme of arrangement, you have been, will be or may be released from some or all of the debts from which you would have been released if you had instead been discharged from the bankruptcy.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (10) This Act applies to you as if any amount that:
- (a) is a quarantined amount for you for the current year or was a quarantined amount for you for an earlier year; and
  - (b) has not been applied under section 118-80 and that you have not yet deducted;
- were not an amount relating to using or holding boats that you can deduct for the current year or a later year.

### **26-50 Expenses for a leisure facility**

- (1) You cannot deduct under this Act a loss or outgoing to the extent you incur it:
- (a) to acquire ownership of a \*leisure facility; or
  - (b) to retain ownership of a leisure facility; or
  - (c) to acquire rights to use a leisure facility; or
  - (d) to retain rights to use a leisure facility; or
  - (e) to use, operate, maintain or repair a leisure facility; or
  - (f) in relation to any obligation associated with your ownership of a leisure facility; or
  - (g) in relation to any obligation associated with your rights to use a leisure facility.

However, there are exceptions (see subsections (3), (4) and (8)).

*What is a leisure facility?*

- (2) A **leisure facility** is land, a building, or part of a building or other structure, that is used (or held for use) for holidays or \*recreation.

*Exception—leisure facilities*

- (3) Subsection (1) does not stop you deducting a loss or outgoing for a \*leisure facility if at all times in the income year:
- (a) you hold the leisure facility for sale in the ordinary course of your business of selling leisure facilities; or
  - (b) you use the leisure facility (or hold it for use) mainly to provide it:
    - (i) in the ordinary course of your \*business of providing leisure facilities for payment; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 26** Some amounts you cannot deduct, or cannot deduct in full

Section 26-52

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- (ii) to produce your assessable income in the nature of rents, lease premiums, licence fees or similar charges; or
- (iii) for your employees to use; or
- (iv) for the care of your employees' \*children.

In the case of a company, subparagraphs (b)(iii) and (iv) do not apply to employees who are \*members or directors of the company.

*Exception—part year use of leisure facilities*

- (4) If you use a \*leisure facility (or hold it) as described in subsection (3) at all times during *part* of the income year, then subsection (1) does not stop you deducting so much of the loss or outgoing as is reasonable in the circumstances.

*Anti-avoidance—when exceptions do not apply*

- (7) A \*leisure facility is taken not to be used (or held) as described in subsection (3) if:
  - (a) apart from this subsection, the leisure facility would be used (or held) in that way because of a \*scheme; and
  - (b) in the Commissioner's opinion, the scheme would not have been entered into or carried out if this section had not been enacted.

*Exception when you provide a fringe benefit*

- (8) Subsection (1) does not stop you deducting expenditure you incur in \*providing a \*fringe benefit.

**26-52 Bribes to foreign public officials**

- (1) You cannot deduct under this Act a loss or outgoing you incur that is a \*bribe to a foreign public official.
- (2) An amount is a ***bribe to a foreign public official*** to the extent that:
  - (a) you incur the amount in, or in connection with:
    - (i) providing a benefit to another person; or
    - (ii) causing a benefit to be provided to another person; or
    - (iii) offering to provide, or promising to provide, a benefit to another person; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (iv) causing an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
- (b) the benefit is not legitimately due to the other person (see subsection (6)); and
- (c) you incur the amount with the intention of influencing a \*foreign public official (who may or may not be the other person) in the exercise of the official's duties as a foreign public official in order to:
  - (i) obtain or retain business; or
  - (ii) obtain or retain an advantage in the conduct of business that is not legitimately due to you, or another person, as the recipient, or intended recipient, of the advantage in the conduct of business (see subsection (7)).

The benefit may be any advantage and is not limited to property.

- (2A) For the purposes of subsection (2), disregard whether business, or a business advantage, was actually obtained or retained.

*Payments that written law of foreign public official's country requires or permits*

- (3) An amount is not a ***bribe to a foreign public official*** if, assuming the benefit had been provided, and all related acts had been done, in the \*foreign public official's country, a written law of that country would have required or permitted the provision of the benefit.

*Facilitation payments*

- (4) An amount is not a ***bribe to a foreign public official*** if:
  - (a) the value of the benefit is of a minor nature; and
  - (b) the amount is incurred for the sole or dominant purpose of expediting or securing the performance of a routine government action of a minor nature.
- (5) For the purposes of this section, a ***routine government action*** is an action of a \*foreign public official that:
  - (a) is ordinarily and commonly performed by the official; and
  - (b) is covered by any of the following subparagraphs:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 26** Some amounts you cannot deduct, or cannot deduct in full

Section 26-52

---

- (i) granting a permit, licence or other official document that qualifies a person to do business in a foreign country or in a part of a foreign country;
- (ii) processing government papers such as a visa or work permit;
- (iii) providing police protection or mail collection or delivery;
- (iv) scheduling inspections associated with contract performance or related to the transit of goods;
- (v) providing telecommunications services, power or water;
- (vi) loading and unloading cargo;
- (vii) protecting perishable products, or commodities, from deterioration;
- (viii) any other action of a similar nature; and
- (c) does not involve a decision about:
  - (i) whether to award new business; or
  - (ii) whether to continue existing business with a particular person; or
  - (iii) the terms of new business or existing business; and
- (d) does not involve encouraging a decision about:
  - (i) whether to award new business; or
  - (ii) whether to continue existing business with a particular person; or
  - (iii) the terms of new business or existing business.

*Benefit not legitimately due*

- (6) In working out if a benefit is not legitimately due to another person in a particular situation, disregard the following:
  - (a) the fact that the benefit may be, or be perceived to be, customary, necessary or required in the situation;
  - (b) the value of the benefit;
  - (c) any official tolerance of the benefit.

*Advantage in the conduct of business that is not legitimately due*

- (7) In working out if an advantage in the conduct of business is not legitimately due in a particular situation, disregard the following:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the fact that the advantage may be customary, or perceived to be customary, in the situation;
- (b) the value of the advantage;
- (c) any official tolerance of the advantage.

*Duties of foreign public official*

- (8) The duties of a \*foreign public official are any authorities, duties, functions or powers that:
  - (a) are conferred on the official; or
  - (b) the official holds himself or herself out as having.

**26-53 Bribes to public officials**

- (1) You cannot deduct under this Act a loss or outgoing you incur that is a \*bribe to a public official.
- (2) An amount is a ***bribe to a public official*** to the extent that:
  - (a) you incur the amount in, or in connection with:
    - (i) providing a benefit to another person; or
    - (ii) causing a benefit to be provided to another person; or
    - (iii) offering to provide, or promising to provide, a benefit to another person; or
    - (iv) causing an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
  - (b) the benefit is not legitimately due to the other person (see subsection (3)); and
  - (c) you incur the amount with the intention of influencing a \*public official (who may or may not be the other person) in the exercise of the official's duties as a public official in order to:
    - (i) obtain or retain business; or
    - (ii) obtain or retain an advantage in the conduct of business that is not legitimately due to you, or another person, as the recipient, or intended recipient, of the advantage in the conduct of business (see subsection (4)).

The benefit may be any advantage and is not limited to property.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 26-54

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*Benefit not legitimately due*

- (3) In working out if a benefit is not legitimately due to another person in a particular situation, disregard the following:
- (a) the fact that the benefit may be customary, or perceived to be customary, in the situation;
  - (b) the value of the benefit;
  - (c) any official tolerance of the benefit.

*Advantage in the conduct of business that is not legitimately due*

- (4) In working out if an advantage in the conduct of business is not legitimately due in a particular situation, disregard the following:
- (a) the fact that the advantage may be customary, or perceived to be customary, in the situation;
  - (b) the value of the advantage;
  - (c) any official tolerance of the advantage.

*Duties of public official*

- (5) The duties of a \*public official are any authorities, duties, functions or powers that:
- (a) are conferred on the official; or
  - (b) the official holds himself or herself out as having.

**26-54 Expenditure relating to illegal activities**

- (1) You cannot deduct under this Act a loss or outgoing to the extent that it was incurred in the furtherance of, or directly in relation to, a physical element of an offence against an \*Australian law of which you have been convicted if the offence was, or could have been, prosecuted on indictment.
- (2) Despite section 170 of the *Income Tax Assessment Act 1936*, the Commissioner may amend your assessment at any time within 4 years after you are convicted of the relevant offence for the purpose of giving effect to subsection (1) of this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **26-55 Limit on deductions**

(1) There is a limit on the total of the amounts you can deduct for the income year under these provisions:

- (a) section 25-50 (which is about payments of pensions, gratuities or retiring allowances) of this Act;
- (ba) Division 30 (which is about deductions for gifts or contributions) of this Act;
- (bb) Division 31 (which is about deductions for conservation covenants) of this Act;
- (d) section 290-150 (which is about deductions for personal superannuation contributions).

Do not include in the total an amount that you could also deduct under another provision of this Act, apart from section 8-10 (which prevents double deductions).

(2) The limit is worked out by subtracting from your assessable income all your deductions except:

- (a) \*tax losses; and

See Division 36 (which is about tax losses of earlier income years).

- (c) amounts you have deposited in terms of Schedule 2G (Farm management deposits) to the *Income Tax Assessment Act 1936*.

### **26-60 Superannuation contributions surcharge**

You cannot deduct under this Act:

- (a) a superannuation contributions surcharge within the meaning of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*; or
- (b) a superannuation contributions surcharge within the meaning of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 26-65

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**26-65 Termination payments surcharge**

You cannot deduct under this Act a termination payments surcharge within the meaning of the *Termination Payments Tax (Assessment and Collection) Act 1997*.

**26-68 Loss from disposal of eligible venture capital investments**

*Partners in VCLPs and ESVCLPs*

- (1) You cannot deduct under this Act your share of a loss made from the disposal or other realisation of an \*eligible venture capital investment if:
  - (a) it is made by a \*VCLP, or an \*ESVCLP, that is \*unconditionally registered; and
  - (b) were that disposal or other realisation to be a \*disposal of a \*CGT asset, your share of any \*capital gain or \*capital loss would be disregarded under section 118-405 or 118-407.

*Partners in AFOFs*

- (2) You cannot deduct under this Act your share of a loss made from the disposal or other realisation of an \*eligible venture capital investment if:
  - (a) it is made by:
    - (i) an \*AFOF that is \*unconditionally registered; or
    - (ii) a \*VCLP, or an \*ESVCLP, that is unconditionally registered and in which an AFOF that is \*unconditionally registered is a partner; and
  - (b) were that disposal or other realisation to be a \*disposal of a \*CGT asset, your share of any \*capital gain or \*capital loss would be disregarded under section 118-410.

*Eligible venture capital investors*

- (3) You cannot deduct under this Act a loss made from the disposal or other realisation of an \*eligible venture capital investment if:
  - (a) you are an \*eligible venture capital investor; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) were that disposal or other realisation to be a \*disposal of a \*CGT asset, any \*capital gain or \*capital loss would be disregarded under section 118-415.

### **26-70 Loss from disposal of venture capital equity**

You cannot deduct under this Act a loss made from the disposal or other realisation of \*venture capital equity in a \*resident investment vehicle if:

- (a) it is made by a \*venture capital entity or a \*limited partnership referred to in subsection 118-515(2); and
- (b) if that disposal or other realisation were a \*disposal of a \*CGT asset, any \*capital gain or \*capital loss would be disregarded under Subdivision 118-G.

### **26-75 Excess contributions tax cannot be deducted**

You cannot deduct under this Act an amount of \*excess contributions tax that you pay.

### **26-80 Financing costs on loans to pay superannuation contribution**

- (1) You can only deduct under this Act a \*financing cost connected with a contribution you make to a \*superannuation plan if you can deduct the contribution under Subdivision 290-B.
- (2) A *financing cost* connected with a contribution is expenditure incurred to the extent that it relates to obtaining finance to make the contribution, including:
  - (a) interest, and payments in the nature of interest; and
  - (b) expenses of borrowing.

### **26-85 Borrowing costs on loans to pay life insurance premiums**

- (1) You can only deduct under this Act interest on, or other expenses associated with, money you borrow to pay a premium for a \*life insurance policy if:
  - (a) the \*risk component of the premium received by the insurer is the entire amount of the premium; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 26** Some amounts you cannot deduct, or cannot deduct in full

Section 26-90

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- (b) each amount the insurer is liable to pay under the policy would be included in your assessable income if it were paid.
- (2) The *risk component* of a premium for a \*life insurance policy means the amount of the premium worked out on the basis specified in the regulations.

**26-90 Superannuation supervisory levy**

You cannot deduct under this Act so much of a levy imposed by the *Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991* as represents the late lodgment amount (within the meaning of section 6 of that Act).

**26-95 Superannuation guarantee charge**

You cannot deduct under this Act a charge imposed by the *Superannuation Guarantee Charge Act 1992*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 27—Effect of input tax credits etc. on deductions**

### **Table of Subdivisions**

	Guide to Division 27
27-A	General
27-B	Effect of input tax credits etc. on capital allowances

### **Guide to Division 27**

#### **27-1 What this Division is about**

This Division sets out the effect of the GST in working out deductions. Generally speaking, input tax credits, GST and adjustments under the GST Act are disregarded.

### **Subdivision 27-A—General**

#### **Table of sections**

27-5	Input tax credits and decreasing adjustments
27-10	Certain increasing adjustments
27-15	GST payments
27-20	Elements in calculation of amounts
27-25	GST groups and GST joint ventures
27-35	Certain sections not to apply to certain assets or expenditure

#### **27-5 Input tax credits and decreasing adjustments**

You cannot deduct under this Act a loss or outgoing you incur, to the extent that the loss or outgoing includes an amount relating to an \*input tax credit to which you are entitled or a \*decreasing adjustment that you have.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 27-10

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**27-10 Certain increasing adjustments**

- (1) You can deduct an amount of an \*increasing adjustment that arises under Division 129 of the \*GST Act.
- (2) However, you cannot deduct the amount to the extent (if any) that the adjustment arises from an increase in the extent to which the activity giving rise to the adjustment is of a private or domestic nature.
- (3) If:
  - (a) you have an \*increasing adjustment under Division 138 of the \*GST Act in respect of an asset as a result of the cancellation of your registration under Part 2-5 of the GST Act; and
  - (b) immediately after the cancellation, you held the asset for the purpose of gaining or producing assessable income;you can deduct the amount of the increasing adjustment.
- (4) However, you cannot deduct an amount under subsection (1) or (3) to the extent that, because it becomes a component of a \*net input tax credit, a reduction is made under section 103-30 (reduction of cost base etc. by net input tax credits).

**27-15 GST payments**

- (1) You cannot deduct under this Act a loss or outgoing consisting of a payment under Division 33 of the \*GST Act.
- (2) This section does not apply to the payment:
  - (a) to the extent (if any) that the \*net amount to which the payment relates was increased under section 21-5 of the \*Wine Tax Act (which allows for such increases to take account of wine equalisation tax); and
  - (b) to the extent (if any) that the \*net amount was increased under section 13-5 of the \*Luxury Car Tax Act (which allows for such increases to take account of luxury car tax); and
  - (c) to the extent (if any) that the \*net amount was increased under paragraph 13-10(1)(a) of the Luxury Car Tax Act (which allows for such alterations to take account of increasing luxury car tax adjustments under that Act).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) This section does not apply to the payment of \*GST (under section 33-15 of the \*GST Act) on a \*taxable importation that:
- (a) was not a \*creditable importation; or
  - (b) was \*partly creditable;
- but only to the extent that that payment of GST exceeds the \*input tax credit (if any) to which you are entitled for that importation.

### **27-20 Elements in calculation of amounts**

In calculating an amount that you may be able to deduct:

- (a) an element in the calculation that is an amount paid or payable is treated as not including an amount equal to any \*input tax credit for an \*acquisition related to the amount paid or payable, or any \*decreasing adjustment related to that amount; and
- (b) an element in the calculation that is an amount received or receivable is treated as not including an amount equal to any \*GST payable on a \*taxable supply related to the amount received or receivable, or any \*increasing adjustment related to that amount.

### **27-25 GST groups and GST joint ventures**

- (1) A \*member of a \*GST group is to be treated, for the purposes of this Division, as if Subdivision 48-B of the \*GST Act (other than subsections 48-45(3) and (4)) did not apply to that member.
- (2) A \*participant in a \*GST joint venture is to be treated, for the purposes of this Division, as if Subdivision 51-B of the \*GST Act did not apply to that participant.

### **27-35 Certain sections not to apply to certain assets or expenditure**

Sections 27-5, 27-10, 27-15 and 27-20 do not apply to assets, or to expenditure, for which you can deduct amounts under Division 40 or 328.

Note: See instead Subdivision 27-B.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 27-80

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**Subdivision 27-B—Effect of input tax credits etc. on capital allowances**

**Table of sections**

27-80	Cost or opening adjustable value of depreciating assets reduced for input tax credits
27-85	Cost or opening adjustable value of depreciating assets reduced: decreasing adjustments
27-87	Certain decreasing adjustments included in assessable income
27-90	Cost or opening adjustable value of depreciating assets increased: increasing adjustments
27-92	Certain increasing adjustments can be deducted
27-95	Balancing adjustment events
27-100	Pooling
27-105	Other Division 40 expenditure
27-110	Input tax credit etc. relating to 2 or more things

**27-80 Cost or opening adjustable value of depreciating assets reduced for input tax credits**

- (1) A \*depreciating asset's \*cost is reduced if:
- (a) an entity's acquisition or importation of the asset constitutes a \*creditable acquisition or \*creditable importation; and
  - (b) the entity is or becomes entitled to an \*input tax credit for the acquisition or importation; and
  - (c) the entity can deduct amounts for the asset under Division 40 or 328.

The reduction is the amount of the input tax credit.

- (2) A \*depreciating asset's \*cost is also reduced if:
- (a) the entity that \*holds the asset incurs expenditure that is included in the second element of the asset's cost for the income year in which the asset's \*start time occurs; and
  - (b) the entity is or becomes entitled to an \*input tax credit for the \*creditable acquisition or \*creditable importation to which the expenditure relates; and
  - (c) the entity can deduct amounts for the asset under Division 40 or 328.

The reduction is the amount of the input tax credit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) However, subsections (1) and (2) do not apply if the \*cost of the \*depreciating asset is modified under Division 40 to be its \*market value.
- (3A) A \*depreciating asset's \*opening adjustable value for an income year and its \*cost is reduced if:
- (a) an entity's acquisition or importation of the asset constitutes a \*creditable acquisition or \*creditable importation; and
  - (b) the entity is or becomes entitled to an \*input tax credit in an income year (the *credit year*) for the acquisition or importation and the credit year occurs after the income year in which the acquisition or importation occurred; and
  - (c) the income year is after the one in which the asset's \*start time occurs; and
  - (d) the entity can deduct amounts for the asset under Division 40 or 328.
- The reduction is the amount of the input tax credit.
- (4) A \*depreciating asset's \*opening adjustable value for an income year and its \*cost is reduced if:
- (a) the entity that \*holds the asset incurs expenditure that is included in the second element of the asset's cost for that income year; and
  - (b) that income year is after the one in which the asset's \*start time occurs; and
  - (c) the entity is or becomes entitled to an \*input tax credit for the \*creditable acquisition or \*creditable importation to which the expenditure relates for the income year in which the expenditure was incurred; and
  - (d) the entity can deduct amounts for the asset under Division 40 or 328.
- The reduction is the amount of the input tax credit.
- (5) If the reduction under subsection (2), (3A) or (4) is more than:
- (a) for a subsection (2) case—the \*depreciating asset's \*cost; or
  - (b) for a subsection (3A) or (4) case—the depreciating asset's \*opening adjustable value;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 27-85

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the excess is included in the entity's assessable income unless the entity is an \*exempt entity.

*Exception: pooling*

- (6) This section does not apply to:
- (a) a depreciating asset allocated to a low-value pool or a pool under Division 328 for or in the \*current year; or
  - (b) \*in-house software if expenditure on the software is allocated to a software development pool for the current year; or
  - (c) a project pool.

**27-85 Cost or opening adjustable value of depreciating assets reduced: decreasing adjustments**

- (1) This section applies to an entity if:
- (a) the entity can deduct amounts for a \*depreciating asset under Division 40 or 328; and
  - (b) the entity has a \*decreasing adjustment in an income year that relates directly or indirectly to the asset.

(1A) However, this section does not apply to a \*decreasing adjustment that arises under Division 129 or 132 of the \*GST Act.

Note: See instead section 27-87.

- (2) The asset's \*cost is reduced by an amount equal to the \*decreasing adjustment if the adjustment arises in the income year in which the asset's \*start time occurs.
- (3) The asset's \*opening adjustable value for an income year and its \*cost is reduced by an amount equal to the \*decreasing adjustment if the adjustment arises in that year and that year is after the one in which the asset's \*start time occurs.
- (4) If the reduction under subsection (2) or (3) is more than:
- (a) for a subsection (2) case—the \*depreciating asset's \*cost; or
  - (b) for a subsection (3) case—the depreciating asset's \*opening adjustable value;

the excess is included in the entity's assessable income unless the entity is an \*exempt entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Exception: pooling*

- (5) This section does not apply to:
- (a) a depreciating asset allocated to a low-value pool or a pool under Division 328 for or in the \*current year; or
  - (b) \*in-house software if expenditure on the software is allocated to a software development pool for the current year; or
  - (c) a project pool.

**27-87 Certain decreasing adjustments included in assessable income**

- (1) This section applies to an entity if:
- (a) the entity can deduct amounts for a \*depreciating asset under Division 40 or 328; and
  - (b) the entity has a \*decreasing adjustment that arises under Division 129 or 132 of the \*GST Act in an income year that relates directly or indirectly to the asset; and
  - (c) section 27-95 does not apply to the entity in relation to the asset.
- (2) The amount of the \*decreasing adjustment is included in the entity's assessable income for the income year unless the entity is an \*exempt entity.

**27-90 Cost or opening adjustable value of depreciating assets increased: increasing adjustments**

- (1) This section applies to an entity if:
- (a) the entity can deduct amounts for a \*depreciating asset under Division 40 or 328; and
  - (b) the entity has an \*increasing adjustment in an income year that relates directly or indirectly to the asset.
- (1A) However, this section does not apply to an \*increasing adjustment that arises under Division 129 or 132 of the \*GST Act.

Note: See instead section 27-92.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 27-92

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- (2) The asset's \*cost is increased by an amount equal to the \*increasing adjustment if the adjustment arises in the income year in which the asset's \*start time occurs.
- (3) The asset's \*opening adjustable value for an income year and its \*cost is increased by an amount equal to the \*increasing adjustment if the adjustment arises in that year and that year is after the one in which the asset's \*start time occurs.

*Exception: pooling*

- (4) This section does not apply to:
  - (a) a depreciating asset allocated to a low-value pool or a pool under Division 328 for or in the \*current year; or
  - (b) \*in-house software if expenditure on the software is allocated to a software development pool for the current year; or
  - (c) a project pool.

**27-92 Certain increasing adjustments can be deducted**

- (1) This section applies to an entity if:
  - (a) the entity can deduct amounts for a \*depreciating asset under Division 40 or 328; and
  - (b) the entity has an \*increasing adjustment that arises under Division 129 or 132 of the \*GST Act in an income year that relates directly or indirectly to the asset.
- (2) The entity can deduct the amount of the \*increasing adjustment for the income year.
- (3) However, the entity cannot deduct the amount to the extent (if any) that the adjustment arises from an increase in the extent to which the activity giving rise to the adjustment is of a private or domestic nature.

**27-95 Balancing adjustment events**

- (1) The \*termination value of a \*depreciating asset is reduced if the relevant \*balancing adjustment event is a \*taxable supply. The reduction is an amount equal to the \*GST payable on the supply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (2) However, subsection (1) does not apply if the \*termination value of the \*depreciating asset is modified under Division 40 to be its \*market value.
- (3) The \*termination value of a \*depreciating asset is increased if the entity that \*held the asset has a \*decreasing adjustment that relates directly or indirectly to that \*taxable supply in the income year in which the \*balancing adjustment event occurred. The increase is the amount of the decreasing adjustment.
- (4) The \*termination value of a \*depreciating asset is decreased if the entity that \*held the asset has an \*increasing adjustment that relates directly or indirectly to that \*taxable supply in the income year in which the \*balancing adjustment event occurred. The decrease is the amount of the increasing adjustment.
- (5) An amount is included in the assessable income of the entity that \*held the asset if the entity has a \*decreasing adjustment that relates directly or indirectly to that \*taxable supply in a later income year. The amount included is the amount of the decreasing adjustment.
- (6) The entity that \*held the asset can deduct an amount if the entity has an \*increasing adjustment that relates directly or indirectly to that \*taxable supply in a later income year. The amount it can deduct is the amount of the increasing adjustment.

### **27-100 Pooling**

- (1) This section contains special rules for expenditure (the *pooled expenditure*) incurred by an entity:
  - (a) on a \*depreciating asset allocated to a low-value pool; or
  - (b) on a depreciating asset allocated to a pool under Division 328 for or in an income year; or
  - (c) on \*in-house software if the expenditure on the software is allocated to a software development pool; and
  - (d) on \*project amounts if the amounts are allocated to a project pool.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 27-100

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*Reduction to pools etc.*

- (2) There is a reduction under subsection (3) or (5) if:
- (a) the pooled expenditure relates directly or indirectly to a \*creditable acquisition or \*creditable importation; and
  - (b) the entity is or becomes entitled to an \*input tax credit in an income year (the *credit year*) for the acquisition or importation and the credit year occurs after the income year in which the acquisition or importation occurred.
- (2A) There is a reduction under subsection (4) if:
- (a) the pooled expenditure relates directly or indirectly to a \*creditable acquisition or \*creditable importation; and
  - (b) the entity is or becomes entitled to an \*input tax credit in an income year (the *credit year*) for the acquisition or importation.

*Reduced cost of assets allocated to a pool*

- (2B) A \*depreciating asset's \*cost is reduced if:
- (a) an entity's acquisition or importation of the asset constitutes a \*creditable acquisition or \*creditable importation; and
  - (b) the entity is or becomes entitled to an \*input tax credit for the acquisition or importation and the income year in which the acquisition or importation occurred is the same as the one in which the input tax credit arose; and
  - (c) the asset is allocated to a low-value pool or a pool under Division 328 for or in that year.

The reduction is the amount of the input tax credit.

*Low-value pools*

- (3) For a low-value pool, the \*closing pool balance of the pool for:
- (a) if the credit year is later than the first income year for which \*depreciating assets were allocated to the pool—the income year before the credit year; or
  - (b) if the credit year is the first income year for which \*depreciating assets were allocated to the pool—the credit year;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

is reduced by an amount equal to the input tax credit.

*Software development pools and project pools*

- (4) For a software development pool or a project pool, the expenditure in the pool for the credit year, or the \*pool value for the credit year, is reduced by an amount equal to the \*input tax credit.

*Small business pools*

- (5) For a pool under Division 328, the \*opening pool balance of the pool for the credit year is reduced by an amount equal to the input tax credit.

*No reduction if market value*

- (5A) However, there is no reduction to the \*cost of a \*depreciating asset if its cost is modified under Division 40 to be its \*market value.

*Second element of cost*

- (6) There is a reduction under subsection (7) if:
- (a) the entity incurs expenditure in an income year (also the **credit year**) that is included in the second element of the \*cost of a \*depreciating asset allocated to a low-value pool or a pool under Division 328 for or in the credit year; and
  - (b) the entity is or becomes entitled, after the credit year, to an \*input tax credit for the expenditure.
- (7) An amount equal to the amount of the \*input tax credit is applied in reduction of:
- (a) for a low-value pool:
    - (i) if the credit year is later than the first income year for which \*depreciating assets were allocated to the pool—the \*closing pool balance of the pool for the income year before the credit year; or
    - (ii) if the credit year is the first income year for which \*depreciating assets were allocated to the pool—the \*closing pool balance of the pool for the credit year; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 27-100

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- (b) for a pool under Division 328—the \*opening pool balance of the pool for the credit year.
- (7A) There is a reduction to an amount of expenditure included in the second element of the \*cost of a \*depreciating asset if:
- (a) the asset is allocated to a low-value pool or a pool under Division 328 for or in the income year in which the expenditure was incurred; and
  - (b) the entity that incurred the expenditure is or becomes entitled to an \*input tax credit for the expenditure; and
  - (c) the entitlement arises in the income year in which the expenditure was incurred.

The reduction is the amount of the input tax credit.

*Increasing adjustments*

- (8) There is an increase under subsection (9) if the entity has an \*increasing adjustment (except one that arises under Division 129 or 132 of the \*GST Act) in an income year (the *adjustment year*) that relates directly or indirectly to a \*creditable acquisition or \*creditable importation to which the pooled expenditure relates.

Note: For an increasing adjustment that arises under Division 129 or 132 of the GST Act, see section 27-92.

- (9) An amount equal to the amount of that \*increasing adjustment is added to:
- (a) for a low-value pool:
    - (i) if the adjustment year is later than the first income year for which \*depreciating assets were allocated to the pool—the \*closing pool balance of the pool for the income year before the adjustment year; or
    - (ii) if the adjustment year is the first income year for which \*depreciating assets were allocated to the pool—the \*closing pool balance of the pool for the adjustment year; or
  - (b) for a pool under Division 328—the \*opening pool balance of the pool for the adjustment year; or
  - (c) for \*in-house software—the amount of expenditure allocated to the software development pool for the adjustment year; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) for a project pool—the \*pool value for the adjustment year.

*Decreasing adjustments*

- (10) There is a decrease under subsection (11) if the entity has a \*decreasing adjustment (except one that arises under Division 129 or 132 of the \*GST Act) in an income year (also the **adjustment year**) that relates directly or indirectly to a \*creditable acquisition or \*creditable importation to which the pooled expenditure relates.

Note: For a decreasing adjustment that arises under Division 129 or 132 of the GST Act, see section 27-87.

- (11) An amount equal to the amount of the \*decreasing adjustment is applied in reduction of:
- (a) for a low-value pool:
    - (i) if the adjustment year is later than the first income year for which \*depreciating assets were allocated to the pool—the \*closing pool balance of the pool for the income year before the adjustment year; or
    - (ii) if the adjustment year is the first income year for which \*depreciating assets were allocated to the pool—the \*closing pool balance of the pool for the adjustment year; or
  - (b) for a pool under Division 328—the \*opening pool balance of the pool for the adjustment year; or
  - (c) for \*in-house software—the amount of expenditure allocated to the software development pool for the adjustment year; or
  - (d) for a project pool—the \*pool value for the adjustment year.
- (12) If the amount available for reduction under subsection (11) is more than the amount referred to in paragraph (11)(a), (b), (c) or (d) (whichever is applicable), the excess is included in the entity's assessable income unless the entity is an \*exempt entity.

**27-105 Other Division 40 expenditure**

- (1) This section applies to expenditure for which an entity can deduct amounts under Division 40 (but not under Subdivision 40-B or 40-E, or Subdivision 40-I to the extent that that Subdivision relates to project pools).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 27-110

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- (2) The amount of the expenditure is reduced if the entity is or becomes entitled to an \*input tax credit for a \*creditable acquisition or \*creditable importation to which the expenditure directly or indirectly relates. The reduction is the amount of the input tax credit that relates to that expenditure.
- (3) If the entity has a \*decreasing adjustment in an income year that relates directly or indirectly to the expenditure, an amount equal to the decreasing adjustment is included in the entity's assessable income for that income year.
- (4) If the entity has an \*increasing adjustment in an income year that relates directly or indirectly to the expenditure, the entity can deduct an amount equal to the increasing adjustment for that income year.
- (5) If the entity is a partnership and partners in that partnership can deduct amounts under Division 40 because section 40-570 or 40-665 applies, an amount equal to the \*input tax credit, the \*decreasing adjustment or the \*increasing adjustment is apportioned to each of the partners as set out in subsection 40-570(2) or 40-665(2).
- (6) However, this section does not apply to an \*exempt entity.

**27-110 Input tax credit etc. relating to 2 or more things**

This Subdivision applies to an \*input tax credit, or an \*increasing adjustment or \*decreasing adjustment, that relates directly or indirectly to 2 or more things of which at least one is a \*depreciating asset as if a reasonable proportion of the input tax credit or adjustment related directly or indirectly to each of those depreciating assets and each of those other things.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 28—Car expenses**

### **Table of Subdivisions**

	Guide to Division 28
28-A	Deductions for car expenses
28-B	Choosing which method to use
28-C	The “cents per kilometre” method
28-D	The “12% of original value” method
28-E	The “one-third of actual expenses” method
28-F	The “log book” method
28-G	Keeping a log book
28-H	Odometer records for a period
28-I	Retaining the log book and odometer records
28-J	Situations where you cannot use, or don’t need to use, one of the 4 methods

### **Guide to Division 28**

#### **28-1 What this Division is about**

This Division sets out the rules for working out deductions for car expenses if you own or lease a car or hire a car under a hire purchase agreement.

#### **Table of sections**

28-5	Map of this Division
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 28-5

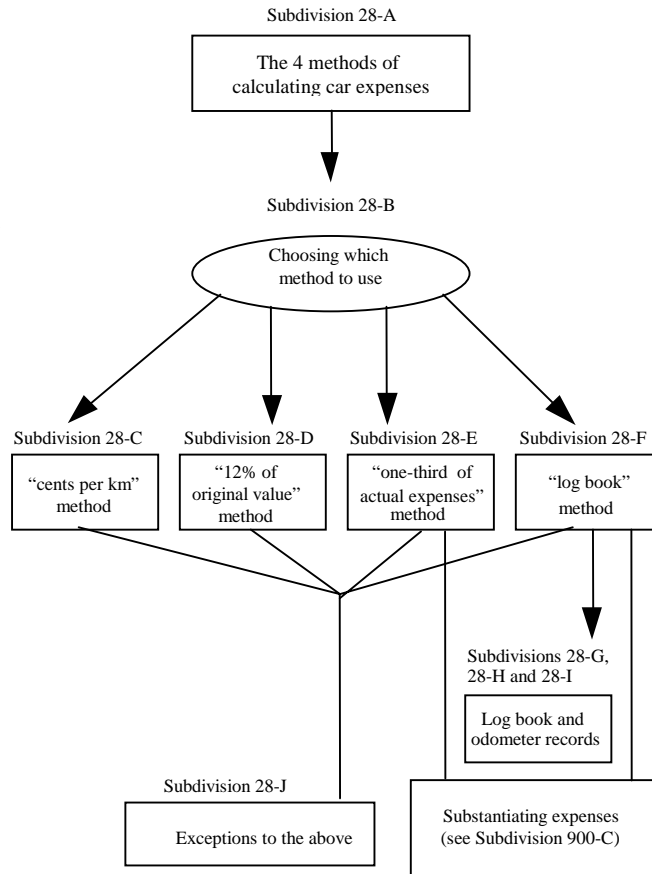
**28-5 Map of this Division**

*Section 28-12 contains the basic operative provision.*

*Choosing the best method is up to you. Hence it is important to understand the methods and how they differ.*

*The “log book” method is more complicated because it involves further Subdivisions about log books and odometer records.*

*The exceptions cover unusual cases which will not apply to most taxpayers.*



**Subdivision 28-A—Deductions for car expenses**

**Table of sections**

28-10	Application of Division 28
28-12	Car expenses
28-13	Meaning of <i>car expense</i>

**28-10 Application of Division 28**

- (1) This Division applies to an individual.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (2) It also applies to a partnership that includes at least one individual, as if the partnership were an individual.
- (3) It does not apply to any other entity.

### **28-12 Car expenses**

- (1) If you owned or leased a \*car, you can deduct for the car's expenses an amount or amounts worked out using one of 4 methods.

Note 1: For particular types of cars taken on hire you cannot use one of the 4 methods: see section 28-165.

Note 2: In certain circumstances the lessee of a luxury car is taken to be its owner (see subsection 42A-15(2) in Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936*).

Note 3: In certain circumstances (for example, under a hire purchase agreement) the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

- (2) You must use one of the 4 methods unless an exception applies. If you can't use any of the methods, you can't deduct anything for the \*car expenses.

### **28-13 Meaning of *car expense***

- (1) A *car expense* is a loss or outgoing to do with a \*car.
- (2) In addition, any of the following is a car expense:
  - (a) a loss or outgoing to do with operating a \*car;
  - (b) the decline in value of a car.
- (3) None of the following is a car expense:
  - (a) a loss or outgoing incurred, or a payment made, in respect of travel outside Australia;
  - (b) a taxi fare or similar loss or outgoing.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 28-B—Choosing which method to use**

### **Guide to Subdivision 28-B**

#### **28-14 What this Subdivision is about**

This Subdivision sets out the rules about choosing a method of calculating car expense deductions.

#### **Table of sections**

28-15 Choosing among the 4 methods

##### **Operative provision**

28-20 Rules governing choice of method

#### **28-15 Choosing among the 4 methods**

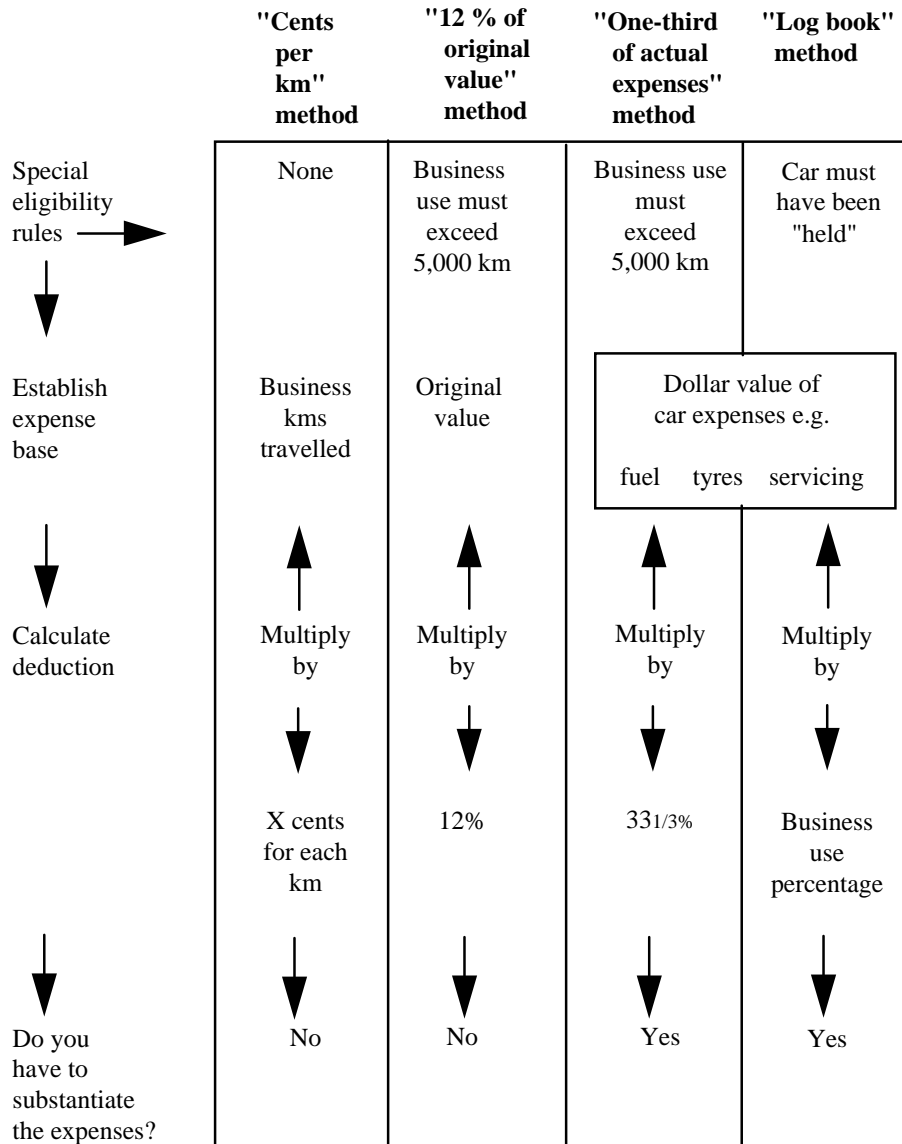
Below is a graphic that gives information about the 4 methods of calculating car expense deductions.

The 4 methods give you the choice of which method best suits your situation and needs.

For instance, some methods will involve more paperwork than others, but could give you bigger deductions. There are also eligibility requirements for some methods, so you need to check that you are eligible to use a particular method.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 28-20

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**Operative provision**

**28-20 Rules governing choice of method**

- (1) You can choose only one method for all the \*car expenses for the \*car for the income year. Choosing one method precludes any other method.
- (2) However, you can change your choice for the income year.  
Example: You choose the “log book” method and deduct \$1,000. On audit, the Commissioner finds that your claim is too high and should be reduced to \$500. You would have been able to deduct \$700 if you had chosen the “cents per kilometre” method. This rule lets you change your choice and deduct the \$700.
- (3) You can also choose different methods for the same \*car for different income years and different methods for different cars for the same year.

**Subdivision 28-C—The “cents per kilometre” method**

**Table of sections**

28-25	How to calculate your deduction
28-30	Capital allowances
28-35	Substantiation

**28-25 How to calculate your deduction**

- (1) To calculate your deduction using the “cents per kilometre” method, you multiply:
  - the number of \*business kilometres the \*car travelled in the income year;by:
  - a number of cents based on the car’s engine capacity.The number of cents can be found in the regulations.
- (2) But you can use this formula for the first 5,000 \*business kilometres only. If the \*car travelled more than 5,000 business kilometres, you must discard the kilometres in excess of 5,000.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Example: If the car travelled 5,085 business kilometres, you could claim for 5,000, and would lose the extra 85.

- (3) **Business kilometres** are kilometres the \*car travelled in the course of:
- (a) producing your assessable income; or
  - (b) your \*travel between workplaces.

You calculate the number of business kilometres by making a reasonable estimate.

### **28-30 Capital allowances**

If a \*balancing adjustment event occurs for the \*car, you will need to refer to the capital allowances rules in Division 40 to find out how using this method affects the operation of those rules. See section 40-370 (about balancing adjustments for some cars).

### **28-35 Substantiation**

To use this method, you do *not* need to substantiate the \*car expenses for the \*car.

### **Subdivision 28-D—The “12% of original value” method**

#### **Table of sections**

28-45	How to calculate your deduction
28-50	Eligibility
28-55	Capital allowances
28-60	Substantiation

### **28-45 How to calculate your deduction**

- (1) Using the “12% of original value” method, you deduct 12% of the cost of the \*car when you acquired it, or 12% of its \*market value when you first began to lease it.

Note 1: The cost to a lessee of a luxury car to which Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936* applies is to be worked out under section 42A-20 in that Division.

Note 2: The cost of a car to which Division 240 applies is to be worked out under section 240-25.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 28-50

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- (2) But the most you can deduct using this method is 12% of the \*car limit for the income year when you first used the \*car for any purpose (if you own it) or when you first began to lease it.

Note: Section 40-230 deals with the car limit.

- (3) Your deduction is reduced if you did not own or lease the \*car for the whole income year. You can only deduct the amount worked out using the formula:

$$\text{Full year car deduction} \times \frac{\left( 365 - \text{Number of car-less days} \right)}{365}$$

The *full year car deduction* is the amount you could deduct if you had owned or leased the \*car for the whole income year.

A *car-less day* is a day when you did not own or lease the \*car.

**28-50 Eligibility**

- (1) You can use this method only if the number of \*business kilometres travelled by the \*car in the income year was more than 5,000, or would have been if you had used the car throughout the income year.
- (2) *Business kilometres* are kilometres the \*car travelled in the course of:
- (a) producing your assessable income; or
  - (b) your \*travel between workplaces.

You calculate the number of business kilometres by making a reasonable estimate.

**28-55 Capital allowances**

If a \*balancing adjustment event occurs for the \*car, you will need to refer to the capital allowances rules in Division 40 to find out how using this method affects the operation of those rules. See section 40-370 (about balancing adjustments for some cars).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## 28-60 Substantiation

To use this method, you do *not* need to substantiate the \*car expenses for the \*car.

## Subdivision 28-E—The “one-third of actual expenses” method

### Table of sections

28-70	How to calculate your deduction
28-75	Eligibility
28-80	Substantiation

## 28-70 How to calculate your deduction

- (1) Using the “one-third of actual expenses” method, you deduct one-third of each \*car expense.
- (2) The expense must qualify as a deduction under some provision of this Act outside this Division (or would qualify if, throughout the income year, you had used the \*car only in producing your assessable income). If only part of the expense would qualify, you deduct one-third of that part.

**Example:** You borrow money to buy a car. You make repayments of principal and payments of interest.

You cannot deduct the repayments of principal because they are capital expenses.

The interest payments would be deductible in full if, throughout the income year, you had used the car only in producing your assessable income. Using the “one third of actual expenses” method, you can deduct one-third of the interest payments.

To find out whether an expense qualifies as a deduction under this Act, see Division 8 (Deductions).

## 28-75 Eligibility

- (1) You can use this method only if the number of \*business kilometres travelled by the \*car in the income year was more than 5,000, or would have been if you had used the car throughout the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 28-80

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- (2) **Business kilometres** are kilometres the \*car travelled in the course of:

- (a) producing your assessable income; or
- (b) your \*travel between workplaces.

You calculate the number of business kilometres by making a reasonable estimate.

**28-80 Substantiation**

To use this method, you must substantiate the expenses under Subdivision 900-C.

**Subdivision 28-F—The “log book” method**

**Table of sections**

28-90	How to calculate your deduction
28-95	Eligibility
28-100	Substantiation

**28-90 How to calculate your deduction**

- (1) To use the “log book” method, you multiply the amount of each \*car expense by the \*business use percentage.

*The expense*

- (2) The expense must qualify as a deduction under some provision of this Act outside this Division (or would qualify if, while you \*held the \*car, you had used it only in producing your assessable income). If only part of the expense would qualify, you multiply that part by the \*business use percentage.

Example: You borrow money to buy a car. You make repayments of principal and payments of interest.

You cannot deduct the repayments of principal because they are capital expenses.

The interest payments would be deductible in full if, throughout the income year, you had used the car only in producing your assessable income.

Using the “log book” method:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- if you held the car for the whole income year—multiply the interest payments by the business use percentage;
- if you held the car for only 6 months of the income year—multiply the interest payments for those 6 months by the business use percentage.

To find out whether an expense qualifies as a deduction under this Act, see Division 8 (Deductions).

*The percentage*

(3) The **business use percentage** is calculated by dividing:

- the number of \*business kilometres that the \*car travelled in the period when you \*held it during the income year;

by

- the total number of kilometres that the car travelled in that period;

and expressing the result as a percentage.

(4) **Business kilometres** are kilometres the \*car travelled in the course of:

- (a) producing your assessable income; or
- (b) your \*travel between workplaces.

(5) You calculate the number of business kilometres by making a reasonable estimate. The estimate must take into account all relevant matters, including:

- (a) any log books, odometer records or other records you have; and
- (b) any variations in the pattern of use of the \*car; and
- (c) any changes in the number of cars you used in the course of producing your assessable income.

(6) You **hold** a \*car while you own it, or it is leased to you, for use in the course of producing your assessable income, even if it is also used for some other purpose.

Note 1: In certain circumstances the lessee of a luxury car is taken to be its owner (see subsection 42A-15(2) in Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936*).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 28** Car expenses

Section 28-95

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Note 2: In certain circumstances the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

**28-95 Eligibility**

You can use this method only if you \*held the \*car for some or all of the income year.

**28-100 Substantiation**

- (1) To use this method, you must substantiate the \*car expenses under Subdivision 900-C.
- (2) You must also keep a log book. Subdivision 28-G explains:
  - how often you need to keep a log book;
  - how to keep a log book.

The log book is relevant to estimating the number of business kilometres the \*car travelled in the period when you \*held it during the income year.

- (3) You must keep odometer records for the period when you \*held the \*car during the income year. Subdivision 28-H tells you about odometer records, which document the total number of kilometres the car travelled in that period.
- (4) You must record the following information, in writing, before you lodge your \*income tax return:
  - (a) your estimate of the number of \*business kilometres; and
  - (b) the \*business use percentage.However, the Commissioner may allow you to record the information later.
- (5) You must retain the log book and the odometer records. Subdivision 28-I has the rules about this.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 28-G—Keeping a log book**

### **Guide to Subdivision 28-G**

#### **28-105 What this Subdivision is about**

This Subdivision tells you how to keep a log book. A log book is relevant to estimating the number of business kilometres the car travelled in the period when you held it during the income year.

#### **Table of sections**

28-110 Steps for keeping a log book

##### **Operative provisions**

28-115 Income years for which you need to keep a log book  
28-120 Choosing the 12 week period for a log book  
28-125 How to keep a log book  
28-130 Replacing one car with another

#### **28-110 Steps for keeping a log book**

There are 3 steps you need to follow in keeping a log book:

- identify an income year for which to keep a log book;
- choose a period of at least 12 weeks for the log book to cover;
- record journeys made in the car during the log book period in the course of producing your assessable income.

#### **Operative provisions**

##### **28-115 Income years for which you need to keep a log book**

- (1) You need to keep a log book for the first income year for which you use this method for the \*car.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 28-120

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- (2) Having kept a log book for one income year, you don't need to keep a new one for the next 4 or more income years unless subsection (3) or (4) requires it. If you haven't kept a new log book for 4 income years in a row, you must keep one for the next income year.

Example: If you keep a log book in 1997-98, you would need to keep the next one in 2002-2003, unless subsection (3) or (4) requires one sooner.

- (3) You must keep a log book for an income year if the Commissioner sends you a notice before the year directing you to keep a log book for the \*car for that year.
- (4) You must keep a log book for an income year if, during that year, you get one or more additional \*cars for which you want to use the "log book" method for that year.
- (5) When you replace one \*car with another, you might have a period when you \*hold both the new car and the old car, or a period when you no longer \*hold the old car but do not yet hold the new car. In both these cases, you are treated for the purposes of subsection (4) as if you held the one car continuously.
- (6) You may choose to keep a log book for an income year even if you don't need to; for example, because you want to establish a higher \*business use percentage.

**28-120 Choosing the 12 week period for a log book**

- (1) The log book must cover a continuous period of at least 12 weeks throughout which you \*held the \*car. If you hold the car for less than 12 weeks, the period must be the entire period for which you held the car.
- (2) The period may overlap the start or end of the income year, so long as it includes part of the year.
- (3) If you want to use the "log book" method for 2 or more \*cars for the same income year, the log books for those cars must cover periods that are concurrent.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **28-125 How to keep a log book**

- (1) It is in your interests to record in the log book any journey made in the \*car during the log book period in the course of producing your assessable income. If a journey is not recorded, the log book will indicate a lower \*business use percentage than is actually the case.
- (2) A journey is recorded by making in the log book an entry specifying:
  - (a) the day the journey began and the day it ended;
  - (b) the \*car's odometer readings at the start and end of the journey;
  - (c) how many kilometres the car travelled on the journey;
  - (d) why the journey was made.The record must be made at the end of the journey or as soon as possible afterwards.
- (3) If 2 or more journeys in a row are made in the \*car on the same day in the course of producing your assessable income, they can be recorded as a single journey.
- (4) The following must be entered in the log book:
  - (a) when the log book period begins and ends;
  - (b) the \*car's odometer readings at the start and the end of the period;
  - (c) the total number of kilometres that the car travelled during the period;
  - (d) the number of kilometres that the car travelled, in the course of producing your assessable income, on journeys recorded in the log book;
  - (e) the number of kilometres referred to in paragraph (d), expressed as a percentage of the total number referred to in paragraph (c).Each of the entries must be made at or as soon as possible after the start or end of the period, as appropriate.
- (5) Each entry in the log book must be in English.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 28-130

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**28-130 Replacing one car with another**

- (1) For the purposes of using the “log book” method, you may nominate one \*car as having replaced another car with effect from a day specified in the nomination.
- (2) After the nomination takes effect, the replacement \*car is treated as the original car, and the original car is treated as a different car. This means that you do not need to repeat for the replacement car the steps you have already taken for the original car under this Subdivision.
- (3) You must record the nomination in writing before you lodge your \*income tax return for the income year in which the nomination takes effect. However, the Commissioner may allow you to do it later.
- (4) You must retain the nomination document until the end of the period for which you must retain the last log book that you began to keep for the original \*car before the day of effect of the nomination.
- (5) Section 28-150 (which is about retaining log books) applies to the nomination document in the same way as it applies to that last log book.

**Subdivision 28-H—Odometer records for a period**

**Guide to Subdivision 28-H**

**28-135 What this Subdivision is about**

This Subdivision tells you how to keep odometer records for a car during a particular period. Odometer records document the total number of kilometres the car travelled during a particular period.

**Table of sections**

**Operative provision**

28-140 How to keep odometer records for a car for a period

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Operative provision**

### **28-140 How to keep odometer records for a car for a period**

- (1) Odometer records for a period are kept in the form of a document in which the following are entered:
  - (a) the \*car's odometer readings at the start and the end of the period;
  - (b) if there is a nomination under section 28-130 to replace the car with another \*car with effect from a day in that period—the odometer readings, at the end of that day, of both cars affected by the nomination.
- (2) Each entry under subsection (1) must be in English and must be made at or as soon as possible after the start or end of the period, or the end of the specified day, as appropriate.
- (3) The following must also be entered in the document:
  - (a) the \*car's make, model and registration number (if any);
  - (b) if the car has an internal combustion engine—its engine capacity expressed in cubic centimetres;
  - (c) if there is a nomination under section 28-130 to replace the car with another \*car—the corresponding details for the other car affected by the nomination.
- (4) Each entry under subsection (3) must be made in English and must be made before you lodge your \*income tax return.
- (5) The Commissioner may allow you to make an entry under this section after you lodge your \*income tax return.

### **Subdivision 28-I—Retaining the log book and odometer records**

#### **Table of sections**

28-150	Retaining the log book for the retention period
28-155	Retaining odometer records

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 28-150

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**28-150 Retaining the log book for the retention period**

- (1) You must retain the log book:
  - (a) first, until the end of the latest income year for which you rely on the log book to support your calculation of the \*business use percentage for the \*car; and
  - (b) then for another 5 years.The period for which you must retain the log book is called the *retention period*.
- (2) The 5 years start on the due day for lodging your \*income tax return for that latest income year. If you lodge your return later, the 5 years start on the day you lodge it.
- (3) However, the \*retention period is extended if, when the 5 years end, you are involved in a dispute with the Commissioner that relates to a deduction worked out using a \*business use percentage that you are relying on the log book to support. See section 900-170.
- (4) If you do not retain the log book for the \*retention period, you cannot deduct any amount worked out using a \*business use percentage that you are relying on the log book to support. If you have already deducted such an amount, your assessment may be amended to disallow the deduction.
- (5) For the purposes of the rules about retaining and producing records of expenses (see Subdivision 900-G), the log book is treated as a record of the \*car expenses for each year for which you use a \*business use percentage that you are relying on the log book to support.
- (6) If you lose the log book, there are rules that might help you in section 900-205. For the purposes of the rules about relief from the effects of failing to substantiate (see Subdivision 900-H), not doing something required by this Division is treated in the same way as not doing something necessary to follow the rules in Division 900.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## 28-155 Retaining odometer records

- (1) You must retain your odometer records relating to the period when you \*held the \*car in the income year.
- (2) If you keep a log book for the income year, you must retain the odometer records for the same period as the log book, and section 28-150 applies to them in the same way as it applies to the log book.
- (3) If you don't keep a log book for the income year, you must retain the odometer records for the same period as written evidence of a \*car expense for the \*car for the income year, and section 900-75 applies to them in the same way as it applies to written evidence of an expense.

Note: Section 900-75 is about retaining written evidence of a car expense.

## Subdivision 28-J—Situations where you cannot use, or don't need to use, one of the 4 methods

### Guide to Subdivision 28-J

#### 28-160 What this Subdivision is about

This Subdivision sets out the situations where you cannot use, or don't need to use, any of the 4 methods. These situations involve either the nature of your car or the way you use it.

### Table of sections

#### Operative provisions

28-165	Exception for particular cars taken on hire
28-170	Exception for particular cars used in particular ways
28-175	Further miscellaneous exceptions
28-180	Car expenses related to award transport payments
28-185	Application of Subdivision 28-J to PAYE to recipients and payers of certain withholding payments

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 28-165

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**Operative provisions**

**28-165 Exception for particular cars taken on hire**

- (1) For particular types of \*cars taken on hire you cannot use one of the 4 methods to calculate your deductions for \*car expenses.
- (2) Instead, you must calculate the deductions under the normal principles governing deductions, including the rules for apportioning a loss or outgoing that is only partly attributable to producing assessable income.
- (3) This section applies to a taxi taken on hire.
- (4) It also applies to a \*motor vehicle taken on hire under an agreement of a kind ordinarily entered into by people who take motor vehicles on hire intermittently, as the occasion requires, on an hourly, daily, weekly or short term basis, except if the motor vehicle:
  - (a) has been taken on hire under successive agreements of a kind that result in substantial continuity of the motor vehicle being taken on hire; or
  - (b) it is reasonable to expect that the motor vehicle will be taken on hire under successive agreements of a kind that will so result.

**28-170 Exception for particular cars used in particular ways**

- (1) For particular types of \*cars used in particular ways you don't need to use one of the 4 methods to calculate your deductions for \*car expenses.
- (2) You *may* use one of the 4 methods, or you may instead calculate the deductions under the normal principles governing deductions, including the rules for apportioning a loss or outgoing that is only partly attributable to producing assessable income.
- (3) This section applies if, whenever you used the \*car in the income year:
  - (a) the car was covered by the description in column 2 of an item in the table below; and
  - (b) you used the car as described in column 3 of that item.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Item	Column 2 Particular car	Column 3 Exempt use
1.	The *car was: (a) a panel van or utility truck; or (b) any other road vehicle designed to carry a load of less than 1 tonne (other than a vehicle designed principally to carry passengers); or (c) a taxi.	You used the car only in one or more of the following ways: (a) in the course of producing your assessable income; (b) to go between your residence and a place where you use the car in the course of producing your assessable income; (c) by providing the car to someone else to drive between his or her residence and a place where the car is used in the course of producing your assessable income; (d) for the purpose of travel that is incidental to using the car in the course of producing your assessable income; (e) for your own or someone else's private use that was minor, infrequent and irregular.
2.	The *car was part of the trading stock of a *business of selling cars that you carried on.	You used the car in the course of the business.
3.	The *car was any type of car.	You let the car on lease or hire in the course of a *business of letting cars on lease or hire that you carry on.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 28** Car expenses

Section 28-175

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<b>Item</b>	<b>Column 2 Particular car</b>	<b>Column 3 Exempt use</b>
4.	The *car was any type of car.	As an employer, you provided the car for the exclusive use of one or more of the following: (a) your employees; (b) their *relatives; in circumstances where one or more of them was entitled to use the car for private purposes. Note: This Subdivision also applies to entities that are not employers, but pay (or are liable to pay) withholding payments covered by subsection 28-185(3).

**28-175 Further miscellaneous exceptions**

- (1) This section lists some miscellaneous cases where you don't need to use one of the 4 methods to calculate your deductions for \*car expenses.
- (2) You *may* use one of the 4 methods, or you may instead calculate the deductions under the normal principles governing deductions, including the rules for apportioning a loss or outgoing that is only partly attributable to producing assessable income.
- (3) The cases are as follows:
  - (a) the \*car was unregistered throughout the period when you \*held it during the income year, and during that period you used it principally in the course of producing your assessable income; or
  - (b) at some time during the income year the \*car was part of the trading stock of a \*business of selling cars that you carried on, and you didn't use the car at any time during that year; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the expense is to do with repairs to or other work on the \*car, and you incurred it in the course of a \*business that you carried on of doing repairs or other work on cars.

In applying paragraph (a), the car is taken to be registered in a particular place while it is lawful to drive the car on a public road there.

### **28-180 Car expenses related to award transport payments**

- (1) Subdivision 900-I (Award transport payments) allows certain losses or outgoings to be deducted without getting written evidence. The losses or outgoings are \*transport expenses related to an allowance or reimbursement paid or payable to you by your employer under an \*industrial instrument that was in force on 29 October 1986.

Note: This Subdivision also applies to entities that are *not* employers, but pay (or are liable to pay) withholding payments covered by subsection 28-185(3).

- (2) If that Subdivision lets you deduct \*car expenses, or parts of \*car expenses, without getting written evidence, you don't need to use any of the 4 methods to calculate your deductions for those expenses or parts of expenses.
- (3) However, your use of the 4 methods for *other* \*car expenses you incur for the \*car for the income year is affected, unless you elect not to rely on Subdivision 900-I. Section 900-250 deals with this matter.

### **28-185 Application of Subdivision 28-J to recipients and payers of certain withholding payments**

#### *Application to recipients*

- (1) If an individual receives, or is entitled to receive, \*withholding payments covered by subsection (3), this Subdivision applies to him or her:
- (a) in the same way as it applies to an employee; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 28** Car expenses

Section 28-185

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- (b) as if an entity (a *notional employer*) that makes (or is liable to make) such payments to him or her were his or her employer; and
- (c) as if any other individual who receives, or is entitled to receive, such payments from a notional employer were also an employee of the notional employer.

*Application to payers*

- (2) This Division applies to an entity that makes, or is liable to make, \*withholding payments covered by subsection (3):
  - (a) in the same way as it applies to an employer; and
  - (b) as if an individual to whom the entity makes (or is liable to make) such payments were the entity's employee.

*Withholding payments covered*

- (3) This subsection covers a \*withholding payment covered by any of the provisions in Schedule 1 to the *Taxation Administration Act 1953* listed in the table.

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<b>Withholding payments covered</b>		
<b>Item</b>	<b>Provision</b>	<b>Subject matter</b>
1	Section 12-35	Payment to employee
2	Section 12-40	Payment to company director
3	Section 12-45	Payment to office holder
3A	Section 12-47	Payment to *religious practitioner
4	Section 12-50	Return to work payment
5	Subdivision 12-C	*Superannuation benefits, *employment termination payments, unused leave payments and annuities
6	Subdivision 12-D	Benefit and compensation payments

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 30—Gifts or contributions**

### **Table of Subdivisions**

	Guide to Division 30
30-A	Deductions for gifts or contributions
30-B	Tables of recipients for deductible gifts
30-BA	Endorsement of deductible gift recipients
30-C	Rules applying to particular gifts of property
30-CA	Administrative requirements relating to ABNs
30-D	Testamentary gifts under the Cultural Bequests Program
30-DA	Donations to political parties and independent candidates and members
30-DB	Spreading certain gift and covenant deductions over up to 5 income years
30-E	Register of environmental organisations
30-EA	Register of harm prevention charities
30-F	Register of cultural organisations
30-G	Index to this Division

### **Guide to Division 30**

#### **30-1 What this Division is about**

This Division sets out the rules for working out deductions for certain gifts or contributions that you make.

#### **Table of sections**

30-5	How to find your way around this Division
30-10	Index

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 30-5

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**30-5 How to find your way around this Division**

- (1) You should start at Subdivision 30-A unless you are making a contribution or gift to a political party, independent candidate or member, or a testamentary gift under the Cultural Bequests Program.

Note 1: Subdivision 30-D deals with the deductibility of testamentary gifts under the Cultural Bequests Program.

Note 2: Subdivision 30-DA deals with the deductibility of contributions and gifts to political parties, independent candidates and members.

- (2) Subdivision 30-A contains a table of all the gifts and contributions that you can deduct. You need to look at the table to see whether the type of gift or contribution you are making is covered by it.
- (3) In some cases, the table sends you off to Subdivision 30-B. It has a number of tables that list particular funds, authorities or institutions that deductible gifts can be made to.
- (4) In other cases, the table sends you off to Subdivision 30-C. It contains rules that apply to particular gifts of property.
- (4AA) Subdivision 30-BA provides for the Commissioner to endorse as a deductible gift recipient an entity that is, or operates, a fund, authority or institution. The relevance of the Subdivision to you is that generally you can deduct only a gift you make to a recipient that is endorsed or named in:
- (a) this Division; or
  - (b) regulations made for the purposes of this Division.
- Note: The fact that gifts to a recipient registered in the Australian Business Register are deductible will be shown in the Register.
- (4AB) Subdivision 30-CA sets out administrative rules which do not directly affect whether you can deduct a gift you make. The rules require:
- (a) a receipt issued by an entity for a gift to the entity or to a fund, authority or institution operated by the entity to show the entity's ABN; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the Australian Business Registrar to enter in the Australian Business Register a statement in relation to an entity entered in the Register if:
- (i) gifts to the entity are deductible; or
  - (ii) gifts to a fund, authority or institution operated by the entity are deductible.
- (4B) Subdivision 30-DB allows you to spread deductions for certain gifts and covenants over up to 5 income years.
- (5) Subdivision 30-E requires the establishment of a register of \*environmental organisations. Subdivision 30-EA requires the establishment of a register of \*harm prevention charities. Subdivision 30-F requires the establishment of a register of \*cultural organisations. Their only relevance to you is that you can deduct a gift that you make to a fund listed on one of those registers.

### **30-10 Index**

There is an index to this Division in Subdivision 30-G.

### **Subdivision 30-A—Deductions for gifts or contributions**

#### **Table of sections**

30-15	Table of gifts or contributions that you can deduct
30-17	Requirements for certain recipients

### **30-15 Table of gifts or contributions that you can deduct**

- (1) You can deduct a gift or contribution that you make in the situations set out in the following table. It tells you:
- who the recipient of the gift or contribution can be; and
  - the type of gift or contribution that you can make; and
  - how much you can deduct for the gift or contribution; and
  - any special conditions that apply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

**Section 30-15**

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(2) A testamentary gift or contribution is not deductible under this section.

Note 1: Subdivision 30-D deals with the deductibility of testamentary gifts under the Cultural Bequests Program.

Note 2: Subdivision 30-DA deals with the deductibility of contributions and gifts to political parties, independent candidates and members.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Deductible gifts or contributions**

Recipient	Type of gift or contribution	How much you can deduct	Special conditions
1 A fund, authority or institution covered by an item in any of the tables in Subdivision 30-B.	<p>A gift of:</p> <p>(a) money; or</p> <p>(b) property (including *trading stock) that you purchased during the 12 months before making the gift; or</p> <p>(c) an item of your trading stock if:</p> <ul style="list-style-type: none"> <li>• the gift is a disposal of the item outside the ordinary course of your *business; and</li> <li>• no election has been made, or is made, in relation to the item under Subdivision 385-E (about electing to spread or defer profit from the forced disposal or death of *live stock); or</li> </ul> <p>(d) property valued by the Commissioner at more than \$5,000; or</p> <p>(e) *shares that you have acquired in</p>	<p>(a) if the gift is money—the amount you are giving; or</p> <p>(b) if the gift is property (except trading stock covered by paragraph (c), property covered by paragraph (d) or shares covered by paragraph (e))—the lesser of the market value of the property on the day you made the gift and the amount you paid for the property; or</p> <p>(c) if the gift is an item of your trading stock:</p> <ul style="list-style-type: none"> <li>• that you disposed of outside the ordinary course of your business; and</li> <li>• for which no election has been made, or is made, in relation to the item under Subdivision 385-E;</li> </ul> <p>the market value of the item on the day you made the gift; or</p>	<p>(a) the fund, authority or institution must be in Australia; and</p> <p>(aa) the fund, authority or institution must either meet the requirements of section 30-17 or be mentioned by name in the relevant table item in Subdivision 30-B; and</p> <p>(b) the value of the gift must be \$2 or more; and</p> <p>(c) any conditions set out in the relevant table item in Subdivision 30-B must be satisfied; and</p> <p>(d) if the property is to be valued by the Commissioner—the requirements of section 30-212 are satisfied.</p>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-15

<b>Deductible gifts or contributions</b>			
<b>Recipient</b>	<b>Type of gift or contribution</b>	<b>How much you can deduct</b>	<b>Special conditions</b>
	a *listed public company if: <ul style="list-style-type: none"> <li>• the shares are listed for quotation in the official list of a stock exchange that is listed under the heading “Australia” in regulations made for the purposes of the definition of *approved stock exchange; and</li> <li>• the *market value of the shares on the day you made the gift is \$5,000 or less; and</li> <li>• you acquire the shares at least 12 months before making the gift.</li> </ul>	(d) if the gift is property valued by the Commissioner at more than \$5,000 and you did not purchase the property during the 12 months before making the gift—the value of the property as determined by the Commissioner; or (e) if the gift is shares described in paragraph (e) of the previous column—the market value of the shares on the day you made the gift.	
2 A public fund, or a *prescribed private fund, established and maintained under a will or instrument of trust solely for: (a) the purpose of providing money, property or	A gift of: (a) money; or (b) property (including *trading stock) that you purchased during the 12 months before making the gift; or	(a) if the gift is money—the amount you are giving; or (b) if the gift is property (except trading stock covered by paragraph (c), property covered by paragraph (d) or shares covered by paragraph (e))—the lesser of the	(a) the value of the gift must be \$2 or more; and (b) the terms of the will or trust must allow the trustee to invest money that the fund receives because of the gift only

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 30-15

**Deductible gifts or contributions**

Recipient	Type of gift or contribution	How much you can deduct	Special conditions
<p>benefits:</p> <ul style="list-style-type: none"> <li>• to a fund, authority or institution gifts to which are deductible under item 1 of this table; and</li> <li>• for any purposes set out in the item of the table in Subdivision 30-B that covers the fund, authority or institution; or</li> </ul> <p>(b) the establishment of such a fund, authority or institution.</p>	<p>(c) an item of your trading stock if:</p> <ul style="list-style-type: none"> <li>• the gift is a disposal of the item outside the ordinary course of your *business; and</li> <li>• no election has been made, or is made, in relation to the item under Subdivision 385-E (about electing to spread or defer profit from the forced disposal or death of *live stock); or</li> </ul> <p>(d) property valued by the Commissioner at more than \$5,000; or</p> <p>(e) *shares that you have acquired in a *listed public company if:</p> <ul style="list-style-type: none"> <li>• the shares are listed for quotation in the official list of a stock exchange that is listed under the heading “Australia” in</li> </ul>	<p>market value of the property on the day you made the gift and the amount you paid for the property; or</p> <p>(c) if the gift is an item of your trading stock:</p> <ul style="list-style-type: none"> <li>• that you disposed of outside the ordinary course of your business; and</li> <li>• for which no election has been made, or is made, in relation to the item under Subdivision 385-E;</li> </ul> <p>the market value of the item on the day you made the gift; or</p> <p>(d) if the gift is property valued by the Commissioner at more than \$5,000 and you did not purchase the property during the 12 months before making the gift—the value of the property as determined by the Commissioner; or</p> <p>(e) if the gift is shares described in paragraph (e) of the previous</p>	<p>in a way that an *Australian law allows trustees to invest trust money; and</p> <p>(c) the fund must meet the requirements of section 30-17, unless the fund is a prescribed private fund; and</p> <p>(d) if the property is to be valued by the Commissioner—the requirements of section 30-212 are satisfied.</p>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-15

<b>Deductible gifts or contributions</b>			
<b>Recipient</b>	<b>Type of gift or contribution</b>	<b>How much you can deduct</b>	<b>Special conditions</b>
	regulations made for the purposes of the definition of *approved stock exchange; and <ul style="list-style-type: none"> <li>the *market value of the shares on the day you made the gift is \$5,000 or less; and</li> <li>you acquire the shares at least 12 months before making the gift.</li> </ul>	column—the market value of the shares on the day you made the gift.	
4 (a) the Australian Fund; or (b) a public library in Australia; or (c) a public museum in Australia; or (d) a public art gallery in Australia; or (e) an institution in Australia consisting of a public library, a public museum and a public art gallery or any 2 of them.	A gift of property (except an estate or interest in land or in a building or part of a building).	The general rule is that you can deduct the average of the *GST inclusive market values (as reduced under subsection (3) if that subsection applies) specified in the written valuations you get from approved valuers.  Subdivision 30-C sets out: <ul style="list-style-type: none"> <li>(a) how a person becomes an approved valuer; and</li> <li>(b) the exceptions to the general rule; and</li> </ul>	(a) the property must be accepted by the recipient for inclusion in a collection it is maintaining or establishing; and  (b) the value of the gift must be \$2 or more; and  (ba) the institution must meet the requirements of section 30-17, unless it is the Australian Fund; and

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Deductible gifts or contributions**

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Recipient	Type of gift or contribution	How much you can deduct	Special conditions
		<p>(c) the situations when the amount you can deduct is reduced.</p> <p>If the property is jointly owned, see section 30-225 to work out how much of the gift you can deduct.</p>	<p>(c) you must satisfy the valuation requirements in section 30-200, unless section 30-205 (about the proceeds of the sale being assessable) applies.</p>
5 The Commonwealth (for the purposes of Artbank).	A gift of property (except an estate or interest in land or in a building or part of a building).	<p>The general rule is that you can deduct the average of the *GST inclusive market values (as reduced under subsection (3) if that subsection applies) specified in the written valuations you get from approved valuers.</p> <p>Subdivision 30-C sets out:</p> <p>(a) how a person becomes an approved valuer; and</p> <p>(b) the exceptions to the general rule; and</p> <p>(c) the situations when the amount you can deduct is reduced.</p> <p>If the property is jointly owned, see</p>	<p>(a) the property must be accepted by the Commonwealth for inclusion in a collection maintained, or being established, for the purposes of Artbank; and</p> <p>(b) you must satisfy the valuation requirements in section 30-200, unless section 30-205 (about the proceeds of the sale being assessable) applies.</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-15

<b>Deductible gifts or contributions</b>			
<b>Recipient</b>	<b>Type of gift or contribution</b>	<b>How much you can deduct</b>	<b>Special conditions</b>
		section 30-225 to work out how much of the gift you can deduct.	
6 (a) the National Trust of Australia (New South Wales); or (b) the National Trust of Australia (Victoria); or (c) The National Trust of Queensland; or (d) The National Trust of South Australia; or (e) The National Trust of Australia (W.A.); or (f) the National Trust of Australia (Tasmania); or (g) The National Trust of Australia (Northern Territory); or(h)the National Trust of Australia (A.C.T.); or (i) the Australian Council of National Trusts.	A gift of a place included in: (a) the National Heritage List, or the Commonwealth Heritage List, under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> ; or (b) the Register of the National Estate under the <i>Australian Heritage Council Act 2003</i> .	The general rule is that you can deduct the average of the *GST inclusive market values (as reduced under subsection (3) if that subsection applies) specified in the written valuations you get from approved valuers.  Subdivision 30-C sets out: (a) how a person becomes an approved valuer; and (b) the exceptions to the general rule; and (c) the situations when the amount you can deduct is reduced.  If the place is jointly owned, see section 30-225 to work out how much of the gift you can deduct.	(a) the place must be accepted by the recipient for the purpose of preserving it for the benefit of the public; and (b) the value of the gift must be \$2 or more; and (c) you must satisfy the valuation requirements in section 30-200, unless section 30-205 (about the proceeds of the sale being assessable) applies.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Deductible gifts or contributions**

Recipient	Type of gift or contribution	How much you can deduct	Special conditions
7 A *deductible gift recipient that is a fund, authority or institution covered by item 1 or 2 of this table.	<p>A contribution of:</p> <p>(a) money, if the amount is more than \$150; or</p> <p>(b) property that you purchased during the 12 months before making the contribution, if the lesser of:</p> <ul style="list-style-type: none"> <li>• the *market value of the property on the day you made the contribution; and</li> <li>• the amount you paid for the property;</li> </ul> <p>is more than \$150; or</p> <p>(c) property valued by the Commissioner at more than \$5,000, if you did not purchase the property during the 12 months before making the contribution; or</p> <p>(ca) *shares that you have acquired in a *listed public company if:</p> <ul style="list-style-type: none"> <li>• the shares are listed for quotation in the official</li> </ul>	<p>(a) if the contribution is money—the amount of the contribution, reduced by the *GST inclusive market value, on the day you made the contribution, of the right to attend, or participate in, the fund-raising event; or</p> <p>(b) if the contribution is property that you purchased during the 12 months before making the contribution—the lesser of:</p> <ul style="list-style-type: none"> <li>• the market value of the property on the day you made the contribution; and</li> <li>• the amount you paid for the property;</li> </ul> <p>reduced by the GST inclusive market value, on the day you made the contribution, of the right to attend, or participate in, the fund-raising event; or</p> <p>(c) if the contribution is property valued by the Commissioner at</p>	<p>(a) if the contribution is money—the GST inclusive market value, on the day you made the contribution, of the right to attend, or participate in, the fund-raising event must not exceed the lesser of:</p> <ul style="list-style-type: none"> <li>• 20% of the amount of the contribution; and</li> <li>• \$150; and</li> </ul> <p>(b) if the contribution is property that you purchased during the 12 months before making the contribution—the GST inclusive market value, on the day you made the contribution, of the right to attend, or participate in, the fund-raising event must</p>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-15

<b>Deductible gifts or contributions</b>			
<b>Recipient</b>	<b>Type of gift or contribution</b>	<b>How much you can deduct</b>	<b>Special conditions</b>
	<p>list of a stock exchange that is listed under the heading “Australia” in regulations made for the purposes of the definition of *approved stock exchange; and</p> <ul style="list-style-type: none"> <li>the market value of the shares on the day you made the contribution is more than \$150 and less than or equal to \$5,000; and</li> <li>you acquire the shares at least 12 months before making the contribution;</li> </ul> <p>where:</p> <p>(d) the contribution is not a gift; and</p> <p>(e) either:</p> <ul style="list-style-type: none"> <li>the contribution is made in return for a right permitting you to attend, or participate in, a particular *fund-raising</li> </ul>	<p>more than \$5,000 and you did not purchase the property during the 12 months before making the contribution—the value of the property as determined by the Commissioner, reduced by the GST inclusive market value, on the day you made the contribution, of the right to attend, or participate in, the fund-raising event; or</p> <p>(ca) if the contribution is shares described in paragraph (ca) of the previous column—the market value of the shares on the day you made the contribution, reduced by the GST inclusive market value, on the day you made the contribution, of the right to attend, or participate in, the fund-raising event.</p>	<p>not exceed the lesser of:</p> <ul style="list-style-type: none"> <li>20% of the lesser of the market value of the property on the day you made the contribution and the amount you paid for the property; and</li> <li>\$150; and</li> </ul> <p>(c) if the contribution is property valued by the Commissioner at more than \$5,000 and you did not purchase the property during the 12 months before making the contribution—the GST inclusive market value, on the day you made the contribution, of the right to attend, or participate in, the fund-raising event must not exceed \$150; and</p>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Deductible gifts or contributions**

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Recipient	Type of gift or contribution	How much you can deduct	Special conditions
	event in Australia; or <ul style="list-style-type: none"> <li>• the contribution is made in return for a right permitting an individual (other than you) to attend, or participate in, a particular fund-raising event in Australia.</li> </ul>		(ca) if the contribution is shares described in paragraph (ca) of the column headed “Type of gift or contribution”—the GST inclusive market value, on the day you made the contribution, of the right to attend, or participate in, the fund-raising event must not exceed the lesser of: <ul style="list-style-type: none"> <li>• 20% of the market value of the shares on the day you made the contribution; and</li> <li>• \$150; and</li> </ul> (d) if, instead of making the contribution, you had made a gift of money to the fund, authority or institution, and:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-15

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**Deductible gifts or contributions**

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<b>Recipient</b>	<b>Type of gift or contribution</b>	<b>How much you can deduct</b>	<b>Special conditions</b>
			<ul style="list-style-type: none"><li>• the amount of the gift had been more than \$2; and</li><li>• the gift had been made for the same purpose for which funds were to be raised by the fund-raising event; you could have deducted the gift under item 1 or 2 of this table; and</li></ul> <p>(e) you must be an individual; and</p> <p>(f) you cannot deduct more than 2 contributions in relation to the same fund-raising event; and</p> <p>(g) if the property is to be valued by the Commissioner—the requirements of section 30-212 are satisfied.</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Deductible gifts or contributions**

Recipient	Type of gift or contribution	How much you can deduct	Special conditions
8 A *deductible gift recipient that is a fund, authority or institution covered by item 1 or 2 of this table.	<p>A contribution of money, if:</p> <p>(a) the amount is more than \$150; and</p> <p>(b) the contribution is not a gift; and</p> <p>(c) you made the contribution by way of consideration for the supply of goods or services; and</p> <p>(d) you made the contribution because you were the successful bidder at an auction that:</p> <ul style="list-style-type: none"> <li>• was a particular *fund-raising event in Australia; or</li> <li>• was held at a particular fund-raising event in Australia; and</li> </ul> <p>(e) the amount of the contribution exceeds the *GST inclusive market value, on the day you made the contribution, of the goods or services.</p>	<p>The amount of the contribution, reduced by the GST inclusive market value, on the day you made the contribution, of the goods or services.</p>	<p>(a) the GST inclusive market value, on the day you made the contribution, of the goods or services must not exceed the lesser of:</p> <ul style="list-style-type: none"> <li>• 20% of the amount of the contribution; and</li> <li>• \$150; and</li> </ul> <p>(b) if, instead of making the contribution, you had made a gift of money to the fund, authority or institution, and:</p> <ul style="list-style-type: none"> <li>• the amount of the gift had been more than \$2; and</li> <li>• the gift had been made for the same purpose for which funds were to be raised by the</li> </ul>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application  
**Part 2-5** Rules about deductibility of particular kinds of amounts  
**Division 30** Gifts or contributions

Section 30-15

<b>Deductible gifts or contributions</b>			
<b>Recipient</b>	<b>Type of gift or contribution</b>	<b>How much you can deduct</b>	<b>Special conditions</b>
			fund-raising event; you could have deducted the gift under item 1 or 2 of this table; and (c) you must be an individual.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) For the purposes of items 4, 5 and 6 of the table in subsection (2), the \*GST inclusive market values of the property or place in question are reduced by  $\frac{1}{11}$  if you would have been entitled to an \*input tax credit if:
  - (a) you had \*acquired the property or place at the time you made the gift; and
  - (b) your acquisition had been for a \*creditable purpose.
- (4) For the purposes of item 7 of the table in subsection (2), in working out the \*GST inclusive market value of the right in question, disregard anything that would prevent or restrict conversion of the right to money.
- (5) For the purposes of item 8 of the table in subsection (2), in working out the \*GST inclusive market value of the goods or services in question, disregard anything that would prevent or restrict conversion of the goods or services to money.

### **30-17 Requirements for certain recipients**

- (1) This section sets out requirements to be met for you to be able to deduct a gift you make to a fund, authority or institution described in the column headed “Recipient” of item 1, 2 or 4 of the table in section 30-15. However, this section does not apply to:
  - (a) a fund, authority or institution that is mentioned by name in an item of a table in Subdivision 30-B; or
  - (b) a \*prescribed private fund; or
  - (c) the Australian Fund.
- (2) The fund, authority or institution must:
  - (a) be an entity or \*government entity that is endorsed under Subdivision 30-BA as a \*deductible gift recipient; or
  - (b) in the case of a fund—either:
    - (i) be owned legally by an entity that is endorsed under Subdivision 30-BA as a \*deductible gift recipient for the operation of the fund; or
    - (ii) be under the control of one or more persons who constitute a \*government entity that is endorsed under

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-17

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Subdivision 30-BA as a \*deductible gift recipient for the operation of the fund; or

- (c) in the case of an authority or institution—be part of an entity or \*government entity that is endorsed under Subdivision 30-BA as a \*deductible gift recipient for the operation of the authority or institution.

Example: A public fund that is established and maintained for constructing a building to be used by a State school and is controlled by the principal of the school would be an example of a fund under the control of one or more persons who constitute a government entity that is endorsed as a deductible gift recipient for the operation of the fund, if the school were so endorsed.

**Subdivision 30-B—Tables of recipients for deductible gifts**

**Table of sections**

**Health**

30-20 Health

**Education**

30-25 Education

30-30 Gifts that must be for certain purposes

30-35 Gifts to a public fund established to benefit a rural school hostel building must satisfy certain requirements

30-37 Scholarship etc. funds

**Research**

30-40 Research

**Welfare and rights**

30-45 Welfare and rights

30-45A Australian disaster relief funds—declarations by Minister

30-46 Australian disaster relief funds—declarations under State and Territory law

**Defence**

30-50 Defence

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Environment**

- 30-55 The environment  
30-60 Gifts to a National Parks body or conservation body must satisfy certain requirements

**Industry, trade and design**

- 30-65 Industry, trade and design

**The family**

- 30-70 The family  
30-75 Marriage education organisations must be approved

**International affairs**

- 30-80 International affairs  
30-85 Developing country relief funds  
30-86 Developed country disaster relief funds

**Sports and recreation**

- 30-90 Sports and recreation

**Philanthropic trusts**

- 30-95 Philanthropic trusts

**Cultural organisations**

- 30-100 Cultural organisations

**Fire and emergency services**

- 30-102 Fire and emergency services

**Other recipients**

- 30-105 Other recipients

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 30-20

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**Health**

**30-20 Health**

(1) This table sets out general categories of health recipients.

<b>Health—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
1.1.1	a public hospital	none
1.1.2	a hospital carried on by a society or association otherwise than for the purposes of profit or gain to the individual members of the society or association	none
1.1.3	a public fund established before 23 October 1963 and maintained for the purpose of providing money for hospitals covered by item 1.1.1 or 1.1.2 or for the establishment of such hospitals	none
1.1.4	a public authority engaged in research into the causes, prevention or cure of disease in human beings, animals or plants	the gift must be made for such research
1.1.5	a public institution engaged solely in research into the causes, prevention or cure of disease in human beings, animals or plants	none
1.1.6	a charitable institution whose principal activity is to promote the prevention or the control of diseases in human beings	none
1.1.7	a public ambulance service	none
1.1.8	a public fund established and maintained for the purpose of providing money for the provision of public ambulance services	none

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(2) This table sets out specific health recipients.

<b>Health—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
1.2.1	The Royal Australian and New Zealand College of Obstetricians and Gynaecologists	none
1.2.2	the Australian College of Occupational Medicine	none
1.2.3	the Australian Postgraduate Federation in Medicine	the gift must be made for education or research in medical knowledge or science
1.2.4	the College of Radiologists in Australasia	the gift must be made for education or research in medical knowledge or science
1.2.5	the New South Wales College of Nursing	none
1.2.6	the Royal Australian and New Zealand College of Psychiatrists	none
1.2.7	the Royal Australian College of General Practitioners	the gift must be made for education or research in medical knowledge or science
1.2.8	the Royal Australasian College of Physicians	none
1.2.9	the Royal Australasian College of Surgeons	none
1.2.10	the Royal College of Pathologists of Australasia	the gift must be made for education or research in medical knowledge or science
1.2.11	the Australian Regional Council of the Royal College of Obstetricians and Gynaecologists	none
1.2.12	the Royal College of Nursing, Australia	none
1.2.13	the Australian and New Zealand College of Anaesthetists	none
1.2.14	SouthCare Helicopter Fund	the gift must be made after 11 September 2000

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-25

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**Health—Specific**

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<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
1.2.15	Breast Cancer Network Australia	the gift must be made after 22 May 2001
1.2.16	National Breast Cancer Centre Gift Fund	the gift must be made after 24 September 2001
1.2.17	The Bionic Ear Institute	the gift must be made after 4 October 2001
1.2.18	The Australasian College for Emergency Medicine	the gift must be made after 2 February 2009

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**Education**

**30-25 Education**

(1) This table sets out general categories of education recipients.

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**Education—General**

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<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
2.1.1	a public university	none
2.1.2	a public fund for the establishment of a public university	none
2.1.3	a higher education institution within the meaning of the <i>Higher Education Funding Act 1988</i>	none
2.1.4	a residential educational institution affiliated under statutory provisions with a public university	none
2.1.5	a residential educational institution established by the Commonwealth	none
2.1.6	a residential educational institution that is affiliated with a higher education institution within the meaning of the <i>Higher Education Funding Act 1988</i>	none

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Education—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
2.1.7	an institution that the Minister for Employment, Education, Training and Youth Affairs has declared by a signed instrument to be a technical and further education institution within the meaning of the <i>Employment, Education and Training Act 1988</i>	see section 30-30
2.1.8	a public fund established and maintained solely for the purpose of providing religious instruction in government schools in Australia	none
2.1.9	a public fund established and maintained by a Roman Catholic archdiocesan or diocesan authority solely for the purpose of providing religious instruction in government schools in Australia	none
2.1.10	a public fund established and maintained solely for providing money for the acquisition, construction or maintenance of a building used, or to be used, as a school or college by: (a) a government; or (b) a public authority; or (c) a society or association which is carried on otherwise than for the purposes of profit or gain to the individual members of the society or association	none
2.1.11	a public fund established and maintained solely for providing money for the acquisition, construction or maintenance of a rural school hostel building	see section 30-35

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-25

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**Education—General**

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<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
2.1.12	a government school that: (a) provides special education for students each of whom has a disability that is permanent or is likely to be permanent; and (b) does not provide education for other students	none
2.1.13	a public fund: (a) that is established for charitable purposes; and (b) that is established and maintained solely for providing money for scholarships, bursaries or prizes to which section 30-37 applies	see section 30-37

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(2) This table sets out specific education recipients.

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**Education—Specific**

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<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
2.2.1	The Academy of the Social Sciences in Australia Incorporated	none
2.2.2	the Australian Academy of Science	none
2.2.3	the Australian Academy of the Humanities for the Advancement of Scholarship in Language, Literature, History, Philosophy and the Fine Arts	none
2.2.4	the Australian Academy of Technological Sciences and Engineering Limited	none
2.2.6	the Australian and New Zealand Association for the Advancement of Science	none
2.2.7	the Australian Ireland Fund	none
2.2.8	the Life Education Centre	none

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Education—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
2.2.9	a company that conducts life education programs under the auspices of the Life Education Centre if the company: (a) is not carried on for the purposes of profit or gain to its individual members; and (b) is prohibited by its *constitution from making any distribution of money or property to its members	the gift must be for the conduct of such programs
2.2.10	the Council for Christian Education in Schools	none
2.2.11	the Council for Jewish Education in Schools	none
2.2.13	the Lionel Murphy Foundation	none
2.2.14	the Marcus Oldham Farm Management College	see section 30-30
2.2.15	the Constitutional Centenary Foundation Incorporated	none
2.2.16	the Polly Farmer Foundation (Inc)	none
2.2.17	The Australian Council of Christians and Jews	the gift must be made after 6 December 1998
2.2.18	the Sir William Tyree Foundation of The Australian Industry Group	the gift must be made after 28 February 1999
2.2.19	the Foundation for Gambling Studies	the gift must be made after 8 March 2000
2.2.20	Australian Nuffield Farming Scholars Association	the gift must be made after 16 April 2001
2.2.21	Dymocks Literacy Foundation Limited	the gift must be made after 4 January 2001
2.2.22	Australian Primary Principals Association Education Foundation	the gift must be made after 1 October 2001
2.2.23	Commonwealth Study Conferences (Australia) Incorporated	the gift must be made after 19 February 2001
2.2.24	Mt Eliza Graduate School of Business and Government Limited	the gift must be made after 4 April 2000
2.2.25	Australian Human Rights Education Fund	the gift must be made after 24 September 2001

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-30

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<b>Education—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
2.2.26	Aboriginal Education Council (N.S.W.) Incorporated	the gift must be made after 6 May 2002
2.2.27	General Sir John Monash Foundation	the gift must be made after 16 June 2002
2.2.28	Australian-American Educational Foundation	the gift must be made after 30 April 2003
2.2.29	The Australian Literacy and Numeracy Foundation Limited	the gift must be made after 11 October 2002
2.2.30	The Constitution Education Fund	the gift must be made after 20 June 2003
2.2.31	Country Education Foundation of Australia Limited	the gift must be made on or after 20 August 2003
2.2.32	The Clontarf Foundation Inc.	the gift must be made after 30 August 2004
2.2.33	International Specialised Skills Institute Incorporated	the gift must be made after 11 August 2005
2.2.34	Yachad Accelerated Learning Project Limited	the gift must be made after 29 June 2005 and before 1 July 2009
2.2.36	The Spirit of Australia Foundation	the gift must be made after 10 September 2007
2.2.37	The Royal Institution of Australia Incorporated	the gift must be made after 16 April 2009

**30-30 Gifts that must be for certain purposes**

- (1) You can deduct a gift that you make to:
- (a) a technical and further education institution covered by item 2.1.7 of the table in subsection 30-25(1); or
  - (b) the Marcus Oldham Farm Management College;
- only if the gift is for:
- (c) purposes of the institution, or of the College, that have been declared by the Minister for Employment, Education, Training and Youth Affairs to relate solely to tertiary education; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (d) the provision of facilities for the institution, or the College, if the Minister has declared that he or she is satisfied the facilities are to be used principally for such purposes.
- (2) A declaration under subsection (1) must be in writing, signed by the Minister.

**30-35 Gifts to a public fund established to benefit a rural school hostel building must satisfy certain requirements**

- (1) You can deduct a gift that you make to a public fund covered by item 2.1.11 of the table in subsection 30-25(1) only if each requirement in this section is satisfied.
- (2) The rural school hostel building must be used, or going to be used, principally as residential accommodation for students:
  - (a) whose usual place of residence is in a rural area; and
  - (b) who are undertaking primary or secondary education, or special education programs for children with disabilities, at a school in the same area as the building.
- (3) The costs of the school must be solely or partly funded by the Commonwealth, a State or a Territory.
- (4) The residential accommodation must be provided by:
  - (a) the Commonwealth, a State or a Territory; or
  - (b) a public authority; or
  - (c) a company that:
    - (i) is not carried on for the purposes of profit or gain to its individual members; and
    - (ii) is prohibited by its \*constitution from making any distribution of money or property to its members.

**30-37 Scholarship etc. funds** [*see* Note 5]

For the purposes of item 2.1.13 of the table in subsection 30-25(1), a scholarship, bursary or prize is one to which this section applies if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-40

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- (a) it may only be awarded to Australian citizens, or permanent residents of Australia, within the meaning of the *Australian Citizenship Act 1948*; and
- (b) it is open to individuals or groups of individuals throughout a region of at least 200,000 people, or throughout at least an entire State or Territory; and
- (c) it promotes recipients' education in either or both of the following:
  - (i) \*pre-school courses, \*primary courses, \*secondary courses or \*tertiary courses;
  - (ii) educational institutions overseas, by way of study of a component of a course covered by subparagraph (i); and
- (d) it is awarded on merit or for reasons of equity.

**Research**

**30-40 Research**

- (1) This table sets out general categories of research recipients.

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<b>Research—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
3.1.1	a university, college, institute, association or organisation which is an approved research institute for the purposes of section 73A (Expenditure on scientific research) of the <i>Income Tax Assessment Act 1936</i>	the gift must be made for purposes of scientific research in the field of natural or applied science

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- (2) This table sets out specific research recipients.

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<b>Research—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
3.2.1	the Centre for Independent Studies	none
3.2.2	the Ian Clunies Ross Memorial Foundation	none

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 30-45

<b>Research—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
3.2.3	the Commonwealth	the gift must be made for purposes of research in the Australian Antarctic Territory
3.2.4	The Menzies Research Centre Public Fund	the gift must be made after 2 April 1998
3.2.5	The Sir Earl Page Memorial Trust	the gift must be made after 6 May 2001
3.2.6	Research Australia Limited	the gift must be made after 26 June 2001
3.2.7	The Page Research Centre Limited	the gift must be made after 12 January 2005
3.2.8	The Chifley Research Centre Limited	the gift must be made after 19 May 2005
3.2.9	Don Chipp Foundation Ltd	the gift must be made after 26 June 2006
3.2.10	Lingiari Policy Centre	the gift must be made after 25 July 2006
3.2.11	Grattan Institute	the gift must be made after 4 March 2009 and before 5 March 2011

## Welfare and rights

### 30-45 Welfare and rights

- (1) This table sets out general categories of welfare and rights recipients.

<b>Welfare and rights—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
4.1.1	a public benevolent institution	none

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-45

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**Welfare and rights—General**

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<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
4.1.2	a public fund established before 23 October 1963 and maintained for the purpose of providing money for public benevolent institutions or for the establishment of public benevolent institutions	none
4.1.3	a public fund established and maintained for the relief of persons in Australia who are in necessitous circumstances	none
4.1.4	a public fund that, when the gift is made, is on the register of *harm prevention charities kept under Subdivision 30-EA	the gift must be made after 30 June 2003
4.1.5	a public fund (including a public fund established and maintained by a public benevolent institution): (a) that is established for charitable purposes; and (b) that is established and maintained solely for providing money for the relief (including relief by way of assistance to re-establish a community) of people in Australia in distress as a result of a disaster to which subsection 30-45A(1) or 30-46(1) applies	see sections 30-45A and 30-46
4.1.6	a charitable institution whose principal activity is one or both of these: (a) providing short-term direct care to animals (but not only native wildlife) that have been lost or mistreated or are without owners; (b) rehabilitating orphaned, sick or injured animals (but not only native wildlife) that have been lost or mistreated or are without owners	none

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Welfare and rights—General**

Item	Fund, authority or institution	Special conditions
4.1.7	a charitable institution that would be a public benevolent institution, but for one or both of these: (a) it also promotes the prevention or the control of diseases in human beings (but not as a principal activity); (b) it also promotes the prevention or the control of *behaviour that is harmful or abusive to human beings (but not as a principal activity)	none

(2) This table sets out specific welfare and rights recipients.

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**Welfare and rights—Specific**

Item	Fund, authority or institution	Special conditions
4.2.1	Amnesty International Australia	none
4.2.2	the Child Accident Prevention Foundation of Australia	none
4.2.3	the National Foundation for Australian Women Limited	none
4.2.4	the National Safety Council of Australia Limited	none
4.2.5	the Pearl Watson Foundation Limited	none
4.2.6	the Royal Society for the Prevention of Cruelty to Animals New South Wales	none
4.2.7	the Royal Society for the Prevention of Cruelty to Animals (Victoria) Inc.	none
4.2.9	the Royal Society for the Prevention of Cruelty to Animals (South Australia) Incorporated	none
4.2.10	the Royal Society for the Prevention of Cruelty to Animals Western Australia (Incorporated)	none
4.2.11	the R.S.P.C.A. (Tasmania) Incorporated	none

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-45

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<b>Welfare and rights—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
4.2.12	the Society for the Prevention of Cruelty to Animals (Northern Territory)	none
4.2.13	the Royal Society for the Prevention of Cruelty to Animals (A.C.T.) Incorporated	none
4.2.14	the R.S.P.C.A. Australia Incorporated	none
4.2.15	The Business Against Domestic Violence Reserve	the gift must be made after 22 April 1998
4.2.19	Reconciliation Australia Limited	the gift must be made after 6 December 2000
4.2.20	Royal Society for the Prevention of Cruelty to Animals, Queensland Incorporated	the gift must be made after 22 December 1999
4.2.21	Crime Stoppers Western Australia Limited	the gift must be made after 31 October 2002
4.2.22	New South Wales Crime Stoppers Limited	the gift must be made after 31 October 2002
4.2.23	Crime Stoppers Tasmania	the gift must be made after 28 November 2002
4.2.24	Crime Stoppers Queensland Limited	the gift must be made after 23 January 2003
4.2.25	Crime Stoppers Australia Ltd	the gift must be made after 4 June 2003
4.2.26	Alcohol Education and Rehabilitation Foundation Limited	the gift must be made after 5 June 2003
4.2.27	Crime Stoppers South Australia Limited	the gift must be made on or after 19 September 2003
4.2.28	International Social Service - Australian Branch	the gift must be made after 17 March 2004
4.2.29	the Victorian Crime Stoppers Program	the gift must be made after 22 April 2004
4.2.31	Crime Stoppers Northern Territory Program	the gift must be made after 13 March 2005
4.2.31A	ACT Region Crime Stoppers Limited	the gift must be made after 12 February 2009

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 30-45A

<b>Welfare and rights—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
4.2.32	Kidsafe ACT (Inc.)	the gift must be made after 2 August 2007
4.2.33	Kidsafe New South Wales (Inc.)	the gift must be made after 2 August 2007
4.2.34	Kidsafe NT (Inc.)	the gift must be made after 2 August 2007
4.2.35	Kidsafe Qld (Inc.)	the gift must be made after 2 August 2007
4.2.36	Kidsafe SA Incorporated	the gift must be made after 2 August 2007
4.2.37	Kidsafe Tasmania (Inc)	the gift must be made after 2 August 2007
4.2.38	Kidsafe Vic (Inc.)	the gift must be made after 2 August 2007
4.2.39	Kidsafe Western Australia (Inc)	the gift must be made after 2 August 2007
4.2.40	Ian Thorpe’s Fountain for youth Limited	the gift must be made after 28 February 2008
4.2.41	2009 Victorian Bushfire Appeal Trust Account (established under section 19 of the <i>Financial Management Act 1994</i> of Victoria)	the gift must be made: (a) after 7 February 2009; and (b) before 6 February 2014

**30-45A Australian disaster relief funds—declarations by Minister**

- (1) For the purposes of item 4.1.5 of the table in subsection 30-45(1), an event is a disaster to which this subsection applies if the Minister has declared it to be a disaster. The Minister may do so if satisfied that:
- (a) it developed rapidly; and
  - (b) it resulted in the death, serious injury or other physical suffering of a large number of people, or in widespread damage to property or the natural environment.
- (2) The Minister’s declaration of an event as a disaster:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 30-46**

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- (a) must be in writing; and
  - (b) must specify the day (or the first day) of the event; and
  - (c) must be published on the internet or by another method determined by the Minister.
- (3) The Minister's declaration of an event as a disaster is not a legislative instrument.
- (4) You can deduct a gift that you make to a public fund covered by item 4.1.5 of the table in subsection 30-45(1), in relation to a disaster to which subsection (1) of this section applies, only within the 2 years beginning on the day specified in the declaration as the day (or the first day) of the event for which the fund is to provide relief.

Note: Public funds under item 4.1.5 of the table in subsection 30-45(1) are for disaster relief of people in Australia. Public funds may also be established for disaster relief of people in other countries. See items 9.1.1 (which is not limited to disaster relief) and 9.1.2 of the table in section 30-80.

**30-46 Australian disaster relief funds—declarations under State and Territory law**

- (1) For the purposes of item 4.1.5 of the table in subsection 30-45(1), a disaster is one to which this subsection applies if:
- (a) it is declared to be a disaster, or it gives rise to a declaration of a state of emergency, by or with the approval of a Minister of a State or Territory under the law of the State or Territory; and
  - (b) it developed rapidly; and
  - (c) it resulted in the death, serious injury or other physical suffering of a large number of people, or in widespread damage to property or the natural environment; and
  - (d) subsection 30-45A(1) does not apply to it.
- (2) You can deduct a gift that you make to a public fund covered by item 4.1.5 of the table in subsection 30-45(1), in relation to a disaster to which subsection (1) of this section applies, only within the 2 years beginning:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (a) if the day (or the first day) on which the event occurred is specified in the declaration mentioned in paragraph (1)(a)—on that day; or
- (b) otherwise—on the day of the declaration.

Note: Public funds under item 4.1.5 of the table in subsection 30-45(1) are for disaster relief of people in Australia. Public funds may also be established for disaster relief of people in other countries. See items 9.1.1 (which is not limited to disaster relief) and 9.1.2 of the table in section 30-80.

## Defence

### 30-50 Defence

- (1) This table sets out general categories of defence recipients.

<b>Defence—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
5.1.1	the Commonwealth or a State	the gift must be made for purposes of defence
5.1.2	a public institution or public fund established and maintained for the comfort, recreation or welfare of members of the armed forces of any part of Her Majesty's dominions, or of any allied or other foreign force serving in association with Her Majesty's armed forces	none

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-50

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**Defence—General**

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<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
5.1.3	a public fund established and maintained solely for providing money to reconstruct, or make critical repairs to, a particular war memorial that: (a) is located in Australia; and (b) commemorates events in a conflict in which Australia was involved, or people who are mainly Australians and who participated on Australia's behalf in a conflict; and (c) is a focus for public commemoration of the events or people mentioned in paragraph (b); and (d) is solely or mainly used for that public commemoration	the gift must be made within the 2 years beginning on the day on which: (a) the fund; or (b) if the fund is legally owned by an entity that is endorsed for the operation of the fund—the entity; is endorsed as a *deductible gift recipient under Subdivision 30-BA

(2) This table sets out specific defence recipients.

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**Defence—Specific**

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<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
5.2.11	The RSL Foundation	the gift must be made after 20 September 2000
5.2.16	Bowral Vietnam Memorial Walk Trust Incorporated	the gift must be made after 15 August 2001 and before 16 August 2006
5.2.24	City of Onkaparinga Memorial Gardens Association Inc	the gift must be made after 28 April 2004 and before 1 July 2005
5.2.25	The Finding Sydney Foundation	the gift must be made after 26 August 2004 and before 1 July 2009
5.2.26	C E W Bean Foundation	the gift must be made after 14 November 2005 and before 15 November 2007

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 30-55

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**Defence—Specific**

<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
5.2.27	The Vietnam War Memorial of Victoria Incorporated	the gift must be made after 31 December 2004 and before 1 January 2006
5.2.28	The Bathurst War Memorial Carillon Public Fund Trust	the gift must be made after 2 August 2007 and before 3 August 2009
5.2.29	AE 2 Commemorative Foundation Ltd	the gift must be made after 28 February 2008 and before 1 March 2010
5.2.30	Memorials Development Committee Ltd	the gift must be made after 4 September 2007 and before 1 July 2010

**Environment**

**30-55 The environment**

(1) This table sets out general categories of environment recipients.

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**The environment—General**

<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
6.1.1	a public fund that, when the gift is made, is on the register of *environmental organisations kept under Subdivision 30-E	none

(2) This table sets out specific environment recipients.

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**The environment—Specific**

<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
6.2.1	the Australian Conservation Foundation Incorporated	see section 30-60
6.2.2	Greening Australia Limited	see section 30-60
6.2.3	Landcare Australia Limited	see section 30-60

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-55

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<b>The environment—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
6.2.4	the National Parks Association of New South Wales	see section 30-60
6.2.5	the Victorian National Parks Association Incorporated	see section 30-60
6.2.6	Trust for Nature (Victoria)	see section 30-60
6.2.7	the National Parks Association of Queensland	see section 30-60
6.2.8	The Nature Conservation Society of South Australia Incorporated	see section 30-60
6.2.9	the Nature Foundation SA Incorporated	see section 30-60
6.2.10	the Western Australian National Parks and Reserves Association Incorporated	see section 30-60
6.2.11	the Tasmanian Conservation Trust Incorporated	see section 30-60
6.2.12	the National Parks Association of the Australian Capital Territory Incorporated	see section 30-60
6.2.13	the National Trust of Australia (New South Wales)	none
6.2.14	the National Trust of Australia (Victoria)	none
6.2.15	The National Trust of Queensland	none
6.2.16	The National Trust of South Australia	none
6.2.17	The National Trust of Australia (W.A.)	none
6.2.18	the National Trust of Australia (Tasmania)	none
6.2.19	The National Trust of Australia (Northern Territory)	none
6.2.20	the National Trust of Australia (A.C.T.)	none
6.2.21	the Australian Council of National Trusts	none
6.2.22	the World Wide Fund for Nature	see section 30-60
6.2.23	Mawson's Huts Foundation Limited	the gift must be made after 17 March 1997

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**30-60 Gifts to a National Parks body or conservation body must satisfy certain requirements**

You can deduct a gift that you make to:

- (a) an environmental institution covered by any of the items 6.2.1 to 6.2.12 of the table in subsection 30-55(2); or
  - (b) the World Wide Fund for Nature;
- only if, at the time of making the gift:
- (c) the institution or Fund has agreed to give the \*Environment Secretary, within a reasonable period after the end of the income year in which you made the gift, statistical information about gifts made to the institution or Fund during that income year; and
  - (d) the institution or Fund has a policy of not acting as a mere conduit for the donation of money or property to other institutions, bodies or persons.

**Industry, trade and design**

**30-65 Industry, trade and design**

This table sets out specific industry, trade and design recipients.

<b>Industry, trade and design—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
7.2.1	the Industrial Design Council of Australia	none
7.2.2	the Productivity Promotion Council of Australia	none
7.2.3	the WorldSkills Australia Inc.	none
7.2.4	Indigenous Community Volunteers Limited	the gift must be made after 16 April 2001
7.2.5	Australian Business Week Limited	the gift must be made after 8 December 2003

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 30-70

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**The family**

**30-70 The family**

(1) This table sets out general categories of family recipients.

<b>The family—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
8.1.1	a public fund established and maintained by a *non-profit company solely for the purpose of providing money to be used in giving or providing marriage education under the <i>Marriage Act 1961</i> to individuals in Australia	see section 30-75
8.1.2	a public fund: (a) that is established and maintained by a *non-profit company which receives funding from the Commonwealth to provide family counselling or family dispute resolution within the meaning of the <i>Family Law Act 1975</i> ; and (b) that is established and maintained solely for the purpose of providing money to be used in providing family counselling or family dispute resolution within the meaning of the <i>Family Law Act 1975</i> to individuals in Australia	none

(2) This table sets out specific family recipients.

<b>The family—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
8.2.3	Australian Breastfeeding Association	the gift must be made after 31 July 2001
8.2.4	Playgroup NSW (Inc).	the gift must be made after 14 April 2005
8.2.5	Playgroup WA (Inc)	the gift must be made after 13 March 2005

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 30-75

<b>The family—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
8.2.6	Playgroup Queensland Incorporated	the gift must be made after 14 April 2005
8.2.7	Playgroup Tasmania Inc.	the gift must be made after 14 April 2005
8.2.8	Playgroup Association Northern Territory Incorporated	the gift must be made after 24 May 2005
8.2.9	ACT Playgroups Association Incorporated	the gift must be made after 14 April 2005
8.2.10	Playgroup Victoria Inc.	the gift must be made after 23 February 2006
8.2.11	Playgroup SA Inc	the gift must be made after 5 August 2006
8.2.12	Playgroup Australia Incorporated	the gift must be made after 2 August 2006

**30-75 Marriage education organisations must be approved**

You can deduct a gift that you make to a public fund covered by item 8.1.1 of the table in subsection 30-70(1) only if the company has been approved by the Minister under section 9C of the *Marriage Act 1961*.

**International affairs**

**30-80 International affairs**

- (1) This table sets out general categories of international affairs recipients.

<b>International affairs—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
9.1.1	a public fund declared by the Treasurer to be a developing country relief fund	see section 30-85

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-80

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**International affairs—General**

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<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
9.1.2	a public fund established and maintained by a public benevolent institution solely for providing money for the relief (including relief by way of assistance to re-establish a community) of people in a country other than: (a) Australia; and (b) a country declared by the Minister for Foreign Affairs to be a developing country; who are in distress as a result of a disaster to which subsection 30-86(1) applies	see section 30-86

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(2) This table sets out specific international affairs recipients.

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**International affairs—Specific**

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<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
9.2.1	the Australian Institute of International Affairs	none
9.2.2	the Australian National Travel Association	none
9.2.3	The Foundation for Development Cooperation Ltd	none
9.2.4	Australian American Education Leadership Foundation Limited	the gift must be made after 26 January 1998
9.2.5	Sydney Talmudical College Association Refugees Overseas Aid Fund	the gift must be made after 29 January 1998
9.2.6	United Israel Appeal Refugee Relief Fund Limited	the gift must be made after 29 January 1998
9.2.7	the Asia Society AustralAsia Centre	the gift must be made after 6 December 1998
9.2.8	The Global Foundation	the gift must be made after 2 November 1999
9.2.10	Australia for UNHCR	the gift must be made after 27 June 2007 and before 28 June 2012

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>International affairs—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
9.2.12	Lowy Institute for International Policy	the gift must be made after 13 August 2003
9.2.13	The Rotary Leadership Victoria Australian Embassy for Timor-Leste Fund Limited	the gift must be made after 7 November 2004 and before 1 January 2010
9.2.15	Australian Red Cross Society—US 2005 Hurricane Relief Appeal	the gift must be made after 31 August 2005 and before 1 September 2006
9.2.16	The Salvation Army Hurricane Katrina Relief Appeal	the gift must be made after 1 September 2005 and before 2 September 2006
9.2.17	Xanana Vocational Education Trust	the gift must be made after 20 July 2005 and before 21 July 2009
9.2.18	American Australian Association Limited	the gift must be made after 13 November 2006
9.2.19	WHEELCHAIRS FOR KIDS Incorporated	the gift must be made after 28 February 2008 and before 1 March 2010
9.2.20	World Youth Day 2008 Trust	the gift must be made after 4 September 2007 and before 1 July 2009
9.2.21	Diplomacy Training Program Limited	the gift must be made after 16 April 2009

### **30-85 Developing country relief funds**

- (1) You can deduct a gift that you make to a public fund covered by item 9.1.1 of the table in subsection 30-80(1) only if the declaration is in force at the time you make the gift.
- (2) The Treasurer may, by notice in the *Gazette*, declare a public fund to be a developing country relief fund if he or she is satisfied that the fund:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 30-86

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- (a) has been established by an organisation declared by the Minister for Foreign Affairs to be an approved organisation; and
  - (b) is solely for the relief of people in a country declared by the Minister for Foreign Affairs to be a developing country.
- (3) The notice must specify the day on which it has effect. It cannot have effect earlier than the day on which it is published in the *Gazette*.
- (4) The Treasurer may, by notice in the *Gazette*, revoke a declaration that a public fund is a developing country relief fund. The notice must specify the day on which it has effect. It cannot have effect earlier than the day on which it is published in the *Gazette*.
- (5) A declaration by the Minister for Foreign Affairs under this section must be in writing, signed by the Minister.

**30-86 Developed country disaster relief funds**

- (1) For the purposes of item 9.1.2 of the table in subsection 30-80(1), a disaster is one to which this subsection applies if the Minister has recognised it as a disaster. The Minister may do so if satisfied that:
- (a) it developed rapidly; and
  - (b) it resulted in the death, serious injury or other physical suffering of a large number of people, or in widespread damage to property or the natural environment.
- (2) The Minister's recognition of an event as a disaster:
- (a) must be in writing; and
  - (b) must specify the day (or the first day) of the event; and
  - (c) must be published on the Internet or by another method determined by the Minister.
- (3) The Minister's recognition of an event as a disaster is not a legislative instrument.
- (4) You can deduct a gift that you make to a public fund covered by item 9.1.2 of the table in subsection 30-80(1) only within the 2 years beginning on the day specified in the declaration as the day (or the first day) of the event for which the fund is to provide relief.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 30-90

Note: A public fund may also be established for disaster relief of people in Australia (see item 4.1.5 of the table in section 30-45).

## Sports and recreation

### 30-90 Sports and recreation

This table sets out specific sports and recreation recipients.

<b>Sports and recreation—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
10.2.1	the Australian Sports Foundation	none
10.2.2	Guides Australia Incorporated	none
10.2.3	an institution that is known as a State or Territory branch of Guides Australia Incorporated	none
10.2.4	the Scout Association of Australia	none
10.2.5	an institution that is known as a State or Territory branch of the Scout Association of Australia	none
10.2.6	the Australian Games Uniform Company Limited	none
10.2.7	The Bradman Memorial Fund	the gift must be made after 24 February 2001
10.2.8	Amy Gillett Foundation	the gift must be made after 13 September 2007

## Philanthropic trusts

### 30-95 Philanthropic trusts

This table sets out specific philanthropic trusts.

<b>Philanthropic trusts—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
11.2.1	the Connellan Airways Trust	none

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-100

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<b>Philanthropic trusts—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
11.2.2	The Friends of the Duke of Edinburgh's Award in Australia Incorporated	none
11.2.4	the Playford Memorial Trust	none
11.2.5	The Sir Robert Menzies Memorial Foundation Limited	none
11.2.7	the Winston Churchill Memorial Trust	none
11.2.8	The Foundation for Young Australians	the gift must be made after 6 May 2001
11.2.9	Visy Cares	the gift must be made after 19 June 2001

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**Cultural organisations**

**30-100 Cultural organisations**

(1) This table sets out general categories of cultural recipients.

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<b>Cultural organisations—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
12.1.1	a public fund that, when the gift is made, is on the register of *cultural organisations kept under Subdivision 30-F	none
12.1.2	a public library	none
12.1.3	a public museum	none
12.1.4	a public art gallery	none
12.1.5	an institution consisting of a public library, public museum and public art gallery or of any 2 of them	none

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(2) This table sets out specific cultural recipients.

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<b>Cultural organisations—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
12.2.1	The Australiana Fund	none

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Cultural organisations—Specific**

<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
12.2.2	Australian Business Arts Foundation Ltd.	the gift must be made after 8 November 1996
12.2.3	The Ranfurly Library Service Incorporated	the gift must be made after 2 May 2006

**Fire and emergency services**

**30-102 Fire and emergency services**

This table sets out specific fire and emergency services recipients.

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**Fire and emergency services—Specific**

<b>Item</b>	<b>Authority or institution</b>	<b>Established under legislation of the following State or Territory</b>	<b>Special conditions</b>
12A.2.1	State Emergency Service	New South Wales	the gift must be made after 22 December 2003
12A.2.2	Country Fire Authority	Victoria	the gift must be made after 22 December 2003
12A.2.3	Victoria State Emergency Service	Victoria	the gift must be made after 22 December 2003
12A.2.4	CFA & Brigades Donations Fund	Victoria	the gift must be made after 30 June 2004
12A.2.5	Queensland Fire and Rescue Service	Queensland	the gift must be made after 22 December 2003
12A.2.6	State Emergency Service	Queensland	the gift must be made after 22 December 2003

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-105

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<b>Fire and emergency services—Specific</b>			
<b>Item</b>	<b>Authority or institution</b>	<b>Established under legislation of the following State or Territory</b>	<b>Special conditions</b>
12A.2.7	Fire and Emergency Services Authority of Western Australia	Western Australia	the gift must be made after 22 December 2003
12A.2.8	State Emergency Service South Australia	South Australia	the gift must be made after 22 December 2003
12A.2.9	Tasmania Fire Service	Tasmania	the gift must be made after 22 December 2003
12A.2.10	State Emergency Service	Tasmania	the gift must be made after 22 December 2003
12A.2.13	ACT Rural Fire Service	Australian Capital Territory	the gift must be made after 30 June 2004
12A.2.14	ACT State Emergency Service	Australian Capital Territory	the gift must be made after 30 June 2004

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**Other recipients**

**30-105 Other recipients**

This table sets out specific other recipients.

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<b>Other recipients—specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
13.2.1	the Council for Jewish Community Security	the gift must be made after 9 August 2007
13.2.2	the Foundation for Rural and Regional Renewal Public Fund	the gift must be made after 28 March 2000

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Other recipients—specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
13.2.3	Young Endeavour Youth Scheme Public Fund	the gift must be made after 24 September 2001
13.2.3A	Leeuwin Ocean Adventure Foundation Limited	the gift must be made after 16 April 2009
13.2.4	Australian Council for Children and Youth Organisations Inc.	the gift must be made after 23 July 2002
13.2.5	St Paul's Cathedral Restoration Fund	the gift must be made after 22 April 2002 and before 23 April 2008
13.2.6	Dunn and Lewis Youth Development Foundation Limited	the gift must be made on or after 10 November 2003 and before 1 January 2009
13.2.7	Lord Somers Camp and Power House	the gift must be made after 4 March 2004
13.2.8	St George's Cathedral Restoration Fund	the gift must be made after 27 September 2004 and before 1 January 2011
13.2.11	St Michael's Church Restoration Fund	the gift must be made after 23 February 2006 and before 24 February 2008
13.2.12	Nonprofit Australia Ltd	the gift must be made after 28 June 2006 and before 29 June 2009
13.2.13	Point Nepean Community Trust	the gift must be made after 26 June 2006 and before 11 June 2009

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-115

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<b>Other recipients—specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
13.2.14	St Mary's Cathedral Restoration Appeal Incorporated	the gift must be made after 26 April 2006 and before 27 April 2007
13.2.14A	Bunbury Diocese Cathedral Rebuilding Fund	the gift must be made after 18 December 2006 and before 19 December 2010
13.2.15	Australian Peacekeeping Memorial Project Incorporated	the gift must be made after 29 April 2007 and before 1 January 2009
13.2.16	Social Ventures Australia Limited	the gift must be made after 3 May 2007
13.2.17	PWR Melbourne 2009 Limited	the gift must be made after 2 February 2009 and before 1 January 2010

**Subdivision 30-BA—Endorsement of deductible gift recipients**

**Guide to Subdivision 30-BA**

**30-115 What this Subdivision is about**

This Subdivision sets out rules about endorsement of entities and government entities as deductible gift recipients. Endorsement of an entity described (except by name) in Subdivision 30-A, 30-B or 30-D lets you deduct a gift you make to a fund, authority or institution that is, or is operated by, the entity.

**Table of sections**

**Endorsement as a deductible gift recipient**

30-120 Endorsement by Commissioner

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- 30-125 Entitlement to endorsement  
30-130 Maintaining a gift fund

**Government entities treated like entities**

- 30-180 How this Subdivision applies to government entities

**Endorsement as a deductible gift recipient**

**30-120 Endorsement by Commissioner**

If an entity applies for endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*, the Commissioner must endorse the entity:

- (a) as a \*deductible gift recipient, if the entity is entitled to be endorsed as a deductible gift recipient; or
- (b) as a \*deductible gift recipient for the operation of a fund, authority or institution, if the entity is entitled to be endorsed as a deductible gift recipient for the operation of the fund, authority or institution.

Note: For procedural rules relating to endorsement, see Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.

**30-125 Entitlement to endorsement**

*Endorsement of an entity that is a fund, authority or institution*

- (1) An entity is entitled to be endorsed as a \*deductible gift recipient if the entity:
  - (a) has an \*ABN; and
  - (b) is a fund, authority or institution that:
    - (i) is described (but not by name) in item 1, 2 or 4 of the table in section 30-15; and
    - (ii) is not described by name in Subdivision 30-B if it is described in item 1 of that table; and
    - (iii) meets the relevant conditions (if any) identified in the column headed "Special conditions" of the item of that table in which it is described; and
  - (c) meets the requirements of subsection (6), unless:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-125

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- (i) the entity is established by an Act; and
- (ii) the Act (or another Act) does not provide for the winding up or termination of the entity.

*Endorsement of an entity for operating a fund, authority etc.*

- (2) An entity is entitled to be endorsed as a \*deductible gift recipient for the operation of a fund, authority or institution that is described (but not by name) in item 1, 2 or 4 of the table in section 30-15 and is not described by name in Subdivision 30-B if:
  - (a) the entity has an \*ABN; and
  - (b) the entity:
    - (i) legally owns the fund; or
    - (ii) includes the authority or institution; and
  - (c) the fund, authority or institution meets the relevant conditions (if any) identified in the column headed “Special conditions” of that item; and
  - (d) the entity meets the requirements of subsection (6), unless:
    - (i) the entity is established by an Act; and
    - (ii) the Act (or another Act) does not provide for the winding up or termination of the entity; and
  - (e) the entity meets the requirements of section 30-130, unless the entity is endorsed as a deductible gift recipient under paragraph 30-120(a).

*Relevant special conditions in table in section 30-15*

- (3) To avoid doubt, a condition requiring the fund, authority or institution to meet the requirements of section 30-17 is not a relevant condition for the purposes of subparagraph (1)(b)(iii) or paragraph (2)(c).

Note: Section 30-17 requires the entity to be endorsed under this Subdivision as a deductible gift recipient.

*Transfer of assets from fund, authority or institution*

- (6) A law (outside this Subdivision), a document constituting the entity or rules governing the entity’s activities must require the entity, at the first occurrence of an event described in subsection (7), to

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

transfer to a fund, authority or institution gifts to which can be deducted under this Division:

- (a) any surplus assets of the gift fund (see section 30-130); or
- (b) if the entity is not required by this section to meet the requirements of section 30-130—any surplus:
  - (i) gifts of money or property for the principal purpose of the fund, authority or institution; and
  - (ii) contributions described in item 7 or 8 of the table in section 30-15 in relation to a \*fund-raising event held for that purpose; and
  - (iii) money received by the entity because of such gifts or contributions.

*Events requiring transfer*

- (7) The events are:
  - (a) the winding up of the fund, authority or institution; and
  - (b) if the entity is endorsed because of a fund, authority or institution—the revocation of the entity’s endorsement under this Subdivision relating to the fund, authority or institution.

Note 1: There are 2 ways an entity can be endorsed because of a fund, authority or institution. An entity can be endorsed either *because it is* a fund, authority or institution or *because it operates* a fund, authority or institution.

Note 2: Section 426-55 in Schedule 1 to the *Taxation Administration Act 1953* deals with revocation of endorsement.

Note 3: The entity is also required to keep appropriate records: see section 382-15 of the *Taxation Administration Act 1953*.

### **30-130 Maintaining a gift fund**

- (1) The entity must maintain for the principal purpose of the fund, authority or institution a fund (the *gift fund*):
  - (a) to which gifts of money or property for that purpose are to be made; and
  - (b) to which contributions described in item 7 or 8 of the table in section 30-15 in relation to a \*fund-raising event held for that purpose are to be made; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 30-180

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- (c) to which any money received by the entity because of such gifts or contributions is to be credited; and
  - (d) that does not receive any other money or property.
- (2) The entity must use the gift fund only for the principal purpose of the fund, authority or institution.

*Exception—only one gift fund required per entity*

- (3) An entity that operates 2 or more funds, authorities or institutions also meets the requirements of this section for 2 or more of those funds, authorities or institutions by maintaining a single gift fund if:
- (a) the gift fund meets the requirements in paragraphs (1)(a), (b) and (c) in respect of each of the funds, authorities or institutions for which the gift fund is maintained; and
  - (b) the gift fund does not receive any other money or property.
- (4) The entity must use a gift or contribution made to the fund and any money credited to the fund only for the principal purpose of the fund, authority or institution to which the gift, contribution or money relates.

Note: The entity is also required to keep appropriate records for each of the funds, authorities or institutions: see section 382-15 of the *Taxation Administration Act 1953*.

## **Government entities treated like entities**

### **30-180 How this Subdivision applies to government entities**

- (1) The other sections of this Subdivision apply in relation to a \*government entity in the same way as they apply in relation to an entity.
- (2) Subparagraph 30-125(2)(b)(i) (as applied by this section) operates as if it referred to the \*government entity consisting of persons, one or more of whom controlled the fund (instead of referring to the entity legally owning the fund).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 30-C—Rules applying to particular gifts of property**

### **Table of sections**

#### **Valuation requirements**

- 30-200 Getting written valuations
- 30-205 Proceeds of the sale would have been assessable
- 30-210 Approved valuers
- 30-212 Valuations by the Commissioner

#### **Working out the amount you can deduct for a gift of property**

- 30-215 How much you can deduct
- 30-220 Reducing the amount you can deduct

#### **Joint ownership of property**

- 30-225 Gift of property by joint owners

### **Valuation requirements**

#### **30-200 Getting written valuations**

- (1) You satisfy the valuation requirements if you get 2 or more written valuations of the gift you made.

Note 1: In most cases, you need to get these written valuations to be able to deduct a gift of property that you make to a recipient covered by item 4, 5 or 6 of the table in section 30-15.

Note 2: You do *not* need to get written valuations in the circumstances set out in section 30-205.

- (2) The valuations must be by different individuals, each of whom is an approved valuer of the kind of property you are giving away.

Note: Section 30-210 deals with how an individual becomes an approved valuer.

- (3) Each valuation must state the amount that, in the opinion of the valuer, was:

- (a) the \*GST inclusive market value of the property on the day you made the gift; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 30-205

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- (b) the \*GST inclusive market value of the property on the day the valuation was made.
- (4) If a valuation states the \*GST inclusive market value of the property on the day the valuation was made, it must have been made within 90 days before or after the gift was made. However, the Commissioner may allow a longer period than this.

**30-205 Proceeds of the sale would have been assessable**

- (1) You do *not* need to get written valuations of the gift you made if:
  - (a) no amount is included in your assessable income in respect of the gift you made; but
  - (b) an amount *would* have been included in your assessable income if you had sold the property instead of making the gift.
- (2) However, this section does not apply if, apart from the operation of subsection 118-60(2), an amount would have been included in your assessable income in respect of the gift you made.

**30-210 Approved valuers**

- (1) The Secretary to the Department of Communications and the Arts may approve an individual as a valuer of a particular kind of property. The approval must be in writing, signed by the Secretary.
- (2) The Secretary must, in deciding whether to approve an individual, have regard to:
  - (a) the individual's qualifications, experience and knowledge in valuing that kind of property; and
  - (b) the individual's knowledge of the current \*GST inclusive market value of that kind of property; and
  - (c) the individual's standing in the professional community.

**30-212 Valuations by the Commissioner**

- (1) If you make a gift or contribution that is covered by a provision of this Division that refers to the value of property as determined by

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the Commissioner, you must seek the valuation from the Commissioner.

- (2) The Commissioner may charge you the amount worked out in accordance with the regulations for making the valuation.

### **Working out the amount you can deduct for a gift of property**

#### **30-215 How much you can deduct**

- (1) This section contains the rules for working out how much you can deduct for a gift of property that you make to a recipient covered by item 4, 5 or 6 of the table in section 30-15.
- (2) The general rule is that the amount you can deduct for a gift of this kind is the average of the \*GST inclusive market values (as reduced under subsection 30-15(3) if that subsection applies) specified in the written valuations you got from the approved valuers.

Note: In some situations you must reduce the amount you can deduct: see section 30-220.

- (3) The exceptions to the general rule are set out in this table:

<b>Amount you can deduct for a gift of property</b>		
<b>Item</b>	<b>In this case:</b>	<b>The amount you can deduct is:</b>
1	Section 30-205 (which is about the proceeds of the sale being assessable) applies, and you bought the property	the amount you paid for the property, reduced by the amount of any *input tax credit to which you are or were entitled for your *acquisition of the property
2	Section 30-205 (which is about the proceeds of the sale being assessable) applies, and you created or produced the property	so much of the cost of creation or production as you would have been able to deduct if you had sold the property, reduced by the amount of any *input tax credit to which you are or were entitled for your *acquisitions to the extent that they were made for the purpose of creating or producing the property

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 30-220

**Amount you can deduct for a gift of property**

<b>Item</b>	<b>In this case:</b>	<b>The amount you can deduct is:</b>
3	Neither of cases 1 and 2 applies, and you acquired the property: <ul style="list-style-type: none"> <li>(a) less than one year before making the gift (otherwise than by inheriting it); or</li> <li>(b) for the purpose of giving it away; or</li> <li>(c) subject to an *arrangement that the property would be given away</li> </ul>	the lesser of the amount you paid for the property and: <ul style="list-style-type: none"> <li>(a) if the average of the written valuations you got fairly represents the *GST inclusive market value (as reduced under subsection (4) if that subsection applies) of the property on the day you made the gift—that average; or</li> <li>(b) if it does not—the *GST inclusive market value (as reduced under subsection (4) if that subsection applies) of the property on the day you made the gift</li> </ul>
4	None of cases 1 to 3 applies, and the average of the written valuations you got does <i>not</i> fairly represent the *market value of the property on the day you made the gift	the *GST inclusive market value (as reduced under subsection (4) if that subsection applies) of the property on the day you made the gift

- (4) For the purposes of items 3 and 4 of the table in subsection (3), the \*GST inclusive market values of the property in question are reduced by  $\frac{1}{11}$  if you would have been entitled to an \*input tax credit if:
- (a) you had \*acquired the property at the time you made the gift; and
  - (b) your acquisition had been for a \*creditable purpose.

**30-220 Reducing the amount you can deduct**

- (1) The amount you can deduct is reduced by a reasonable amount if:
- (a) the terms and conditions on which the gift is made are such that the recipient:
    - (i) does not receive immediate custody and control of the property; or

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (ii) does not have the unconditional right to retain custody and control of the property in perpetuity; or
  - (iii) does not obtain an immediate, indefeasible and unencumbered legal and equitable title to the property; or
  - (b) the custody, control or use of the property by the recipient is affected by an \*arrangement entered into in respect of the making of the gift.
- (2) In deciding what is a reasonable amount, have regard to the effect of those terms and conditions, or that \*arrangement, on the \*GST inclusive market value of the gift.

## **Joint ownership of property**

### **30-225 Gift of property by joint owners**

If:

- (a) you own property jointly with one or more other entities; and
  - (b) you and the other entities make a gift of the property; and
  - (c) you would have been able to deduct the gift under section 30-15 because of item 4, 5 or 6 of the table in that section if you had made a gift of the property as sole owner of it;
- you can deduct so much of the gift as is reasonable, having regard to your interest in the property.

### **Subdivision 30-CA—Administrative requirements relating to ABNs**

#### **Guide to Subdivision 30-CA**

##### **30-226 What this Subdivision is about**

An entity must ensure certain details must appear on a receipt it issues for a gift that:

- (a) is made to the entity or a fund, authority or institution it operates; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 30-227

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(b) is of a kind that the giver can deduct under Subdivision 30-A.

If the entity has an ABN, the Australian Business Registrar must state in the Australian Business Register that the entity is a deductible gift recipient.

**Table of sections**

**Requirements**

30-227	Entities to which this Subdivision applies
30-228	Content of receipt for gift
30-229	Australian Business Register must show deductibility of gifts to deductible gift recipient

**Requirements**

**30-227 Entities to which this Subdivision applies**

- (1) This Subdivision sets out requirements relating to a \*deductible gift recipient.
- (2) A **deductible gift recipient** is an entity or \*government entity that:
  - (a) is a fund, authority or institution described in item 1, 2, 4, 5 or 6 of the table in section 30-15 and is:
    - (i) endorsed under Subdivision 30-BA as a deductible gift recipient; or
    - (ii) mentioned by name in that table or in Subdivision 30-B; or
    - (iii) a \*prescribed private fund; or
  - (b) is endorsed as a deductible gift recipient for the operation of a fund, authority or institution described in item 1, 2 or 4 of the table in section 30-15.

**30-228 Content of receipt for gift or contribution**

- (1) If a \*deductible gift recipient issues a receipt for a gift described in the relevant item of the table in section 30-15 to the fund, authority

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

or institution, the deductible gift recipient must ensure that the receipt states:

- (a) the name of the fund, authority or institution; and
- (b) the \*ABN (if any) of the deductible gift recipient; and
- (c) the fact that the receipt is for a gift.

Note: If the deductible gift recipient is endorsed as a deductible gift recipient and it contravenes this section, the Commissioner may revoke its endorsement: see section 426-55 in Schedule 1 to the *Taxation Administration Act 1953*.

- (2) If a \*deductible gift recipient issues a receipt for a contribution described in item 7 of the table in section 30-15, the deductible gift recipient must ensure that the receipt states:
  - (a) the name of the deductible gift recipient; and
  - (b) the \*ABN (if any) of the deductible gift recipient; and
  - (c) the fact that the receipt is for a contribution made in return for a right to attend, or participate in, a specified \*fund-raising event; and
  - (d) if the contribution is money—the amount of the contribution; and
  - (e) the amount of the \*GST inclusive market value, on the day the contribution was made, of the right to attend, or participate in, the fund-raising event.
- (3) For the purposes of paragraph (2)(e), in working out the \*GST inclusive market value of the right in question, disregard anything that would prevent or restrict conversion of the right to money.
- (4) If a \*deductible gift recipient issues a receipt for a contribution described in item 8 of the table in section 30-15, the deductible gift recipient must ensure that the receipt states:
  - (a) the name of the deductible gift recipient; and
  - (b) the \*ABN (if any) of the deductible gift recipient; and
  - (c) the fact that the receipt is for a contribution made by way of consideration for the supply of goods or services; and
  - (d) the fact that the contribution was made because the contributor was the successful bidder at an auction that:
    - (i) was a specified \*fund-raising event; or
    - (ii) was held at a specified fund-raising event; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 30-229

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- (e) if the contribution is money—the amount of the contribution; and
  - (f) the \*GST inclusive market value, on the day the contribution was made, of the goods or services.
- (5) For the purposes of paragraph (4)(f), in working out the \*GST inclusive market value of the goods or services in question, disregard anything that would prevent or restrict conversion of the goods or services to money.

**30-229 Australian Business Register must show deductibility of gifts to deductible gift recipient**

- (1) If a \*deductible gift recipient has an \*ABN, the \*Australian Business Registrar must enter in the \*Australian Business Register in relation to the deductible gift recipient a statement that it is a deductible gift recipient for a specified period.

Note 1: An entry (or lack of entry) of a statement required by this section does not affect whether you can deduct a gift to the fund, authority or institution.

Note 2: This section will apply to all entities and government entities that are endorsed as deductible gift recipients under Subdivision 30-BA, because they must have ABNs to be endorsed. It will also apply to other entities described or named in Subdivision 30-A if they have ABNs.

- (2) If the \*deductible gift recipient is a deductible gift recipient only because it is endorsed under Subdivision 30-BA as a deductible gift recipient for the operation of a fund, authority or institution, the statement must name the fund, authority or institution.
- (3) The \*Australian Business Registrar may remove the statement from the \*Australian Business Register after the end of the period.
- (4) The \*Australian Business Registrar must take reasonable steps to ensure that a statement appearing in the \*Australian Business Register under this section is true. For this purpose, the Registrar may:
- (a) change the statement; or
  - (b) remove the statement from the Register if the statement is not true; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) remove the statement from the Register and enter another statement in the Register under this section.
- (5) Making, changing or removing an entry in the \*Australian Business Register as required or permitted by this section does not contravene section 16 of the *Income Tax Assessment Act 1936* (Officers to observe secrecy).

### **Subdivision 30-D—Testamentary gifts under the Cultural Bequests Program**

#### **Table of sections**

30-230	Testamentary gifts of property
30-235	Getting a certificate
30-240	Limit on total value of gifts for an income year

#### **30-230 Testamentary gifts of property**

- (1) A testamentary gift of property (except an estate or interest in land or in a building or part of a building) that you make under the Cultural Bequests Program is deductible for the income year in which you die.

Note: The trustee of your estate can claim the deduction in the income tax return lodged for you that covers the period from the start of the income year to the day you die.

- (2) The recipient of the gift must be:
  - (a) The Australiana Fund; or
  - (b) a public library in Australia; or
  - (c) a public museum in Australia; or
  - (d) a public art gallery in Australia; or
  - (e) an institution in Australia consisting of a public library, a public museum and a public art gallery or any 2 of them.
- (2A) When you die, one of the following requirements must be met:
  - (a) the recipient must be endorsed under Subdivision 30-BA as a deductible gift recipient;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

**Section 30-235**

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- (b) there must be an entity endorsed under Subdivision 30-BA as a \*deductible gift recipient for the operation of the recipient institution.

This subsection does not apply if the recipient is The Australiana Fund.

- (3) The property must be given to, and accepted by, the recipient for inclusion in a collection it is maintaining or establishing.
- (4) The value of the gift must be \$2 or more.
- (5) When you die, there must be in force a certificate from the Minister for Communications and the Arts:
  - (a) approving the gift; and
  - (b) specifying the value of the gift.
- (6) If:
  - (a) you die before the last day of an income year; and
  - (b) section 26-55 (which is about a limit on deductions) prevents the whole or a part of the gift from being deductible in the \*income tax return lodged for you for that income year;the trustee of your estate can claim the whole or part as a deduction in the trust's income tax return for that income year.

Note: The trust's income tax return covers the period from the day you die to the end of the income year.

**30-235 Getting a certificate**

- (1) You get a certificate by making a written application for one to the Minister for Communications and the Arts.
- (2) The Minister must decide your application in accordance with written guidelines made by the Minister under this section.
- (3) The guidelines may require the Minister to decide an application having regard to:
  - (a) specified criteria; or
  - (b) recommendations of particular bodies.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) If the Minister approves your gift, he or she must give you a certificate:
- (a) approving the gift; and
  - (b) specifying the value of the gift; and
  - (c) setting out any other information that the Commissioner requires.

### **30-240 Limit on total value of gifts for an income year**

The total value of all gifts approved by the Minister for Communications and the Arts for an income year cannot exceed an amount that the Minister determines in writing. The Minister must determine this amount before approving any gifts for that income year.

## **Subdivision 30-DA—Donations to political parties and independent candidates and members**

### **Guide to Subdivision 30-DA**

#### **30-241 What this Subdivision is about**

Generally, you can deduct certain contributions and gifts to political parties, independent candidates and members.

Contributions and gifts must be at least \$2 and there is a limit on the total amount that you can deduct.

### **Table of sections**

#### **Operative provisions**

30-242	Deduction for political contributions and gifts
30-243	Amount of the deduction
30-244	When an individual is an independent candidate
30-245	When an individual is an independent member

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Operative provisions**

### **30-242 Deduction for political contributions and gifts**

- (1) You can deduct any of the following for the income year in which they are made:
  - (a) a contribution or gift to a political party that is registered under Part XI of the *Commonwealth Electoral Act 1918* or under corresponding State or Territory legislation;
  - (b) a contribution or gift to an individual when the individual is an \*independent candidate for a Commonwealth, State, Northern Territory or Australian Capital Territory election;
  - (c) a contribution or gift to an individual who is, or was, an \*independent member of the Commonwealth Parliament, a State Parliament, the Legislative Assembly of the Northern Territory or the Legislative Assembly for the Australian Capital Territory.
- (2) The contribution or gift must be of:
  - (a) money; or
  - (b) property that you purchased during the 12 months before making the contribution or gift.
- (3) The value of the contribution or gift must be at least \$2.
- (4) You cannot deduct a testamentary contribution or gift under this Subdivision.
- (5) A contribution or gift to an individual who is, or was, an \*independent member must be made:
  - (a) when the individual is an independent member; or
  - (b) if the individual ceases to be an independent member because:
    - (i) a Parliament, a House of a Parliament or a Legislative Assembly is dissolved or has reached its maximum duration; or
    - (ii) the individual comes up for election; after the individual ceases to be a member but before candidates for the resulting election are declared or otherwise

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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publicly announced by an entity authorised under the relevant electoral legislation.

### **30-243 Amount of the deduction**

- (1) If the contribution or gift is money, the amount of the deduction is the amount of money.
- (2) If the contribution or gift is property, the amount of the deduction is the lesser of:
  - (a) the market value of the property on the day that you made the contribution or gift; and
  - (b) the amount that you paid for the property.

#### *\$1,500 limit on deductions*

- (3) You cannot deduct more than \$1,500 under this Subdivision for an income year for contributions and gifts to political parties.
- (4) You cannot deduct more than \$1,500 under this Subdivision for an income year for contributions and gifts to \*independent candidates or \*independent members.

### **30-244 When an individual is an independent candidate**

- (1) An individual is an *independent candidate* if:
  - (a) the individual is a candidate in an election (including an election that is later declared void) for members of the Commonwealth Parliament, a State Parliament, the Legislative Assembly of the Northern Territory or the Legislative Assembly for the Australian Capital Territory; and
  - (b) the individual's candidature is not endorsed by a political party that is registered under Part XI of the *Commonwealth Electoral Act 1918* or under corresponding State or Territory legislation.
- (2) However, an individual does not start being an \*independent candidate until the candidates for the election are declared or otherwise publicly announced by an entity authorised under the relevant electoral legislation.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 30-245

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- (3) An individual stops being an \*independent candidate when the result of the election is declared or otherwise publicly announced by an entity authorised under the relevant electoral legislation.
- (4) If:
  - (a) the election is taken to have wholly failed under the relevant electoral legislation; and
  - (b) the result of the election has not been declared or otherwise publicly announced by an entity authorised under the relevant electoral legislation;the individual stops being an \*independent candidate in that election when candidates for the replacement election are declared or otherwise publicly announced by an entity authorised under the relevant electoral legislation.

**30-245 When an individual is an independent member**

- (1) An individual is an *independent member* of the Commonwealth Parliament, a State Parliament, the Legislative Assembly of the Northern Territory or the Legislative Assembly for the Australian Capital Territory if the individual:
  - (a) is a member of that Parliament or Legislative Assembly; and
  - (b) the individual is not a member of a political party that is registered under Part XI of the *Commonwealth Electoral Act 1918* or under corresponding State or Territory legislation.
- (2) An individual who becomes a member as a result of an election (including an election that is later declared void) is taken to start being a member of the Parliament or Legislative Assembly when the individual's election as a member is declared or otherwise publicly announced by an entity authorised under the relevant electoral legislation.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 30-DB—Spreading certain gift and covenant deductions over up to 5 income years**

### **Guide to Subdivision 30-DB**

#### **30-246 What this Subdivision is about**

This Subdivision allows you to elect to spread deductions for certain gifts and covenants over up to 5 income years. There are some different requirements for environmental, heritage and cultural property gifts and conservation covenants.

#### **Table of sections**

##### **Operative provisions**

30-247	Gifts and covenants for which elections can be made
30-248	Making an election
30-249	Effect of election
30-249A	Requirements—environmental property gifts
30-249B	Requirements—heritage property gifts
30-249C	Requirements—certain cultural property gifts
30-249D	Requirements—conservation covenants

#### **Operative provisions**

##### **30-247 Gifts and covenants for which elections can be made**

- (1) An election under this Subdivision may be made for a gift, made on or after 1 July 2003, that is:
  - (a) a gift of:
    - (i) money; or
    - (ii) property valued by the Commissioner at more than \$5,000;  
made to a fund, authority or institution covered by item 1 or 2 of the table in section 30-15; or
  - (b) a gift that is covered by item 4, 5 or 6 of the table in section 30-15.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 30-248

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- (2) An election under this Subdivision may also be made for entering into a \*conservation covenant, under Division 31, on or after 1 July 2003.

**30-248 Making an election**

- (1) If you can deduct an amount:
  - (a) under this Division for a gift covered by subsection 30-247(1); or
  - (b) under Division 31 for entering into a \*conservation covenant covered by subsection 30-247(2);you may make a written election to spread that deduction over the current income year and up to 4 of the immediately following income years.
- (2) In the election, you must specify the percentage (if any) of the deduction that you will deduct in each of the income years.
- (3) You must make the election before you lodge your \*income tax return for the income year in which you made the gift or entered into the covenant.
- (4) You may vary an election at any time. However, the variation can only change the percentage that you will deduct in respect of income years for which you have not yet lodged an \*income tax return.
- (5) Unless section 30-249A, 30-249B or 30-249C applies, the election and any variation must be in the \*approved form.

Note: Sections 30-249A, 30-249B and 30-249C provide for the form of elections and variations for gifts covered by those sections.

**30-249 Effect of election**

- (1) In each of the income years you specified in the election, you can deduct the amount corresponding to the percentage you specified for that year.
- (2) You cannot deduct the amount that you otherwise would have been able to deduct for the gift in the income year in which you made the gift or entered into the covenant.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**30-249A Requirements—environmental property gifts**

- (1) This section applies if you make an election for a gift of property made to a fund, authority or institution covered by section 30-55.
- (2) You must give a copy of the election to the \*Environment Secretary before you lodge your \*income tax return for the income year in which you made the gift.
- (3) If you vary the election, you must give a copy of the variation to the \*Environment Secretary before you lodge your \*income tax return for the first income year to which the variation applies.
- (4) The election and any variation must be in a form approved in writing by the \*Environment Secretary.

**30-249B Requirements—heritage property gifts**

- (1) This section applies if you make an election for a gift of property made to a fund, authority or institution covered by item 6 of the table in section 30-15.
- (2) You must give a copy of the election to the \*Heritage Secretary before you lodge your \*income tax return for the income year in which you made the gift.
- (3) If you vary the election, you must give a copy of the variation to the \*Heritage Secretary before you lodge your \*income tax return for the first income year to which the variation applies.
- (4) The election and any variation must be in a form approved in writing by the \*Heritage Secretary.

**30-249C Requirements—certain cultural property gifts**

- (1) This section applies if you make an election for a gift covered by item 4 or 5 of the table in section 30-15.
- (2) You must give a copy of the election to the \*Arts Secretary before you lodge your \*income tax return for the income year in which you made the gift.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 30-249D

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- (3) If you vary the election, you must give a copy of the variation to the \*Arts Secretary before you lodge your \*income tax return for the first income year to which the variation applies.
- (4) The election and any variation must be in a form approved in writing by the \*Arts Secretary.

**30-249D Requirements—conservation covenants**

- (1) This section applies if you make an election for a \*conservation covenant.
- (2) You must give a copy of the election to the \*Environment Secretary before you lodge your \*income tax return for the income year in which you entered the covenant.
- (3) If you vary the election, you must give a copy of the variation to the \*Environment Secretary before you lodge your \*income tax return for the first income year to which the variation applies.

**Subdivision 30-E—Register of environmental organisations**

**Guide to Subdivision 30-E**

**30-250 What this Subdivision is about**

This Subdivision requires the establishment of a register of environmental organisations. Section 30-15 allows you to deduct a gift that you make to a fund that is on the register.

**Table of sections**

**Operative provisions**

30-255	Establishing the register
30-260	Meaning of <i>environmental organisation</i>
30-265	Its principal purpose must be protecting the environment
30-270	Other requirements it must satisfy
30-275	Further requirement for a body corporate or a co-operative society
30-280	What must be on the register

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

30-285 Removal from the register

## **Operative provisions**

### **30-255 Establishing the register**

The \*Environment Secretary must keep a register of  
\*environmental organisations.

Note: Section 30-280 sets out what details must be entered on the register.

### **30-260 Meaning of *environmental organisation***

An *environmental organisation* is:

- (a) a body corporate; or
- (b) a co-operative society; or
- (c) a trust; or
- (d) an unincorporated body established for a public purpose by the Commonwealth, a State or a Territory;

that satisfies each requirement in sections 30-265 and 30-270.

Note: A body corporate or a co-operative society must satisfy a further requirement: see section 30-275.

### **30-265 Its principal purpose must be protecting the environment**

- (1) Its principal purpose must be:
  - (a) the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or
  - (b) the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.
- (2) It must maintain a public fund that meets the requirements of section 30-130, or would meet those requirements if the \*environmental organisation were a fund, authority or institution.
- (4) It must have agreed to comply with any rules that the Treasurer and the \*Environment Minister make to ensure that gifts made to the fund are used only for its principal purpose.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 30-270

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**30-270 Other requirements it must satisfy**

*No payment of profits to its members*

- (1) It must not pay any of its profits or financial surplus, or give any of its property, to its members, beneficiaries, controllers or owners (as appropriate).

*No acting as a conduit*

- (2) It must have a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons.

*Surplus assets to be transferred on winding up*

- (3) It must have rules providing that, if the public fund is wound up, any surplus assets of the fund are to be transferred to another fund that is on the register.

*Statistical information to be provided*

- (4) It must have agreed to give the \*Environment Secretary, within a reasonable period after the end of each income year, statistical information about gifts made to the public fund during that income year.

**30-275 Further requirement for a body corporate or a co-operative society**

A body corporate (except a statutory authority) or a co-operative society is an *environmental organisation* only if:

- (a) its membership consists principally of bodies corporate; or
- (b) it has at least 50 members who are individuals that are:
  - (i) regarded as financial members; and
  - (ii) entitled to vote at a general meeting of it; or
- (c) the \*Environment Minister has determined that, because of special circumstances, it does not have to meet either of the requirements in paragraph (a) or (b).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



### **30-280 What must be on the register**

- (1) The \*Environment Secretary must enter on the register each \*environmental organisation, and the public fund it maintains, that he or she has been directed to enter by the Treasurer and the \*Environment Minister.
- (2) The Treasurer and the Minister may so direct the Secretary only if the Minister has notified the Treasurer that he or she is satisfied that an organisation is an \*environmental organisation. The notification must be in writing.
- (3) The direction must be in writing and must specify the day on which the organisation and public fund are to be entered on the register. The day must be the day on which the direction is given or a later day.
- (4) The Treasurer and the \*Environment Minister must have regard to the policies and budgetary priorities of the Commonwealth Government in deciding whether to give a direction.

### **30-285 Removal from the register**

- (1) The Treasurer and the \*Environment Minister may direct the \*Environment Secretary to remove an \*environmental organisation, and the public fund it maintains, from the register.
- (2) The direction must be in writing and must specify the day on which the organisation and public fund are to be removed from the register. The day must be the day on which the direction is given or a later day.

## **Subdivision 30-EA—Register of harm prevention charities**

### **Guide to Subdivision 30-EA**

#### **30-286 What this Subdivision is about**

This Subdivision requires the establishment of a register of harm prevention charities. Section 30-15 allows you to deduct a gift that you make to a fund that is on the register.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 30-287

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**Table of sections**

**Operative provisions**

30-287	Establishing the register
30-288	Meaning of <i>harm prevention charity</i>
30-289	Principal activity—promoting the prevention or control of harm or abuse
30-289A	Other requirements
30-289B	What must be on the register
30-289C	Removal from the register

**Operative provisions**

**30-287 Establishing the register**

The Secretary of the Department of Family and Community Services must keep a register of \*harm prevention charities.

Note: Section 30-289B sets out what details must be entered on the register.

**30-288 Meaning of *harm prevention charity***

A *harm prevention charity* is a charitable institution that:

- (a) satisfies each requirement in sections 30-289 and 30-289A;  
and
- (b) is endorsed as exempt from income tax under  
Subdivision 50-B.

**30-289 Principal activity—promoting the prevention or control of harm or abuse**

- (1) The principal activity of the institution must be the promotion of the prevention or the control of \*behaviour that is harmful or abusive to human beings.
- (2) It must maintain a public fund that meets the requirements of section 30-130.
- (4) It must have agreed to comply with any rules that the Treasurer and the Minister for Family and Community Services make to ensure that gifts made to the fund are used only for its principal activity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **30-289A Other requirements**

*No acting as a conduit*

- (1) The institution must have a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons.

*Surplus assets to be transferred on winding up*

- (2) It must have rules providing that, if the public fund is wound up, any surplus assets of the fund are to be transferred to another fund that is on the register.

*Statistical information to be provided*

- (3) It must have agreed to give the Secretary of the Department of Family and Community Services, within a reasonable period after the end of each income year, statistical information about gifts made to the public fund during that income year.

### **30-289B What must be on the register**

- (1) The Secretary of the Department of Family and Community Services must enter on the register each \*harm prevention charity, and the public fund it maintains, that he or she has been directed to enter by the Treasurer and the Minister for Family and Community Services.
- (2) The Treasurer and the Minister may so direct the Secretary only if the Minister has notified the Treasurer that he or she is satisfied that an institution is a \*harm prevention charity. The notification must be in writing.
- (3) The direction must be in writing and must specify the day on which the charity and public fund are to be entered on the register. The day must be the day on which the direction is given or a later day.
- (4) The Treasurer and the Minister for Family and Community Services must have regard to the policies and budgetary priorities of the Commonwealth Government in deciding whether to give a direction.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 30-289C

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**30-289C Removal from the register**

- (1) The Treasurer and the Minister for Family and Community Services may direct the Secretary of the Department of Family and Community Services to remove a \*harm prevention charity, and the public fund it maintains, from the register.
- (2) The direction must be in writing and must specify the day on which the charity and public fund are to be removed from the register. The day must be the day on which the direction is given or a later day.

**Subdivision 30-F—Register of cultural organisations**

**Guide to Subdivision 30-F**

**30-290 What this Subdivision is about**

This Subdivision requires the establishment of a register of cultural organisations. Section 30-15 allows you to deduct a gift that you make to a fund that is on the register.

**Table of sections**

**Operative provisions**

30-295	Establishing the register
30-300	Meaning of <i>cultural organisation</i>
30-305	What must be on the register
30-310	Removal from the register

**Operative provisions**

**30-295 Establishing the register**

The Secretary to the Department of Communications and the Arts must keep a register of \*cultural organisations.

Note: Section 30-305 sets out what details must be entered on the register.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **30-300 Meaning of *cultural organisation***

- (1) A *cultural organisation* is:
  - (a) a body corporate; or
  - (b) a trust; or
  - (c) an unincorporated body established for a public purpose by the Commonwealth, a State or a Territory;that satisfies each requirement in this section.
- (2) Its principal purpose must be the promotion of literature, music, a performing art, a visual art, a craft, design, film, video, television, radio, community arts, Aboriginal arts or movable cultural heritage.
- (3) It must maintain a public fund that meets the requirements of section 30-130, or would meet those requirements if the \*cultural organisation were a fund, authority or institution.
- (5) It must not pay any of its profits or financial surplus, or give any of its property, to its members, beneficiaries, controllers or owners (as appropriate).
- (6) It must have agreed to comply with any rules that the Treasurer and the Minister for Communications and the Arts make to ensure that gifts made to the fund are used only for its principal purpose.
- (7) It must have agreed to give the Secretary to the Department of Communications and Arts, at intervals of 6 months, statistical information about gifts made to the public fund during the last 6 months.

### **30-305 What must be on the register**

- (1) The Secretary to the Department of Communications and the Arts must enter on the register each \*cultural organisation, and the public fund it maintains, that he or she has been directed to enter by the Treasurer and the Minister for Communications and the Arts.
- (2) The Treasurer and the Minister may so direct the Secretary only if the Minister has notified the Treasurer that he or she is satisfied

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

**Section 30-310**

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that an organisation is a \*cultural organisation. The notification must be in writing.

- (3) The direction must be in writing and must specify the day on which the organisation and public fund are to be entered on the register. The day must be the day on which the direction is given or a later day.
- (4) The Treasurer and the Minister for Communications and the Arts must have regard to the policies and budgetary priorities of the Commonwealth Government in deciding whether to give a direction.

**30-310 Removal from the register**

- (1) The Treasurer and the Minister for Communications and the Arts may direct the Secretary to the Department of Communications and the Arts to remove a \*cultural organisation, and the public fund it maintains, from the register.
- (2) The direction must be in writing and must specify the day on which the organisation and public fund are to be removed from the register. The day must be the day on which the direction is given or a later day.

**Subdivision 30-G—Index to this Division**

**Table of sections**

30-315	Index
30-320	Effect of this Subdivision

**30-315 Index**

- (1) The table in this section gives you an index to this Division.
- (2) It tells you:
  - each topic covered by this Division; and
  - where in this Division you can find the detail about each topic.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: In the last column there are many references in this form: item 2.2.1.  
These refer to items in the tables in Subdivision 30-B.

<b>Index</b>		
<b>Topic</b>		<b>Provision</b>
1A	2009 Victorian Bushfire Appeal Trust Account	item 4.2.41
1AA	Aboriginal Education Council (N.S.W.) Incorporated	item 2.2.26
1	Academies - professional	section 30-25
2	Academy of the Social Sciences in Australia Incorporated	item 2.2.1
2AAA	ACT Playgroups Association Incorporated	item 8.2.9
2AAB	ACT Region Crime Stoppers Limited	item 4.2.31A
2AB	ACT Rural Fire Service	item 12A.2.13
2AC	ACT State Emergency Service	item 12A.2.14
2ACA	AE 2 Commemorative Foundation Ltd	item 5.2.29
2AD	American Australian Association Limited	item 9.2.18
3	Amnesty International Australia	item 4.2.1
3A	Amy Gillett Foundation	item 10.2.8
4	Ancillary funds	item 2 of the table in section 30-15
4A	Animal welfare	item 4.1.6
5	Antarctic research	item 3.2.3
6	Approved research institutes	item 3.1.1
7	Armed forces, auxiliaries	item 5.1.2
8	Artbank	item 5 of the table in section 30-15
9	Art galleries	items 12.1.4 and 12.1.5; item 4 of the table in section 30-15
9AA	Asia Society AustralAsia Centre	item 9.2.7
9AB	Australasian College for Emergency Medicine	item 1.2.18
9A	Australia for UNHCR	item 9.2.10

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-315

---

<b>Index</b>		
<b>Topic</b>		<b>Provision</b>
10	Australian Academy of Science	item 2.2.2
11	Australian Academy of Technological Sciences and Engineering Limited	item 2.2.4
12	Australian Academy of the Humanities for the Advancement of Scholarship in Language, Literature, History, Philosophy and the Fine Arts	item 2.2.3
13A	Australian American Education Leadership Foundation Limited	item 9.2.4
14	Australiana Fund	item 12.2.1; item 4 of the table in section 30-15
15	Australian and New Zealand Association for the Advancement of Science	item 2.2.6
16	Australian and New Zealand College of Anaesthetists	item 1.2.13
17	Australian Antarctic Territory, payment to Commonwealth for research	item 3.2.3
17AAA	Australian Breastfeeding Association	item 8.2.3
17AA	Australian Business Arts Foundation Ltd.	item 12.2.2
17A	Australian Business Register	section 30-229
17B	Australian Business Week Limited	item 7.2.5
19	Australian College of Occupational Medicine	item 1.2.2
20	Australian Conservation Foundation Incorporated	item 6.2.1
20AA	Australian Council for Children and Youth Organisations Inc.	item 13.2.4
20A	Australian Council of Christians and Jews	item 2.2.17
21	Australian Games Uniform Company Limited	item 10.2.6
21A	Australian Human Rights Education Fund	item 2.2.25
22	Australian Institute of International Affairs	item 9.2.1
23	Australian Ireland Fund	item 2.2.7
24	Australian National Travel Association	item 9.2.2

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---



<b>Index</b>		
<b>Topic</b>		<b>Provision</b>
24A	Australian Nuffield Farming Scholars Association	item 2.2.20
24B	Australian Peacekeeping Memorial Project Incorporated	item 13.2.15
25	Australian Postgraduate Federation in Medicine	item 1.2.3
25A	Australian Primary Principals Association Education Foundation	item 2.2.22
25C	Australian Red Cross Society—US 2005 Hurricane Relief Appeal	item 9.2.15
26	Australian Regional Council of the Royal College of Obstetricians and Gynaecologists	item 1.2.11
27	Australian Sports Foundation	item 10.2.1
27AA	Bathurst War Memorial Carillon Public Fund Trust	item 5.2.28
27A	Bionic Ear Institute	item 1.2.17
28AAA	Bowral Vietnam Memorial Walk Trust Incorporated	item 5.2.16
28AA	Bradman Memorial Fund	item 10.2.7
28A	Breast Cancer Network Australia	item 1.2.15
28ABA	Bunbury Diocese Cathedral Rebuilding Fund	13.2.14A
28AB	Business Against Domestic Violence Reserve	item 4.2.15
30	Centre for Independent Studies	item 3.2.1
30AA	C E W Bean Foundation	item 5.2.26
30A	CFA & Brigades Donations Fund	item 12A.2.4
30B	Chifley Research Centre Limited	item 3.2.8
31	Child Accident Prevention Foundation of Australia	item 4.2.2
31A	City of Onkaparinga Memorial Gardens Association Inc	item 5.2.24
31B	Clontarf Foundation Inc.	item 2.2.32

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-315

---

<b>Index</b>		
<b>Topic</b>		<b>Provision</b>
33	College buildings	item 2.1.10
34	College of Radiologists in Australasia	item 1.2.4
34AA	Commonwealth Study Conferences (Australia) Incorporated	item 2.2.23
35	Conditional gifts	section 30-220
36	Connellan Airways Trust	item 11.2.1
37	Conservation bodies	section 30-55
38	Constitutional Centenary Foundation Incorporated	item 2.2.15
39	Council for Christian Education in Schools	item 2.2.10
39A	Council for Jewish Community Security	item 13.2.1
40	Council for Jewish Education in Schools	item 2.2.11
40A	Country Education Foundation of Australia Limited	item 2.2.31
40AA	Country Fire Authority (Victoria)	item 12A.2.2
40B	Crime Stoppers South Australia Limited	item 4.2.27
40C	Crime Stoppers Northern Territory Program	item 4.2.31
41	Cultural Bequests Program, testamentary gifts	Subdivision 30-D
42	Cultural organisations	section 30-100
43	Cultural organisations, register of	Subdivision 30-F
44	Defence organisations	section 30-50
44AAA	Diplomacy Training Program Limited	item 9.2.21
44AA	Disaster relief—public fund for relief of people in Australia	item 4.1.5
44AB	Disaster relief—public fund for relief of people in developing countries	item 9.1.1
44AC	Disaster relief—public fund for relief of people in developed countries	item 9.1.2
44A	Diseases—charitable institutions whose principal activity is to promote the prevention or the control of diseases in human beings	items 1.1.6 and 4.1.7

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

<b>Index</b>		
<b>Topic</b>		<b>Provision</b>
45	Diseases—institutions researching causes, prevention or cure	items 1.1.4 and 1.1.5
45AAA	Don Chipp Foundation Ltd	item 3.2.9
45AA	Dunn and Lewis Youth Development Foundation Limited	item 13.2.6
45A	Dymocks Literacy Foundation Limited	item 2.2.21
46	Education—education bodies	section 30-25
46AA	Education—public fund for scholarships, bursaries and prizes	item 2.1.13
46A	Endorsement as a deductible gift recipient	Subdivision 30-BA
47	Environmental organisations	section 30-55
48	Environmental organisations, register of	Subdivision 30-E
48A	Family and child mediation and counselling	item 8.1.1
49	Family organisations	section 30-70
49B	Fire and emergency services	section 30-102
49C	Fire and Emergency Services Authority of Western Australia	item 12A.2.7
50	Foundation for Development Cooperation Ltd	item 9.2.3
50A	Foundation for Gambling Studies	item 2.2.19
50B	Foundation for Rural and Regional Renewal Public Fund	item 13.2.2
50C	Foundation for Young Australians	item 11.2.8
51	Friends of the Duke of Edinburgh's Award in Australia Incorporated	item 11.2.2
51AA	Fund-raising events—contributions	items 7 and 8 of the table in section 30-15
51A	General Sir John Monash Foundation	item 2.2.27
52	Global Foundation	item 9.2.8
52A	Grattan Institute	item 3.2.11
53	Greening Australia Limited	item 6.2.2
53A	Guides Australia Incorporated	items 10.2.2 and 10.2.3

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-315

---

<b>Index</b>		
<b>Topic</b>		<b>Provision</b>
53B	Harm prevention charities	items 4.1.4 and 4.1.7
54	Health organisations	section 30-20
56	Heritage properties	item 6 of the table in section 30-15
57	Higher education institutions	item 2.1.3
58	Hospitals	items 1.1.1, 1.1.2 and 1.1.3
60	Ian Clunies Ross Memorial Foundation	item 3.2.2
60A	Indigenous Community Volunteers Limited	item 7.2.4
61	Industrial Design Council of Australia	item 7.2.1
62	Industry, trade and design	section 30-65
63	International affairs	section 30-80
63A	International Social Service - Australian Branch	item 4.2.28
63B	International Specialised Skills Institute Incorporated	item 2.2.33
64	Joint ownership of property	section 30-225
64A	Kidsafe	items 4.2.32 to 4.2.39 (inclusive)
65	Landcare Australia Limited	item 6.2.3
65A	Leeuwin Ocean Adventure Foundation Limited	item 13.2.3A
66	Libraries	items 12.1.2 and 12.1.5; item 4 of the table in section 30-15
67	Life Education Centre	items 2.2.8 and 2.2.9
67A	Lingiari Policy Centre	item 3.2.10
68	Lionel Murphy Foundation	item 2.2.13
68AA	Lord Somers Camp and Power House	item 13.2.7
68AB	Lowy Institute for International Policy	item 9.2.12
69	Marcus Oldham Farm Management College	item 2.2.14
70	Marriage education organisations	item 8.1.1
70A	Mawson's Huts Foundation Limited	item 6.2.23

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

<b>Index</b>		
<b>Topic</b>		<b>Provision</b>
71	Medical colleges	section 30-20
72	Medical research	section 30-20
72AA	Memorials Development Committee Ltd	item 5.2.30
72A	Menzies Research Centre Public Fund	item 3.2.4
72C	Mt Eliza Graduate School of Business and Government Limited	item 2.2.24
73	Museums	items 12.1.3 and 12.1.5; item 4 of the table in section 30-15
73A	National Breast Cancer Centre Gift Fund	item 1.2.16
74	National Foundation for Australian Women Limited	item 4.2.3
75	National Parks associations	section 30-55
76	National Safety Council of Australia Limited	item 4.2.4
77	National Trust bodies	section 30-55; item 6 of the table in section 30-15
77A	Nature Foundation SA Incorporated	item 6.2.9
78	Nature organisations	section 30-55
79	Necessitous circumstances - funds for relief of persons in	item 4.1.3
80	New South Wales College of Nursing	item 1.2.5
81	Nonprofit Australia Ltd	item 13.2.12
82	Overseas relief funds	item 9.1.1
82A	Page Research Centre Limited	item 3.2.7
83	Pearl Watson Foundation Limited	item 4.2.5
84	People in need, fund for	item 4.1.3
85	Philanthropic trusts	section 30-95
86	Playford Memorial Trust	item 11.2.4
86A	Playgroup Association Northern Territory Incorporated	item 8.2.8
86AA	Playgroup Australia Incorporated	item 8.2.12
86B	Playgroup NSW (Inc)	item 8.2.4

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application**Part 2-5** Rules about deductibility of particular kinds of amounts**Division 30** Gifts or contributions

## Section 30-315

---

<b>Index</b>		
<b>Topic</b>		<b>Provision</b>
86C	Playgroup Queensland Incorporated	item 8.2.6
86CA	Playgroup SA Inc	item 8.2.11
86D	Playgroup Tasmania Inc	item 8.2.7
86DA	Playgroup Victoria Inc.	item 8.2.10
86E	Playgroup WA (Inc)	item 8.2.5
86F	Point Nepean Community Trust	item 13.2.13
87	Political parties and independent candidates and members	Subdivision 30-DA
88	Polly Farmer Foundation (Inc)	item 2.2.16
89	Prevention of cruelty to animals	section 30-45
90	Productivity	section 30-65
91	Productivity Promotion Council of Australia	item 7.2.2
92	Property, rules for valuing gifts	section 30-15 and Subdivision 30-C
92A	Public ambulance services	items 1.1.7 and 1.1.8
93	Public benevolent institutions	items 4.1.1, 4.1.2 and 4.1.7
94	PWR Melbourne 2009 Limited	item 13.2.17
94AA	Queensland Fire and Rescue Service	item 12A.2.5
94AB	Ranfurly Library Service Incorporated	item 12.2.3
94A	Receipts for gifts	Subdivision 30-CA
94B	Reconciliation Australia Limited	item 4.2.19
95	Religious instruction/education	section 30-25
95A	Research Australia Limited	item 3.2.6
96	Research institutions	items 1.1.4 and 1.1.5
97	Residential education institutions	section 30-25
97A	Royal Australian and New Zealand College of Obstetricians and Gynaecologists	item 1.2.1
98	Royal Australian and New Zealand College of Psychiatrists	item 1.2.6
99	Royal Australian College of General Practitioners	item 1.2.7
100	Royal Australasian College of Physicians	item 1.2.8

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

<b>Index</b>		
<b>Topic</b>		<b>Provision</b>
101	Royal Australasian College of Surgeons	item 1.2.9
102	Royal College of Nursing, Australia	item 1.2.12
103	Royal College of Pathologists of Australasia	item 1.2.10
103A	Royal Institution of Australia Incorporated	item 2.2.37
104	Royal Societies for the Prevention of Cruelty to Animals	section 30-45
104B	RSL Foundation	item 5.2.11
105	Rural school hostel buildings	item 2.1.11
105B	Salvation Army Hurricane Katrina Relief Appeal	item 9.2.16
107	School building funds	item 2.1.10
108	Schools	section 30-25
109	Scouts	items 10.2.4 and 10.2.5
110A	Sir Earl Page Memorial Trust	item 3.2.5
111	Sir Robert Menzies Memorial Trust Foundation Limited	item 11.2.5
111A	Sir William Tyree Foundation of The Australian Industry Group	item 2.2.18
111AA	Social Ventures Australia Limited	item 13.2.16
111B	SouthCare Helicopter Fund	item 1.2.14
111C	Spirit of Australia Foundation	item 2.2.36
112	Sports and recreation	section 30-90
112AA	Spreading deductions over income years	Subdivision 30-DB
112AB	State Emergency Service (New South Wales)	item 12A.2.1
112AC	State Emergency Service (Queensland)	item 12A.2.6
112AD	State Emergency Service South Australia	item 12A.2.8
112AE	State Emergency Service (Tasmania)	item 12A.2.10
112AF	St George's Cathedral Restoration Fund	item 13.2.8
112AFA	St Mary's Cathedral Restoration Appeal Incorporated	item 13.2.14
112AG	St Michael's Church Restoration Fund	item 13.2.11

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 30** Gifts or contributions

Section 30-315

---

<b>Index</b>		
<b>Topic</b>		<b>Provision</b>
112BA	St Paul's Cathedral Restoration Fund	item 13.2.5
112C	Sydney Talmudical College Association Refugees Overseas Aid Fund	item 9.2.5
112E	Tasmania Fire Service	item 12A.2.9
113	Tasmanian Conservation Trust Incorporated	item 6.2.11
114	Taxation incentives for the Arts scheme	items 4 and 5 of the table in section 30-15
115	Technical and further education institution	item 2.1.7
116	Tertiary education/TAFE	section 30-25
116A	Trust for Nature (Victoria)	item 6.2.6
117	Trusts—ancillary	item 2 of the table in section 30-15
118	Trusts—philanthropic	section 30-95
118A	United Israel Appeal Refugee Relief Fund Limited	item 9.2.6
119	Universities – general	section 30-25
120	Universities – research	section 30-40
120A	Valuations by Commissioner	section 30-212
121	Valuers	section 30-210
121A	Victorian Crime Stoppers Program	item 4.2.29
121B	Victoria State Emergency Service	item 12A.2.3
121C	Vietnam War Memorial of Victoria Incorporated	item 5.2.27
122	Visy Cares	item 11.2.9
123	War Memorials	section 30-50
124	Welfare and rights	section 30-45
124A	WHEELCHAIRS FOR KIDS Incorporated	item 9.2.19
125	Winston Churchill Memorial Trust	item 11.2.7
126	WorldSkills Australia Inc.	item 7.2.3
127	World Wide Fund for Nature Australia	item 6.2.22
127AA	World Youth Day 2008 Trust	item 9.2.20
127A	Xanana Vocational Education Trust	item 9.2.17

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Index</b>		
<b>Topic</b>		<b>Provision</b>
127B	Yachad Accelerated Learning Project Limited	item 2.2.34
128	Young Endeavour Youth Scheme Public Fund	item 13.2.3

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### **30-320 Effect of this Subdivision**

This Subdivision is a \*Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 31—Conservation covenants**

### **Guide to Division 31**

#### **31-1 What this Division is about**

You can deduct an amount if you enter into a conservation covenant over land that you own and you satisfy certain conditions.

The amount you can deduct is the difference between the market value of the land just before and after you enter into the covenant.

#### **Table of sections**

##### **Operative provisions**

31-5	Deduction for entering into conservation covenant
31-10	Requirements for fund, authority or institution
31-15	Valuations by the Commissioner

#### **Operative provisions**

##### **31-5 Deduction for entering into conservation covenant**

- (1) You can deduct an amount if:
  - (a) you enter into a \*conservation covenant over land you own;  
and
  - (b) the conditions set out in subsection (2) are met.
- (2) These conditions must be satisfied:
  - (a) the covenant must be perpetual;
  - (b) you must not receive any money, property or other material benefit for entering into the covenant;
  - (c) the \*market value of the land must decrease as a result of your entering into the covenant;
  - (d) one or both of these must apply:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) the change in the market value of the land as a result of entering into the covenant must be more than \$5,000;
- (ii) you must have entered into a contract to acquire the land not more than 12 months before you entered into the covenant;
- (e) the covenant must have been entered into with:
  - (i) a fund, authority or institution that meets the requirements of section 31-10; or
  - (ii) the Commonwealth, a State, a Territory or a \*local governing body; or
  - (iii) an authority of the Commonwealth, a State or a Territory.

Note: You must seek a valuation of the change in market value from the Commissioner: see section 31-15.

- (3) The amount you can deduct is the difference between the \*market value of the land just before you entered the covenant and its decreased market value just after that time, but only to the extent that the decrease is attributable to your entering into the covenant.

Note: You can spread the deduction over a 5 year period: see Subdivision 30-DB.

- (4) For the purposes of paragraph (2)(a), a covenant is treated as being perpetual even if a Minister of a State or Territory has a power to rescind it.
- (5) A **conservation covenant** over land is a covenant that:
  - (a) restricts or prohibits certain activities on the land that could degrade the environmental value of the land; and
  - (b) is permanent and registered on the title to the land (if registration is possible); and
  - (c) is approved in writing by, or is entered into under a program approved in writing by, the \*Environment Minister.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 31-10

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**31-10 Requirements for fund, authority or institution**

- (1) The fund, authority or institution:
  - (a) must be covered by an item in any of the tables in Subdivision 30-B and must meet any conditions set out in the relevant table item; or
  - (b) must be a public fund, or a \*prescribed private fund, established under a will or instrument of trust solely for:
    - (i) the purpose of providing money, property or benefits to a fund, authority or institution mentioned in paragraph (a) and for any purposes set out in the item of the table in Subdivision 30-B that covers the fund, authority or institution; or
    - (ii) the establishment of such a fund, authority or institution.
- (2) If the fund, authority or institution is not listed specifically in Subdivision 30-B, it must also:
  - (a) be in Australia; and
  - (b) meet the requirements of section 30-17 (about the endorsement of deductible gift recipients) or be a \*prescribed private fund.

**31-15 Valuations by the Commissioner**

- (1) You must seek a valuation of the change in the \*market value of the land from the Commissioner for the purposes of this Division.
- (2) The Commissioner may charge you the amount worked out in accordance with the regulations for making the valuation.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 32—Entertainment expenses**

### **Table of Subdivisions**

	Guide to Division 32
32-A	No deduction for entertainment expenses
32-B	Exceptions
32-C	Definitions relevant to the exceptions
32-D	In-house dining facilities (employer expenses table item 1.2)
32-E	Anti-avoidance
32-F	Special rules for companies and partnerships

### **Guide to Division 32**

#### **32-1 What this Division is about**

You cannot deduct costs of providing entertainment. Nor can you deduct amounts for property that you use for providing entertainment. But there are exceptions.

#### **Subdivision 32-A—No deduction for entertainment expenses**

##### **Table of sections**

32-5	No deduction for entertainment expenses
32-10	Meaning of <i>entertainment</i>
32-15	No deduction for property used for providing entertainment

#### **32-5 No deduction for entertainment expenses**

To the extent that you incur a loss or outgoing in respect of providing \*entertainment, you cannot deduct it under section 8-1. However, there are exceptions, which are set out in Subdivision 32-B.

Note 1: Under section 8-1 you can deduct a loss or outgoing that you incur for the purpose of producing assessable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 32-10

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- Note 2: If you have used your property in providing entertainment, you may not be able to deduct an amount for the property: see section 32-15.
- Note 3: Section 32-75 deals with arrangements to avoid the operation of this section.

**32-10 Meaning of *entertainment***

- (1) ***Entertainment*** means:
- (a) entertainment by way of food, drink or \*recreation; or
  - (b) accommodation or travel to do with providing entertainment by way of food, drink or \*recreation.
- (2) You are taken to provide ***entertainment*** even if business discussions or transactions occur.

Note: These are some examples of what is entertainment:

- business lunches
- social functions.

These are some examples of what is *not* entertainment:

- meals on business travel overnight
- theatre attendance by a critic
- a restaurant meal of a food writer.

**32-15 No deduction for property used for providing entertainment**

To the extent that you use property in providing \*entertainment, your use of the property is taken *not* to be for the \*purpose of producing assessable income if section 32-5 would stop you deducting a loss or outgoing if you incurred it in the income year in providing the entertainment.

Note: Under some provisions of this Act, in order to deduct an amount for your property, you must have used the property for the purpose of producing assessable income.

**Subdivision 32-B—Exceptions**

**Table of sections**

32-20	The main exception—fringe benefits
32-25	The tables set out the other exceptions
32-30	Employer expenses

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- 32-35 Seminar expenses
- 32-40 Entertainment industry expenses
- 32-45 Promotion and advertising expenses
- 32-50 Other expenses

### 32-20 The main exception—fringe benefits

Section 32-5 does not stop you deducting a loss or outgoing to the extent that you incur it in respect of providing \*entertainment by way of \*providing a \*fringe benefit.

But this exception does not apply to the extent that the taxable value of the \*fringe benefit is reduced under section 63A of the *Fringe Benefits Tax Assessment Act 1986*.

Note 1: You may be able to deduct losses or outgoings that are fringe benefits under section 51AEA, 51AEB or 51AEC of the *Income Tax Assessment Act 1936*. If you do, then you cannot deduct them under section 8-1 (about general deductions) and so this section is not relevant.

Note 2: There are other exceptions for a loss or outgoing you incur in providing a benefit that would be a fringe benefit if it were not an exempt benefit: see items 1.6 and 1.7 of the table in section 32-30.

### 32-25 The tables set out the other exceptions

Section 32-5 does not stop you deducting a loss or outgoing to the extent that you incur it in respect of providing \*entertainment as described in column 2 of an item of a table in this Subdivision.

However, if column 3 of that item applies, the exception in column 2 of that item does not.

### 32-30 Employer expenses

Employer expenses		
Item	Section 32-5 does not stop you deducting a loss or outgoing for ...	But the exception does not apply if ...
1.1	providing food or drink to your employees in an *in-house dining facility.	the food or drink is provided at a party, reception or other social function.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 32** Entertainment expenses

Section 32-30

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<b>Employer expenses</b>		
<b>Item</b>	<b>Section 32-5 does not stop you deducting a loss or outgoing for ...</b>	<b>But the exception does not apply if ...</b>
1.2	providing food or drink to individuals (other than your employees) in an *in-house dining facility.	(a) you choose (under section 32-70) <i>not</i> to include in your assessable income \$30 for each meal you provide in the *in-house dining facility in the income year to an individual (other than your employee); <i>or</i>  (b) the food or drink is provided at a party, reception or other social function.
1.3	providing food or drink in a *dining facility to your employees who perform most of their duties in connection with:  (a) the dining facility; or  (b) a facility (of which the dining facility forms a part) for providing accommodation, *recreation or travel.	the food or drink is provided at a party, reception or other social function.
1.4	providing food or drink to your employee under an *industrial instrument relating to overtime.	
1.5	providing a facility for *recreation on property you occupy, if the facility is mainly operated for your employees to use.	the facility is for:  (a) accommodation; or  (b) dining or drinking (unless it is a food or drink vending machine).
1.6	providing food or drink which would be a *fringe benefit apart from sections 54, 58, 58N, 58S and 58T of the <i>Fringe Benefits Tax Assessment Act 1986</i> (disregarding section 58P of that Act).	

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Employer expenses</b>		
Item	Section 32-5 does not stop you deducting a loss or outgoing for ...	But the exception does not apply if ...
1.7	providing a meal which would be a *fringe benefit apart from sections 58A, 58F, 58L, 58LA and 58M of the <i>Fringe Benefits Tax Assessment Act 1986</i> (disregarding section 58P of that Act).	
1.8	giving your employee an allowance that is included in his or her assessable income.	(a) the employee is a *relative of another employee of yours; <i>and</i> (b) you give the allowance to the relative, as your employee, because: (i) he or she provides, or facilitates providing, *entertainment to do with the other employee's employment; <i>and</i> (ii) you expect the relative to do so.

Note 1: In the case of a company, items 1.1, 1.2, 1.3, 1.5 and 1.8 cover directors of the company as if they were employees: see section 32-80.

Note 2: In the case of a company, items 1.1, 1.2, 1.3 and 1.5 cover directors, employees and property of another company that is a member of the same wholly-owned group: see section 32-85.

Note 3: Item 1.8 has a special operation for partnerships: see section 32-90.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 32** Entertainment expenses

Section 32-35

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**32-35 Seminar expenses**

<b>Seminar expenses</b>		
<b>Item</b>	<b>Section 32-5 does not stop you deducting a loss or outgoing for ...</b>	<b>But the exception does not apply if ...</b>
2.1	providing food, drink, accommodation or travel to an individual (including yourself) that is reasonably incidental to the individual attending a *seminar that *goes for at least 4 hours.	(a) the seminar is a *business meeting; <i>or</i> (b) the *seminar's main purpose is to promote or advertise a *business (or prospective *business) or its goods or services; <i>or</i> (c) the *seminar's main purpose is to provide *entertainment at, or in connection with, the seminar.

**32-40 Entertainment industry expenses**

<b>Entertainment industry expenses</b>		
<b>Item</b>	<b>Section 32-5 does not stop you deducting a loss or outgoing for ...</b>	<b>But the exception does not apply if ...</b>
3.1	providing *entertainment for payment in the ordinary course of a *business that you carry on.	
3.2	providing *entertainment in performing your duties to your employer who carries on a *business that includes providing that entertainment for payment.	

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 32-45 Promotion and advertising expenses

Promotion and advertising expenses		
Item	Section 32-5 does not stop you deducting a loss or outgoing for ...	But the exception does not apply if ...
4.1	providing *entertainment if: (a) you provide it to an individual under a contract to supply him or her with goods or services in the ordinary course of your *business; <i>and</i> (b) you incur the loss or outgoing to promote or advertise to the public your business or its goods or services.	
4.2	providing or exhibiting your *business's goods or services if you incur the loss or outgoing to promote or advertise those goods or services to the public.	
4.3	providing *entertainment to promote or advertise to the public a *business or its goods or services.	some people have a greater opportunity to get the benefits of the entertainment than ordinary members of the public have.

### 32-50 Other expenses

Other expenses		
Item	Section 32-5 does not stop you deducting a loss or outgoing for ...	But the exception does not apply if ...
5.1	buying food or drink to do with overtime that you work, if you receive an allowance under an *industrial instrument to buy the food or drink.	

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 32-55

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Other expenses		
Item	Section 32-5 does not stop you deducting a loss or outgoing for ...	But the exception does not apply if ...
5.2	providing *entertainment free to members of the public who are sick, disabled, poor or otherwise disadvantaged.	

**Subdivision 32-C—Definitions relevant to the exceptions**

**Table of sections**

32-55	In-house dining facility (employer expenses table items 1.1 and 1.2)
32-60	Dining facility (employer expenses table item 1.3)
32-65	Seminars (seminar expenses table item 2.1)

**32-55 In-house dining facility (employer expenses table items 1.1 and 1.2)**

An *in-house dining facility* is a canteen, dining room or similar facility that:

- (a) is on property you occupy; and
- (b) is operated mainly for providing food and drink to your employees; and
- (c) is not open to the public.

Note 1: In the case of a company, this definition also covers directors of the company as if they were employees: see section 32-80.

Note 2: In the case of a company, this definition also covers directors, employees and property of another company that is a member of the same wholly-owned group: see section 32-85.

**32-60 Dining facility (employer expenses table item 1.3)**

A *dining facility* is:

- (a) a canteen, dining room or similar facility; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) a cafe, restaurant or similar facility;  
that is on property you occupy.

Note: In the case of a company, this definition also covers property of another company that is a member of the same wholly-owned group: see section 32-85.

### **32-65 Seminars (seminar expenses table item 2.1)**

- (1) *Seminar* includes a conference, convention, lecture, meeting (including a meeting for the presentation of awards), speech, “question and answer session”, training session or educational course.
- (2) In working out whether a \*seminar *goes for at least 4 hours* the following are taken not to affect the seminar’s continuity, nor to form part of it:
  - (a) any part of the seminar that occurs during a meal;
  - (b) any break during the seminar for the purpose of a meal, rest or \*recreation.
- (3) A \*seminar is a *business meeting* if its main purpose is for individuals who are (or will be) associated with the carrying on of a particular \*business to give or receive information, or discuss matters, relating to the business.

However, the \*seminar is *not a business meeting* if it:

- (a) is organised by (or on behalf of) an employer solely for either or both of these purposes:
  - (i) training the employer and the employer’s employees (or just those employees) in matters relevant to the employer’s \*business (or prospective \*business);
  - (ii) enabling the employer and the employer’s employees (or just those employees) to discuss general policy issues relevant to the internal management of the employer’s \*business; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 32-70

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- (b) is conducted on property that is occupied by a person (other than the employer) whose \*business includes organising seminars or making property available for conducting seminars.

Note 1: In the case of a company, subsection (3) covers directors of the company as if they were employees: see section 32-80.

Note 2: In the case of a company, paragraph (3)(b) also covers property of another company that is a member of the same wholly-owned group: see section 32-85.

Note 3: Subsection (3) has a special operation for partnerships: see section 32-90.

**Subdivision 32-D—In-house dining facilities (employer expenses table item 1.2)**

**Table of sections**

32-70 \$30 is assessable for each meal provided to non-employee in an in-house dining facility

**32-70 \$30 is assessable for each meal provided to non-employee in an in-house dining facility**

- (1) Your assessable income includes \$30 for a meal you provide in an \*in-house dining facility in the income year to an individual other than your employee, but only if:
- (a) you incur a loss or outgoing in respect of providing the meal; and
  - (b) because of item 1.2 of the table in section 32-30, section 32-5 does not stop you deducting the loss or outgoing under section 8-1 (which deals with general deductions); and
  - (c) the loss or outgoing is one that you can deduct under section 8-1 for the income year or some other income year.
- (2) However, you can choose *not* to include in your assessable income \$30 for each meal you provide in the \*in-house dining facility in the income year to an individual other than your employee.

Note: If you do choose, you cannot rely on item 1.2 of the table in section 32-30 as a basis for deducting a loss or outgoing you incur in respect of providing a meal.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) You must choose by the day you lodge your \*income tax return for the income year, or within a further time allowed by the Commissioner.

### **Subdivision 32-E—Anti-avoidance**

#### **Table of sections**

32-75 Commissioner may treat you as having incurred entertainment expense

### **32-75 Commissioner may treat you as having incurred entertainment expense**

If:

- (a) you incur a loss or outgoing under an \*arrangement; and
- (b) someone provides \*entertainment under the arrangement to you or someone else; and
- (c) section 32-5 would have stopped you deducting the loss or outgoing under section 8-1 (which deals with general deductions) if you had incurred it in respect of providing that entertainment;

this Division applies to you as if you had incurred the loss or outgoing in providing that entertainment, to the extent (if any) that the Commissioner thinks reasonable.

Note: This means that section 32-5 will prevent you from deducting the loss or outgoing under section 8-1 unless an exception applies.

Example: A company pays \$1,000 to sponsor a football game. Under the same arrangement, the company is given a viewing box at the game. To the extent the Commissioner thinks reasonable, he or she can treat the company as having incurred the \$1,000 in providing entertainment.

### **Subdivision 32-F—Special rules for companies and partnerships**

#### **Table of sections**

32-80 Company directors  
32-85 Directors, employees and property of wholly-owned group company  
32-90 Partnerships

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 32-80

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**32-80 Company directors**

In the case of a company, these provisions cover directors of the company as if they were the company's employees:

- item 1.1 (exception for \*in-house dining facilities) of the table in section 32-30;
- item 1.2 (exception for \*in-house dining facilities) of the table in section 32-30;
- item 1.3 (exception for \*dining facilities) of the table in section 32-30;
- item 1.5 (exception for recreational facilities) of the table in section 32-30;
- item 1.8 (exception for providing your employee with an allowance) of the table in section 32-30;
- section 32-55 (which defines *in-house dining facility*);
- subsection 32-65(3) (which defines *business meeting*).

**32-85 Directors, employees and property of wholly-owned group company**

*Employees and directors of group company*

(1) In the case of a company, these provisions cover directors and employees of another company that is a member of the same \*wholly-owned group as if they were the company's own directors and employees:

- item 1.1 (exception for \*in-house dining facilities) of the table in section 32-30;
- item 1.2 (exception for \*in-house dining facilities) of the table in section 32-30;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- item 1.3 (exception for \* dining facilities) of the table in section 32-30;
- item 1.5 (exception for recreational facilities) of the table in section 32-30;
- section 32-55 (which defines *in-house dining facility*);
- subsection 32-60(1) (which defines *dining facility*);
- paragraph 32-65(3)(b).

*Property occupied by group company*

- (2) Those provisions also cover property occupied by that other company as if the company occupied that property.

### **32-90 Partnerships**

In the case of a partnership:

- item 1.8 (exception for providing employee with an allowance) of the table in section 32-30; and
  - subsection 32-65(3) (which defines *business meeting*);
- apply to a partner in the same way as they apply to an employee of the partnership, but only for the purposes of calculating, in accordance with section 90 of the *Income Tax Assessment Act 1936*, the partnership's net income or partnership loss.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 34—Non-compulsory uniforms**

### **Table of Subdivisions**

	Guide to Division 34
34-A	Application of Division 34
34-B	Deduction for your non-compulsory uniform
34-C	Registering the design of a non-compulsory uniform
34-D	Appeals from Industry Secretary's decision
34-E	The Register of Approved Occupational Clothing
34-F	Approved occupational clothing guidelines
34-G	The Industry Secretary

### **Guide to Division 34**

#### **34-1 What this Division is about**

This Division is about deductions for the costs of non-compulsory uniforms.

#### **Table of sections**

34-3	What you need to read
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#### **34-3 What you need to read**

##### *Employees*

- (1) If you incur expenditure for your non-compulsory uniform, you need to read Subdivision 34-B (which is about deductions for your non-compulsory uniform), starting at section 34-10.

##### *Employers*

- (2) If you have people working for you who want to deduct expenditure of that kind, you need to read:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Subdivision 34-C (which is about registering the design of a non-compulsory uniform), starting at section 34-25; and
- Subdivision 34-D (which is about appeals from Industry Secretary's decision), starting at section 34-40.

### **Subdivision 34-A—Application of Division 34**

#### **Table of sections**

34-5	This Division applies to employees and others
34-7	This Division applies to employers and others

#### **34-5 This Division applies to employees and others**

- (1) This Division applies not only to an individual who is an employee. It also applies to an individual who is *not* an employee, but who receives, or is entitled to receive, \*withholding payments covered by subsection (3).
- (2) If an individual is *not* an employee, but is covered by subsection (1), this Division applies to the individual as if:
  - (a) he or she were an employee; and
  - (b) the entity, who pays (or is liable to pay) \*withholding payments covered by subsection (3) that result in the individual being in receipt of, or entitled to receive, such payments, were the individual's employer; and
  - (c) any other individual who receives (or is entitled to receive) \*withholding payments covered by subsection (3):
    - (i) that result in that other individual being in receipt of, or entitled to receive, such payments; and
    - (ii) that the entity pays (or is liable to pay) to that other individual;were an employee of the entity.
- (3) This subsection covers a \*withholding payment covered by any of the provisions in Schedule 1 to the *Taxation Administration Act 1953* listed in the table.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 34-7

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**Withholding payments covered**

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<b>Item</b>	<b>Provision</b>	<b>Subject matter</b>
1	Section 12-40	Payment to company director
2	Section 12-45	Payment to office holder
3	Section 12-50	Return to work payment
4	Subdivision 12-D	Benefit, training and compensation payments

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**34-7 This Division applies to employers and others**

If an entity is *not* an employer, but pays (or is liable to pay) \*withholding payments covered by subsection 34-5(3), this Division applies to the entity as if:

- (a) it were an employer; and
- (b) an individual to whom the entity pays (or is liable to pay) such withholding payments were the entity's employee.

**Subdivision 34-B—Deduction for your non-compulsory uniform**

**Table of sections**

34-10	What you can deduct
34-15	What is a <i>non-compulsory</i> uniform?
34-20	What are <i>occupation specific clothing</i> and <i>protective clothing</i> ?

**34-10 What you can deduct**

- (1) If you are an employee, you can deduct expenditure you incur in respect of your \*non-compulsory \*uniform if:
  - (a) you can deduct the expenditure under another provision of this Act; and
  - (b) the \*design of the uniform is registered under this Division when you incur the expenditure.

Note 1: This Division also applies to individuals who are not employees: see Subdivision 34-A.

Note 2: Employers apply to register designs of uniforms: see Subdivision 34-C.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) You *cannot* deduct the expenditure under this Act if the \*design is *not* registered at the time you incur the expenditure.
- (3) However, this Division does not stop you deducting expenditure you incur in respect of your \*occupation specific clothing or \*protective clothing.

### **34-15 What is a *non-compulsory* uniform?**

*What is a uniform?*

- (1) A **uniform** is one or more items of clothing (including accessories) which, when considered as a set, distinctively identify you as a person associated (directly or indirectly) with:
  - (a) your employer; or
  - (b) a group consisting of your employer and one or more of your employer's \*associates.

*When is a uniform **non-compulsory**?*

- (2) Your uniform is **non-compulsory** unless your employer consistently enforces a policy that requires you and the other employees (except temporary or relief employees) who do the same type of work as you:
  - (a) to wear the uniform when working for your employer; and
  - (b) not to substitute an item of clothing *not* included in the uniform for an item of clothing included in the uniform when working for your employer;except in special circumstances.

### **34-20 What are *occupation specific clothing* and *protective clothing*?**

- (1) **Occupation specific clothing** is clothing that distinctively identifies you as belonging to a particular profession, trade, vocation, occupation or calling. To determine this, disregard any feature of the clothing that distinctively identifies you as a person associated (directly or indirectly) with:
  - (a) your employer; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 34-25

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- (b) a group consisting of your employer and one or more of your employer's \*associates.

Example: Occupation specific clothing includes a nurse's uniform, a chef's checked pants and a religious cleric's ceremonial robes.

- (2) **Protective clothing** is clothing of a kind that you mainly use to protect yourself, or someone else, from risk of:
  - (a) death; or
  - (b) \*disease (including the contraction, aggravation, acceleration or recurrence of a disease); or
  - (c) injury (including the aggravation, acceleration or recurrence of an injury); or
  - (d) damage to clothing; or
  - (e) damage to an artificial limb or other artificial substitute, or to a medical, surgical or other similar aid or appliance.

Example: Protective clothing includes overalls, aprons, goggles, hard hats and safety boots, when worn to protect the wearer.

*Meaning of disease*

- (3) **Disease** includes any mental or physical ailment, disorder, defect or morbid condition, whether of sudden onset or gradual development and whether of genetic or other origin.

**Subdivision 34-C—Registering the design of a non-compulsory uniform**

**Table of sections**

34-25	Application to register the design
34-30	Industry Secretary's decision on application
34-33	Written notice of decision
34-35	When uniform becomes registered

**34-25 Application to register the design**

- (1) The employer of an employee who has, or will have, a \*non-compulsory \*uniform can apply to the Secretary to the Department of Industry, Science and Tourism (the **Industry Secretary**) for the \*design of the uniform to be registered.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: This Division also applies to entities that are not employers: see Subdivision 34-A.

*Meaning of design of a uniform*

- (2) The **design** of a \*uniform includes features such as its colouring, construction, durability, ornamentation, pattern and shape.

*Form of application*

- (3) The application must be:
- (a) in writing; and
  - (b) in a form approved in writing by the \*Industry Secretary; and
  - (c) accompanied by such information as the Industry Secretary requires.

### **34-30 Industry Secretary's decision on application**

*Industry Secretary must decide to grant or refuse application*

- (1) After considering the application, the \*Industry Secretary must decide to either grant or refuse the application.

*Criteria for grant of application*

- (2) The \*Industry Secretary must not decide to grant an application unless he or she is satisfied that the design meets the criteria set out in the \*approved occupational clothing guidelines.

Note: The approved occupational clothing guidelines are created under section 34-55.

*When Industry Secretary taken to have refused application*

- (3) The \*Industry Secretary is taken to have refused an application if he or she does not make a decision by the later of the following times (the **deadline**):
- (a) the end of 90 days (the **90-day period**) after the day the Industry Secretary receives the application;
  - (b) if the Industry Secretary, by written notice given to the applicant within the 90-day period, requests the applicant to

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 34-33

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give further information about the application—the end of 90 days after the Industry Secretary receives the further information.

**34-33 Written notice of decision**

- (1) If the \*Industry Secretary makes a decision to grant or refuse an application under subsection 34-30(1) before the \*deadline, the Industry Secretary must give the applicant written notice of the decision.

*Reasons for refusal*

- (2) If the notice is a notice of a decision to refuse the application, it must also set out the reasons for the refusal.

*Statements to accompany notice of decision*

- (3) The notice of the decision is to include the statements set out in subsections (4) and (5).
- (4) There must be a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the \*AAT, by (or on behalf of) any entity whose interests are affected by the decision, for review of the decision.
- (5) There must also be a statement to the effect that a request may be made under section 28 of that Act by (or on behalf of) such an entity for a statement:
- (a) setting out the findings on material questions of fact; and
  - (b) referring to the evidence or other material on which those findings were based; and
  - (c) giving the reasons for the decision;
- except where subsection 28(4) of that Act applies.

*Failure does not affect validity*

- (6) If the \*Industry Secretary fails to comply with subsection (4) or (5), that failure does not affect the validity of his or her decision.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



### **34-35 When uniform becomes registered**

If the \*Industry Secretary decides to grant the application, the \*design of the \*uniform becomes registered on:

- (a) the day the decision is made; or
- (b) if the applicant requests—such earlier day as the Industry Secretary specifies.

Note: When the design becomes registered, an entry for the design is made on the Register of Approved Occupational Clothing. Subdivision 34-E is about the Register.

### **Subdivision 34-D—Appeals from Industry Secretary’s decision**

#### **Table of sections**

34-40 Review of decisions by the Administrative Appeals Tribunal

### **34-40 Review of decisions by the Administrative Appeals Tribunal**

Applications may be made to the \*AAT for review of a decision made by the \*Industry Secretary under subsection 34-30(1).

### **Subdivision 34-E—The Register of Approved Occupational Clothing**

#### **Table of sections**

34-45 Keeping of the Register

34-50 Changes to the Register

### **34-45 Keeping of the Register**

- (1) The \*Industry Secretary must keep the Register of Approved Occupational Clothing, listing the designs that are required to be entered on the Register because of this Division.

*Register to be open for inspection*

- (2) The \*Industry Secretary must arrange for the Register to be available for inspection at any reasonable time by any person on request.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 34-50

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**34-50 Changes to the Register**

*Removal of registration*

- (1) The \*Industry Secretary must remove an entry for a \*design from the Register of Approved Occupational Clothing if requested to do so by the employer who applied for the design to be registered.

*Correcting errors and mistakes*

- (2) The \*Industry Secretary may correct a clerical error or an obvious mistake in an entry for a design in the Register and, if the Industry Secretary does so, the correction takes effect on the day on which the design to which the entry relates was registered.

**Subdivision 34-F—Approved occupational clothing guidelines**

**Table of sections**

34-55 Approved occupational clothing guidelines

**34-55 Approved occupational clothing guidelines**

- (1) The Treasurer must, by legislative instrument, formulate written guidelines (the *approved occupational clothing guidelines*) setting out criteria that \*designs of uniforms must meet if the designs are to be registered.

*Matters to be taken into account in making guidelines*

- (2) In making \*approved occupational clothing guidelines, the matters to which the Treasurer is to have regard include:
  - (a) how distinctively a \*uniform's \*design identifies the wearer as a person associated (directly or indirectly) with:
    - (i) the applicant for registering the uniform's design; or
    - (ii) a group consisting of the applicant and one or more of the applicant's \*associates; and
  - (b) the nature of the \*business or activities the applicant carries on.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 34-G—The Industry Secretary**

### **Table of sections**

34-60	Industry Secretary to give Commissioner information about entries
34-65	Delegation of powers by Industry Secretary

### **34-60 Industry Secretary to give Commissioner information about entries**

The \*Industry Secretary must give the Commissioner information about entries of \*designs on the Register of Approved Occupational Clothing if the Commissioner requests him or her to do so.

### **34-65 Delegation of powers by Industry Secretary**

The \*Industry Secretary may, by writing, delegate any or all of his or her functions and powers under this Division to a person in the Department of Industry, Science and Tourism:

- (a) who holds or performs the duties of a \*Senior Executive Service office; or
- (b) whose classification level appears in Group 7 or 8 of Schedule 1 to the Classification Rules under the *Public Service Act 1999*; or
- (c) who is acting in a position usually occupied by a person with a classification level of the kind mentioned in paragraph (b).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 35—Deferral of losses from non-commercial business activities**

### **Guide to Division 35**

#### **35-1 What this Division is about**

This Division prevents losses of individuals from non-commercial business activities being offset against other assessable income in the year the loss is incurred. The loss is deferred.

It sets out a series of tests to determine whether a business activity is treated as being non-commercial.

The deferred losses may be offset in later years against profits from the activity or, if one of the tests is satisfied or the Commissioner exercises a discretion, against other income.

#### **Table of sections**

##### **Operative provisions**

35-5	Object
35-10	Deferral of deductions from non-commercial business activities
35-15	Modification if you have exempt income
35-20	Modification if you become bankrupt
35-25	Application of Division to certain partnerships
35-30	Assessable income test
35-35	Profits test
35-40	Real property test
35-45	Other assets test
35-50	Apportionment
35-55	Commissioner's discretion

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### 35-5 Object

- (1) The object of this Division is to improve the integrity of the taxation system by:
  - (a) preventing losses from non-commercial activities that are \*carried on as \*businesses by individuals (alone or in partnership) being offset against other assessable income; and
  - (b) preventing pre-business capital expenditure and post-business capital expenditure by individuals (alone or in partnership) in relation to non-commercial activities being deductible under section 40-880 (business related costs);unless certain exceptions apply.
- (2) This Division is not intended to apply to activities that do not constitute \*carrying on a \*business (for example, the receipt of income from passive investments).

### 35-10 Deferral of deductions from non-commercial business activities

- (1) The rule in subsection (2) applies for an income year to each \*business activity you carried on in that year if you are an individual, either alone or in partnership (whether or not some other entity is a member of the partnership), unless:
  - (a) one of the tests set out in section 35-30 (assessable income test), 35-35 (profits test), 35-40 (real property test) or 35-45 (other assets test) is satisfied for the business activity for that year; or
  - (b) the Commissioner has exercised the discretion set out in section 35-55 for the business activity for that year; or
  - (c) the exception in subsection (4) applies for that year.

Note: This section covers individuals carrying on a business activity as partners, but not individuals merely in receipt of income jointly. Compare the definition of *partnership* in subsection 995-1(1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 35-10

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*Rules*

- (2) If the amounts attributable to the \*business activity for that income year that you could otherwise deduct under this Act for that year exceed your assessable income (if any) from the business activity for that year, or your share of it, this Act applies to you as if the excess:

- (a) were not incurred in that income year; and
- (b) were an amount attributable to the activity that you can deduct from assessable income from the activity for the next income year in which the activity is carried on.

Note: There are modifications of this rule if you have exempt income (see section 35-15) or you become bankrupt (see section 35-20).

Example: Jennifer has a salaried job, and she also carries on a business activity consisting of selling lingerie.

Jennifer starts that activity on 1 July 2002, and for the 2002-03 income year, the activity produces assessable income of \$8,000 and deductions of \$10,000. The activity does not pass any of the tests and the discretion is not exercised so the \$2,000 excess is carried over to the next income year in which the activity is carried on.

For the 2003-04 income year, the activity produces assessable income of \$9,000 and deductions of \$10,000 (excluding the \$2,000 excess from 2002-03). Again, no tests passed and no exercise of discretion.

\$3,000 is carried over to the next income year (comprising the \$1,000 excess for the current year, plus the previous year's \$2,000 excess) when the activity is carried on.

- (2A) You cannot deduct an amount under section 40-880 (business related costs) for expenditure in relation to a \*business activity you used to \*carry on if you are an individual, either alone or in partnership (whether or not some other entity is a member of the partnership) unless:
- (a) one of the tests set out in section 35-30 (assessable income test), 35-35 (profits test), 35-40 (real property test) or 35-45 (other assets test) was satisfied for the business activity; or
  - (b) the Commissioner has exercised the discretion set out in section 35-55 for the business activity; or
  - (c) the exception in subsection (4) applied;
- for the income year in which the business activity ceased to be carried on or an earlier income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2B) If you are an individual, either alone or in partnership (whether or not some other entity is a member of the partnership), you cannot deduct an amount under section 40-880 (business related costs) for expenditure in relation to a \*business activity:
- (a) you propose to \*carry on; or
  - (b) another entity proposes to carry on if the other entity is not an individual, either alone or in partnership;
- for an income year before the one in which the business activity starts to be carried on.
- (2C) This section applies to an amount that you could have deducted, apart from paragraph (2B)(a), as if it were an amount attributable to the \*business activity that you can deduct from assessable income from the activity for the income year in which the business activity starts to be \*carried on.
- (2D) You can deduct expenditure covered by paragraph (2B)(b) for the income year in which the \*business activity starts to be \*carried on.

*Grouping business activities*

- (3) In applying this Division, you may group together \*business activities of a similar kind.

*Exceptions*

- (4) The rule in subsection (2), (2A) or (2B) does not apply to a \*business activity for an income year if:
- (a) the activity is a \*primary production business, or a \*professional arts business; and
  - (b) your assessable income for that year (except any \*net capital gain) from other sources that do not relate to that activity is less than \$40,000.
- (5) A **professional arts business** is a \*business you carry on as:
- (a) the author of a literary, dramatic, musical or artistic work; or

Note: The expression “author” is a technical term from copyright law. In general, the “author” of a musical work is its composer and the “author” of an artistic work is the artist, sculptor or photographer who created it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 35-15

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- (b) a \*performing artist; or
- (c) a \*production associate.

**35-15 Modification if you have exempt income**

- (1) The rule in subsection 35-10(2) may be modified for an income year if you \*derived \*exempt income in that year.
- (2) Any amount to which paragraph 35-10(2)(b) would otherwise apply for an income year for you is reduced by so much of your \*net exempt income as is not applied for that income year under section 36-10 or 36-15 (about tax losses). This reduction is made before you apply the paragraph 35-10(2)(b) amount against assessable income from the \*business activity.

**35-20 Modification if you become bankrupt**

- (1) The rule in subsection 35-10(2) or (2A) is modified as set out in subsection (3) for an income year if in that year (the *current year*) you become bankrupt or are released from a debt by the operation of an Act relating to bankruptcy.
- (2) The rule is also modified as set out in subsection (3) if:
  - (a) you became bankrupt before the current year; and
  - (b) the bankruptcy is annulled in the current year under section 74 of the *Bankruptcy Act 1966* because your creditors have accepted a proposal for a composition or scheme of arrangement; and
  - (c) under the composition or scheme of arrangement, you have been, will be or may be released from some or all of the debts from which you would have been released if you had instead been discharged from the bankruptcy.
- (3) This Act applies to you as if any amount that:
  - (a) paragraph 35-10(2)(b) had applied to for an income year before the current year for you; and
  - (b) you have not yet deducted;were not an amount attributable to the \*business activity that you can deduct for the current year or a later income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **35-25 Application of Division to certain partnerships**

For the purpose of applying the tests in sections 35-30, 35-40 and 35-45 where you carry on a \*business activity in an income year as a partner, ignore:

- (a) any part of the assessable income from the business activity for the year that is attributable to the interest of a partner that is not an individual in the partnership net income or partnership loss for the year; and
- (b) any part of the assessable income from the business activity for the year that is \*derived from the activity by another partner otherwise than as a member of the partnership; and
- (c) any part of the \*reduced cost bases or other values of assets of the partnership used in carrying on the activity in that year that is attributable to the interest of a partner that is not an individual in those assets; and
- (d) any part of the reduced cost bases or other values of assets owned or leased by another partner that are not partnership assets and used in carrying on the activity in that year.

### **35-30 Assessable income test**

The rules in section 35-10 do not apply to a \*business activity for an income year if:

- (a) the amount of assessable income from the business activity for the year; or
- (b) you started to carry on the business activity, or stopped carrying it on, during the year—a reasonable estimate of what would have been the amount of that assessable income if you had carried on that activity throughout the year; is at least \$20,000.

### **35-35 Profits test**

- (1) The rules in section 35-10 do not apply to a \*business activity (except an activity carried on by one or more individuals as partners, whether or not some other entity is a member of the partnership) for an income year (the *current year*) if, for each of at least 3 of the past 5 income years (including the current year) the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 35** Deferral of losses from non-commercial business activities

Section 35-40

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sum of the deductions attributable to that activity for that year (apart from the operation of subsections 35-10(2) and (2C)) is less than the assessable income from the activity for that year.

- (2) For a \*business activity you carried on with one or more others as partners, the rules in section 35-10 do not apply to you for the current year if, for each of at least 3 of the past 5 income years (including the current year) the sum of your deductions (including your share of the partnership deductions) attributable to that activity for that year (apart from the operation of subsections 35-10(2) and (2C)) is less than your assessable income (including your share of the partnership's assessable income) from the activity for that year.

**35-40 Real property test**

- (1) The rules in section 35-10 do not apply to a \*business activity for an income year if the total \*reduced cost bases of real property or interests in real property used on a continuing basis in carrying on the activity in that year is at least \$500,000.
- (2) You may use the \*market value of the real property or interest if that value is more than its \*reduced cost base.
- (3) The \*reduced cost base or \*market value is worked out:
- (a) as at the end of the income year; or
  - (b) if you stopped carrying on the \*business activity during the year:
    - (i) as at the time you stopped; or
    - (ii) if you disposed of the asset before that time in the course of stopping carrying on the activity—as at the time you disposed of it.
- (4) However, these assets are not counted for this test:
- (a) a \*dwelling, and any adjacent land used in association with the dwelling, that is used mainly for private purposes;
  - (b) fixtures owned by you as a tenant.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**35-45 Other assets test**

- (1) The rules in section 35-10 do not apply to a \*business activity for an income year if the total values of assets that are counted for this test (see subsections (2) and (4)) and that are used on a continuing basis in carrying on the activity in that year is at least \$100,000.
- (2) The assets counted for this test, and their values for this test, are set out in this table:

<b>Assets counted for this test and their values</b>		
<b>Item</b>	<b>Asset</b>	<b>Value</b>
1	An asset whose decline in value you can deduct under Division 40	The asset's *written down value
2	An item of *trading stock	Its value under subsection 70-45(1)
3	An asset that you lease from another entity	The sum of the amounts of the future lease payments for the asset to which you are irrevocably committed, less an appropriate amount to reflect any interest component for those lease payments
4	Trademarks, patents, copyrights and similar rights	Their *reduced cost base

- (3) The value of such an asset is worked out:
  - (a) as at the end of the income year; or
  - (b) if you stopped carrying on the \*business activity during the year:
    - (i) as at the time you stopped; or
    - (ii) if you disposed of the asset before that time in the course of stopping carrying on the activity—as at the time you disposed of it.
- (4) However, these assets are not counted for this test:
  - (a) assets that are real property or interests in real property that are taken into account for that year under section 35-40;
  - (b) \*cars, motor cycles and similar vehicles.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 35-50

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**35-50 Apportionment**

If an asset that is being taken into account under section 35-40 or 35-45 is used during an income year partly in carrying on the relevant \*business activity and partly for other purposes, only that part of its \*reduced cost base, \*market value or other value that is attributable to its use in carrying on the business activity in that year is taken into account for that section.

**35-55 Commissioner's discretion**

(1) The Commissioner may decide that the rule in subsection 35-10(2) does not apply to a \*business activity for one or more income years if the Commissioner is satisfied that it would be unreasonable to apply that rule because:

- (a) the business activity was or will be affected in that or those income years by special circumstances outside the control of the operators of the business activity, including drought, flood, bushfire or some other natural disaster; or

Note: This paragraph is intended to provide for a case where a business activity would have satisfied one of the tests if it were not for the special circumstances.

- (b) the business activity has started to be carried on and, for that or those income years:

- (i) because of its nature, it has not satisfied, or will not satisfy, one of the tests set out in section 35-30, 35-35, 35-40 or 35-45; and
- (ii) there is an objective expectation, based on evidence from independent sources (where available) that, within a period that is commercially viable for the industry concerned, the activity will either meet one of those tests or will produce assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsections 35-10(2) and (2C)).

Note: This paragraph is intended to cover a business activity that has a lead time between the commencement of the activity and the production of any assessable income. For example, an activity involving the planting of hardwood trees for harvest, where many

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

years would pass before the activity could reasonably be expected to produce income.

- (2) The Commissioner may decide that the rule in subsection 35-10(2B) does not apply to a \*business activity for an income year if the Commissioner is satisfied that it would be unreasonable to apply that rule because special circumstances of the kind referred to in paragraph (1)(a) of this section prevented the activity from starting.

Note: This subsection is intended to provide for a case where a business activity would have begun to be carried on and satisfied one of the tests if it were not for the special circumstances.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 36—Tax losses of earlier income years**

### **Table of Subdivisions**

	Guide to Division 36
36-A	Deductions for tax losses of earlier income years
36-B	Effect of you becoming bankrupt
36-C	Excess franking offsets

### **Guide to Division 36**

#### **36-1 What this Division is about**

If you have more deductions for an income year than you have income, the difference is a *tax loss* which you may be able to deduct in a later income year.

### **Subdivision 36-A—Deductions for tax losses of earlier income years**

#### **Table of sections**

36-10	How to calculate a tax loss for an income year
36-15	How to deduct tax losses of entities other than corporate tax entities
36-17	How to deduct tax losses of corporate tax entities
36-20	Net exempt income
36-25	Special rules about tax losses

#### **36-10 How to calculate a tax loss for an income year**

- (1) Add up the amounts you can deduct for an income year (except <sup>\*</sup>tax losses for earlier income years).
- (2) Subtract your total assessable income.
- (3) If you <sup>\*</sup>derived <sup>\*</sup>exempt income, also subtract your <sup>\*</sup>net exempt income (worked out under section 36-20).

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<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) Any amount remaining is your *tax loss* for the income year, which is called a *loss year*.

Note 1: Some deductions are limited so that they cannot contribute to a tax loss. See section 26-55 (Limit on certain deductions).

Note 2: The meanings of *tax loss* and *loss year* are modified by section 36-55 for a corporate tax entity that has an amount of excess franking offsets.

### **36-15 How to deduct tax losses of entities other than corporate tax entities**

- (1) Your \*tax loss for a \*loss year is deducted in a later income year as follows if you are not a \*corporate tax entity at any time during the later income year.

Note: See section 36-17 for the deduction of a tax loss of an entity that is a corporate tax entity at any time during the later income year.

*If you have no net exempt income*

- (2) If your total assessable income for the later income year exceeds your total deductions (other than \*tax losses), you deduct the tax loss from that excess.

*If you have net exempt income*

- (3) If you have \*net exempt income for the later income year and your total assessable income (if any) for the later income year exceeds your total deductions (except \*tax losses), you deduct the tax loss:
- (a) first, from your net exempt income; and
  - (b) secondly, from the part of your total assessable income that exceeds those deductions.
- (4) However, if you have \*net exempt income for the later income year and those deductions exceed your total assessable income, then:
- (a) subtract that excess from your net exempt income; and
  - (b) deduct the tax loss from any net exempt income that remains.

To work out your net exempt income: see section 36-20.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 36-17

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*General*

- (5) If you have 2 or more \*tax losses, you deduct them in the order in which you incurred them.
- (6) A \*tax loss can be deducted only to the extent that it has not already been deducted.
- (7) If you cannot deduct all or part of your \*tax loss in an income year, you can carry forward to the next income year the undeducted amount. You then apply this Subdivision to work out if you can deduct the tax loss in that income year.

Note: Your tax losses under this Division may be reduced if any of your commercial debts have been forgiven in the income year: see Subdivision 245-E of Schedule 2C to the *Income Tax Assessment Act 1936*.

**36-17 How to deduct tax losses of corporate tax entities**

- (1) A \*tax loss of an entity for a \*loss year is deducted in a later income year as follows if the entity is a \*corporate tax entity at any time during the later income year.

*If the entity has no net exempt income*

- (2) If the entity's total assessable income for the later income year exceeds the entity's total deductions (except \*tax losses), the entity is to deduct from that excess so much of the tax loss as the entity chooses. The entity may choose a nil amount.

*If the entity has net exempt income*

- (3) If the entity has \*net exempt income for the later income year and the entity's total assessable income (if any) for that year exceeds the entity's total deductions (except \*tax losses), the entity is to:
  - (a) first, deduct the tax loss from the net exempt income; and
  - (b) secondly, deduct from the part of the total assessable income that exceeds those deductions so much of the undeducted amount of the tax loss (if any) as the entity chooses.

The entity may choose a nil amount under paragraph (b).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Note: To work out the corporate tax entity's net exempt income: see section 36-20.

- (4) However, if the entity has \*net exempt income for the later income year and those deductions exceed the entity's total assessable income, the entity is to:
- (a) subtract that excess from the net exempt income; and
  - (b) deduct the \*tax loss from any net exempt income that remains.

Note: This means there is no choice available under this subsection.

*Limit to how much the entity can choose*

- (5) The choice that the entity has under subsection (2) or (3) for the later income year is subject to both of the following:
- (a) the entity must choose a nil amount if, disregarding the \*tax loss and other tax losses of the entity, the entity would have an amount of \*excess franking offsets for that year;
  - (b) if, disregarding the tax loss and other tax losses of the entity, the entity would *not* have an amount of excess franking offsets for that year—the entity must not choose an amount that would result in the entity having an amount of excess franking offsets for that year.

Example: For the 2002-2003 income year, Company A has:

- a tax loss of \$150 from a previous income year; and
- assessable income of \$200 (franked distribution of \$70, franking credit of \$30 and \$100 of income from other sources); and
- no deductions; and
- no net exempt income.

The tax offset of \$30 from the franking credit is not stated in Division 67 to be subject to the refundable tax offset rules.

Company A would not have an amount of excess franking offsets for that year if the tax loss were disregarded (see section 36-55). This is because the tax offset of \$30 is less than \$60, the amount of income tax that Company A would have to pay if it did not have the tax offset and the tax loss. Paragraph (a) therefore does not apply.

If Company A chooses to deduct the full amount of the tax loss, it would have an amount of excess franking offsets of \$15:

$$\$30 - ((\$200 - \$150) \times 30\%)$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 36** Tax losses of earlier income years

Section 36-17

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Company A therefore cannot make this choice because of paragraph (b).

However, if Company A chooses to deduct \$100 of the tax loss, it would not have an amount of excess franking offsets:

$$\$30 = ((\$200 - \$100) \times 30\%)$$

Company A therefore can choose to deduct \$100 of the tax loss.

- (6) The entity must state its choice under subsection (2) or (3) in its \*income tax return for the later income year.

*General*

- (7) If the entity has 2 or more \*tax losses, the entity is to deduct them in the order in which the entity incurred them.
- (8) A \*tax loss can be deducted under this section only to the extent that it has not already been deducted.
- (9) If, under this section, a \*corporate tax entity does not or cannot deduct all or part of a \*tax loss in an income year, the entity can carry forward the undeducted amount to the next income year. This Subdivision then applies in working out how it can deduct the tax loss in that income year.

Note: The entity's tax losses may be reduced if any of its commercial debts have been forgiven in the income year: see Subdivision 245-E of Schedule 2C to the *Income Tax Assessment Act 1936*.

*Recalculation of amounts resulting in a choice or a change of a choice*

- (10) Subsection (11) or (12) applies if at least one of the following amounts is recalculated after an entity has lodged its \*income tax return for an income year:
- (a) the amount of a \*tax loss that the entity can deduct in that year;
  - (b) the amount of the difference between the entity's total assessable income for that year and the entity's total deductions (other than \*tax losses) for that year;
  - (c) the amount of the entity's \*net exempt income for that year;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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whether or not the amount is recalculated in an amendment of the entity's assessment for that year, and whether or not the amount was a nil amount before the recalculation (or has become a nil amount after the recalculation).

- (11) If:
- (a) before the recalculation, a choice under subsection (2) or (3) for the income year was not available to the entity; but
  - (b) as a result of the recalculation, the choice has (apart from subsection (6)) become available to the entity;
- the entity can make that choice by written notice given to the Commissioner.
- (12) If:
- (a) the entity made a choice under subsection (2) or (3) for the income year; but
  - (b) as a result of the recalculation, the entity wishes to change that choice;
- the entity can do so by written notice given to the Commissioner.
- (13) Subsections (10) to (12) have effect subject to section 170 of the *Income Tax Assessment Act 1936* (about amendment of assessments).

### **36-20 Net exempt income**

- (1) If you are an Australian resident, your ***net exempt income*** is the amount by which your total \*exempt income from all sources exceeds the total of:
- (a) the losses and outgoings (except capital losses and outgoings) you incurred in deriving that exempt income; and
  - (b) any taxes payable outside Australia on that exempt income.
- (2) If you are a foreign resident, your ***net exempt income*** is the amount (if any) by which the total of:
- (a) your \*exempt income \*derived from sources in Australia; and
  - (b) your exempt income to which section 26AG (Certain film proceeds included in assessable income) of the *Income Tax Assessment Act 1936* applies;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 36-25

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exceeds the total of:

- (c) the losses and outgoings (except capital losses and outgoings) you incurred in deriving exempt income covered by paragraph (a) or (b); and
- (d) any taxes payable outside Australia on income covered by paragraph (b).

**36-25 Special rules about tax losses**

*Tax losses of individuals*

<b>Item</b>	<b>For the special rules about this situation ...</b>	<b>See:</b>
1.	You go bankrupt, or you are released from debts under a bankruptcy law: your right to deduct tax losses of an earlier income year may be affected.	Subdivision 36-B

*Tax losses of companies*

<b>Item</b>	<b>For the special rules about this situation ...</b>	<b>See:</b>
1.	A company has had a change of ownership or control during the income year, and has not satisfied the same business test: it works out its taxable income and its tax loss in a special way.	Subdivision 165-B

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Item</b>	<b>For the special rules about this situation ...</b>	<b>See:</b>
2.	<p>A company wants to deduct a tax loss. It cannot do so unless:</p> <ul style="list-style-type: none"> <li>• the same people owned the company during the loss year, the income year and any intervening year; and</li> <li>• no person controlled the company's voting power at any time during the income year who did not also control it during the whole of the loss year and any intervening year;</li> </ul> <p><i>or</i> the company has satisfied the same business test.</p>	Subdivision 165-A
3.	<p>One or more of these things happen:</p> <ul style="list-style-type: none"> <li>• income is injected into a company;</li> <li>• a tax benefit is obtained from available losses or deductions;</li> <li>• a deduction is injected into a company;</li> <li>• a tax benefit is obtained because of available income.</li> </ul> <p>The Commissioner can disallow tax losses or current year deductions.</p>	Division 175
4.	<p>A company can transfer a surplus amount of its tax loss to another company so that the other company can deduct the amount in the income year of the transfer. (Both companies must be members of the same wholly-owned group.)</p> <p><i>See also: Tax losses of pooled development funds (PDFs) below</i></p>	Subdivision 170-A
5.	<p>A *life insurance company</p>	Subdivision 320-D

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 36** Tax losses of earlier income years

Section 36-25

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*Tax losses of corporate tax entities*

<b>Item</b>	<b>For the special rules about this situation...</b>	<b>See:</b>
1.	A *corporate tax entity that has an amount of *excess franking offsets for an income year: it works out its *tax loss in a special way.	Subdivision 36-C

*Tax losses of entities generally*

<b>Item</b>	<b>For the special rules about this situation ...</b>	<b>See:</b>
3.	You have deductions in relation to deriving income under section 26AG of the <i>Income Tax Assessment Act 1936</i> from the proceeds of a film: your tax loss may have a film component, which is deductible from your film income only.	Subdivision 375-G

*Tax losses of pooled development funds (PDFs)*

<b>Item</b>	<b>For the special rules about this situation ...</b>	<b>See:</b>
1.	A company is a pooled development fund (PDF) at the end of an income year for which it has a tax loss: it can only deduct the loss while it is a PDF.	Section 195-5
2.	A company becomes a PDF during an income year: special rules affect how it works out a tax loss and how the loss is deducted in a later income year.	Section 195-15

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Tax losses of VCLPs, ESVCLPs, AFOFs and VCMPs*

<b>Item</b>	<b>For the special rules about this situation ...</b>	<b>See:</b>
1.	A limited partnership that has a tax loss becomes a VCLP, an ESVCLP, an AFOF or a VCMP: it cannot deduct the loss while it is a VCLP, an ESVCLP, an AFOF or a VCMP.	Subdivision 195-B

*Tax losses of entities that become foreign hybrids*

<b>Item</b>	<b>For the special rules about this situation...</b>	<b>See:</b>
1.	An entity that has a tax loss becomes a *foreign hybrid: it cannot deduct the loss while it is a foreign hybrid.	Section 830-115

*Tax losses of trusts*

<b>Item</b>	<b>For the special rules about this subsection...</b>	<b>See:</b>
1.	<p>A trust has had a change of ownership or control or there has been an abnormal trading in its units:</p> <ul style="list-style-type: none"> <li>• if this happens in the income year, it works out its net income and tax loss in a special way; or</li> <li>• if this happens at any time from the start of a loss year until the end of the income year, it cannot deduct a tax loss from the loss year.</li> </ul> <p>This will not be the case if the trust is an excepted trust. However, if it became one by making a family trust election, a special tax may be payable on certain distributions and other amounts.</p>	Divisions 266, 267 and 268 of Schedule 2F to the <i>Income Tax Assessment Act 1936</i>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 36** Tax losses of earlier income years

Section 36-30

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<b>Item</b>	<b>For the special rules about this subsection...</b>	<b>See:</b>
2.	A trust is involved in a scheme to take advantage of deductions. The trust may be prevented from making full use of them.	Division 270 of Schedule 2F to the <i>Income Tax Assessment Act 1936</i>

**Subdivision 36-B—Effect of you becoming bankrupt**

**Guide to Subdivision 36-B**

**36-30 What this Subdivision is about**

After you become bankrupt, you cannot deduct a tax loss that you incurred beforehand. However, you may be able to deduct repayments of debts you incurred in the loss year.

**Table of sections**

**Operative provisions**

- 36-35 No deduction for tax loss incurred before bankruptcy
- 36-40 Deduction for amounts paid for debts incurred before bankruptcy
- 36-45 Limit on deductions for amounts paid

**Operative provisions**

**36-35 No deduction for tax loss incurred before bankruptcy**

- (1) If:
  - (a) you became bankrupt; or
  - (b) you were released from a debt by the operation of an Act relating to bankruptcy;before the income year, you cannot deduct a \*tax loss that you incurred before the day on which you either became bankrupt or were released.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (2) If:
- (a) you became bankrupt before the income year; and
  - (b) the bankruptcy is later annulled under section 74 of the *Bankruptcy Act 1966* because your creditors have accepted your proposal for a composition or scheme of arrangement; and
  - (c) under the composition or scheme of arrangement, you have been, will be or may be released from some or all of the debts from which you would have been released if you had instead been discharged from the bankruptcy;
- you cannot deduct a \*tax loss that you incurred before the day on which you became bankrupt.

### **36-40 Deduction for amounts paid for debts incurred before bankruptcy**

#### *Tax losses generally*

- (1) If:
- (a) you pay an amount in the income year for a debt that you incurred in an earlier income year; and
  - (b) you have a \*tax loss covered by section 36-35 for that earlier income year;
- you can deduct the amount paid, but only to the extent that it does not exceed so much of the debt as the Commissioner is satisfied was taken into account in calculating the amount of the tax loss.

#### *Film losses*

- (2) If:
- (a) you pay an amount in the income year for a debt that you incurred in an earlier income year; and
  - (b) you incurred the debt in the course of deriving or gaining \*assessable film income or \*exempt film income; and
  - (c) you also incurred a \*film loss covered by section 36-35 in that earlier income year;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 36-45

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you can deduct the amount paid, but only to the extent that it does not exceed so much of the debt as the Commissioner is satisfied was taken into account in calculating the amount of the film loss.

**36-45 Limit on deductions for amounts paid**

*Tax losses generally*

- (1) The total of your deductions under subsection 36-40(1) for amounts paid in the income year for debts incurred in the \*loss year cannot exceed the amount of the \*tax loss reduced by the sum of:
  - (a) your deductions under that subsection for amounts paid in earlier income years for debts incurred in the loss year; and
  - (b) any amounts of the tax loss deducted in earlier income years; and
  - (c) any amounts of the tax loss that, apart from section 36-35, would have been deductible from your \*net exempt income for the income year or earlier income years.

*Film losses*

- (2) The total of your deductions under subsection 36-40(2) for amounts paid in the income year for debts incurred in the \*loss year cannot exceed the amount of the \*film loss reduced by the sum of:
  - (a) your deductions under that subsection for amounts paid in earlier income years for debts incurred in the loss year; and
  - (b) any amounts of the film loss deducted in earlier income years; and
  - (c) any amounts of the film loss that, apart from section 36-35, would have been deductible from your \*net exempt film income for the income year or earlier income years.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 36-C—Excess franking offsets

### Guide to Subdivision 36-C

#### 36-50 What this Subdivision is about

Amounts of tax offsets to which a corporate tax entity is entitled under Division 207 and Subdivision 210-H may in some circumstances be converted into an amount of a tax loss for the entity.

#### Table of sections

##### Operative provision

36-55 Converting excess franking offsets into tax loss

### Operative provision

#### 36-55 Converting excess franking offsets into tax loss

##### *Excess franking offsets*

- (1) An entity that is a \*corporate tax entity at any time during an income year has an amount of *excess franking offsets* for that year if:
  - (a) the total amount of \*tax offsets to which the entity is entitled for that year under Division 207 and Subdivision 210-H (except those that are subject to the refundable tax offset rules because of section 67-25);exceeds:
  - (b) the amount of income tax that the entity would have to pay on its taxable income for that year if:
    - (i) it did not have those tax offsets; and
    - (ii) it did not have any tax offsets that are subject to the tax offset carry forward rules or the refundable tax offset rules; and
    - (iii) it did not have any tax offset under section 205-70;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 36-55

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but had all its other tax offsets.

The excess is the amount of *excess franking offsets*.

Note: Division 65 sets out the tax offset carry forward rules. Division 67 sets out which tax offsets are subject to the refundable tax offset rules.

Example: For the 2002-2003 income year, Company E has:

- assessable income of \$200 (franked distribution of \$140 and franking credit of \$60); and
- \$100 of deductions that are allowable.

The tax offset of \$60 from the franking credit is not stated in Division 67 to be subject to the refundable tax offset rules.

Disregarding the tax offset of \$60 from the franking credit, the amount of income tax that Company E would have to pay is \$30:

$$((\$140 + \$60) - \$100) \times 30\%$$

This amount is \$30 less than the tax offset of \$60. Company E therefore has an amount of excess franking offsets of \$30 for that year.

*How to work out the amount of the tax loss*

(2) For the purposes of this Act, if:

- (a) an entity has an amount of \*excess franking offsets for an income year; and
- (b) the result of applying the following method statement is a positive amount;

then:

- (c) the entity is taken to have a \*tax loss for that year equal to that positive amount (instead of an amount of tax loss worked out under section 36-10, 165-70, 175-35 or 701-30); and
- (d) that year is taken to be a \*loss year for the entity if the entity would not otherwise have a tax loss for that year.

*Method statement*

Step 1. Work out the amount (if any) that would have been the entity's \*tax loss for that year under section 36-10, 165-70, 175-35 or 701-30 if the entity's \*net exempt income for that year (if any) were disregarded.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: See section 36-20 for the calculation of net exempt income.

- Step 2. Divide the amount of \*excess franking offsets by the \*corporate tax rate.
- Step 3. Add the results of steps 1 and 2.
- Step 4. Reduce the result of step 3 by the entity's \*net exempt income for that year (if any).

The result of this step is taken to be the entity's \*tax loss for that year. However, if the result of this step is nil or a negative amount, the company does not have any tax loss for that year.

Example: Assume that company E did not derive any exempt income for the 2002-2003 income year and that it would not otherwise have any tax loss for that year under section 36-10, 165-70, 175-35 or 701-30.

Applying the method statement, the amount of excess franking offsets of \$30 generates a tax loss of \$100 for that year, which can be deducted in a later income year under section 36-15 or 36-17.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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# **Income Tax Assessment Act 1997**

## **Act No. 38 of 1997 as amended**

This compilation was prepared on 2 July 2009  
taking into account amendments up to Act No. 62 of 2009

**Volume 2** includes: Table of Contents  
Sections 40-1 to 55-10

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated  
may be affected by application provisions that are set out in  
the Notes section

## **Chapter 2—Liability rules of general application**



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# Contents

<b>Chapter 2—Liability rules of general application</b>	i
<b>Part 2-10—Capital allowances: rules about deductibility of capital expenditure</b>	1
<b>Division 40—Capital allowances</b>	1
<b>Guide to Division 40</b>	1
40-1 What this Division is about .....	1
40-10 Simplified outline of this Division.....	2
<b>Subdivision 40-A—Objects of Division</b>	4
40-15 Objects of Division.....	4
<b>Subdivision 40-B—Core provisions</b>	4
<b>Guide to Subdivision 40-B</b>	4
40-20 What this Subdivision is about .....	4
<b>Operative provisions</b>	6
40-25 Deducting amounts for depreciating assets.....	6
40-30 What a <i>depreciating asset</i> is .....	8
40-35 Jointly held depreciating assets .....	9
40-40 Meaning of <i>hold</i> a depreciating asset .....	9
40-45 Assets to which this Division does not apply .....	12
40-50 Assets for which you deduct under another Subdivision .....	13
40-53 Alterations etc. to certain depreciating assets .....	13
40-55 Use of certain car methods .....	14
40-60 When a depreciating asset starts to decline in value .....	14
40-65 Choice of methods to work out the decline in value.....	14
40-70 Diminishing value method.....	16
40-72 Diminishing value method for post-9 May 2006 assets.....	17
40-75 Prime cost method .....	18
40-80 When you can deduct the asset's cost.....	20
40-85 Meaning of <i>adjustable value</i> and <i>opening adjustable value</i> of a depreciating asset.....	21
40-90 Debt forgiveness.....	22
40-95 Choice of determining effective life .....	22
40-100 Commissioner's determination of effective life.....	29
40-102 Capped life of certain depreciating assets.....	30
40-105 Self-assessing effective life .....	33
40-110 Recalculating effective life .....	33
40-115 Splitting a depreciating asset .....	35
40-120 Replacement spectrum licences .....	36
40-125 Merging depreciating assets .....	36
40-130 Choices.....	37

---



---

40-135	Certain anti-avoidance provisions .....	37
40-140	Getting tax information from associates .....	37
<b>Subdivision 40-C—Cost</b>		39
<b>Guide to Subdivision 40-C</b>		39
40-170	What this Subdivision is about .....	39
<b>Operative provisions</b>		39
40-175	Cost .....	39
40-180	First element of cost .....	40
40-185	Amount you are taken to have paid to hold a depreciating asset or to receive a benefit.....	42
40-190	Second element of cost.....	44
40-195	Apportionment of cost.....	46
40-200	Exclusion from cost.....	46
40-205	Cost of a split depreciating asset .....	46
40-210	Cost of merged depreciating assets.....	47
40-215	Adjustment: double deduction.....	47
40-220	Cost reduced by amounts not of a capital nature .....	47
40-225	Adjustment: acquiring a car at a discount.....	47
40-230	Adjustment: car limit.....	48
<b>Subdivision 40-D—Balancing adjustments</b>		49
<b>Guide to Subdivision 40-D</b>		49
40-280	What this Subdivision is about .....	49
<b>Operative provisions</b>		50
40-285	Balancing adjustments.....	50
40-290	Reduction for non-taxable use .....	51
40-292	Adjustments where deductions for decline in value also allowable under section 73BA or 73BH of <i>Income Tax Assessment Act 1936</i> .....	53
40-295	Meaning of <i>balancing adjustment event</i> .....	55
40-300	Meaning of <i>termination value</i> .....	55
40-305	Amount you are taken to have received under a balancing adjustment event.....	57
40-310	Apportionment of termination value.....	59
40-320	Car to which section 40-225 applies.....	59
40-325	Adjustment: car limit.....	59
40-335	Deduction for in-house software where you will never use it.....	59
40-340	Roll-over relief .....	60
40-345	What the roll-over relief is.....	63
40-350	Additional consequences .....	63
40-360	Notice to allow transferee to work out how this Division applies .....	63
40-365	Involuntary disposals.....	64

---

---

40-370	Balancing adjustments where there has been use of different car expense methods.....	66
<b>Subdivision 40-E—Low-value and software development pools</b>		68
<b>Guide to Subdivision 40-E</b>		68
40-420	What this Subdivision is about .....	68
<b>Operative provisions</b>		69
40-425	Allocating assets to a low-value pool .....	69
40-430	Rules for assets in low-value pools.....	70
40-435	Private or exempt use of assets.....	71
40-440	How you work out the decline in value of assets in low-value pools .....	71
40-445	Balancing adjustment events .....	72
40-450	Software development pools.....	73
40-455	How to work out your deduction.....	73
40-460	Your assessable income includes consideration for pooled software .....	74
<b>Subdivision 40-F—Primary production depreciating assets</b>		74
<b>Guide to Subdivision 40-F</b>		74
40-510	What this Subdivision is about .....	74
<b>Operative provisions</b>		75
40-515	Water facilities and horticultural plants.....	75
40-520	Meaning of <i>water facility</i> and <i>horticultural plant</i> .....	76
40-525	Conditions .....	76
40-530	When a water facility or horticultural plant starts to decline in value .....	78
40-535	Meaning of <i>horticulture</i> and <i>commercial horticulture</i> .....	78
40-540	How you work out the decline in value for water facilities .....	78
40-545	How you work out the decline in value for horticultural plants .....	79
40-555	Amounts you cannot deduct .....	80
40-560	Non-arm's length transactions.....	81
40-565	Extra deduction for destruction of a horticultural plant .....	81
40-570	How this Subdivision applies to partners and partnerships.....	82
40-575	Getting tax information if you acquire a horticultural plant .....	83
<b>Subdivision 40-G—Capital expenditure of primary producers and other landholders</b>		84
<b>Guide to Subdivision 40-G</b>		84
40-625	What this Subdivision is about .....	84
<b>Operative provisions</b>		85
40-630	Landcare operations.....	85
40-635	Meaning of <i>landcare operation</i> .....	87
40-640	Meaning of <i>approved management plan</i> .....	88

---

---

40-645	Electricity and telephone lines.....	88
40-650	Amounts you cannot deduct under this Subdivision.....	89
40-655	Meaning of <i>connecting power to land or upgrading the connection and metering point</i> .....	91
40-660	Non-arm's length transactions.....	92
40-665	How this Subdivision applies to partners and partnerships.....	92
40-670	Approval of persons as farm consultants.....	93
40-675	Review of decisions relating to approvals.....	93
<b>Subdivision 40-H—Capital expenditure that is immediately deductible</b>		93
<b>Guide to Subdivision 40-H</b>		93
40-725	What this Subdivision is about.....	93
<b>Operative provisions</b>		94
40-730	Deduction for expenditure on exploration or prospecting.....	94
40-735	Deduction for expenditure on mining site rehabilitation.....	96
40-740	Meaning of <i>ancillary mining activities</i> and <i>mining building site</i> .....	97
40-745	No deduction for certain expenditure.....	98
40-750	Deduction for payments of petroleum resource rent tax.....	98
40-755	Environmental protection activities.....	99
40-760	Limits on deductions from environmental protection activities.....	100
40-765	Non-arm's length transactions.....	101
<b>Subdivision 40-I—Capital expenditure that is deductible over time</b>		101
<b>Guide to Subdivision 40-I</b>		101
40-825	What this Subdivision is about.....	101
<b>Operative provisions</b>		102
40-830	Project pools.....	102
40-832	Project pools for post-9 May 2006 projects.....	103
40-835	Reduction of deduction.....	104
40-840	Meaning of <i>project amount</i> .....	105
40-845	Project life.....	106
40-855	When you start to deduct amounts for a project pool.....	106
40-860	Meaning of <i>mining capital expenditure</i> .....	106
40-865	Meaning of <i>transport capital expenditure</i> .....	108
40-870	Meaning of <i>transport facility</i> .....	109
40-875	Meaning of <i>processed minerals</i> and <i>minerals treatment</i> .....	109
40-880	Business related costs.....	110
40-885	Non-arm's length transactions.....	113

---

---

<b>Subdivision 40-J—Capital expenditure for the establishment of trees in carbon sink forests</b>	113
<b>Guide to Subdivision 40-J</b>	113
40-1000 What this Subdivision is about .....	113
<b>Operative provisions</b>	114
40-1005 Deduction for expenditure for establishing trees in carbon sink forests.....	114
40-1010 Expenditure for establishing trees in carbon sink forests.....	115
40-1015 <i>Carbon sequestration</i> by trees .....	117
40-1020 Certain expenditure disregarded .....	117
40-1025 Non-arm’s length transactions .....	118
<b>Division 41—Additional deduction for certain new business investment</b>	119
<b>Guide to Division 41</b>	119
41-1 What this Division is about .....	119
<b>Operative provisions</b>	120
41-5 Object of Division .....	120
41-10 Entitlement to deduction for investment.....	120
41-15 Amount of deduction.....	121
41-20 Recognised new investment amount.....	123
41-25 Investment commitment time .....	124
41-30 First use time .....	125
41-35 New investment threshold .....	126
<b>Division 43—Deductions for capital works</b>	127
<b>Guide to Division 43</b>	127
43-1 What this Division is about .....	127
43-2 Key concepts used in this Division.....	127
<b>Subdivision 43-A—Key operative provisions</b>	129
<b>Guide to Subdivision 43-A</b>	129
43-5 What this Subdivision is about .....	129
<b>Operative provisions</b>	129
43-10 Deductions for capital works.....	129
43-15 Amount you can deduct.....	130
43-20 Capital works to which this Division applies .....	130
43-25 Rate of deduction.....	132
43-30 No deduction until construction is complete .....	132
43-35 Requirement for body corporate to be registered under the Industry Research and Development Act .....	132
43-40 Deduction for destruction of capital works.....	133
43-45 Certain anti-avoidance provisions .....	133
43-50 Links and signposts to other parts of the Act.....	134

---

---

43-55	Anti-avoidance—arrangement etc. with tax-exempt entity .....	135
<b>Subdivision 43-B—Establishing the deduction base</b>		136
<b>Guide to Subdivision 43-B</b>		136
43-60	What this Subdivision is about .....	136
43-65	Explanatory material .....	136
<b>Operative provisions</b>		137
43-70	What is construction expenditure?.....	137
43-72	Meaning of <i>forestry road, timber operation</i> and <i>timber mill building</i> .....	139
43-75	Construction expenditure area .....	139
43-80	When capital works begin .....	141
43-85	Pools of construction expenditure .....	141
43-90	Table of intended use at time of completion of construction .....	142
43-95	Meaning of <i>hotel building</i> and <i>apartment building</i> .....	145
43-100	Certificates by Innovation Australia .....	146
<b>Subdivision 43-C—Your area and your construction expenditure</b>		146
<b>Guide to Subdivision 43-C</b>		146
43-105	What this Subdivision is about .....	146
43-110	Explanatory material .....	147
<b>Operative provisions</b>		147
43-115	Your area and your construction expenditure—owners.....	147
43-120	Your area and your construction expenditure—lessees and quasi-ownership right holders.....	147
43-125	Lessees' or right holders' pools can revert to owner .....	148
43-130	Identifying your area on acquisition or disposal.....	148
<b>Subdivision 43-D—Deductible uses of capital works</b>		149
<b>Guide to Subdivision 43-D</b>		149
43-135	What this Subdivision is about .....	149
<b>Operative provisions</b>		149
43-140	Using your area in a deductible way.....	149
43-145	Using your area in the 4% manner.....	152
43-150	Meaning of <i>industrial activities</i> .....	156
<b>Subdivision 43-E—Special rules about uses</b>		158
<b>Guide to Subdivision 43-E</b>		158
43-155	What this Subdivision is about .....	158
<b>Operative provisions</b>		159
43-160	Your area is used for a purpose if it is maintained ready for use for the purpose.....	159
43-165	Temporary cessation of use .....	159
43-170	Own use—capital works other than hotel and apartment buildings.....	159

---

---

43-175	Own use—hotel and apartment buildings.....	160
43-180	Special rules for hotel and apartment buildings.....	161
43-185	Residential or display use.....	162
43-190	Use of facilities not commonly provided, and of certain buildings used to operate a hotel, motel or guest house.....	163
43-195	Use for research and development activities must be in connection with a business.....	164
<b>Subdivision 43-F—Calculation of deduction</b>		164
<b>Guide to Subdivision 43-F</b>		164
43-200	What this Subdivision is about.....	164
43-205	Explanatory material.....	164
<b>Operative provisions</b>		166
43-210	Deduction for capital works begun after 26 February 1992.....	166
43-215	Deduction for capital works begun before 27 February 1992.....	168
43-220	Capital works taken to have begun earlier for certain purposes.....	169
<b>Subdivision 43-G—Undeducted construction expenditure</b>		170
<b>Guide to Subdivision 43-G</b>		170
43-225	What this Subdivision is about.....	170
<b>Operative provisions</b>		170
43-230	Calculating undeducted construction expenditure—common step.....	170
43-235	Post-26 February 1992 undeducted construction expenditure.....	171
43-240	Pre-27 February 1992 undeducted construction expenditure.....	172
<b>Subdivision 43-H—Balancing deduction on destruction of capital works</b>		172
<b>Guide to Subdivision 43-H</b>		172
43-245	What this Subdivision is about.....	172
<b>Operative provisions</b>		173
43-250	The amount of the balancing deduction.....	173
43-255	Amounts received or receivable.....	173
43-260	Apportioning amounts received for destruction.....	174
<b>Division 45—Disposal of leases and leased plant</b>		175
<b>Guide to Division 45</b>		175
45-1	What this Division is about.....	175
<b>Operative provisions</b>		176
45-5	Disposal of leased plant or lease.....	176
45-10	Disposal of interest in partnership.....	178
45-15	Disposal of shares in 100% subsidiary that leases plant.....	180
45-20	Disposal of shares in 100% subsidiary that leases plant in partnership.....	181

---

---

45-25	Group members liable to pay outstanding tax .....	182
45-30	Reduction for certain plant acquired before 21.9.99.....	182
45-35	Limit on amount included for plant for which there is a CGT exemption .....	183
45-40	Meaning of <i>plant</i> and <i>written down value</i> .....	184
<b>Part 2-15—Non-assessable income</b>		186
<b>Division 50—Exempt entities</b>		186
<b>Subdivision 50-A—Various exempt entities</b>		186
50-1	Entities whose ordinary income and statutory income is exempt .....	187
50-5	Charity, education, science and religion .....	187
50-10	Community service.....	188
50-15	Employees and employers .....	188
50-20	Funds contributing to other funds.....	189
50-25	Government .....	189
50-30	Health .....	189
50-35	Mining .....	190
50-40	Primary and secondary resources, and tourism.....	190
50-45	Sports, culture, film and recreation.....	191
50-50	Special conditions for items 1.1 and 1.2.....	192
50-52	Special condition for items 1.1, 1.5, 1.5A, 1.5B and 4.1 .....	192
50-55	Special conditions for items 1.3, 1.4, 6.1 and 6.2 .....	193
50-57	Special condition for item 1.5.....	193
50-60	Special conditions for items 1.5A and 1.5B .....	193
50-65	Special conditions for item 1.6.....	194
50-70	Special conditions for items 1.7, 2.1, 9.1 and 9.2 .....	194
50-72	Special condition for item 4.1.....	195
50-75	Certain distributions may be made overseas.....	195
50-80	Testamentary trusts may be treated as 2 trusts.....	196
<b>Subdivision 50-B—Endorsing charitable entities as exempt from income tax</b>		197
<b>Guide to Subdivision 50-B</b>		197
50-100	What this Subdivision is about .....	197
<b>Endorsing charitable entities as exempt from income tax</b>		197
50-105	Endorsement by Commissioner.....	197
50-110	Entitlement to endorsement.....	197
<b>Division 51—Exempt amounts</b>		200
51-1	Amounts of ordinary income and statutory income that are exempt .....	200
51-5	Defence.....	201
51-10	Education and training.....	202

---

---

51-30	Welfare .....	204
51-32	Compensation payments for loss of tax exempt payments .....	205
51-33	Compensation payments for loss of pay and/or allowances as a Defence reservist .....	207
51-35	Payments to a full-time student at a school, college or university .....	207
51-40	Payments to a secondary student .....	208
51-42	Bonuses for early completion of an apprenticeship .....	208
51-43	Income collected or derived by a copyright collecting society .....	209
51-50	Maintenance payments to a spouse or child .....	209
51-52	Income derived from eligible venture capital investments by ESVCLPs .....	210
51-54	Gain or profit from disposal of eligible venture capital investments .....	212
51-55	Gain or profit from disposal of venture capital equity .....	213
51-57	Interest on judgment debt relating to personal injury .....	213
51-60	Prime Minister's Prizes .....	214
<b>Division 52—Certain pensions, benefits and allowances are exempt from income tax</b>		215
<b>Guide to Division 52</b>		215
52-1	What this Division is about .....	215
<b>Subdivision 52-A—Exempt payments under the Social Security Act 1991</b>		216
<b>Guide to Subdivision 52-A</b>		216
52-5	What this Subdivision is about .....	216
<b>Operative provisions</b>		216
52-10	How much of a social security payment is exempt? .....	216
52-15	Supplementary amounts of payments .....	232
52-20	Tax-free amount of an ordinary payment after the death of your partner .....	234
52-25	Tax-free amount of certain bereavement lump sum payments .....	235
52-30	Tax-free amount of certain other bereavement lump sum payments.....	238
52-35	Tax-free amount of a lump sum payment made because of the death of a person you are caring for.....	239
52-40	Provisions of the <i>Social Security Act 1991</i> under which payments are made .....	240
<b>Subdivision 52-B—Exempt payments under the Veterans' Entitlements Act 1986</b>		243
<b>Guide to Subdivision 52-B</b>		243
52-60	What this Subdivision is about .....	243

---



---

<b>Operative provisions</b>	244
52-65 How much of a veterans' affairs payment is exempt? .....	244
52-70 Supplementary amounts of payments .....	248
52-75 Provisions of the <i>Veterans' Entitlements Act 1986</i> under which payments are made.....	248
<b>Subdivision 52-C—Exempt payments made because of the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986</b>	250
<b>Guide to Subdivision 52-C</b>	250
52-100 What this Subdivision is about .....	250
<b>Operative provisions</b>	251
52-105 Supplementary amount of a payment made under the <i>Repatriation Act 1920</i> is exempt .....	251
52-110 Other exempt payments .....	252
<b>Subdivision 52-CA—Exempt payments under the Military Rehabilitation and Compensation Act 2004</b>	252
<b>Guide to Subdivision 52-CA</b>	252
52-112 What this Subdivision is about .....	252
<b>Operative provisions</b>	253
52-114 How much of a payment under the Military Rehabilitation and Compensation Act is exempt? .....	253
<b>Subdivision 52-CB—Exempt payments under the Australian Participants in British Nuclear Tests (Treatment) Act 2006</b>	256
52-117 Payments of travelling expenses are exempt .....	256
<b>Subdivision 52-D—Exempt payments made by the Commonwealth to reimburse certain expenditure</b>	257
52-125 Private health insurance incentive payments are exempt.....	257
<b>Subdivision 52-E—Exempt payments under the ABSTUDY scheme</b>	257
<b>Guide to Subdivision 52-E</b>	257
52-130 What this Subdivision is about .....	257
<b>Operative provisions</b>	258
52-131 Payments under ABSTUDY scheme .....	258
52-132 Supplementary amount of payment .....	259
52-133 Tax-free amount of ordinary payment on death of partner if no bereavement payment payable.....	261
52-134 Tax-free amount if you receive a bereavement lump sum payment .....	261

---

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<b>Subdivision 52-F—Exemption of Commonwealth education or training payments</b>	262
52-140 Supplementary amount of a Commonwealth education or training payment is exempt.....	262
52-145 Meaning of Commonwealth education or training payment.....	264
<b>Subdivision 52-G—Exempt payments under the A New Tax System (Family Assistance) (Administration) Act 1999</b>	265
52-150 Family assistance payments are exempt .....	265
<b>Subdivision 52-H—Other exempt payments</b>	265
52-160 Economic security strategy payments are exempt .....	265
52-165 Household stimulus payments are exempt.....	265
<b>Division 53—Various exempt payments</b>	266
<b>Guide to Division 53</b>	266
53-1 What this Division is about .....	266
<b>Operative provisions</b>	266
53-10 Exemption of various types of payments.....	266
53-15 Supplementary amount of exceptional circumstances relief payment or farm help income support .....	268
53-20 Exemption of similar Australian and United Kingdom veterans' payments .....	269
<b>Division 54—Exemption for certain payments made under structured settlements and structured orders</b>	270
<b>Guide to Division 54</b>	270
54-1 What this Division is about .....	270
<b>Subdivision 54-A—Definitions</b>	270
<b>Operative provisions</b>	271
54-5 Definitions.....	271
54-10 Meaning of <i>structured settlement</i> and <i>structured order</i> .....	271
<b>Subdivision 54-B—Tax exemption for personal injury annuities</b>	274
<b>Operative provisions</b>	274
54-15 Personal injury annuity exemption for injured person.....	274
54-20 Lump sum compensation etc. would not have been assessable .....	274
54-25 Requirements of the annuity instrument.....	274
54-30 Requirements for payments of the annuity .....	275
54-35 Payments during the guarantee period on the death of the injured person.....	276
54-40 Requirement for minimum monthly level of support .....	277

---

---

<b>Subdivision 54-C—Tax exemption for personal injury lump sums</b>	279
<b>Operative provisions</b>	280
54-45 Personal injury lump sum exemption for injured person .....	280
54-50 Lump sum compensation would not have been assessable.....	280
54-55 Requirements of the instrument under which the lump sum is paid.....	280
54-60 Requirements for payments of the lump sum .....	281
<b>Subdivision 54-D—Miscellaneous</b>	282
<b>Operative provisions</b>	282
54-65 Exemption for certain payments to reversionary beneficiaries .....	282
54-70 Special provisions about trusts .....	282
54-75 Minister to arrange for review and report.....	283
<b>Division 55—Payments that are not exempt from income tax</b>	285
<b>Guide to Division 55</b>	285
55-1 What this Division is about .....	285
<b>Operative provisions</b>	285
55-5 Occupational superannuation payments .....	285
55-10 Education entry payments .....	286

## **Part 2-10—Capital allowances: rules about deductibility of capital expenditure**

### **Division 40—Capital allowances**

#### **Table of Subdivisions**

	Guide to Division 40
40-A	Objects of Division
40-B	Core provisions
40-C	Cost
40-D	Balancing adjustments
40-E	Low-value and software development pools
40-F	Primary production depreciating assets
40-G	Capital expenditure of primary producers and other landholders
40-H	Capital expenditure that is immediately deductible
40-I	Capital expenditure that is deductible over time
40-J	Capital expenditure for the establishment of trees in carbon sink forests

#### **Guide to Division 40**

##### **40-1 What this Division is about**

You can deduct an amount equal to the decline in value of a *depreciating asset* (an asset that has a limited effective life and that is reasonably expected to decline in value over the time it is used) that you hold.

That decline is generally measured by reference to the effective life of the asset.

You can also deduct amounts for certain other capital expenditure.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-10

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**40-10 Simplified outline of this Division**

The key concepts about depreciating assets and certain other capital expenditure are outlined below (in *bold italics*).

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Simplified outline of this Division		
Item	Major topic <i>Subordinate topics</i> Rules	Provisions
<b>1</b>	<b>Rules about depreciating assets</b>	
1.1	<i>Core provisions</i>  <i>Depreciating assets</i> are assets with a limited effective life that are reasonably expected to decline in value. Broadly, the <i>effective life</i> of a depreciating asset is the period it can be used to produce income. The <i>decline in value</i> is based on the cost and effective life of the depreciating asset, not its actual change in value. It begins at <i>start time</i> , when you begin to use the asset (or when you have it installed ready for use). It continues while you use the asset (or have it installed). Usually, the owner of a depreciating asset <i>holds</i> the asset and can therefore claim deductions for its decline in value. Sometimes the economic owner will be different to the legal owner and the economic owner will be the holder.	Subdivision 40-B
1.2	<i>Cost</i>  The <i>cost</i> of a depreciating asset includes both: <ul style="list-style-type: none"><li>• expenses you incur to start holding the asset; and</li><li>• additional expenses that contribute to its present condition and location (e.g. improvements).</li></ul>	Subdivision 40-C
1.3	<i>Balancing adjustments</i>  When you stop holding a depreciating asset you may have to include an amount in your assessable income, or deduct an amount under a <i>balancing adjustment</i> . The adjustment reconciles the decline with the actual change in value.	Subdivision 40-D

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Simplified outline of this Division**

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Item	Major topic <i>Subordinate topics</i> Rules	Provisions
1.4	<i>Low-value and software development pools</i> Low-cost assets and assets depreciated to a low value may be placed in a <b>low value pool</b> , which is treated as a single depreciating asset. You can also pool in-house software expenditure in a <b>software development pool</b> .	Subdivision 40-E
1.5	<i>Primary production depreciating assets</i> You can deduct amounts for capital expenditure on: <ul style="list-style-type: none"> <li>• <b>water facilities</b> over 3 income years; or</li> <li>• <b>horticultural plants</b> over a period that relates to the effective life of the plant.</li> </ul>	Subdivision 40-F
<b>2 Rules about other capital expenditure</b>		
2.1	<i>Capital expenditure of primary producers and other landholders</i> You can deduct amounts for capital expenditure on: <ul style="list-style-type: none"> <li>• <b>landcare operations</b> immediately; or</li> <li>• <b>electricity and telephone lines</b> over 10 income years.</li> </ul>	Subdivision 40-G
2.2	<i>Capital expenditure that is immediately deductible</i> You can get an immediate deduction for certain capital expenditure on: <ul style="list-style-type: none"> <li>• <b>exploration or prospecting</b>; and</li> <li>• <b>rehabilitation of mine and quarry sites</b>; and</li> <li>• <b>paying petroleum taxes</b>; and</li> <li>• <b>environmental protection activities</b>.</li> </ul>	Subdivision 40-H
2.3	<i>Capital expenditure that is deductible over time</i> You can deduct amounts for certain capital expenditure associated with projects you carry on. You deduct the amount over the life of the project using a <b>project pool</b> . You can also deduct amounts for certain business related costs over 5 years where the amounts are not otherwise taken into account and are not denied a deduction.	Subdivision 40-I

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 40** Capital allowances

Section 40-15

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**Simplified outline of this Division**

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<b>Item</b>	<b>Major topic</b> <i>Subordinate topics</i>	<b>Provisions</b>
2.4	<i>Capital expenditure for establishing trees in carbon sink forests</i> You can deduct amounts for capital expenditure for the establishment of trees in carbon sink forests.	Subdivision 40-J

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**Subdivision 40-A—Objects of Division**

**Table of sections**

40-15    Objects of Division

**40-15 Objects of Division**

The objects of this Division are:

- (a) to allow you to deduct the \*cost of a \*depreciating asset; and
- (b) to spread the deduction over a period that reflects the time for which the asset can be used to obtain benefits; and
- (c) to provide deductions for certain other capital expenditure that is not otherwise deductible.

Note 1:    This Division does not apply to some depreciating assets: see section 40-45.

Note 2:    The application of this Division to a life insurance company is affected by sections 320-200 and 320-255.

**Subdivision 40-B—Core provisions**

**Guide to Subdivision 40-B**

**40-20 What this Subdivision is about**

The rules that apply to most depreciating assets are in this Subdivision. It explains:

- what a *depreciating asset* is; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- when you start deducting amounts for depreciating assets; and
- how to work out your deductions.

It also contains rules for splitting and merging depreciating assets.

## Table of sections

### Operative provisions

40-25	Deducting amounts for depreciating assets
40-30	What a <i>depreciating asset</i> is
40-35	Jointly held depreciating assets
40-40	Meaning of <i>hold</i> a depreciating asset
40-45	Assets to which this Division does not apply
40-50	Assets for which you deduct under another Subdivision
40-53	Alterations etc. to certain depreciating assets
40-55	Use of certain car methods
40-60	When a depreciating asset starts to decline in value
40-65	Choice of methods to work out the decline in value
40-70	Diminishing value method
40-72	Diminishing value method for post-9 May 2006 assets
40-75	Prime cost method
40-80	When you can deduct the asset's cost
40-85	Meaning of <i>adjustable value</i> and <i>opening adjustable value</i> of a depreciating asset
40-90	Debt forgiveness
40-95	Choice of determining effective life
40-100	Commissioner's determination of effective life
40-102	Capped life of certain depreciating assets
40-105	Self-assessing effective life
40-110	Recalculating effective life
40-115	Splitting a depreciating asset
40-120	Replacement spectrum licences
40-125	Merging depreciating assets
40-130	Choices
40-135	Certain anti-avoidance provisions
40-140	Getting tax information from associates

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 40-25

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## Operative provisions

### 40-25 Deducting amounts for depreciating assets

*You deduct the decline in value*

- (1) You can deduct an amount equal to the decline in value for an income year (as worked out under this Division) of a \*depreciating asset that you \*held for any time during the year.

Note 1: Sections 40-70, 40-72 and 40-75 show you how to work out the decline for most depreciating assets. There is a limit on the decline: see subsections 40-70(3), 40-72(3) and 40-75(7).

Note 2: Small business entities can choose to both deduct and work out the amount they can deduct under Division 328.

Note 3: Generally, only one taxpayer can deduct amounts for a depreciating asset. However, if you and another taxpayer jointly hold the asset, each of you deduct amounts for it: see section 40-35.

*Reduction of deduction*

- (2) You must reduce your deduction by the part of the asset's decline in value that is attributable to your use of the asset, or your having it \*installed ready for use, for a purpose other than a \*taxable purpose.

Example: Ben holds a depreciating asset that he uses for private purposes for 30% of his total use in the income year.

If the asset declines by \$1,000 for the year, Ben would have to reduce his deduction by \$300 (30% of \$1,000).

*Further reduction: leisure facilities*

- (3) You may have to make a further reduction for a \*depreciating asset that is a \*leisure facility attributable to your use of it, or your having it \*installed ready for use, for a \*taxable purpose.
- (4) That reduction is the part of the \*leisure facility's decline in value that is attributable to your use of it, or your having it \*installed ready for use, at a time when:
- (a) its use did not constitute a \*fringe benefit; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) you did not use it or \*hold it for use as mentioned in paragraph 26-50(3)(b) (about using it in the course of your business or for your employees).

*Exception: low-value pools*

- (5) Subsections (2), (3) and (4) do not apply to \*depreciating assets allocated to a low-value pool.

Despite subsection (1), you can continue to deduct an amount equal to the decline in value for an income year (as worked out under this Division) of such an asset even though you do not continue to \*hold that asset.

Note: See Subdivision 40-E for low-value pools.

*Exception: Use of  $\frac{1}{3}$  of actual expenses method for a car*

- (6) Subsections (2), (3) and (4) do not apply to a \*car for an income year for which you use the “one-third of actual expenses” method. Instead, you reduce your deduction by  $\frac{2}{3}$  of the car’s decline in value.

Note: See Division 28 for that method.

*Meaning of taxable purpose*

- (7) Subject to subsection (8), a **taxable purpose** is:

- (a) the \*purpose of producing assessable income; or
- (b) the purpose of \*exploration or prospecting; or
- (c) the purpose of \*mining site rehabilitation; or
- (d) \*environmental protection activities.

Note: Where you have had a deduction under this Division an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

- (8) If Division 250 applies to you and an asset that is a \*depreciating asset:
- (a) if section 250-150 applies—you are taken to be using the asset for a \*taxable purpose to the extent specified in a determination made under subsection 250-150(3); or
  - (b) otherwise—you are taken not to be using the asset for such a purpose.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-30

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**40-30** What a *depreciating asset* is

- (1) A *depreciating asset* is an asset that has a limited \*effective life and can reasonably be expected to decline in value over the time it is used, except:
  - (a) land; or
  - (b) an item of \*trading stock; or
  - (c) an intangible asset, unless it is mentioned in subsection (2).
- (2) These intangible assets are *depreciating assets* if they are not \*trading stock:
  - (a) \*mining, quarrying or prospecting rights;
  - (b) \*mining, quarrying or prospecting information;
  - (c) items of \*intellectual property;
  - (d) \*in-house software;
  - (e) \*IRUs;
  - (f) \*spectrum licences;
  - (g) \*datacasting transmitter licences;
  - (h) \*telecommunications site access rights.
- (3) This Division applies to an improvement to land, or a fixture on land, whether the improvement or fixture is removable or not, as if it were an asset separate from the land.

Note 1: Whether such an asset is a depreciating asset depends on whether it falls within the definition in subsection (1).

Note 2: This Division does not apply to capital works for which you can deduct amounts under Division 43: see subsection 40-45(2).

- (4) Whether a particular composite item is itself a *depreciating asset* or whether its components are separate *depreciating assets* is a question of fact and degree which can only be determined in the light of all the circumstances of the particular case.

Example 1: A car is made up of many separate components, but usually the car is a depreciating asset rather than each component.

Example 2: A floating restaurant consists of many separate components (like the ship itself, stoves, fridges, furniture, crockery and cutlery), but usually these components are treated as separate depreciating assets.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (5) This Division applies to a renewal or extension of a \*depreciating asset that is a right as if the renewal or extension were a continuation of the original right.
- (6) This Division applies to a \*mining, quarrying or prospecting right (the **new right**) as if it were a continuation of another mining, quarrying or prospecting right you \*held if:
  - (a) the other right ends; and
  - (b) the new right and the other right relate to the same area, or any difference in area is not significant.

#### **40-35 Jointly held depreciating assets**

- (1) This Division and Divisions 41, 328 and 775 apply to a \*depreciating asset (the **underlying asset**) that you \*hold, and that is also held by one or more other entities, as if *your interest in the underlying asset* were itself the underlying asset.

Note: Partners do not hold partnership assets: see section 40-40.

- (2) As a result, the decline in value of the underlying asset is not itself taken into account.

Example: Buford Corp owns an office block that it leases to 2 companies, Smokey Pty Ltd and Bandit Pty Ltd. Smokey and Bandit decide to install a fountain in front of the building.

They discuss it with Buford who agrees to pay half the cost (because the fountain won't be removable at the end of the lease). Smokey and Bandit split the rest of the cost between them.

Smokey and Bandit would each hold the asset under item 3 of the table in section 40-40 and Buford would hold it under item 10. They would be joint holders, so each would write-off its *interest* in the fountain.

#### **40-40 Meaning of *hold* a depreciating asset**

Use this table to work out who **holds** a \*depreciating asset. An entity identified in column 3 of an item in the table as **not holding** a depreciating asset cannot **hold** the asset under another item.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 40** Capital allowances

Section 40-40

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**Identifying the holder of a depreciating asset**

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<b>Item</b>	<b>This kind of depreciating asset:</b>	<b>Is held by this entity:</b>
1	A *luxury car in respect of which a lease has been granted	The lessee (while the lessee has the right to use the car) and <i>not</i> the lessor
2	A *depreciating asset that is fixed to land subject to a *quasi-ownership right (including any extension or renewal of such a right) where the owner of the right has a right to remove the asset	The owner of the quasi-ownership right (while the right to remove exists)
3	An improvement to land (whether a fixture or not) subject to a *quasi-ownership right (including any extension or renewal of such a right) made, or itself improved, by any owner of the right for the owner's own use where the owner of the right has no right to remove the asset	The owner of the quasi-ownership right (while it exists)
4	A *depreciating asset that is subject to a lease where the asset is fixed to land and the lessor has the right to recover the asset	The lessor (while the right to recover exists)
5	A right that an entity legally owns but which another entity (the <i>economic owner</i> ) exercises or has a right to exercise immediately, where the economic owner has a right to become its legal owner and it is reasonable to expect that: (a) the economic owner will become its legal owner; or (b) it will be disposed of at the direction and for the benefit of the economic owner	The economic owner and <i>not</i> the legal owner

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Identifying the holder of a depreciating asset**

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Item	This kind of depreciating asset:	Is held by this entity:
6	A *depreciating asset that an entity (the <i>former holder</i> ) would, apart from this item, hold under this table (including by another application of this item) where a second entity (also the <i>economic owner</i> ): (a) possesses the asset, or has a right as against the former holder to possess the asset immediately; and (b) has a right as against the former holder the exercise of which would make the economic owner the holder under any item of this table; and it is reasonable to expect that the economic owner will become its holder by exercising the right, or that the asset will be disposed of at the direction and for the benefit of the economic owner	The economic owner and <i>not</i> the former holder
7	A *depreciating asset that is a partnership asset	The partnership and <i>not</i> any particular partner
8	*Mining, quarrying or prospecting information that an entity has and that is relevant to: (a) *mining operations carried on, or proposed to be carried on by the entity; or (b) a *business carried on by the entity that includes *exploration or prospecting for *minerals or quarry materials obtainable by such operations; whether or not it is generally available	The entity
9	Other *mining quarrying or prospecting information that an entity has and that is not generally available	The entity
10	Any *depreciating asset	The owner, or the legal owner if there is both a legal and equitable owner

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 40** Capital allowances

Section 40-45

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Example 1: Power Finance leases a luxury car to Kris who subleases it to Rachael. As lessee, item 1 makes Rachael the holder of the car. Power, as the legal owner, would normally hold the car under item 10.

However, item 1 makes it clear that Power, as lessor, does *not* hold the car. As the lessee, item 1 would normally mean that Kris held the car but, again, she is also a lessor and so is not the holder (she also doesn't have the right to use the car during the sublease).

Example 2: Sandra sells a packing machine to Jenny under a hire purchase agreement. Jenny holds the machine under item 6 because, although she is not the legal owner until she exercises her option to purchase, she possesses the machine now and can exercise an option to become its legal owner.

Jenny is reasonably expected to exercise that option because the final payment will be well below the expected market value of the machine at the end of the agreement. Sandra, as the machine's legal owner, would normally be its holder under item 10 but item 6 makes it clear that the legal owner is *not* the holder.

Note 1: Some assets may have holders under more than one item in the table.

Note 2: As well as hire purchase agreements, items 5 and 6 cover cases like assets subject to chattel mortgages, sales subject to retention of title clauses and assets subject to bare trusts.

**40-45 Assets to which this Division does not apply**

*Eligible work related items*

- (1) This Division does not apply to an asset that is an eligible work related item for the purposes of section 58X of the *Fringe Benefits Tax Assessment Act 1986* where the relevant benefit provided by the employer is an expense payment benefit or a property benefit (within the meaning of that Act).

*Capital works*

- (2) This Division does not apply to capital works for which you can deduct amounts under Division 43, or for which you could deduct amounts under that Division:
  - (a) but for expenditure being incurred, or capital works being started, before a particular day; or
  - (b) had you used the capital works for a purpose relevant to those capital works under section 43-140.

Note: Section 43-20 lists the capital works to which that Division applies.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Films*

- (5) This Division does not apply to a \*depreciating asset if you or another taxpayer has deducted or can deduct amounts for it under:
  - (a) Division 10BA of Part III of the *Income Tax Assessment Act 1936* (about Australian films); or
  - (b) Division 10B of Part III of that Act if the depreciating asset relates to a copyright in an Australian film within the meaning of that Division.
- (6) This Division applies to a \*depreciating asset that is copyright in a \*film where a company is entitled to a \*tax offset under section 376-55 in respect of the film as if the asset's \*cost were reduced by the amount of that offset.

**40-50 Assets for which you deduct under another Subdivision**

- (1) You cannot deduct an amount, or work out a decline in value, for a \*depreciating asset under this Subdivision if you or another taxpayer has deducted or can deduct amounts for it under Subdivision 40-F (about primary production depreciating assets), 40-G (about capital expenditure of primary producers and other landholders) or 40-J (about capital expenditure for the establishment of trees in carbon sink forests).
- (2) You cannot deduct an amount, or work out a decline in value, for \*in-house software under this Subdivision if you have allocated expenditure on the software to a software development pool under Subdivision 40-E.

**40-53 Alterations etc. to certain depreciating assets**

- (1) These things are not the same \*depreciating asset for the purposes of section 40-50 and Subdivision 40-F:
  - (a) a depreciating asset; and
  - (b) a repair of a capital nature, or an alteration, addition or extension, to that asset that would, if it were a separate depreciating asset, be a \*water facility.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 40-55

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- (2) These things are not the same \*depreciating asset for the purposes of section 40-50 and Subdivision 40-G:
  - (a) a depreciating asset; and
  - (b) a repair of a capital nature, or an alteration, addition or extension, to that asset that would, if it were a separate depreciating asset, be a \*landcare operation.

**40-55 Use of certain car methods**

You cannot deduct any amount for the decline in value of a \*car for an income year if you use the “cents per kilometre” method, or the “12% of original value” method, for the car for that year.

Note: See Division 28 for those methods.

**40-60 When a depreciating asset starts to decline in value**

- (1) A \*depreciating asset you \*hold starts to decline in value from when its \*start time occurs.
- (2) The *start time* of a \*depreciating asset is when you first use it, or have it \*installed ready for use, for any purpose.

Note: Previous use by a transition entity is ignored: see section 58-70.

- (3) However, there is another *start time* for a \*depreciating asset you \*hold if a \*balancing adjustment event referred to in paragraph 40-295(1)(b) occurs for the asset and you start to use the asset again. Its second *start time* is when you start using it again.

**40-65 Choice of methods to work out the decline in value**

- (1) You have a choice of 2 methods to work out the decline in value of a \*depreciating asset. You must choose to use either the \*diminishing value method or the \*prime cost method.

Note 1: Once you make the choice for an asset, you cannot change it: see section 40-130.

Note 2: For the diminishing value method, see sections 40-70 and 40-72. For the prime cost method, see section 40-75.

Note 3: In some cases you do not have to make the choice because you can deduct the asset’s cost: see section 40-80.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Exception: asset acquired from associate*

- (2) For a \*depreciating asset that you acquire from an \*associate of yours where the associate has deducted or can deduct an amount for the asset under this Division, you must use the same method that the associate was using.

Note: You can require the associate to tell you which method the associate was using: see section 40-140.

*Exception: holder changes but user same or associate of former user*

- (3) For a \*depreciating asset that you acquire from a former \*holder of the asset, you must use the same method that the former holder was using for the asset if:
- (a) the former holder or another entity (each of which is the **former user**) was using the asset at a time before you became the holder; and
  - (b) while you hold the asset, the former user or an \*associate of the former user uses the asset.
- (4) However, you must use the \*diminishing value method if:
- (a) you do not know, and cannot readily find out, which method the former holder was using; or
  - (b) the former holder did not use a method.

*Exception: low-value pools*

- (5) You work out the decline in value of a \*depreciating asset in a low-value pool under Subdivision 40-E rather than under this Subdivision.

*Exception: expenditure deductible under research and development provisions*

- (6) If you can deduct an amount under section 73BA of the *Income Tax Assessment Act 1936* (or could if you had not chosen a tax offset under section 73I of that Act) for the asset:
- (a) for a period before the first period for which you can deduct an amount for the asset under this Division; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-70

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- (b) for a period that starts at the same time as the first period for which you can deduct an amount for the asset under this Division;

you must, for the purposes of this Division, use the same method as you used, or use, for the asset for the purposes of working out the deduction under section 73BA.

**40-70 Diminishing value method**

- (1) You work out the decline in value of a \*depreciating asset for an income year using the *diminishing value method* in this way:

$$\text{Base value} \times \frac{\text{Days held}}{365} \times \frac{150\%}{\text{Asset's * effective life}}$$

where:

*base value* is:

- (a) for the income year in which the asset's \*start time occurs—its \*cost; or
- (b) for a later year—the sum of its \*opening adjustable value for that year and any amount included in the second element of its cost for that year.

*days held* is the number of days you \*held the asset in the income year from its \*start time, ignoring any days in that year when you did not use the asset, or have it \*installed ready for use, for any purpose.

Note: If you recalculate the effective life of a depreciating asset, you use that recalculated life in working out your deduction.

You can choose to recalculate effective life because of changed circumstances: see section 40-110. That section also requires you to recalculate effective life in some cases.

*Exception: intangibles*

- (2) You cannot use the \*diminishing value method to work out the decline in value of:
  - (a) \*in-house software; or
  - (b) an item of \*intellectual property (except copyright in a \*film); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) a \*spectrum licence; or
- (d) a \*datacasting transmitter licence; or
- (e) a \*telecommunications site access right.

*Limit on decline*

- (3) The decline in value of a \*depreciating asset under this section for an income year cannot be more than the amount that is the asset's **base value** in the formula in subsection (1) for that income year.

**40-72 Diminishing value method for post-9 May 2006 assets**

- (1) You work out the decline in value of a \*depreciating asset for an income year using the **diminishing value method** in this way if you started to \*hold the asset on or after 10 May 2006:

$$\text{Base value} \times \frac{\text{Days held}}{365} \times \frac{200\%}{\text{Asset's *effective life}}$$

where:

**base value** has the same meaning as in subsection 40-70(1).

**days held** has the same meaning as in subsection 40-70(1).

Note: If you recalculate the effective life of a depreciating asset, you use that recalculated life in working out your deduction.

You can choose to recalculate effective life because of changed circumstances: see section 40-110. That section also requires you to recalculate effective life in some cases.

*Exception: intangibles*

- (2) You cannot use the \*diminishing value method to work out the decline in value of:
  - (a) \*in-house software; or
  - (b) an item of \*intellectual property (except copyright in a \*film);  
or
  - (c) a \*spectrum licence; or
  - (d) a \*datacasting transmitter licence; or
  - (e) a \*telecommunications site access right.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-75

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*Limit on decline*

- (3) The decline in value of a \*depreciating asset under this section for an income year cannot be more than the amount that is the asset's **base value** in the formula in subsection (1) for that income year.

**40-75 Prime cost method**

- (1) You work out the decline in value of a \*depreciating asset for an income year using the **prime cost method** in this way:  
where:

$$\text{Asset's *cost} \times \frac{\text{Days held}}{365} \times \frac{100\%}{\text{Asset's *effective life}}$$

where:

**days held** has the same meaning as in subsection 40-70(1).

Example: Greg acquires an asset for \$3,500 and first uses it on the 26th day of the income year. If the effective life of the asset is  $3\frac{1}{3}$  years, the asset would decline in value in that year by:

$$\$3,500 \times \frac{[365 - 25]}{365} \times \frac{100\%}{3\frac{1}{3}} = \$978$$

The asset's adjustable value at the end of the income year is:

$$\$3,500 - \$978 = \$2,522$$

- (2) However, you must adjust the formula in subsection (1) for an income year (the **change year**):
- (a) for which you recalculate the \*depreciating asset's \*effective life; or
  - (b) after the year in which the asset's start time occurs and in which an amount is included in the second element of the asset's \*cost; or
  - (c) for which the asset's \*opening adjustable value is reduced under section 40-90 (about debt forgiveness); or
  - (e) for which there is a reduction to the asset's opening adjustable value under paragraph 40-365(5)(b) (about

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

involuntary disposals) where you are using the prime cost method; or

- (f) for which the opening adjustable value of the asset is modified under subsection 27-80(3A) or (4), 27-85(3) or 27-90(3); or
- (g) for which there is a reduction in the asset's opening adjustable value under section 775-70; or
- (h) for which there is an increase in the asset's opening adjustable value under section 775-75.

The adjustments apply for the change year and later years.

Note: For recalculating a depreciating asset's effective life: see section 40-110.

- (3) The adjustments are:
  - (a) instead of the asset's \*cost, you use its \*opening adjustable value for the change year plus the amounts (if any) included in the second element of its cost for that year; and
  - (b) instead of the asset's \*effective life, you use its \*remaining effective life.
- (4) The **remaining effective life** of a \*depreciating asset is any period of its \*effective life that is yet to elapse as at:
  - (a) the start of the change year; or
  - (b) in the case of a roll-over under section 40-340—the time when the \*balancing adjustment event occurs for the transferor.

Note: Effective life is worked out in years and fractions of years.

- (5) You must also adjust the formula in subsection (1) for an intangible \*depreciating asset that:
  - (a) is mentioned in an item in the table in subsection 40-95(7) (except item 5, 7 or 8); and
  - (b) you acquire from a former \*holder of the asset.

The adjustment applies for the income year in which you acquire the asset and later income years.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-80

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- (6) Instead of the asset's \*effective life under the table in subsection 40-95(7), you use the number of years remaining in that effective life as at the start of the income year in which you acquire the asset.

*Limit on decline*

- (7) The decline in value of a \*depreciating asset under this section for an income year cannot be more than:
- (a) for the income year in which the asset's \*start time occurs—its \*cost; or
  - (b) for a later year—the sum of its \*opening adjustable value for that year and any amount included in the second element of its cost for that year.

**40-80 When you can deduct the asset's cost**

*Exploration or prospecting*

- (1) The decline in value of a \*depreciating asset you \*hold is the asset's \*cost if:
- (a) you first use the asset for \*exploration or prospecting for \*minerals, or quarry materials, obtainable by \*mining operations; and
  - (b) when you first use the asset, you do not use it for:
    - (i) development drilling for \*petroleum; or
    - (ii) operations in the course of working a mining property, quarrying property or petroleum field; and
  - (c) you satisfy one or more of these subparagraphs at the asset's \*start time:
    - (i) you carry on \*mining operations;
    - (ii) it would be reasonable to conclude you proposed to carry on such operations;
    - (iii) you carry on a \*business of, or a business that included, exploration or prospecting for minerals or quarry materials obtainable by such operations, and expenditure on the asset was necessarily incurred in carrying on that business.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Depreciating assets used for certain purposes*

- (2) The decline in value of a \*depreciating asset you start to \*hold in an income year is the asset's \*cost if:
- (a) that cost does not exceed \$300; and
  - (b) you use the asset predominantly for the \*purpose of producing assessable income that is not income from carrying on a \*business; and
  - (c) the asset is not one that is part of a set of assets that you started to hold in that income year where the total cost of the set of assets exceeds \$300; and
  - (d) the total cost of the asset and any other identical, or substantially identical, asset that you start to hold in that income year does not exceed \$300.

**40-85 Meaning of *adjustable value* and *opening adjustable value* of a depreciating asset**

- (1) The *adjustable value* of a \*depreciating asset at a particular time is:
- (a) if you have not yet used it or had it \*installed ready for use for any purpose—its \*cost; or
  - (b) for a time in the income year in which you first use it, or have it installed ready for use, for any purpose—its cost less its decline in value up to that time; or
  - (c) for a time in a later income year—the sum of its \*opening adjustable value for that year and any amount included in the second element of its cost for that year up to that time, less its decline in value for that year up to that time.

Note: The adjustable value of a depreciating asset may be modified by section 250-285.

- (2) The *opening adjustable value* of a \*depreciating asset for an income year is its \*adjustable value to you at the end of the previous income year.

Note: The opening adjustable value of a depreciating asset may be modified by one of these provisions:

- Subdivision 27-B;
- subsection 40-90(3);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 40-90

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- subsection 40-285(4);
- paragraph 40-365(5)(b);
- section 775-70;
- section 775-75.

**40-90 Debt forgiveness**

- (1) This section applies if an amount (the *debt forgiveness amount*) is applied in reduction of deductible expenditure for a \*depreciating asset in an income year (within the meaning of Division 245 of Schedule 2C to the *Income Tax Assessment Act 1936*) under section 245-155 of that Schedule.
- (2) The asset's \*cost is reduced for that income year by the debt forgiveness amount.
- (3) The asset's \*opening adjustable value for that income year is reduced by the debt forgiveness amount if that income year is later than the one in which its \*start time occurs.

**40-95 Choice of determining effective life**

- (1) You must choose either:
  - (a) to use an \*effective life determined by the Commissioner for a \*depreciating asset under section 40-100; or
  - (b) to work out the effective life of the asset yourself under section 40-105.

Note: If you choose to use an effective life determined by the Commissioner for a depreciating asset, a capped life may apply to the asset under section 40-102.

- (2) Your choice of an \*effective life determined by the Commissioner for a \*depreciating asset is limited to one in force as at:
  - (a) the time when you entered into a contract to acquire the asset, you otherwise acquired it or you started to construct it if its \*start time occurs within 5 years of that time; or
  - (b) for \*plant that you entered into a contract to acquire, you otherwise acquired or you started to construct before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999—the time when you entered into the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

contract to acquire it, otherwise acquired it or started to construct it; or

(c) otherwise—its \*start time.

- (3) You must make the choice for the income year in which the asset's \*start time occurs.

Note: For rules about choices: see section 40-130.

*Exception: asset acquired from associate*

- (4) For a \*depreciating asset that you start to \*hold where the former holder is an \*associate of yours and the associate has deducted or can deduct an amount for the asset under this Division, you must use:
- (a) if the associate was using the \*diminishing value method for the asset—the same \*effective life that the associate was using; or
  - (b) if the associate was using the \*prime cost method—an effective life equal to any period of the asset's effective life the associate was using that is yet to elapse at the time you started to hold it.

Note: You can require the associate to tell you which effective life the associate was using: see section 40-140.

- (4A) Subsection (4) does not apply to a \*depreciating asset if subsection (4B) or (4C) applies to the asset.
- (4B) For a \*depreciating asset that you start to \*hold if:
- (a) the former holder is an \*associate of yours; and
  - (b) the associate has deducted or can deduct an amount for the asset under this Division; and
  - (c) section 40-102 applied to the asset immediately before you started to hold it because an item in the tables in subsections 40-102(4) and (5) applied to it at the relevant time (the *relevant time for the associate*) that applied to the associate under subsection 40-102(3); and
  - (d) a different item in the tables in subsections 40-102(4) and (5) applies to the asset when you start to hold it; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 40-95

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- (e) the item referred to in paragraph (d) would have applied to the asset at the relevant time for the associate if the use to which the asset were put at that time were the use (the *new use*) to which it is put when you start to hold it;

you must use:

- (f) if the associate was using the \*diminishing value method for the asset—an \*effective life equal to the \*capped life that would have applied to the asset under subsection 40-102(4) or (5) at the relevant time for the associate if the use to which the asset were put at that time were the new use; or
- (g) if the associate was using the \*prime cost method—an effective life equal to the capped life that:
  - (i) would have applied to the asset under subsection 40-102(4) or (5) at the relevant time for the associate if the use to which the asset were put at that time were the new use; and
  - (ii) is yet to elapse at the time you start to hold it.

Note 1: If paragraph (e) is not satisfied, subsection (4C) may apply to the depreciating asset.

Note 2: You can require the associate to tell you the relevant time that applied to the associate under subsection 40-102(3): see section 40-140.

(4C) For a \*depreciating asset that you start to \*hold if:

- (a) the former holder is an \*associate of yours; and
- (b) the associate has deducted or can deduct an amount for the asset under this Division; and
- (c) section 40-102 applied to the asset immediately before you started to hold it; and
- (d) one of the following applies:
  - (i) no item in the tables in subsections 40-102(4) and (5) applies to the asset when you start to hold it;
  - (ii) subsection (4B) would apply to the asset but for paragraph (e) of that subsection not being satisfied;

you must use:

- (e) if the associate was using the \*diminishing value method for the asset—the \*effective life determined by the Commissioner for the asset under section 40-100 that the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

associate would have used if section 40-102 had not applied to the asset; or

- (f) if the associate was using the \*prime cost method—an effective life equal to any period of the effective life determined by the Commissioner for the asset under section 40-100 that:
  - (i) the associate would have used if section 40-102 had not applied to the asset; and
  - (ii) is yet to elapse at the time you start to hold it.

Note: You can require the associate to tell you which effective life the associate would have used if section 40-102 had not applied to the asset: see section 40-140.

*Exception: holder changes but user same or associate of former user*

- (5) For a \*depreciating asset that you start to \*hold where:
  - (a) the former holder or another entity (each of which is the **former user**) was using the asset at a time before you became the holder; and
  - (b) while you hold the asset, the former user or an \*associate of the former user uses the asset;you must use:
  - (c) if the former holder was using the \*diminishing value method for the asset—the same \*effective life that the former holder was using; or
  - (d) if the former holder was using the \*prime cost method—an effective life equal to any period of the asset's effective life the former holder was using that is yet to elapse at the time you started to hold it.
- (5A) Subsection (5) does not apply to a \*depreciating asset if subsection (5B) or (5C) applies to the asset.
- (5B) For a \*depreciating asset that you start to \*hold if:
  - (a) paragraphs (5)(a) and (b) apply; and
  - (b) section 40-102 applied to the asset immediately before you started to hold it because an item in the tables in subsections 40-102(4) and (5) applied to it at the relevant time (the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-95

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*relevant time for the former holder*) that applied to the former holder under subsection 40-102(3); and

- (c) a different item in the tables in subsections 40-102(4) and (5) applies to the asset when you start to hold it; and
- (d) the item referred to in paragraph (c) would have applied to the asset at the relevant time for the former holder if the use to which the asset were put at that time were the use (the *new use*) to which it is put when you start to hold it;

you must use:

- (e) if the former holder was using the \*diminishing value method for the asset—an \*effective life equal to the \*capped life that would have applied to the asset under subsection 40-102(4) or (5) at the relevant time for the former holder if the use to which the asset were put at that time were the new use; or
- (f) if the former holder was using the \*prime cost method—an effective life equal to the capped life that:
  - (i) would have applied to the asset under subsection 40-102(4) or (5) at the relevant time for the former holder if the use to which the asset were put at that time were the new use; and
  - (ii) is yet to elapse at the time you start to hold it.

Note: If paragraph (d) is not satisfied, subsection (5C) may apply to the depreciating asset.

(5C) For a \*depreciating asset that you start to \*hold if:

- (a) paragraphs (5)(a) and (b) apply; and
- (b) section 40-102 applied to the asset immediately before you started to hold it; and
- (c) one of the following applies:
  - (i) no item in the tables in subsections 40-102(4) and (5) applies to the asset when you start to hold it;
  - (ii) subsection (5B) would apply to the asset but for paragraph (d) of that subsection not being satisfied;

you must use:

- (d) if the former holder was using the \*diminishing value method for the asset—the \*effective life determined by the Commissioner for the asset under section 40-100 that the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- former holder would have used if section 40-102 had not applied to the asset; or
- (e) if the former holder was using the \*prime cost method—an effective life equal to any period of the effective life determined by the Commissioner for the asset under section 40-100 that:
- (i) the former holder would have used if section 40-102 had not applied to the asset; and
  - (ii) is yet to elapse at the time you start to hold it.
- (6) However, you must use an \*effective life determined by the Commissioner if:
- (a) you do not know, and cannot readily find out, which effective life the former holder was using and, if subsection (5B) or (5C) applied to the asset, either of the following matters:
    - (i) the effective life the former holder would have used if section 40-102 had not applied to the asset;
    - (ii) the relevant time that applied to the former holder under subsection 40-102(3); or
  - (b) the former holder did not use an effective life.

*Exception: intangible depreciating assets*

- (7) The **effective life** of an intangible \*depreciating asset mentioned in this table is the period applicable to that asset under the table.

<b><i>Effective life of certain intangible depreciating assets</i></b>		
<b>Item</b>	<b>For this asset:</b>	<b>The effective life is:</b>
1	Standard patent	20 years
2	Innovation patent	8 years
3	Petty patent	6 years
4	Registered design	15 years
5	Copyright (except copyright in a *film)	The shorter of: (a) 25 years from when you acquire the copyright; or (b) the period until the copyright ends

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-95

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***Effective life of certain intangible depreciating assets***

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<b>Item</b>	<b>For this asset:</b>	<b>The effective life is:</b>
6	A licence (except one relating to a copyright or *in-house software)	The term of the licence
7	A licence relating to a copyright (except copyright in a *film)	The shorter of: (a) 25 years from when you become the licensee; or (b) the period until the licence ends
8	*In-house software	4 years
9	*Spectrum licence	The term of the licence
10	*Datacasting transmitter licence	15 years
14	*Telecommunications site access right	The term of the right

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(8) The ***effective life*** of an intangible \*depreciating asset that is not mentioned in the table in subsection (7) and is not an \*IRU or a \*mining, quarrying or prospecting right cannot be longer than the term of the asset as extended by any reasonably assured extension or renewal of that term.

(9) The ***effective life*** of an \*IRU is the \*effective life of the telecommunications cable over which the IRU is granted.

Note: Section 73BG of the *Income Tax Assessment Act 1936* modifies the way in which the effective life of a depreciating asset is worked out for certain companies. That section applies if it is reasonably likely that the asset will be used for the purpose of the carrying on by or on behalf of the company of research and development activities (as defined in section 73B of that Act).

*Exception: mining, quarrying or prospecting rights*

(10) The ***effective life*** of a \*mining, quarrying or prospecting right is the period you work out yourself by estimating the period (in years, including fractions of years) set out in column 3 of this table:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Item	For this asset:	Estimate the period until the end of:
1	A *mining, quarrying or prospecting right relating to *mining operations (except obtaining *petroleum or quarry materials)	The life of the mine or proposed mine to which the right relates or, if there is more than one, the life of the mine that has the longest estimated life
2	A *mining, quarrying or prospecting right relating to *mining operations to obtain *petroleum	The life of the petroleum field or proposed petroleum field to which the right relates
3	A *mining, quarrying or prospecting right relating to *mining operations to obtain quarry materials	The life of the quarry or proposed quarry to which the right relates or, if there is more than one, the life of the quarry that has the longest estimated life

- (11) You work out the period in subsection (10):
- (a) as from the \*start time of the \*mining, quarrying or prospecting right; and
  - (b) by reference only to the period of time over which the reserves, reasonably estimated using an appropriate accepted industry practice, are expected to be extracted from the mine, petroleum field or quarry.

#### **40-100 Commissioner's determination of effective life**

- (1) The Commissioner may make a written determination specifying the *effective life* of \*depreciating assets. The determination may specify conditions for particular depreciating assets.
- (2) A determination may specify a day from which it takes effect for \*depreciating assets specified in the determination.
- (3) A determination may operate retrospectively to a day specified in the determination if:
  - (a) there was no applicable determination at that day for the \*depreciating asset covered by the determination; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 40-102

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- (b) the determination specifies a shorter \*effective life for the depreciating asset covered by the determination than was previously applicable.
- (4) The Commissioner is to make a determination of the *effective life* of a \*depreciating asset by estimating the period (in years, including fractions of years) it can be used by any entity for a \*taxable purpose or for the purpose of producing \*exempt income or \*non-assessable non-exempt income and, if relevant for the asset:
  - (a) assuming it will be subject to wear and tear at a rate that is reasonable for the Commissioner to assume; and
  - (b) assuming it will be maintained in reasonably good order and condition; and
  - (c) having regard to the period within which it is likely to be scrapped, sold for no more than scrap value or abandoned.

**40-102 Capped life of certain depreciating assets**

- (1) If this section applies to a \*depreciating asset, the *effective life* of the asset is the period (the *capped life*) that applies to the asset under subsection (4) or (5) at the relevant time (which is worked out using subsection (3)).

*Working out if this section applies*

- (2) This section applies to a \*depreciating asset if:
  - (a) you choose, under paragraph 40-95(1)(a), to use an \*effective life determined by the Commissioner for the asset under section 40-100; and
  - (b) your choice is limited to a determination in force at the time mentioned in paragraph 40-95(2)(a) or (c); and
  - (c) a \*capped life applies to the asset under subsection (4) or (5) at the relevant time (which is worked out using subsection (3)); and
  - (d) the capped life is shorter than the effective life mentioned in paragraph (a).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) For the purposes of this section, the relevant time is:
- (a) the \*start time of the \*depreciating asset if:
    - (i) paragraph 40-95(2)(c) applies to you; or
    - (ii) paragraph 40-95(2)(a) applies to you and a \*capped life does not apply to the asset under subsection (4) or (5) at the time mentioned in that paragraph; or
    - (iii) paragraph 40-95(2)(a) applies to you and the capped life that applies to the asset under subsection (4) or (5) at the time mentioned in that paragraph is longer than the capped life that applies to the asset at its start time; or
  - (b) if paragraph (a) does not apply—the time mentioned in paragraph 40-95(2)(a).

*Capped life*

- (4) If the \*depreciating asset corresponds exactly to the description in column 2 of the table, the ***capped life*** of the asset is the period specified in column 3 of the table.

<b><i>Capped life of certain depreciating assets</i></b>		
<b>Item</b>	<b>Kind of depreciating asset</b>	<b>Period</b>
1	Aeroplane used predominantly for agricultural spraying or agricultural dusting	8 years
2	Aeroplane to which item 1 does not apply	10 years
3	Helicopter used predominantly for mustering, agricultural spraying or agricultural dusting	8 years
4	Helicopter to which item 3 does not apply	10 years
5	Bus with a *gross vehicle mass of more than 3.5 tonnes	7.5 years
6	Light commercial vehicle with a *gross vehicle mass of 3.5 tonnes or less and designed to carry a load of 1 tonne or more	7.5 years
7	Minibus with a *gross vehicle mass of 3.5 tonnes or less and designed to carry 9 or more passengers	7.5 years
8	Trailer with a *gross vehicle mass of more than 4.5 tonnes	10 years

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 40** Capital allowances

Section 40-102

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***Capped life of certain depreciating assets***

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<b>Item</b>	<b>Kind of depreciating asset</b>	<b>Period</b>
9	Truck with a *gross vehicle mass of more than 3.5 tonnes (other than a truck that is used in *mining operations and that is not of a kind that can be registered to be driven on a public road in the place in which the truck is operated)	7.5 years

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- (5) If the \*depreciating asset is of a kind described in column 2 of the table and is used in the industry specified in column 3 of the table for the asset, the ***capped life*** of the asset is the period specified in column 4 of the table.

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***Capped life of certain depreciating assets used in specified industries***

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<b>Item</b>	<b>Kind of depreciating asset</b>	<b>Industry in which the asset is used</b>	<b>Period</b>
1	Gas transmission asset	Gas supply	20 years
2	Gas distribution asset	Gas supply	20 years
3	Oil production asset (other than an electricity generation asset or an offshore platform)	Oil and gas extraction	15 years
4	Gas production asset (other than an electricity generation asset or an offshore platform)	Oil and gas extraction	15 years
5	Offshore platform	Oil and gas extraction	20 years
6	Asset (other than an electricity generation asset) used to manufacture condensate, crude oil, domestic gas, liquid natural gas or liquid petroleum gas but not if the manufacture occurs in an oil refinery	Petroleum refining	15 years
7	Harvester	Primary production sector	6 <sup>2</sup> / <sub>3</sub> years
8	Tractor	Primary production sector	6 <sup>2</sup> / <sub>3</sub> years

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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#### **40-105 Self-assessing effective life**

- (1) You work out the *effective life* of a \*depreciating asset yourself by estimating the period (in years, including fractions of years) it can be used by any entity for a \*taxable purpose or for the purpose of producing \*exempt income or \*non-assessable non-exempt income and, if relevant for the asset:
  - (a) having regard to the wear and tear you reasonably expect from your expected circumstances of use; and
  - (b) assuming that it will be maintained in reasonably good order and condition.
- (2) If, in working out that period, you conclude that the asset would be likely to be scrapped, sold for no more than scrap value or abandoned before the end of that period, its *effective life* ends at the earlier time.
- (3) You work out the period in subsection (1) or (2) as from the \*start time of the \*depreciating asset.

*Exception: intangibles*

- (4) This section does not apply to the following intangible \*depreciating assets:
  - (a) assets to which an item in the table in subsection 40-95(7) applies;
  - (b) \*mining, quarrying or prospecting rights.

#### **40-110 Recalculating effective life**

- (1) You may choose to recalculate the \*effective life of a \*depreciating asset from a later income year if the effective life you have been using is no longer accurate because of changed circumstances relating to the nature of the use of the asset.

Example: Some examples of changes in circumstances that may result in your recalculating the effective life of a depreciating asset are:

- your use of the asset turns out to be more or less rigorous than you expected (or was anticipated by the Commissioner's determination);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 40** Capital allowances

Section 40-110

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- there is a downturn in demand for the goods or services the asset is used to produce that will result in the asset being scrapped;
- legislation prevents the asset's continued use;
- changes in technology make the asset redundant;
- there is an unexpected demand, or lack of success, for a film.

(2) You must recalculate a \*depreciating asset's \*effective life from a later income year if:

(a) you:

(i) self-assessed its effective life; or

(ii) are using an effective life worked out under section 40-100 (about the Commissioner's determination), or 40-102 (about the capped life of certain depreciating assets), and the \*prime cost method; or

(iii) are using an effective life because of subsection 40-95(4), (4B), (4C), (5), (5B) or (5C); and

(b) its \*cost is increased in that year by at least 10%.

Note 1: You may conclude that the effective life is the same.

Note 2: For the elements of the cost of a depreciating asset, see Subdivision 40-C.

Example 1: Paul purchases a photocopier and self-assesses its effective life at 6 years. In a later year he incurs expenditure to increase the quality of the reproductions it makes. He recalculates its effective life, but concludes that it remains the same.

Example 2: Fiona also purchases a photocopier and self-assesses its effective life at 6 years. In a later year she incurs expenditure to incorporate a more robust paper handling system. She recalculates its effective life, and concludes that it is increased to 7 years.

(3) You must recalculate a \*depreciating asset's \*effective life for the income year in which you started to \*hold it if:

(a) you are using an effective life because of subsection 40-95(4), (4B), (4C), (5), (5B) or (5C); and

(b) the asset's \*cost is increased after you started to hold it in that year by at least 10%.

(3A) Subsections (1), (2) and (3) do not apply to a \*depreciating asset that is a \*mining, quarrying or prospecting right.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3B) You may choose to recalculate the \*effective life of a \*mining, quarrying or prospecting right from a later income year if the effective life you have been using is no longer accurate because of changed circumstances relating to an existing or proposed mine, petroleum field or quarry to which that right relates.
- (4) A recalculation under this section must be done using:
- (a) if paragraph (b) does not apply—section 40-105 (about self-assessing effective life); or
  - (b) if the \*depreciating asset is a \*mining, quarrying or prospecting right—subsections 40-95(10) and (11).

*Exception: intangibles*

- (5) This section does not apply to an intangible \*depreciating asset to which an item in the table in subsection 40-95(7) applies.

#### **40-115 Splitting a depreciating asset**

- (1) If a \*depreciating asset you \*hold is split into 2 or more assets, this Division applies as if you had stopped holding the original asset and started holding the assets into which it is split.

Note 1: For the cost of the split assets, see section 40-205.

Note 2: A balancing adjustment event does not occur just because you split a depreciating asset: see section 40-295.

- (2) If you stop \*holding part of a \*depreciating asset, this Division applies as if, just before you stopped holding that part, you had split the original asset into the part you stopped holding and the rest of the original asset. (The rest of the original asset is then taken to be a different asset from the original asset.)

Example: Bronwyn sells Tim a part interest in a depreciating asset she owns. They become joint holders under section 40-35. She is taken to have split the underlying asset into the interest she retains and the interest Tim buys. She now holds an interest (a new depreciating asset) in the underlying asset and is taken to have stopped holding the interest sold.

- (3) If you grant or assign an interest in an item of \*intellectual property, subsection (2) applies to you as if you had stopped \*holding part of the item.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 40-120

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**40-120 Replacement spectrum licences**

(1) If:

- (a) some (but not all) of a \*spectrum licence you \*hold is assigned or resumed; and
- (b) your original licence is replaced by one or more other spectrum licences (possibly including a modified version of your original licence); and
- (c) the replacement licences together cover exactly the same rights as were covered by your original licence just after the assignment or resumption;

this Division applies as if your original licence (as it existed just after the assignment or resumption) had been split into the replacement licences.

Example: MGP Communications Ltd buys a spectrum licence on 1 July 2003 for \$5 million. The licence specifies areas A, B, C and D. The company assigns the spectrum relating to area C. Area C represents 20% of the market value of the overall licence. \$1m of the adjustable value is allocated to it and \$4m is allocated to the remaining licence.

The Australian Communications and Media Authority adjusts the licence to specify only areas A and B, and issues a new licence specifying area D.

Area D represents 25% of the market value of the spectrum remaining in the licence. The adjustable value of the new licence is therefore \$1m and the adjustable value of the original (modified) licence is \$3m.

- (2) If a \*spectrum licence you \*hold is replaced by 2 or more spectrum licences (possibly including a modified version of your original licence) that together cover exactly the same rights as your original licence, this Division applies as if the original licence had been split into the replacement licences.

**40-125 Merging depreciating assets**

If a \*depreciating asset or assets that you \*hold is or are merged into another depreciating asset, this Division applies as if you had stopped holding the original asset or assets and started holding the merged asset.

Note 1: For the cost of the merged asset, see section 40-210.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 2: A balancing adjustment event does not occur just because you merge depreciating assets: see section 40-295.

#### **40-130 Choices**

- (1) A choice you can make under this Division about a \*depreciating asset must be made:
  - (a) by the day you lodge your \*income tax return for the income year to which the choice relates; or
  - (b) within a further time allowed by the Commissioner.
- (2) Your choice, once made, applies to that income year and all later income years.

*Exception: recalculating effective life*

- (3) However, subsection (2) does not apply to a choice to recalculate the \*effective life of a \*depreciating asset under section 40-110.

#### **40-135 Certain anti-avoidance provisions**

These anti-avoidance provisions:

- (a) section 51AD (Deductions not allowable in respect of property under certain leveraged arrangements) of the *Income Tax Assessment Act 1936*;
- (b) Division 16D (Certain arrangements relating to the use of property) of Part III of that Act;

apply to your deductions under this Division for a \*depreciating asset you \*hold as if you were the owner of the asset instead of any other person.

#### **40-140 Getting tax information from associates**

- (1) If you acquire a \*depreciating asset from an \*associate of yours where the associate has deducted or can deduct an amount for the asset under this Division, you may give the associate a written notice requiring the associate to tell you:
  - (a) the method the associate was using to work out the decline in value of the asset; and
  - (b) the \*effective life the associate was using; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 40-140

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- (c) if section 40-102 applied to the asset at any time:
  - (i) the effective life that the associate would have used if section 40-102 had not applied to the asset; and
  - (ii) the relevant time that applied to the associate under subsection 40-102(3).

- (2) The notice must:
  - (a) be given within 60 days of your acquiring the asset; and
  - (b) specify a period of at least 60 days within which the information must be given; and
  - (c) set out the effect of subsection (3).

Note: Subsections (4) and (5) explain how this subsection operates if the associate is a partnership.

*Requirement to comply with notice*

- (3) The \*associate must not intentionally refuse or fail to comply with the notice.

Penalty: 10 penalty units.

*Giving the notice to a partnership*

- (4) If the \*associate is a partnership:
  - (a) you may give it to the partnership by giving it to any of the partners (this does not limit how else you can give it); and
  - (b) the obligation to comply with the notice is imposed on each of the partners (not on the partnership), but may be discharged by any of them.

- (5) A partner must not intentionally refuse or fail to comply with that obligation, unless another partner has already complied with it.

Penalty: 10 penalty units.

*Limits on giving a notice*

- (6) Only one notice can be given in relation to the same \*depreciating asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 40-C—Cost

### Guide to Subdivision 40-C

#### 40-170 What this Subdivision is about

Your cost of a depreciating asset is a component in working out the amounts you can deduct for it.

There are 2 elements of the cost of a depreciating asset. This Subdivision shows you how to work out those elements.

#### Table of sections

##### Operative provisions

40-175	Cost
40-180	First element of cost
40-185	Amount you are taken to have paid to hold a depreciating asset or to receive a benefit
40-190	Second element of cost
40-195	Apportionment of cost
40-200	Exclusion from cost
40-205	Cost of a split depreciating asset
40-210	Cost of merged depreciating assets
40-215	Adjustment: double deduction
40-220	Cost reduced by amounts not of a capital nature
40-225	Adjustment: acquiring a car at a discount
40-230	Adjustment: car limit

#### Operative provisions

##### 40-175 Cost

The *cost* of a \*depreciating asset you \*hold consists of 2 elements.

Note: The cost of a depreciating asset may be modified by one of these provisions:

- Subdivision 27-B;
- subsection 40-90(2);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 40** Capital allowances

Section 40-180

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- paragraph 40-365(5)(a);
- section 775-70;
- section 775-75.

**40-180 First element of cost**

(1) The first element is worked out as at the time when you began to \*hold the \*depreciating asset (except for a case to which item 3 or 4 of the table in subsection (2) applies). It is:

- (a) if an item in that table applies—the amount specified in that item; or
- (b) otherwise—the amount you are taken to have paid to hold the asset under section 40-185.

Note 1: The first element of the cost may be modified by a later provision in this Subdivision.

Note 2: Section 230-505 provides special rules for working out the amount of consideration for an asset if the asset is a Division 230 financial arrangement or a Division 230 financial arrangement is involved in that consideration.

(2) If more than one item in this table covers the asset, apply the last item that covers it.

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**First element of the *cost* of a depreciating asset**

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<b>Item</b>	<b>In this case:</b>	<b>The <i>cost</i> is:</b>
1	A *depreciating asset you *hold is split into 2 or more assets	For each of the assets into which it is split, the amount worked out under section 40-205
2	A *depreciating asset or assets that you *hold is or are merged into another depreciating asset	For the other asset, the amount worked out under section 40-210
3	A *balancing adjustment event happens to a *depreciating asset you *hold because you stop using it for any purpose expecting never to use it again, and you continue to hold it	The *termination value of the asset at the time of the event

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>First element of the cost of a depreciating asset</b>		
<b>Item</b>	<b>In this case:</b>	<b>The cost is:</b>
4	A *balancing adjustment event happens to a *depreciating asset you *hold but have not used because you expect never to use it, and you continue to hold it	The *termination value of the asset at the time of the event
5	A partnership asset that was *held, just before it became a partnership asset, by one or more partners (whether or not any other entity was a joint holder) or a partnership asset to which subsection 40-295(2) applies	The *market value of the asset when the partnership started to hold it or when the change referred to in subsection 40-295(2) occurred
6	There is roll-over relief under section 40-340 for a *balancing adjustment event happening to a *depreciating asset	The *adjustable value of the asset to the transferor just before the balancing adjustment event occurred
7	You are the legal owner of a *depreciating asset that is hired under a *hire purchase agreement and you start *holding it because the entity to whom it is hired does not become the legal owner	The *market value of the asset when you started to hold it
8	You started to *hold the asset under an *arrangement and: (a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and (b) apart from this item, the first element of the asset's cost would exceed its *market value	The market value of the asset when you started to hold it
9	You started to *hold the asset under an *arrangement that was private or domestic in nature to you (for example, a gift)	The *market value of the asset when you started to hold it
10	The Minister for Finance has determined a cost for you under section 49A, 49B, 50A, 50B, 51A or 51B of the <i>Airports (Transitional) Act 1996</i>	The cost so determined

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-185

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**First element of the *cost* of a depreciating asset**

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<b>Item</b>	<b>In this case:</b>	<b>The <i>cost</i> is:</b>
11	To which Division 58 (which deals with assets previously owned by an *exempt entity) applies	The amount applicable under subsections 58-70(3) and (5)
12	A *balancing adjustment event happens to a *depreciating asset because a person dies and the asset devolves to you as the person's *legal personal representative	The asset's *adjustable value on the day the person died or, if the asset is allocated to a low-value pool, so much of the *closing pool balance for the income year in which the person died as is reasonably attributable to the asset
13	You started to *hold a *depreciating asset because it *passed to you as the beneficiary or a joint tenant	The *market value of the asset when you started to hold it reduced by any *capital gain that was disregarded under section 128-10 or subsection 128-15(3), whether by the deceased or by the *legal personal representative

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(3) The first element of \*cost includes an amount you paid or are taken to have paid in relation to starting to \*hold the \*depreciating asset if that amount is directly connected with holding the asset.

(4) The first element of \*cost of a \*depreciating asset does not include an amount that forms part of the second element of cost of another depreciating asset.

**40-185 Amount you are taken to have paid to hold a depreciating asset or to receive a benefit**

(1) This Division applies to you as if you had paid, to \*hold a \*depreciating asset or for an economic benefit for such an asset, the greater of these amounts:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the sum of the amounts that would have been included in your assessable income because you started to hold the asset or received the benefit, or because you gave something to start holding the asset or receive the benefit, if you ignored the value of anything you gave that reduced the amount actually included; or
- (b) the sum of the applicable amounts set out in this table in relation to holding the asset or receiving the benefit.

Example 1: Gold Medals Ltd manufactures some medals for a local sporting association's annual meeting in return for a die cut stamping machine. The medals have a market value of \$20,000. The machine has an arm's length value of \$100,000 but Gold Medals has to contribute \$75,000 towards acquiring it from the association. Gold Medals will have to include:

$$\left( \$100,000 - \$75,000 \right) = \$25,000$$

in its assessable income because of section 21A of the *Income Tax Assessment Act 1936*.

The first element of the machine's cost will be the greater of:

- the amount it paid (\$75,000) plus the market value of the non-cash benefits it provided (\$20,000), which comes to \$95,000; and
- the amount that was assessable income from receiving the machine (\$25,000) plus the amount by which that assessable income was reduced because of the payment Gold Medals made (\$75,000), which comes to \$100,000.

So, in this case, the first element of the machine's cost to Gold Medals is \$100,000.

Example 2: Laura travels overseas to purchase a purpose-built vehicle for use in her trade. The purchase of the vehicle is the sole reason for the trip. Laura incurs expenses for airfares and accommodation. These expenses are included in the cost of the vehicle because they are "in relation to starting to hold" the vehicle.

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**Amount you are taken to have paid to hold a depreciating asset or to receive a benefit**

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<b>Item</b>	<b>In this case:</b>	<b>The amount is:</b>
1	You pay an amount	The amount
2	You incur or increase a liability to pay an amount	The amount of the liability or increase when you incurred or increased it

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 40** Capital allowances

Section 40-190

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**Amount you are taken to have paid to hold a depreciating asset or to receive a benefit**

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<b>Item</b>	<b>In this case:</b>	<b>The amount is:</b>
3	All or part of a liability to pay an amount owed to you by another entity is terminated	The amount of the liability or part when it is terminated
4	You provide a *non-cash benefit	The *market value of the non-cash benefit when it is provided
5	You incur or increase a liability to provide a *non-cash benefit	The *market value of the non-cash benefit or the increase when you incurred or increased the liability
6	All or part of a liability to provide a *non-cash benefit (except the *depreciating asset) owed to you by another entity is terminated	The *market value of the non-cash benefit when the liability is terminated

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Note 1: Item 1 includes not only amounts actually paid but also amounts taken to have been paid. Examples include the price of the notional purchase made when trading stock is converted to a depreciating asset under section 70-110, the cost of an asset held under a hire purchase arrangement under section 240-25 and a lessor's deemed purchase price when a luxury car lease is terminated under subsection 42A-105(3) of Schedule 2E to the *Income Tax Assessment Act 1936*.

Note 2: Section 230-505 provides special rules for working out the amount of consideration for an asset if the asset is a Division 230 financial arrangement or a Division 230 financial arrangement is involved in that consideration.

- (2) In applying the table in subsection (1) to a liability of yours to pay an amount or provide a \*non-cash benefit, don't count any part of the liability you have already satisfied.

**40-190 Second element of cost**

- (1) The second element is worked out after you start to \*hold the \*depreciating asset.
- (2) The second element is:
- (a) the amount you are taken to have paid under section 40-185 for each economic benefit that has contributed to bringing the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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asset to its present condition and location from time to time since you started to \*hold the asset; and

- (b) expenditure you incur that is reasonably attributable to a \*balancing adjustment event occurring for the asset.

Example 1: Andrew adds a new tray and canopy to his ute. The materials and labour that go into the addition are economic benefits that Andrew received and that contribute to the ute's present condition.

The payments he makes for those economic benefits are included in the second element of the ute's cost.

Example 2: Leonie needed to replace one of her old depreciating assets that was fixed to her land with a new, more efficient one. Leonie paid a contractor a fee to demolish and remove the old asset. This resulted in a balancing adjustment event occurring for the old asset, and the fee forms part of the second element of the cost of the old asset that was demolished.

Note: The second element of the cost may be modified by a later provision in this Subdivision.

- (2A) Paragraph (2)(b) does not apply to a \*balancing adjustment event referred to in item 6 or 11 of the table in subsection 40-300(2).
- (3) However, the second element is worked out using this table if an item in it applies. Use the last applicable item.

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**Second element of the cost of a depreciating asset**

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Item	In this case:	The second element of cost is:
1	You received the benefit under an *arrangement and: (a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and (b) apart from this item, the second element of cost for the benefit would exceed its *market value	The market value of the benefit when you received it
2	You received the benefit under an *arrangement that was private or domestic in nature to you	The *market value of the benefit when you received it

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 40-195

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**40-195 Apportionment of cost**

If you pay an amount for 2 or more things that include at least one \*depreciating asset, or that include a contribution to bringing a depreciating asset to its present condition and location, you take into account as part of its \*cost only that part of what you paid that is reasonably attributable to the asset.

Example: Ian buys 3 assets (one depreciating asset and 2 other assets) under the one transaction. He pays \$30,000 for the 3 assets. \$25,000 of that amount is reasonably attributable to the depreciating asset.

The first element of the depreciating asset's *cost* is \$25,000.

**40-200 Exclusion from cost**

The \*cost of a \*depreciating asset that is not \*plant does not include any amount that was incurred:

- (a) before 1 July 2001; or
- (b) under a contract entered into before that day.

**40-205 Cost of a split depreciating asset**

If you split a \*depreciating asset into separate assets as mentioned in section 40-115, the first element of the *cost* of each of the separate assets is a reasonable proportion of the sum of these amounts:

- (a) the \*adjustable value of the original asset just before it was split; and
- (b) the amount you are taken to have paid under section 40-185 for any economic benefit involved in splitting the original asset.

Example: Barry owns a spectrum licence that covers 3 areas: Area A, area B and area C. The licence has an adjustable value of \$160,000. He sells area A to Chris, and his costs of splitting are \$10,000. Barry is taken to have split the licence into 2 assets.

On the basis of their relative market values, Barry apportions \$170,000 to area A (that he disposed of) and to the licence he still holds for areas B and C.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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#### **40-210 Cost of merged depreciating assets**

If a \*depreciating asset or assets that you \*hold is or are merged into another depreciating asset as mentioned in section 40-125, the first element of the *cost* of the merged asset is a reasonable proportion of the sum of:

- (a) the \*adjustable value or adjustable values of the original asset or assets just before the merger; and
- (b) the amount you are taken to have paid under section 40-185 for any economic benefit involved in merging the original asset or assets.

#### **40-215 Adjustment: double deduction**

- (1) Each element of the \*cost of a \*depreciating asset is reduced by any portion of that element of cost that you have deducted or can deduct, or that has been or will be taken into account in working out an amount you can deduct, other than under this Division, Division 41 or Division 328.
- (2) Subsection (1) does not apply to deductions for research and development plant expenditure (sections 73B and 73BA of the *Income Tax Assessment Act 1936*).

Note: Subsection (2) does not have the effect that deductions for the same amount of any such expenditure will be allowable under both this Division and section 73B or 73BA. Such an outcome is prevented by subsection 40-25(2) (including as applied by section 73BC for the purposes of section 73BA) and subsections 73B(20) and 73BA(7).

#### **40-220 Cost reduced by amounts not of a capital nature**

The \*cost of a \*depreciating asset is reduced by any portion of it that consists of an amount that is not of a capital nature.

#### **40-225 Adjustment: acquiring a car at a discount**

- (1) You must increase the first element of the *cost* of a \*car designed mainly for carrying passengers you acquire at a discount if:
  - (a) it is reasonable to conclude that any portion (the *discount portion*) of the discount is referable to you or another entity selling another asset for less than its \*market value; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-230

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- (b) you, or another entity, has deducted or can deduct an amount for the other asset for any income year; and
  - (c) the sum of the cost of the car and the discount portion exceeds the \*car limit for the \*financial year in which you first use the car for any purpose.
- (2) The first element of the *cost* of the \*car is increased by the discount portion.
  - (3) This section does not apply to a \*car that is excluded from the \*car limit by subsection 40-230(2).

**40-230 Adjustment: car limit**

- (1) The first element of the *cost* of a \*car designed mainly for carrying passengers (after applying section 40-225 and Subdivision 27-B) is reduced to the \*car limit for the \*financial year in which you started to \*hold it if its cost exceeds that limit.
- (2) However, the \*car limit does not apply to a \*car:
  - (a) fitted out for transporting disabled people in wheelchairs for profit; or
  - (b) whose first element of \*cost exceeds that limit only because of modifications made to enable an individual with a disability to use it for a \*taxable purpose.
- (3) The *car limit* for the 2000-01 \*financial year is \$55,134. The limit is indexed annually.

Note: Subdivision 960-M shows you how to index amounts.
- (4) If you \*hold a \*car that is also held by one or more other entities, subsection (1) applies to the \*cost of the car despite section 40-35. Then section 40-35 applies to the cost of the car as reduced under subsection (1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 40-D—Balancing adjustments

### Guide to Subdivision 40-D

#### 40-280 What this Subdivision is about

You may have to make an adjustment to your taxable income if you stop holding a depreciating asset.

The adjustment is generally based on the difference between the actual value of the asset when you stop holding it and its adjustable value.

#### Table of sections

##### Operative provisions

40-285	Balancing adjustments
40-290	Reduction for non-taxable use
40-292	Adjustments where deductions for decline in value also allowable under section 73BA or 73BH of <i>Income Tax Assessment Act 1936</i>
40-295	Meaning of <i>balancing adjustment event</i>
40-300	Meaning of <i>termination value</i>
40-305	Amount you are taken to have received under a balancing adjustment event
40-310	Apportionment of termination value
40-320	Car to which section 40-225 applies
40-325	Adjustment: car limit
40-335	Deduction for in-house software where you will never use it
40-340	Roll-over relief
40-345	What the roll-over relief is
40-350	Additional consequences
40-360	Notice to allow transferee to work out how this Division applies
40-365	Involuntary disposals
40-370	Balancing adjustments where there has been use of different car expense methods

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-285

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**Operative provisions**

**40-285 Balancing adjustments**

- (1) An amount is included in your assessable income if:
- (a) a \*balancing adjustment event occurs for a \*depreciating asset you \*held and:
    - (i) whose decline in value you worked out under Subdivision 40-B; or
    - (ii) whose decline in value you would have worked out under that Subdivision if you had used the asset; and
  - (b) the asset's \*termination value is more than its \*adjustable value just before the event occurred.

The amount included is the difference between those amounts, and it is included for the income year in which the balancing adjustment event occurred.

Note 1: The most common balancing adjustment event is where you sell the depreciating asset.

Note 2: There is a different calculation if you had used different car expense methods for a car: see section 40-370.

Note 3: There is a modification to the calculation in the case of misappropriation by your employee or agent: see section 25-47.

- (2) You can deduct an amount if:
- (a) a \*balancing adjustment event occurs for a \*depreciating asset you \*held and:
    - (i) whose decline in value you worked out under Subdivision 40-B; or
    - (ii) whose decline in value you would have worked out under that Subdivision if you had used the asset; and
  - (b) the asset's \*termination value is less than its \*adjustable value just before the event occurred.

The amount you can deduct is the difference between those amounts, and you can deduct it for the income year in which the balancing adjustment event occurred.

Note 1: There is a different calculation if you had used different car expense methods for a car: see section 40-370.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 2: The timing of a deduction allowed under this subsection is determined under Subdivision 170-D where that Subdivision applies to the balancing adjustment event.

Note 3: There is a modification to the calculation in the case of misappropriation by your employee or agent: see section 25-47.

- (3) The \*adjustable value of a \*depreciating asset you \*hold after this section applies to it is then zero.
- (4) However, subsection (3) does not apply to a \*depreciating asset for which you have a \*cost under item 3 or 4 of the table in subsection 40-180(2). Instead, the asset's \*opening adjustable value for the income year (the *later year*) after the one in which the \*balancing adjustment event occurred is that cost plus any amounts included in the second element of that cost after the event occurred and before the start of the later year.

Note: Those items deal with a case where a balancing adjustment event happens because you still hold an asset you expected not to use.

#### **40-290 Reduction for non-taxable use**

- (1) You must reduce the amount (the *balancing adjustment amount*) included in your assessable income, or the amount you can deduct, under section 40-285 for a \*depreciating asset if your deductions for the asset have been reduced under section 40-25.
- (2) The reduction is:

$$\frac{\text{Sum of reductions}}{\text{Total decline}} \times \text{Balancing adjustment amount}$$

where:

*sum of reductions* is the sum of:

- (a) the reductions in your deductions for the asset under section 40-25; and
- (b) if there has been roll-over relief for the asset under section 40-340—the reductions in deductions for the asset for the transferor or an earlier successive transferor under section 40-25; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-290

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- (c) if you \*hold the asset as the \*legal personal representative of an individual—the reductions in deductions for the asset for the individual under section 40-25.

**total decline** is the sum of:

- (a) the decline in value of the \*depreciating asset since you started to \*hold it; and
  - (b) if there has been roll-over relief for the asset under section 40-340—the decline in value of the asset for the transferor or an earlier successive transferor; and
  - (c) if you \*hold the asset as the \*legal personal representative of an individual—the decline in value of the asset for the individual.
- (3) You must further reduce the amount included in your assessable income, or the amount you can deduct, under section 40-285 for a \*depreciating asset (the **current asset**) if:
- (a) the asset's \*cost (for you) was worked out under section 40-205 (Cost of a split depreciating asset) or 40-210 (Cost of merged depreciating assets); and
  - (b) you used the depreciating asset from which the current asset was split, or a depreciating asset that was merged into the current asset, or had it \*installed ready for use, for a purpose other than a \*taxable purpose.
- (4) The further reduction is such amount as is reasonable having regard to the extent of the use referred to in paragraph (3)(b).

*Exception: mining, quarrying or prospecting information*

- (5) This section does not apply to \*mining, quarrying or prospecting information.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**40-292 Adjustments where deductions for decline in value also allowable under section 73BA or 73BH of *Income Tax Assessment Act 1936***

*Section applies if deductions for decline in value under both this Division and section 73BA*

- (1) This section applies if:
  - (a) a \*balancing adjustment event occurs for a \*depreciating asset you \*held and:
    - (i) whose decline in value you worked out under Subdivision 40-B; or
    - (ii) whose decline in value you would have worked out under that Subdivision if you had used the asset; and
  - (b) for any income year in which you held the asset, you also deducted an amount for it under section 73BA or 73BH of the *Income Tax Assessment Act 1936*, or could have done so if:
    - (i) you had not chosen a tax offset under section 73I of that Act; or
    - (ii) section 73BAF of that Act had not been enacted.

*Section 40-290 to be applied as if use for carrying on research and development activities were use for a taxable purpose*

- (2) If this section applies, you must, in applying section 40-290 (including references in that section to the reduction of deductions under section 40-25) in relation to the \*depreciating asset, assume that when you used it either for a taxable purpose or for the purpose of the carrying on by or on behalf of you of research and development activities, within the meaning of section 73B of the *Income Tax Assessment Act 1936*, you used it for a taxable purpose.

*Increase in amounts deductible or assessable under section 40-285 where 1.25 rate deductions under section 73BA or 73BH*

- (3) If:
  - (a) this section applies; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 40-292

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(b) the amount you deducted under section 73BA or 73BH of the *Income Tax Assessment Act 1936*, as mentioned in paragraph (1)(b) of this section, for at least one income year was worked out by multiplying a notional Division 40 deduction (within the meaning of section 73BA) or a notional Division 42 deduction (within the meaning of section 73BJ) by 1.25 (or would have been so worked out had section 73BAF of the *Income Tax Assessment Act 1936* not been enacted);

then subsection (4) applies.

(4) Any amount (the **section 40-285 amount**) that you can deduct, or that is included in your assessable income, for the \*depreciating asset under section 40-285 (after applying subsection (2) of this section) is increased by the amount worked out using the formula:

$$\frac{\text{Sum of all 1.25 rate notional Division 40/42 deductions}}{\text{Total decline in value}} \times \frac{\text{Adjusted section 40-285 amount}}{\text{40-285 amount}} \times 0.25$$

where:

**adjusted section 40-285 amount** means:

- (a) if the section 40-285 amount is a deduction—the amount of the deduction; or
- (b) if the section 40-285 amount is an amount included in your assessable income—so much of the section 40-285 amount as does not exceed the formula component **total decline in value**.

**sum of all 1.25 rate notional Division 40/42 deductions** means the sum of all notional Division 40 deductions and notional Division 42 deductions (see paragraph (3)(b)) that were multiplied by 1.25 in working out the amounts you deducted for the \*depreciating asset as mentioned in paragraph (1)(b).

**total decline in value** means the cost of the \*depreciating asset less its \*adjustable value.

Note: An asset whose tax cost is set under Division 701 of this Act may have its adjustable value reduced in applying this section: see section 73BAG of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **40-295 Meaning of *balancing adjustment event***

- (1) A ***balancing adjustment event*** occurs for a \*depreciating asset if:
- (a) you stop \*holding the asset; or
  - (b) you stop using it, or having it \*installed ready for use, for any purpose and you expect never to use it, or have it installed ready for use, again; or
  - (c) you have not used it and:
    - (i) if you have had it installed ready for use—you stop having it so installed; and
    - (ii) you decide never to use it.

Note: A balancing adjustment event occurs under paragraph 40-295(1)(a) when you start holding a depreciating asset as trading stock.

- (2) A ***balancing adjustment event*** occurs for a \*depreciating asset if:
- (a) for any reason, a change occurs in the \*holding of, or in the interests of entities in, the asset; and
  - (b) the entity or one of the entities that had an interest in the asset before the change has an interest in it after the change; and
  - (c) the asset was a partnership asset before the change or becomes one as a result of the change.
- (3) However, a ***balancing adjustment event*** does not occur for a \*depreciating asset merely because you split it into 2 or more depreciating assets or you merge it with one or more other depreciating assets.

Note: A balancing adjustment event will occur if you stop holding part of a depreciating asset.

### **40-300 Meaning of *termination value***

- (1) The ***termination value*** of a \*depreciating asset is worked out as at the time when the \*balancing adjustment event occurs. It is:
- (a) if an item in the table in subsection (2) applies—the amount specified in that item; or
  - (b) otherwise—the amount you are taken to have received under section 40-305 for the asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 40** Capital allowances

Section 40-300

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Note: Section 230-505 provides special rules for working out the amount of consideration for an asset if the asset is a Division 230 financial arrangement or a Division 230 financial arrangement is involved in that consideration.

- (2) If more than one item applies, use the value under the last applicable item.

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**Termination value table**

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<b>Item</b>	<b>For this balancing adjustment event:</b>	<b>The termination value is:</b>
1	You stop using a *depreciating asset, or having it *installed ready for use, for any purpose and you expect never to use it again even though you still *hold it	The *market value of the asset when you stopped using it or having it *installed ready for use
2	You decide never to use a *depreciating asset that you have not used even though you still *hold it	The *market value of the asset when you make the decision
3	You stop using *in-house software for any purpose and you expect never to use it again even though you still *hold it	Zero
4	You decide never to use *in-house software that you have not used even though you still *hold it	Zero
5	One or more partners stop holding a *depreciating asset when it becomes a partnership asset or a *balancing adjustment event referred to in subsection 40-295(2) occurs	The *market value of the asset when the partnership started to *hold it or when the balancing adjustment event occurred
6	You stop *holding a *depreciating asset under an *arrangement and: (a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and (b) apart from this item, the *termination value would be less than its *market value	The market value of the asset just before you stopped holding it

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Termination value table**

Item	For this balancing adjustment event:	The termination value is:
7	You stop *holding a *depreciating asset under an *arrangement that was private or domestic in nature to you (for example, a gift)	The *market value of the asset just before you stopped *holding it
8	A *depreciating asset is lost or destroyed	The amount or value received or receivable under an insurance policy or otherwise for the loss or destruction
9	You stop *holding a *depreciating asset because you die and the asset starts being held by the *legal personal representative	The asset's *adjustable value on the day you died or, if the asset is allocated to a low-value pool, so much of the *closing pool balance for the income year in which you died as is reasonably attributable to the asset
10	You stop *holding a *depreciating asset because it *passes directly to a beneficiary or joint tenant when you die	The *market value of the asset on the day you die
11	A *depreciating asset for which the Minister for Finance has determined an amount for you under section 52A of the <i>Airports (Transitional) Act 1996</i>	The amount so determined

- (3) The **termination value** of a \*depreciating asset does not include an amount that is included in assessable income as \*ordinary income under section 6-5 or as \*statutory income under section 6-10 (except an amount that is statutory income under this Division).

Note: Termination value may be adjusted under Subdivision 27-B so that any GST consequences are accounted for.

**40-305 Amount you are taken to have received under a balancing adjustment event**

- (1) This Division applies to you as if you had received, under a \*balancing adjustment event, the greater of these amounts:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 40** Capital allowances

Section 40-305

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- (a) the sum of the amounts you have deducted or can deduct, or has been or will be taken into account in working out an amount you can deduct because of the balancing adjustment event and any amount by which the amount so deductible was reduced because of a case described in the table in this subsection; and
- (b) the sum of the applicable amounts set out in that table:

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<b>Amount you are taken to have received under a balancing adjustment event</b>		
<b>Item</b>	<b>In this case:</b>	<b>The amount is:</b>
1	You receive an amount	The amount
2	You terminate all or part of a liability to pay an amount	The amount of the liability or part when you terminate it
3	You are granted a right to receive an amount or an amount to which you are entitled is increased	The amount of the right or increase when it is granted or increased
4	You receive a *non-cash benefit	The *market value of the non-cash benefit when it is received
5	You terminate all or part of a liability to provide a *non-cash benefit	The *market value of the non-cash benefit or reduction in the non-cash benefit when the liability or part is terminated
6	You are granted a right to receive a *non-cash benefit or you become entitled to an increased non-cash benefit	The *market value of the non-cash benefit, or the increase, when it is granted or increased

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Note 1: Item 1 includes not only amounts actually received but also amounts taken to have been received. Examples include the price of the notional sale made when a depreciating asset is converted to trading stock under section 70-30, the consideration for an asset held under a hire purchase arrangement under section 240-25 and a lessee's deemed consideration when a luxury car lease is terminated under subsection 42A-105(3) of Schedule 2E to the *Income Tax Assessment Act 1936*.

Note 2: Section 230-505 provides special rules for working out the amount of consideration for an asset if the asset is a Division 230 financial arrangement or a Division 230 financial arrangement is involved in that consideration.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) In applying the table in subsection (1) to a right you have to receive an amount or a \*non-cash benefit, don't count any part of the right that has already been satisfied.

#### **40-310 Apportionment of termination value**

If you receive an amount for 2 or more things that include a \*balancing adjustment event occurring for a \*depreciating asset, you take into account as its \*termination value only that part of what you received that is reasonably attributable to the asset.

#### **40-320 Car to which section 40-225 applies**

You must increase the \*termination value of a \*car the \*cost of which was increased under section 40-225 by the discount portion for the car referred to in that section.

#### **40-325 Adjustment: car limit**

The *termination value* of a \*car the \*cost of which was worked out by applying section 40-230 (Car limit) is the amount worked out under subsection 40-300(1) multiplied by the fraction:

$$\frac{CL + \text{Amounts included in the second element of the *car's *cost}}{\text{Total cost of the car (ignoring the *car limit) after applying Subdivision 27-B}}$$

where:

*CL* is the \*car limit for the \*car for the \*financial year in which you first used it for any purpose.

#### **40-335 Deduction for in-house software where you will never use it**

- (1) You can deduct expenditure you incurred on \*in-house software if:
- (a) you incurred the expenditure with the intention of using the software for a \*taxable purpose; and
  - (b) the expenditure relates to a unit of software that you have not used or had \*installed ready for use; and
  - (c) the expenditure is not allocated to a software development pool (see Subdivision 40-E); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-340

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- (d) in the \*current year, you have decided that you will never use the software, or have it installed ready for use.
- (2) The amount that you can deduct in the \*current year is:
  - (a) the total of your expenditure on the \*in-house software in the current year and any previous income year; *less*
  - (b) any amount of consideration you \*derive in relation to the software or any part of it (but no more than the total in paragraph (a));but only to the extent that, when you incurred the expenditure, you intended to use the software, or have it \*installed ready for use, for a \*taxable purpose.

Example: Shannon has abandoned a software project that she was working on. She could not deduct expenditure on the project for the current year or any previous income year under any other provision. Shannon can deduct it under this section, to the extent that she intended to use it, or have it installed ready for use, for a taxable purpose.

Note: If an amount of the expenditure is recouped, the amount may be included in her assessable income: see Subdivision 20-A.

**40-340 Roll-over relief**

*Automatic roll-over relief*

- (1) There is roll-over relief if:
  - (a) there is a \*balancing adjustment event because an entity (the **transferor**) disposes of a \*depreciating asset in an income year to another entity (the **transferee**); and
  - (b) the disposal involves a \*CGT event; and
  - (c) the conditions in an item in this table are satisfied.

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**CGT roll-overs that qualify transferor for relief**

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<b>Item</b>	<b>Type of CGT roll-over</b>	<b>Conditions</b>
1	Disposal of asset to wholly-owned company	The transferor is able to choose a roll-over under Subdivision 122-A for the *CGT event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**CGT roll-overs that qualify transferor for relief**

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Item	Type of CGT roll-over	Conditions
2	Disposal of asset by partnership to wholly-owned company	The transferor is a partnership, the property is partnership property and the partners are able to choose a roll-over under Subdivision 122-B for the disposal by the partners of the *CGT assets consisting of their interests in the property.
2A	Transfer of a *CGT asset of a trust to a company under a trust restructure	The transferor and transferee are able to choose a roll-over under Subdivision 124-N for the *CGT event.
3	Marriage or relationship breakdown	There is a roll-over under Subdivision 126-A for the *CGT event.
4	Disposal of asset to another member of the same wholly-owned group	The transferor is able to choose a roll-over under Subdivision 126-B for the *CGT event.

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Note: Section 40-345 sets out what the relief is.

- (2) In applying an item in the table in subsection (1), disregard the following so far as they relate to the \*depreciating asset you disposed of:
- (a) an exemption in Division 118 (which contains the general exemptions from CGT); and
  - (b) subsection 122-25(3) (which excludes certain assets from roll-over relief under Subdivision 122-A); and
  - (c) subsection 124-870(5) (which excludes certain assets from roll-over relief under Subdivision 124-N).

*Choosing roll-over relief*

- (3) There is also roll-over relief if:
- (a) there is a \*balancing adjustment event for a \*depreciating asset because of subsection 40-295(2) (about a change in the holding of, or in interests in, the asset); and
  - (b) the entity or entities that had an interest in the asset before the change (also the **transferor**) and the entity or entities that have an interest in the asset after the change (also the **transferee**) jointly choose the roll-over relief.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 40** Capital allowances

Section 40-340

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Example: The change could be a variation in the constitution of a partnership or in the interests of the partners.

Note 1: Section 40-345 sets out what the relief is.

Note 2: Subdivision 328-D sets out what the relief is for small business entities that calculate deductions for their depreciating assets under that Subdivision.

- (4) The choice must:
- (a) be in writing; and
  - (b) contain enough information about the transferor's holding of the property for the transferee to work out how this Division or Subdivision 328-D applies to the transferee's holding of the \*depreciating asset; and
  - (c) be made within 6 months after the end of the transferee's income year in which the \*balancing adjustment event occurred, or within a longer period allowed by the Commissioner.
- (5) If you die before the end of the time allowed for jointly choosing roll-over relief, the trustee of your estate may be a party to the choice.
- (6) The transferor must keep the choice or a copy of it for 5 years after the \*balancing adjustment event occurred.

Penalty: 30 penalty units.

- (7) The transferee must keep the choice or a copy of it until the end of 5 years after the next \*balancing adjustment event occurs for the \*depreciating asset.

Penalty: 30 penalty units.

*Exception: Subdivision 170-D applies*

- (8) There can be no roll-over relief if Subdivision 170-D (about transactions by a company that is a member of a linked group) applies to the disposal of the \*depreciating asset or the change in interests in it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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#### **40-345 What the roll-over relief is**

- (1) Section 40-285 does not apply to the \*balancing adjustment event for the transferor.
- (2) The transferee can deduct the decline in value of the \*depreciating asset using the same method and \*effective life (or \*remaining effective life if that method is the \*prime cost method) that the transferor was using.

#### **40-350 Additional consequences**

- (1) For the purposes of Division 45:
  - (a) if the transferor, or a partnership of which the transferor was a member, leased the \*depreciating asset to another entity for most of the time that the transferor or partnership \*held the asset, the transferee is taken also to have done so; and
  - (b) if the transferor, or a partnership of which the transferor was a member, leased the asset to another entity for a period on or after 22 February 1999, the transferee is taken also to have done so; and
  - (c) if the main \*business of the transferor, or a partnership of which the transferor was a member, was to lease assets, the main business of the transferee is taken also to have been to lease assets.
- (2) However, subsection (1) does not apply to roll-over relief under subsection 40-340(3) if the sum of the amounts specified in paragraph 45-5(1)(e) or 45-10(1)(f), or subsection 45-5(4) or 45-10(4), is at least equal to the \*market value of the \*plant or interest concerned.

#### **40-360 Notice to allow transferee to work out how this Division applies**

- (1) This section applies if there is roll-over relief because of subsection 40-340(1).
- (2) The transferor must give the transferee a notice containing enough information about the transferor's \*holding of the property for the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 40-365

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transferee to work out how this Division applies to the transferee's holding of the \*depreciating asset.

- (3) The transferor must give the notice within 6 months after the end of the transferee's income year in which the \*balancing adjustment event occurred, or within a longer period allowed by the Commissioner.
- (4) The transferee must keep the notice until the end of 5 years after the earlier of these events:
  - (a) the transferee disposes of the property;
  - (b) the property is lost or destroyed.

Penalty: 30 penalty units.

**40-365 Involuntary disposals**

- (1) You may exclude some or all of an amount that has been included in your assessable income for a \*depreciating asset (the *original asset*) as a result of a \*balancing adjustment event to the extent that you choose to treat it as an amount to be applied under subsection (5) for one or more replacement assets.
- (2) You can only make this choice if you stop \*holding the asset because:
  - (a) the original asset is lost or destroyed; or
  - (b) the original asset is compulsorily acquired by an \*Australian government agency; or
  - (c) the original asset is acquired by an entity (other than an Australian government agency or a \*foreign government agency) under a power of compulsory acquisition conferred by a law covered under subsection (2A); or
  - (d) you dispose of the original asset to an entity (other than a foreign government agency) in circumstances meeting all of these conditions:
    - (i) the disposal takes place after a notice was served on you by or on behalf of the entity;
    - (ii) the notice invited you to negotiate with the entity with a view to the entity acquiring the asset by agreement;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (iii) the notice informed you that if the negotiations were unsuccessful, the asset would be compulsorily acquired by the entity;
  - (iv) the compulsory acquisition would have been under a power of compulsory acquisition conferred by a law covered under subsection (2A); or
  - (e) you dispose of land onto which the original asset was fixed to an entity (other than a foreign government agency) in circumstances meeting all of these conditions:
    - (i) a mining lease was compulsorily granted over the land;
    - (ii) the lease significantly affected your use of the land;
    - (iii) the lease was in force just before the disposal;
    - (iv) the entity to which you dispose of the land was the lessee under the lease; or
  - (f) you dispose of land onto which the original asset was fixed to an entity (other than a foreign government agency) in circumstances meeting all of these conditions:
    - (i) a mining lease would have been compulsorily granted over the land if you had not disposed of it;
    - (ii) that lease would have significantly affected your use of the land;
    - (iii) the entity to which you dispose of the land would have been the lessee under the lease.
- (2A) A law is covered under this subsection if it is:
- (a) an \*Australian law (other than Chapter 6A of the *Corporations Act 2001*); or
  - (b) a \*foreign law (other than a foreign law corresponding to Chapter 6A of the *Corporations Act 2001*).
- (3) You can only make this choice for a replacement asset if you incur the expenditure on the replacement asset, or you start to \*hold it:
- (a) no earlier than one year, or within a further period the Commissioner allows, before the \*balancing adjustment event occurred; and
  - (b) no later than one year, or within a further period the Commissioner allows, after the end of the income year in which the balancing adjustment event occurred.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-370

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- (4) You can only make this choice for a replacement asset if:
  - (a) at the end of the income year in which you incurred the expenditure on the asset, or you started to \*hold it, you used it, or had it \*installed ready for use, wholly for a \*taxable purpose; and
  - (b) you can deduct an amount for it.
- (5) For the purposes of applying this Act to the replacement asset:
  - (a) its \*cost is reduced by the amount covered by the choice for the income year in which the asset's \*start time occurs; and
  - (b) if the income year is later than the one in which the asset's \*start time occurs—the sum of its \*opening adjustable value for that later year and any amount included in the second element of the asset's cost for that later year is reduced by the amount covered by the choice.
- (6) If you are making the choice for 2 or more replacement assets, you apportion the amount covered by the choice between those items in proportion to their \*cost.

**40-370 Balancing adjustments where there has been use of different car expense methods**

- (1) An amount is included in your assessable income or you can deduct an amount under this section instead of section 40-285 if:
  - (a) a \*balancing adjustment event occurs for a \*car you \*held; and
  - (b) you have deducted or can deduct an amount for the decline in value of the car for an income year under this Division; and
  - (c) you chose:
    - (i) the “cents per kilometre” method in Subdivision 28-C; or
    - (ii) the “12% of original value” method in Subdivision 28-D;for deducting your car expenses for the car for one or more other income years.

Note 1: This means if you have only used the “log book” method or the “one-third of actual expenses” method since you began using the car,

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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you calculate the assessable amount or deductible amount under section 40-285.

Note 2: Also, if you have only used the “cents per kilometre” method or the “12% of original value” method since you began using the car, no amount is assessable or deductible under this section or section 40-285.

- (2) Work out the amount you include in your assessable income or the amount you can deduct in this way:

*Method statement*

- Step 1. Subtract the \*car’s \*adjustable value just before the \*balancing adjustment event occurred from the car’s \*termination value.
- Step 2. Reduce the step 1 amount by the part of the \*car’s decline in value that is attributable to your using the car, or having it \*installed ready for use, for purposes other than \*taxable purposes. You do this by applying the formula in subsection 40-290(2).
- Step 3. Multiply the step 2 amount by the total number of days for which you deducted the decline in value of the \*car under this Division.
- Step 4. Divide the step 3 amount by the total number of days you \*held the \*car.
- Step 5. The step 4 amount is a deduction if it is negative or it is included in your assessable income if it is positive.

- (3) In working out the \*adjustable value for the income years for which you chose the “cents per kilometre method” or the “12% of original value” method, you are to assume the decline in value was calculated under this Division on the same basis as those income years when those methods did not apply.
- (4) In working out the reduction in step 2 for the income years for which you chose the “cents per kilometre method” or the “12% of original value” method, you must assume that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 40** Capital allowances

Section 40-420

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- (a) you had not chosen either of those methods for the \*car; and
- (b) Division 28 (car expenses) had not applied to the car; and
- (c) you used the car for \*taxable purposes:
  - (i) to the extent of 20% if you used the “cents per kilometre” method; or
  - (ii) to the extent of one-third if you used the “12% of original value” method.

**Subdivision 40-E—Low-value and software development pools**

**Guide to Subdivision 40-E**

**40-420 What this Subdivision is about**

You may choose to work out the decline in value of low-cost assets (assets costing less than \$1,000) and certain other depreciating assets through a low-value pool.

You may also choose to deduct amounts for expenditure you incur on in-house software through a software development pool.

**Table of sections**

**Operative provisions**

40-425	Allocating assets to a low-value pool
40-430	Rules for assets in low-value pools
40-435	Private or exempt use of assets
40-440	How you work out the decline in value of assets in low-value pools
40-445	Balancing adjustment events
40-450	Software development pools
40-455	How to work out your deduction
40-460	Your assessable income includes consideration for pooled software

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### 40-425 Allocating assets to a low-value pool

- (1) You may choose to allocate a \*low cost asset you \*hold to a low-value pool for the income year in which you start to use it, or have it \*installed ready for use, for a \*taxable purpose.
- (2) A **low-cost asset** is a \*depreciating asset, except a \*horticultural plant whose \*cost as at the end of the income year in which you start to use it, or have it \*installed ready for use, for a \*taxable purpose is less than \$1,000.
- (3) You may also choose to allocate a \*low-value asset to a low-value pool.
- (4) You cannot allocate a \*depreciating asset to a low-value pool if:
  - (a) its \*cost does not exceed \$300; and
  - (b) you use the asset predominantly for the \*purpose of producing assessable income that is not income from carrying on a \*business; and
  - (c) the asset is not part of a set of assets that you started to hold in that income year where the total cost of the set of assets exceeds \$300; and
  - (d) the total cost of the asset and any other identical, or substantially identical, asset that you start to hold in that income year does not exceed \$300.
- (5) A **low-value asset** is a \*depreciating asset, except a \*horticultural plant, you \*hold:
  - (a) if you have deducted or can deduct amounts for it under this Division for a previous income year—for which you used the \*diminishing value method; and
  - (b) that has an \*opening adjustable value for the current year of less than \$1,000 (worked out using the diminishing value method); and
  - (c) that is not a \*low-cost asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 40-430

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- (6) A \*depreciating asset:
- (a) to which Division 58 (about assets previously owned by an exempt entity) applied for an entity sale situation; and
  - (b) for which you used the \*diminishing value method; and
  - (c) whose \*adjustable value as at the end of the income year before the \*current year is less than \$1,000;
- is also a **low-value asset**.

*Exception: small business entities*

- (7) You cannot allocate a \*depreciating asset to a low-value pool if you deduct amounts for it under Subdivision 328-D (about capital allowances for small business entities).

*Exception: research and development*

- (8) You cannot allocate a \*depreciating asset to a low-value pool if you can deduct an amount for the asset under section 73BA of the *Income Tax Assessment Act 1936* (or could so deduct an amount if you had not chosen a tax offset under section 73I of that Act) for a period before, or starting at the same time as, the allocation has effect.

**40-430 Rules for assets in low-value pools**

- (1) Once you have made a choice to allocate a \*low-cost asset to a low-value pool for an income year, you must allocate all low-cost assets you start to \*hold in that income year or a later one to the pool.

Note 1: This rule does not apply to low-value assets.

Note 2: If you are a small business entity for the income year and you calculate your deductions for your depreciating assets under Subdivision 328-D, you must deduct amounts for your depreciating assets under that Subdivision unless deductions for particular assets are specifically excluded by that Subdivision.

- (2) Once you allocate any \*depreciating asset to a low-value pool, it must remain in the pool.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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#### **40-435 Private or exempt use of assets**

When you allocate a \*depreciating asset to a low-value pool, you must make a reasonable estimate of the percentage (the *taxable use percentage*) of your use of the asset (including any past use) that will be for a \*taxable purpose over:

- (a) for a \*low-cost asset—its \*effective life; or
- (b) for a \*low-value asset—any period of its effective life that is yet to elapse at the start of the income year for which you allocate it to the pool.

#### **40-440 How you work out the decline in value of assets in low-value pools**

- (1) You work out the decline in value of \*depreciating assets in a low-value pool for an income year in this way:

- Step 1. Work out the amount obtained by taking 18<sup>3</sup>/<sub>4</sub>% of the taxable use percentage of the \*cost of each \*low-cost asset you allocated to the pool for that year. Add those amounts.
- Step 2. Add to the step 1 amount 18<sup>3</sup>/<sub>4</sub>% of the taxable use percentage of any amounts included in the second element of the \*cost for that year of:
- (a) assets allocated to the pool for an earlier income year; and
  - (b) \*low-value assets allocated to the pool for the \*current year.
- Step 3. Add to the step 2 amount 37<sup>1</sup>/<sub>2</sub>% of the sum of:
- (a) the \*closing pool balance for the previous income year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-445

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- (b) the taxable use percentage of the \*opening adjustable values of \*low-value assets, at the start of the income year, that you allocated to the pool for that year.

Step 4. The result is the decline in value of the \*depreciating assets in the pool.

- (2) The ***closing pool balance*** of a low-value pool for an income year is the sum of:
- (a) the \*closing pool balance of the pool for the previous income year; and
  - (b) the taxable use percentage of the \*costs of \*low-cost assets you allocated to the pool for that year; and
  - (c) the taxable use percentage of the \*opening adjustable values of any \*low-value assets you allocated to the pool for that year as at the start of that year; and
  - (d) the taxable use percentage of any amounts included in the second element of the cost for the income year of:
    - (i) assets allocated to the pool for an earlier income year; and
    - (ii) low-value assets allocated to the pool for the \*current year;

less the decline in value of the \*depreciating assets in the pool worked out under subsection (1).

Note: The closing pool balance may be reduced under section 40-445 if a balancing adjustment event happens.

**40-445 Balancing adjustment events**

- (1) If a \*balancing adjustment event happens to a \*depreciating asset in a low-value pool in an income year, the \*closing pool balance for that year is reduced (but not below zero) by the taxable use percentage of the asset's \*termination value.
- (2) If the sum of the \*termination values, or the part of it, applicable under subsection (1) exceeds the \*closing pool balance of the pool for that year, the excess is included in your assessable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **40-450 Software development pools**

- (1) You may choose to allocate amounts of expenditure you incur on \*in-house software in an income year to a software development pool if it is expenditure on developing, or having another entity develop, computer software.  

Note: You cannot allocate expenditure on in-house software to a software development pool if it is expenditure on acquiring computer software or a right to use computer software.
- (2) Once you choose to create a software development pool for an income year, any amounts of the kind referred to in subsection (1) you incur after the pool is created (whether in that income year or a later one) must be allocated to a software development pool.
- (3) However, an amount of expenditure on \*in-house software can only be allocated to a software development pool if you intend to use the software solely for a \*taxable purpose.
- (4) You must create a separate software development pool for each income year for which you incur amounts of the kind referred to in subsection (1).

### **40-455 How to work out your deduction**

For all the expenditure on \*in-house software in a software development pool that was incurred in a particular income year (*Year 1*), you get deductions in successive income years as follows:

<b>Deductions allowed for software development pool</b>	
<b>Income year</b>	<b>Amount of expenditure you can deduct for that year</b>
Year 1	Nil
Year 2	40%
Year 3	40%
Year 4	20%

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-460

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**40-460 Your assessable income includes consideration for pooled software**

- (1) If expenditure on \*in-house software is (or was) in your software development pool, your assessable income includes any amount you \*derive as consideration in relation to the software.
- (2) However, subsection (1) does not apply if subsection 40-340(3) (roll-over relief) applies to the change.

**Subdivision 40-F—Primary production depreciating assets**

**Guide to Subdivision 40-F**

**40-510 What this Subdivision is about**

You can deduct amounts for capital expenditure on depreciating assets that are water facilities or horticultural plants.

The amount you can deduct is equal to the asset's decline in value during an income year (as measured under this Subdivision).

**Table of sections**

**Operative provisions**

40-515	Water facilities and horticultural plants
40-520	Meaning of <i>water facility</i> and <i>horticultural plant</i>
40-525	Conditions
40-530	When a water facility or horticultural plant starts to decline in value
40-535	Meaning of <i>horticulture</i> and <i>commercial horticulture</i>
40-540	How you work out the decline in value for water facilities
40-545	How you work out the decline in value for horticultural plants
40-555	Amounts you cannot deduct
40-560	Non-arm's length transactions
40-565	Extra deduction for destruction of a horticultural plant
40-570	How this Subdivision applies to partners and partnerships
40-575	Getting tax information if you acquire a horticultural plant

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Operative provisions

### 40-515 Water facilities and horticultural plants

- (1) You can deduct an amount equal to the decline in value for an income year (as worked out under this Subdivision) of a \*depreciating asset that is one of these:
  - (a) a \*water facility;
  - (b) a \*horticultural plant.

Note 1: Sections 40-540 and 40-545 show you how to work out the decline.

Note 2: Generally, only one taxpayer can deduct amounts for a depreciating asset. However, if you and another taxpayer jointly hold the asset, each of you deduct amounts for it: see section 40-35.

#### *Conditions*

- (2) However, the applicable condition in section 40-525 must be satisfied for the \*depreciating asset.

#### *Limit on deduction*

- (3) You cannot deduct more in total than the amount of capital expenditure incurred on the \*depreciating asset.

#### *Reduction of deduction: water facilities*

- (4) You must reduce your deduction for a \*water facility for an income year by the part of the facility's decline in value that is attributable to the period (if any) in the income year when it was:
  - (a) not wholly used in carrying on a \*primary production business on land in Australia; or
  - (b) not wholly used for a \*taxable purpose.
- (5) Paragraph (4)(a) does not apply to a \*water facility if the expenditure incurred on the construction, manufacture, installation or acquisition of the water facility was incurred by an \*irrigation water provider.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 40-520

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*Meaning of irrigation water provider*

- (6) An **irrigation water provider** is an entity whose \*business is primarily and principally the supply (otherwise than by using a \*motor vehicle) of water to entities for use in \*primary production businesses on land in Australia.

**40-520 Meaning of water facility and horticultural plant**

- (1) A **water facility** is:
- (a) \*plant or a structural improvement, or a repair of a capital nature, or an alteration, addition or extension, to plant or a structural improvement, that is primarily and principally for the purpose of conserving or conveying water; or
  - (b) a structural improvement, or a repair of a capital nature, or an alteration, addition or extension, to a structural improvement, that is reasonably incidental to conserving or conveying water.

Example: Examples of a water facility include a dam, tank, tank stand, bore, well, irrigation channel, pipe, pump, water tower and windmill. Examples of things reasonably incidental to conserving or conveying water include a culvert, a fence to prevent livestock entering an irrigation channel and a bridge over an irrigation channel.

- (2) A **horticultural plant** is a live plant or fungus that is cultivated or propagated for any of its products or parts.

**40-525 Conditions**

*Water facilities*

- (1) The capital expenditure you incurred on the construction, manufacture, installation or acquisition of the \*water facility must have been incurred:
- (a) primarily and principally for the purpose of conserving or conveying water for use in a \*primary production business that you conduct on land in Australia; or
  - (b) for expenditure incurred by an \*irrigation water provider—primarily and principally for the purpose of conserving or conveying water for use in primary production businesses

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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conducted by other entities on land in Australia, being entities supplied with water by the irrigation water provider.

Note: If Division 250 applies to you and an asset that is a water facility:

- (a) if section 250-150 applies—the condition in this subsection is taken to be satisfied for the facility to the extent specified in a determination made under subsection 250-150(3); or
- (b) otherwise—the condition in this subsection is taken not to be satisfied for the facility.

*Horticultural plants*

(2) One of the conditions in this table must be satisfied:

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**Conditions relating to horticultural plants**

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<b>Item</b>	<b>Condition</b>
1	You own the *horticultural plant and any holder of a lease, lesser interest or licence relating to the land does not carry on a *business of *horticulture on the land
2	The *horticultural plant is attached to land you hold under a lease, or a *quasi-ownership right granted by an *exempt Australian government agency or an *exempt foreign government agency, and: <ul style="list-style-type: none"> <li>(a) the lease or quasi-ownership right enables you to carry on a *business of *horticulture on the land; and</li> <li>(b) any holder of a lesser interest or licence relating to the land does not carry on a *business of *horticulture on the land.</li> </ul>
3	You: <ul style="list-style-type: none"> <li>(a) hold a licence relating to the land to which the *horticultural plant is attached; and</li> <li>(b) carry on a *business of *horticulture on the land as a result of holding the licence.</li> </ul>

Note: If Division 250 applies to you and an asset that is a horticultural plant:

- (a) if section 250-150 applies—a condition in this subsection is taken to be satisfied for the plant to the extent specified in a determination made under subsection 250-150(3); or
- (b) otherwise—the conditions in this subsection are taken not to be satisfied for the horticultural plant.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 40-530

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**40-530 When a water facility or horticultural plant starts to decline in value**

A \*water facility or horticultural plant starts to decline in value in the income year worked out using this table:

Start of decline in value		
Item	This asset:	Starts to decline in value in:
1	A *water facility	the income year in which you first incur expenditure on the facility
2	A *horticultural plant	(a) if you are the first entity to satisfy a condition in subsection 40-525(2) for the plant—the income year in which the first commercial season starts; or (b) if not—the later of the income year in which you first satisfied that condition and the income year in which the first commercial season starts

**40-535 Meaning of *horticulture* and *commercial horticulture***

- (1) *Horticulture* includes:
  - (a) propagation and cultivation of a \*horticultural plant in any environment (whether natural or artificial); and
  - (b) propagation and cultivation of seeds, bulbs, spores and similar things; and
  - (c) propagation and cultivation of fungi.
- (2) Use for *commercial horticulture* means use for the \*purpose of producing assessable income in a \*business of \*horticulture.

**40-540 How you work out the decline in value for water facilities**

You work out the decline in value of a \*water facility for an income year in this way for the income year in which you incurred the expenditure and the 2 following years:

$$\text{Expenditure} \times 33\frac{1}{3}\%$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

where:

*expenditure* is the amount of capital expenditure you incurred on the construction, manufacture, installation or acquisition of the \*water facility.

**40-545 How you work out the decline in value for horticultural plants**

- (1) The decline in value of a \*horticultural plant for the income year in which it starts to decline in value is all of the capital expenditure attributable to the establishment of the plant if its \*effective life is less than 3 years.
- (2) You work out the decline in value for an income year of a \*horticultural plant whose \*effective life is 3 years or more in this way:

$$\text{Establishment expenditure} \times \frac{\text{Write-off days in income year}}{365} \times \text{Write-off rate}$$

where:

*establishment expenditure* is the amount of capital expenditure incurred that is attributable to the establishment of the \*horticultural plant.

*write-off days in income year* is the number of days in the income year on which you satisfied a condition in subsection 40-525(2) for the plant and either used it for \*commercial horticulture or held it ready for that use.

*write-off rate* is the rate shown in this table for the \*horticultural plant according to its \*effective life.

<b>Write-off rate for horticultural plant</b>		
<b>Item</b>	<b>Effective life of:</b>	<b>The write-off rate is:</b>
1	3 to fewer than 5 years	40%
2	5 to fewer than 6 <sup>2</sup> / <sub>3</sub> years	27%
3	6 <sup>2</sup> / <sub>3</sub> to fewer than 10 years	20%

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-555

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<b>Write-off rate for horticultural plant</b>		
<b>Item</b>	<b>Effective life of:</b>	<b>The write-off rate is:</b>
4	10 to fewer than 13 years	17%
5	13 to fewer than 30 years	13%
6	30 years or more	7%

*Limit on write-off days*

- (3) Disregard your use of the \*horticultural plant on a day outside the period that:
- (a) starts when the plant *can* first be used for \*commercial horticulture; and
  - (b) extends for the time shown in this table (depending on the plant's \*effective life).

<b>Period after which you cannot count use of horticultural plant</b>		
<b>Item</b>	<b>Effective life:</b>	<b>Time limit:</b>
1	3 to fewer than 5 years	2 years and 183 days
2	5 to fewer than 6 <sup>2</sup> / <sub>3</sub> years	3 years and 257 days
3	6 <sup>2</sup> / <sub>3</sub> to fewer than 10 years	5 years
4	10 to fewer than 13 years	5 years and 323 days
5	13 to fewer than 30 years	7 years and 253 days
6	30 years or more	14 years and 105 days

**40-555 Amounts you cannot deduct**

*Water facilities*

- (1) You cannot deduct an amount for any income year for capital expenditure on the acquisition of a \*water facility if any person has deducted or can deduct an amount under this Subdivision for any income year for earlier capital expenditure on:
- (a) the construction or manufacture of the facility; or
  - (b) a previous acquisition of the facility.

Note: A depreciating asset and a repair of a capital nature or an alteration, addition or extension to that asset that is a water facility are not the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

same depreciating asset for the purposes of section 40-50 and this  
Subdivision: see section 40-53.

*Horticultural plants*

- (3) In working out your deduction under this Subdivision for a  
\*horticultural plant, disregard expenditure incurred:
- (a) in draining swamp or low-lying land; or
  - (b) in clearing land.

**40-560 Non-arm's length transactions**

If you incurred capital expenditure under an \*arrangement and:

- (a) there is at least one other party to the arrangement with whom you did not deal at \*arm's length; and
  - (b) apart from this section, the amount of the expenditure would be more than the \*market value of what it was for;
- the amount of expenditure you take into account under this Subdivision is that market value.

**40-565 Extra deduction for destruction of a horticultural plant**

- (1) You can deduct the amount worked out under subsection (2) for a \*horticultural plant for an income year if its \*effective life is 3 years or more and it is destroyed during the income year while you own it and use it for \*commercial horticulture.
- (2) Work out your deduction as follows:

*Method statement*

- Step 1. Work out the total of the amounts you could have deducted under this Subdivision for the \*horticultural plant for the period:
- (a) starting when the plant could first be used for \*commercial horticulture; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-570

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(b) ending when it was destroyed;

assuming that, during that period, you satisfied a condition in section 40-525 for the plant and used it for commercial horticulture.

Step 2. Subtract from the capital expenditure that is attributable to the establishment of the \*horticultural plant:

(a) the result from step 1; and

(b) any amount you received (under an insurance policy or otherwise) for the destruction.

The remaining amount (if any) is your deduction under subsection (1).

(3) This deduction is in addition to any deduction for the income year under section 40-545.

**40-570 How this Subdivision applies to partners and partnerships**

(1) This section applies to allocate expenditure to you for the purposes of this Subdivision if you were a partner in a partnership when it incurred capital expenditure during an income year.

(2) For the purposes of this Subdivision, you are taken to have incurred during that income year:

(a) the amount of the expenditure that the partners agreed you should bear; or

(b) if there was no such agreement—the proportion of the expenditure equal to the proportion of your individual interest in the net income or partnership loss of the partnership for that income year.

(3) Disregard this Subdivision when working out the net income or partnership loss of the partnership under section 90 of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **40-575 Getting tax information if you acquire a horticultural plant**

- (1) If you begin to satisfy a condition in section 40-525 for a \*horticultural plant, you may give the last entity (if any) that satisfied such a condition for the plant a written notice requiring the entity to give you any or all of the following information:
  - (a) the amount of establishment expenditure for the plant;
  - (b) if the entity used the plant's \*effective life to work out the decline in value of the plant—its effective life and the day on which it could first be used for \*commercial horticulture.
- (2) The notice must:
  - (a) be given within 60 days of your beginning to satisfy that condition; and
  - (b) specify a period of at least 60 days within which the information must be given; and
  - (c) set out the effect of subsection (3).

Note: Subsections (4) and (5) explain how this subsection operates if the last owner is a partnership.

#### *Requirement to comply with notice*

- (3) The entity to whom the notice is given must not intentionally refuse or fail to comply with the notice.

Penalty: 10 penalty units.

#### *Giving the notice to a partnership*

- (4) If the entity to whom the notice is given is a partnership:
  - (a) you may give it to the partnership by giving it to any of the partners (this does not limit how else you can give it); and
  - (b) the obligation to comply with the notice is imposed on each of the partners (not on the partnership), but may be discharged by any of them.
- (5) A partner must not intentionally refuse or fail to comply with that obligation, unless another partner has already complied with it.

Penalty: 10 penalty units.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-625

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*Limits on giving a notice*

- (6) Only one notice can be given in relation to the same \*horticultural plant.

**Subdivision 40-G—Capital expenditure of primary producers and other landholders**

**Guide to Subdivision 40-G**

**40-625 What this Subdivision is about**

You can deduct amounts for capital expenditure you incur:

- on landcare operations; or
- on electricity connections or telephone lines.

**Table of sections**

**Operative provisions**

40-630	Landcare operations
40-635	Meaning of <i>landcare operation</i>
40-640	Meaning of <i>approved management plan</i>
40-645	Electricity and telephone lines
40-650	Amounts you cannot deduct under this Subdivision
40-655	Meaning of <i>connecting power to land or upgrading the connection and metering point</i>
40-660	Non-arm's length transactions
40-665	How this Subdivision applies to partners and partnerships
40-670	Approval of persons as farm consultants
40-675	Review of decisions relating to approvals

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### 40-630 Landcare operations

- (1) You can deduct capital expenditure you incur at a time in an income year on a \*landcare operation for:
- (a) land in Australia you use at the time for carrying on a \*primary production business; or
  - (b) rural land in Australia you use at the time for carrying on a \*business for a \*taxable purpose from the use of that land (except a business of \*mining operations).

Note: If Division 250 applies to you and an asset that is land:

- (a) if section 250-150 applies—you are taken to be using the land for the purpose of carrying on a primary production business, or a business for the purpose of producing assessable income from the use of rural land (except a business of mining operations), to the extent specified in a determination made under subsection 250-150(3); or
  - (b) otherwise—you are taken not to be using the land for such a purpose.
- (1A) A \*rural land irrigation water provider can deduct capital expenditure it incurs at a time in an income year on a \*landcare operation for:
- (a) land in Australia that other entities use at the time for carrying on \*primary production businesses; or
  - (b) rural land in Australia that other entities use at the time for carrying on \*businesses for a \*taxable purpose from the use of that land (except a business of \*mining operations);
- being entities supplied with water by the rural land irrigation water provider.
- (1B) A *rural land irrigation water provider* is:
- (a) an \*irrigation water provider; or
  - (b) an entity whose \*business is primarily and principally the supply (otherwise than by using a \*motor vehicle) of water to entities for use in carrying on \*businesses (except businesses of \*mining operations) using rural land in Australia.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 40-630

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*Exception: plant*

- (2) However, you cannot deduct an amount under this Subdivision for capital expenditure on \*plant, except:
- (a) a fence erected for a purpose described in paragraph 40-635(1)(a) or (b); or
  - (b) a dam or structural improvement (except a fence) covered by paragraph (1)(c), (d), (e) or (f) of the definition of *plant* in section 45-40.
- (2A) In applying paragraph (2)(b) to capital expenditure incurred by a \*rural land irrigation water provider on a dam or structural improvement, the requirement in paragraph 45-40(1)(c) that the land on which the dam or structural improvement is situated be used for agricultural or pastoral operations is to be disregarded.

*Exception: deduction available under Subdivision 40-F*

- (2B) A \*rural land irrigation water provider cannot deduct an amount under this Subdivision for capital expenditure if the entity can deduct an amount for that expenditure under Subdivision 40-F.

*Exception: deduction available under Subdivision 40-J*

- (2C) You cannot deduct an amount under this Subdivision for capital expenditure if any entity can deduct an amount for that expenditure for any income year under Subdivision 40-J.

*Reduction of deduction*

- (3) You must reduce your deduction by a reasonable amount to reflect your use of the land in the income year after the time when you incurred the expenditure for a purpose other than the purpose of carrying on:
- (a) a \*primary production business; or
  - (b) a \*business for the \*purpose of producing assessable income from the use of rural land (except a business of \*mining operations).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4) Subsection (3) does not apply to expenditure incurred by a \*rural land irrigation water provider. Instead, a rural land irrigation water provider must reduce its deduction in relation to particular land by a reasonable amount to reflect an entity's use of the land in the income year after the rural land irrigation water provider incurred the expenditure for a purpose other than a \*taxable purpose.

#### **40-635 Meaning of *landcare operation***

- (1) *Landcare operation* for land means:
- (a) erecting a fence to separate different land classes on the land in accordance with an \*approved management plan for the land; or
  - (b) erecting a fence on the land primarily and principally for the purpose of excluding animals from an area affected by land degradation:
    - (i) to prevent or limit extension or worsening of land degradation in the area; and
    - (ii) to help reclaim the area; or
  - (c) constructing a levee or a similar improvement on the land; or
  - (d) constructing drainage works on the land primarily and principally for the purpose of controlling salinity or assisting in drainage control; or
  - (e) an operation primarily and principally for the purpose of:
    - (i) eradicating or exterminating from the land animals that are pests; or
    - (ii) eradicating, exterminating or destroying plant growth detrimental to the land; or
    - (iii) preventing or fighting land degradation (except by erecting fences on the land); or
  - (f) a repair of a capital nature, or an alteration, addition or extension, to an asset described in paragraph (a), (b), (c) or (d) or an extension of an operation described in paragraph (e); or
  - (g) constructing a structural improvement, or a repair of a capital nature, or an alteration, addition or extension, to a structural improvement, that is reasonably incidental to an asset described in paragraph (c) or (d).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 40** Capital allowances

Section 40-640

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Note: A depreciating asset and a repair of a capital nature or an alteration, addition or extension to that asset are not the same asset for the purposes of section 40-50 and this Subdivision: see section 40-53.

- (2) Paragraph (1)(d) does not apply to an operation draining swamp or low-lying land.

**40-640** *Meaning of approved management plan*

An *approved management plan* for \*land is a plan that:

- (a) shows the different classes within the land and the location of any fencing needed to separate any of the land classes to prevent land degradation; and
- (b) describes the kind of fencing and how it will prevent land degradation; and
- (c) has been prepared by, or approved in writing as a suitable plan for the land by:
  - (i) an officer of an \*Australian government agency responsible for land conservation who has authority to do so; or
  - (ii) an individual who was at the time approved as a farm consultant under this Subdivision.

**40-645** *Electricity and telephone lines*

- (1) You can deduct amounts for capital expenditure you incur on \*connecting power to land or upgrading the connection if, when you incur the expenditure:
  - (a) you have an interest in the land or are a share-farmer carrying on a \*business on the land; and
  - (b) you or another entity intends to use some or all of the electricity to be supplied as a result of the expenditure in carrying on a business on the land for a \*taxable purpose at a time when you have an interest in the land or are a share-farmer carrying on a business on the land.
- (2) You can also deduct amounts for capital expenditure you incur on a telephone line on or extending to land if, when you incurred the expenditure:
  - (a) a \*primary production business was carried on the land; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) you had an interest in the land or you were a share-farmer carrying on a primary production business on the land.
- (3) The amount you can deduct is 10% of the expenditure:
- (a) for the income year in which you incur it; and
  - (b) for each of the next 9 income years.

Note 1: Various provisions may reduce the amount you can deduct or stop you deducting. For example, see:

- Division 26 of this Act (limiting deductions generally); and
- section 40-650 of this Act (specifying expenditure you cannot deduct under this Subdivision); and
- Division 245 of Schedule 2C to the *Income Tax Assessment Act 1936* (which may affect your entitlement to a deduction if your debts are forgiven).

Note 2: If you recoup an amount of the expenditure, the amount will be included in your assessable income. See Subdivision 20-A.

#### **40-650 Amounts you cannot deduct under this Subdivision**

- (1) You cannot deduct amounts for capital expenditure you incur on \*connecting power to land or upgrading the connection if, during the 12 months after electricity is first supplied to the land as a result of the expenditure, no electricity supplied as a result of the expenditure is used in carrying on a \*business on the land for a \*taxable purpose.
- (2) If you deducted an amount for any income year under this Subdivision for the expenditure, your assessment for that income year may be amended under section 170 of the *Income Tax Assessment Act 1936* to disallow the deduction.
- (3) You cannot deduct an amount for capital expenditure you incur on \*connecting power to land or upgrading the connection for:
  - (a) expenditure in providing water, light or power for use on, access to or communication with the site of \*mining operations; or
  - (b) a contribution to the cost of providing water, light or power for those operations.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 40-650

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- (4) You cannot deduct an amount for any income year for your capital expenditure on a part of a telephone line if:
- (a) any entity has deducted, or can deduct, an amount for any income year for the cost of that part under a provision of this Act (except this Subdivision); or
  - (b) the cost of that part has been, or must be, taken into account in working out:
    - (i) the amount of any entity's deduction (including a deduction for a \*depreciating asset) for any income year under a provision of this Act (except this Subdivision); or
    - (ii) the net income, or partnership loss, of a partnership under section 90 of the *Income Tax Assessment Act 1936*.
- (5) However, you can deduct an amount under this Subdivision for your expenditure on a part of a telephone line even if:
- (a) an entity that worked on installing that part has deducted, or can deduct, an amount relating to that part for any income year under this Act (except this Subdivision); or
  - (b) the cost of that part has been, or must be, taken into account:
    - (i) in working out the amount of such an entity's deduction for any income year under a provision of this Act (except this Subdivision); or
    - (ii) under section 90 of the *Income Tax Assessment Act 1936* in working out the net income, or partnership loss, of a partnership that worked on installing that part.
- (6) Subsection (5) has effect whether the entity did the work itself or through one or more employees or \*agents.
- (7) If you can deduct, or have deducted, an amount for any income year under section 40-645 for your expenditure:
- (a) an entity cannot deduct an amount for any income year under a provision of this Act (except this Subdivision) for the expenditure; and
  - (b) the expenditure cannot be taken into account to work out the amount of an entity's deduction for any income year under a provision of this Act (except this Subdivision).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (8) Subsection (7) also applies in working out the net income, or partnership loss, of a partnership under section 90 of the *Income Tax Assessment Act 1936*.

**40-655 Meaning of *connecting power to land or upgrading the connection and metering point***

- (1) Each of these operations is *connecting power to land or upgrading the connection*:
- (a) connecting a mains electricity cable to a \*metering point on the land (whether or not the point from which the cable is connected is on the land);
  - (b) providing or installing equipment designed to measure the amount of electricity supplied through a mains electricity cable to a metering point on the land;
  - (c) providing or installing equipment for use directly in connection with the supply of electricity through a mains electricity cable to a metering point on the land;
  - (d) work to increase the amount of electricity that can be supplied through a mains electricity cable to a metering point on the land;
  - (e) work to modify or replace equipment designed to measure the amount of electricity supplied through a mains electricity cable to a metering point on the land, if the modification or replacement results from increasing the amount of electricity supplied to the land;
  - (f) work to modify or replace equipment for use directly in connection with the supply of electricity through a mains electricity cable to the land, if the modification or replacement results from increasing the amount of electricity supplied to the land;
  - (g) work carried out as a result of a contribution to the cost of a project consisting of the connection of mains electricity facilities to that land and other land.
- (2) However, an operation described in subsection (1) done in the course of replacing or relocating mains electricity cable or equipment is *connecting power to land or upgrading the*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 40-660

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*connection* only if done to increase the amount of electricity that can be supplied to a \*metering point on the land.

- (3) A *metering point* on land is a point where consumption of electricity supplied to the land through a mains electricity cable is measured.

**40-660 Non-arm's length transactions**

If you incurred capital expenditure under an \*arrangement and:

- (a) there is at least one other party to the arrangement with whom you did not deal at \*arm's length; and
- (b) apart from this section, the amount of the expenditure would be more than the \*market value of what it was for;

the amount of expenditure you take into account under this Subdivision is that market value.

**40-665 How this Subdivision applies to partners and partnerships**

- (1) This section applies to allocate expenditure to you for the purposes of this Subdivision if you were a partner in a partnership when it incurred capital expenditure during an income year.
- (2) For the purposes of this Subdivision, you are taken to have incurred during that income year:
  - (a) the amount of the expenditure that the partners agreed you should bear; or
  - (b) if there was no such agreement—the proportion of the expenditure equal to the proportion of your individual interest in the net income or partnership loss of the partnership for that income year.
- (3) Disregard this Subdivision when working out the net income or partnership loss of the partnership under section 90 of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **40-670 Approval of persons as farm consultants**

- (1) A person may be approved in writing as a farm consultant by:
  - (a) the Secretary of the Department of Agriculture, Fisheries and Forestry; or
  - (b) an officer of that Department who has been authorised in writing by that Secretary to approve persons as farm consultants.

Note: This subsection also allows the approval of an individual as a farm consultant to be revoked. See subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The following matters must be taken into account when deciding whether to approve a person as a farm consultant:
  - (a) the person's qualifications, experience and knowledge relating to \*land conservation and farm management;
  - (b) the person's standing in the professional community;
  - (c) any other relevant matters.

### **40-675 Review of decisions relating to approvals**

A person may apply to the \*AAT for review of a decision (as defined in the *Administrative Appeals Tribunal Act 1975*):

- (a) to refuse to approve the person as a farm consultant; or
- (b) to revoke the approval of the person as a farm consultant.

## **Subdivision 40-H—Capital expenditure that is immediately deductible**

### **Guide to Subdivision 40-H**

#### **40-725 What this Subdivision is about**

You get an immediate deduction for certain capital expenditure on:

- exploration or prospecting; and
- rehabilitation of mining or quarrying sites; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 40-730

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- paying petroleum resource rent tax; and
- environmental protection activities.

**Table of sections**

**Operative provisions**

40-730	Deduction for expenditure on exploration or prospecting
40-735	Deduction for expenditure on mining site rehabilitation
40-740	Meaning of <i>ancillary activities</i> and <i>mining building site</i>
40-745	No deduction for certain expenditure
40-750	Deduction for payments of petroleum resource rent tax
40-755	Environmental protection activities
40-760	Limits on deductions from environmental protection activities
40-765	Non-arm's length transactions

**Operative provisions**

**40-730 Deduction for expenditure on exploration or prospecting**

- (1) You can deduct expenditure you incur in an income year on \*exploration or prospecting for \*minerals, or quarry materials, obtainable by \*mining operations if, for that expenditure, you satisfy one or more of these paragraphs:
- (a) you carried on mining operations;
  - (b) it would be reasonable to conclude you proposed to carry on such operations;
  - (c) you carried on a \*business of, or a business that included, exploration or prospecting for minerals or quarry materials obtainable by such operations, and the expenditure was necessarily incurred in carrying on that business.

Note: If Division 250 applies to you and an asset that is land:

- (a) if section 250-150 applies—you can deduct expenditure you incur in relation to the land to the extent specified in a determination made under subsection 250-150(3); or
- (b) otherwise—you cannot deduct such expenditure.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) However, you cannot deduct expenditure under subsection (1) if it is expenditure on:
- (a) development drilling for \*petroleum; or
  - (b) operations in the course of working a mining property, quarrying property or petroleum field.
- (3) Also, you cannot deduct expenditure under subsection (1) to the extent that it forms part of the \*cost of a \*depreciating asset.
- (4) **Exploration or prospecting** includes:
- (a) for mining in general, and quarrying:
    - (i) geological mapping, geophysical surveys, systematic search for areas containing \*minerals (except \*petroleum) or quarry materials, and search by drilling or other means for such minerals or materials within those areas; and
    - (ii) search for ore within, or near, an ore-body or search for quarry materials by drives, shafts, cross-cuts, winzes, rises and drilling; and
  - (b) for petroleum mining:
    - (i) geological, geophysical and geochemical surveys; and
    - (ii) exploration drilling and appraisal drilling; and
  - (c) feasibility studies to evaluate the economic feasibility of mining minerals or quarry materials once they have been discovered; and
  - (d) obtaining \*mining, quarrying or prospecting information associated with the search for, and evaluation of, areas containing minerals or quarry materials.
- (5) **Minerals** includes \*petroleum.
- (6) **Petroleum** means:
- (a) any naturally occurring hydrocarbon or naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
  - (b) any naturally occurring mixture of:
    - (i) one or more hydrocarbons, whether in a gaseous, liquid or solid state; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 40-735

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(ii) one or more of the following: hydrogen sulphide, nitrogen, helium or carbon dioxide;  
whether or not that substance has been returned to a natural reservoir.

(7) **Mining operations** means:

- (a) mining operations on a mining property for extracting \*minerals (except \*petroleum) from their natural site; or
- (b) mining operations for the purpose of obtaining petroleum; or
- (c) quarrying operations on a quarrying property for extracting quarry materials from their natural site;  
for the \*purpose of producing assessable income.

(8) **Mining, quarrying or prospecting information** is geological, geophysical or technical information that:

- (a) relates to the presence, absence or extent of deposits of \*minerals or quarry materials in an area; or
- (b) is likely to help in determining the presence, absence or extent of such deposits in an area.

**40-735 Deduction for expenditure on mining site rehabilitation**

- (1) You can deduct for an income year expenditure you incur in that year to the extent it is on \*mining site rehabilitation of:
- (a) a site on which you:
    - (i) carried on \*mining operations; or
    - (ii) conducted \*exploration or prospecting; or
    - (iii) conducted \*ancillary mining activities; or
  - (b) a \*mining building site.

Note 1: If an amount of the expenditure is recouped, the amount may be included in your assessable income: see Subdivision 20-A.

Note 2: If Division 250 applies to you and an asset that is land:

- (a) if section 250-150 applies—you can deduct expenditure you incur in relation to the land to the extent specified in a determination made under subsection 250-150(3); or
- (b) otherwise—you cannot deduct such expenditure.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) However, a provision of this Act (except Division 8 (which is about deductions)) that expressly prevents or restricts the operation of that Division applies in the same way to this section.
- (3) However, you cannot deduct expenditure under subsection (1) to the extent that it forms part of the \*cost of a \*depreciating asset.
- (4) **Mining site rehabilitation** is an act of restoring or rehabilitating a site or part of a site to, or to a reasonable approximation of, the condition it was in before \*mining operations, \*exploration or prospecting or \*ancillary mining activities were first started on the site, whether by you or by someone else.
- (5) *Partly* restoring or rehabilitating such a site counts as **mining site rehabilitation** (even if you had no intention of completing the work).
- (6) For a \*mining building site, the time when \*ancillary mining activities were first started on the site is the earliest time when the buildings, improvements or \*depreciating assets concerned were located on the site.

#### **40-740 Meaning of *ancillary mining activities* and *mining building site***

- (1) Any of the following are **ancillary mining activities**:
  - (a) preparing a site for you to carry on \*mining operations;
  - (b) providing water, light or power for, access to, or communications with, a site on which you carry on, or will carry on, mining operations;
  - (c) \*minerals treatment of \*minerals or minerals treatment of quarry materials, obtained by you in carrying on mining operations;
  - (d) storing (whether before or after minerals treatment) such minerals, petroleum or quarry materials in relation to the operation of a \*depreciating asset for use primarily and principally in treating such minerals or quarry materials;
  - (e) liquefying natural gas obtained from mining operations you carry on.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 40-745

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- (2) A *mining building site* is a site, or a part of a site, where there are \*depreciating assets that are or were necessary for you to carry on \*mining operations. However, a *mining building site* does not include anything covered by the definition of *housing and welfare*.

**40-745 No deduction for certain expenditure**

Expenditure on these things is not deductible under section 40-735:

- (a) acquiring land or an interest in land or a right, power or privilege to do with land;
- (b) a bond or security, however described, for performing \*mining site rehabilitation;
- (c) \*housing and welfare.

**40-750 Deduction for payments of petroleum resource rent tax**

- (1) You can deduct a payment of \*petroleum resource rent tax, or an \*instalment of petroleum resource rent tax, that you make in an income year.

Note 1: If an amount of the expenditure is recouped, the amount may be included in your assessable income: see Subdivision 20-A.

Note 2: If Division 250 applies to you and an asset:

- (a) if section 250-150 applies—you can deduct expenditure you incur in relation to the asset to the extent specified in a determination made under subsection 250-150(3); or
- (b) otherwise—you cannot deduct such expenditure.

- (2) You cannot deduct under subsection (1) a payment that you make under paragraph 99(c) of the *Petroleum Resource Rent Tax Assessment Act 1987*.

- (3) These amounts are included in your assessable income for the income year in which they are refunded, credited, paid or applied:
- (a) an amount the Commissioner pays you in total or partial discharge of a debt of the kind referred to in subsection 47(1) of the *Petroleum Resource Rent Tax Assessment Act 1987*; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) an amount the Commissioner applies under subsection 47(2) of the *Petroleum Resource Rent Tax Assessment Act 1987* in total or partial discharge of a liability you have.

#### **40-755 Environmental protection activities**

- (1) You can deduct expenditure you incur in an income year for the sole or dominant purpose of carrying on \*environmental protection activities.

Note: If Division 250 applies to you and an asset that is land:

- (a) if section 250-150 applies—you can deduct expenditure you incur in relation to the land to the extent specified in a determination made under subsection 250-150(3); or
  - (b) otherwise—you cannot deduct such expenditure.
- (2) ***Environmental protection activities*** are any of the following activities that are carried on by or for you:
- (a) preventing, fighting or remedying:
    - (i) pollution resulting, or likely to result, from \*your earning activity; or
    - (ii) pollution of or from the site of your earning activity; or
    - (iii) pollution of or from a site where an entity was carrying on any \*business that you have acquired and carry on substantially unchanged as your earning activity;
  - (b) treating, cleaning up, removing or storing:
    - (i) waste resulting, or likely to result, from your earning activity; or
    - (ii) waste that is on or from the site of \*your earning activity; or
    - (iii) waste that is on or from a site where an entity was carrying on any business that you have acquired and carry on substantially unchanged as your earning activity.

No other activities are environmental protection activities.

- (3) ***Your earning activity*** is an activity you carried on, carry on, or propose to carry on:
- (a) for the \*purpose of producing assessable income for an income year (except a \*net capital gain); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-760

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- (b) for the purpose of \*exploration or prospecting; or
  - (c) for the purpose of \*mining site rehabilitation; or
  - (d) for purposes that include one or more of those purposes.
- (4) If \*your earning activity is:
- (a) leasing a site you own; or
  - (b) granting a right to use a site you own or control; or
  - (c) a similar activity involving a site;
- that site is taken to be the site of your earning activity.

Note: This means you can deduct your expenditure on environmental protection activities relating to the site, even if the pollution or waste is caused by another entity that uses the site.

**40-760 Limits on deductions from environmental protection activities**

*Expenditure you cannot deduct*

- (1) You cannot deduct an amount under section 40-755 for an income year for:
- (a) expenditure for acquiring land; or
  - (b) capital expenditure for constructing a building, structure or structural improvement; or
  - (c) capital expenditure for constructing an extension, alteration or improvement to a building, structure or structural improvement; or
  - (d) a bond or security (however described) for performing \*environmental protection activities; or
  - (e) expenditure to the extent that you can deduct an amount for it under a provision of this Act outside this Subdivision.
- Note: You may be able to deduct expenditure described in paragraph (1)(b) or (c) under Division 43 (which deals with capital works).
- (2) In particular, you cannot deduct under section 40-755 expenditure to the extent that you incur it on carrying out an activity for environmental impact assessment of your project.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) However, a provision of this Act (except Division 8 (which is about deductions)) that expressly prevents or restricts the operation of that Division applies in the same way to section 40-755.

#### **40-765 Non-arm's length transactions**

If you incurred capital expenditure under an \*arrangement and:

- (a) there is at least one other party to the arrangement with whom you did not deal at \*arm's length; and
- (b) apart from this section, the amount of the expenditure would be more than the \*market value of what it was for;

the amount of expenditure you take into account under this Subdivision is that market value.

#### **Subdivision 40-I—Capital expenditure that is deductible over time**

#### **Guide to Subdivision 40-I**

#### **40-825 What this Subdivision is about**

You can deduct amounts for certain capital expenditure associated with projects you carry on. You deduct the amounts over the life of the project using a pool.

You can also deduct amounts for certain business related costs. You deduct these amounts over 5 years if the amounts are not otherwise taken into account and are not denied a deduction.

#### **Table of sections**

##### **Operative provisions**

40-830	Project pools
40-832	Project pools for post-9 May 2006 projects
40-835	Reduction of deduction
40-840	Meaning of <i>project amount</i>
40-845	Project life

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 40-830

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40-855	When you start to deduct amounts for a project pool
40-860	Meaning of <i>mining capital expenditure</i>
40-865	Meaning of <i>transport capital expenditure</i>
40-870	Meaning of <i>transport facility</i>
40-875	Meaning of <i>processed minerals</i> and <i>minerals treatment</i>
40-880	Business related costs
40-885	Non-arm's length transactions

## Operative provisions

### 40-830 Project pools

- (1) You can allocate \*project amounts to a project pool.
- (2) You can deduct amounts for \*project amounts that are allocated to the project pool.
- (3) You calculate your deduction for an income year for a project pool in this way:

$$\frac{\text{Pool value} \times 150\%}{DV \text{ project pool life}}$$

where:

***DV project pool life*** is:

- (a) the \*project life of the project; or
- (b) if its project life has been recalculated—its most recently recalculated project life.

***pool value*** is:

- (a) for the first income year that a \*project amount is allocated to the pool—the sum of the project amounts allocated to the pool for that year; or
- (b) for a later income year—the sum of the pool's \*closing pool value for the previous income year and any project amounts allocated to the pool for the later year.

Note: The calculation is made under subsection 40-832(3) for project amounts incurred on or after 10 May 2006 for projects that start to operate on or after that day.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) If, in an income year, you abandon, sell or otherwise dispose of a project for which you have a project pool, you can deduct for that year the sum of the pool's \*closing pool value for the previous income year and any \*project amounts allocated to the pool for the income year.
- (5) Your assessable income for that income year includes any amount you receive for the abandonment, sale or other disposal.
- (6) Your assessable income for an income year includes other capital amounts that you \*derive in that year in relation to a \*project amount allocated to your project pool or in relation to something on which the project amount is expended.
- (7) The *closing pool value* of a project pool for an income year is:
  - (a) for the first income year that a \*project amount is allocated to the pool—the sum of the project amounts allocated to the pool for that year less the amount you could deduct for the pool for that year (apart from section 40-835); or
  - (b) for a later income year—the sum of the pool's \*closing pool value for the previous income year and any project amounts allocated to the pool for the later year less the amount you could deduct for the pool for the later year (apart from section 40-835).
- (8) Your deduction for an income year cannot be more than the amount of the component “pool value” in the formula in subsection (3) for that year.

#### **40-832 Project pools for post-9 May 2006 projects**

- (1) You calculate your deduction for an income year for a project pool in this way if the project pool contains only \*project amounts incurred on or after 10 May 2006 for projects that start to operate on or after that day:

$$\frac{\text{Pool value} \times 200\%}{\text{DV project pool life}}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-835

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where:

*DV project pool life* has the same meaning as in subsection 40-830(3).

*pool value* has the same meaning as in subsection 40-830(3).

- (2) If, in an income year, you abandon, sell or otherwise dispose of a project for which you have a project pool, you can deduct for that year the sum of the pool's \*closing pool value for the previous income year and any \*project amounts allocated to the pool for the income year.
- (3) Your assessable income for that income year includes any amount you receive for the abandonment, sale or other disposal.
- (4) Your assessable income for an income year includes other capital amounts that you \*derive in that year in relation to a \*project amount allocated to your project pool or in relation to something on which the project amount is expended.
- (5) Your deduction for an income year cannot be more than the amount of the component "pool value" in the formula in subsection (1) for that year.

**40-835 Reduction of deduction**

You must reduce your deduction under section 40-830 or 40-832 for an income year by a reasonable amount for the extent (if any) to which the project operates in the year for purposes other than \*taxable purposes.

Note: If Division 250 applies to you and an asset:

- (a) if section 250-150 applies—you are taken to be using the asset for taxable purposes to the extent specified in a determination made under subsection 250-150(3); or
- (b) otherwise—you are taken not to be using the asset for such purposes.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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#### **40-840 Meaning of *project amount***

- (1) An amount of \*mining capital expenditure or \*transport capital expenditure you incur is a ***project amount*** if:
  - (a) it does not form part of the \*cost of a \*depreciating asset you \*hold or held; and
  - (b) you cannot deduct it under a provision of this Act outside this Subdivision; and
  - (c) it is directly connected with:
    - (i) for mining capital expenditure—carrying on the \*mining operations in relation to which the expenditure is incurred; or
    - (ii) for transport capital expenditure—carrying on the \*business in relation to which the expenditure is incurred.
  
- (2) Another amount of capital expenditure you incur is also a ***project amount*** so far as:
  - (a) it does not form part of the \*cost of a \*depreciating asset you \*hold or held; and
  - (b) you cannot deduct it under a provision of this Act outside this Subdivision; and
  - (c) it is directly connected with a project you carry on or propose to carry on for a \*taxable purpose; and
  - (d) it is one of these:
    - (i) an amount paid to create or upgrade community infrastructure for a community associated with the project; or
    - (ii) an amount incurred for site preparation costs for depreciating assets (except, for \*horticultural plants, in draining swamp or low-lying land or in clearing land); or
    - (iii) an amount incurred for feasibility studies for the project; or
    - (iv) an amount incurred for environmental assessments for the project; or
    - (v) an amount incurred to obtain information associated with the project; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 40-845

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- (vi) an amount incurred in seeking to obtain a right to \*intellectual property; or
- (vii) an amount incurred for ornamental trees or shrubs.

**40-845 Project life**

You work out the *project life* of a project by estimating how long (in years, including fractions of years) it will be from when the project starts to operate until it stops operating.

**40-855 When you start to deduct amounts for a project pool**

You start to deduct amounts for a project pool for the first income year when the project starts to operate.

**40-860 Meaning of *mining capital expenditure***

- (1) *Mining capital expenditure* is capital expenditure you incur:
  - (a) in carrying on \*mining operations; or
  - (b) in preparing a site for those operations; or
  - (c) on buildings or other improvements necessary for you to carry on those operations; or
  - (d) in providing, or in contributing to the cost of providing:
    - (i) water, light or power for use on the site of those operations; or
    - (ii) access to, or communications with, the site of those operations; or
  - (e) on buildings for use directly in connection with operating or maintaining \*plant that is primarily and principally for \*treating \*minerals, or quarry materials, that you obtain by carrying on such operations; or
  - (f) on buildings or other improvements for use directly in connection with storing minerals or quarry materials or to facilitate \*minerals treatment of them (whether the storage happens before or after the treatment).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) Capital expenditure you incur on \*housing and welfare in carrying on \*mining operations (except quarrying operations) is also **mining capital expenditure**, but only if:
- (a) for residential accommodation—the accommodation is provided by you, on or adjacent to a site where you carry on those operations, for the use of:
    - (i) your employees, or someone else’s employees, who are employed or engaged in those operations, or in operations of yours that are connected with those operations; or
    - (ii) dependants of such employees; or
  - (b) for health, education, recreation or other similar facilities, or facilities for meals—the facilities:
    - (i) are on or adjacent to a site where you carry on those operations, and are principally for the benefit of the employees or dependants covered by paragraph (a); and
    - (ii) are not run for profit by any person, except in the case of facilities for meals (which may be run for profit); or
  - (c) in the case of works, including works for providing water, light, power, access or communications—the works are carried out directly in connection with the accommodation or facilities covered by this section.
- (3) However, expenditure on these is **not mining capital expenditure**:
- (a) railway lines, roads, pipelines or other facilities, for use wholly or partly for transporting \*minerals or quarry materials, or their products, other than facilities used for transport wholly within the site of \*mining operations you carry on;
  - (b) works carried out in connection with, or buildings or other improvements constructed or acquired for use in connection with, establishing, operating or using a port facility or other facility for ships;
  - (c) an office building that is not at or adjacent to the site of mining operations you carry on;
  - (d) \*housing and welfare in relation to quarrying operations.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 40-865

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**40-865 Meaning of *transport capital expenditure***

- (1) ***Transport capital expenditure*** is capital expenditure you incur, in carrying on a \*business for a \*taxable purpose, on:
- (a) a \*transport facility; or
  - (b) obtaining a right to construct or install a transport facility, or part of one, on land owned or leased by another entity or in a Petroleum Act offshore area or an Installations Act adjacent area within the meaning of section 6AA of the *Income Tax Assessment Act 1936*; or
  - (c) paying compensation for any damage or loss caused by constructing or installing a transport facility or part of one; or
  - (d) earthworks, bridges, tunnels or cuttings that are necessary for a transport facility.
- (2) ***Transport capital expenditure*** also includes capital expenditure you incur, in carrying on a \*business for a \*taxable purpose, by way of contribution to:
- (a) someone else's capital expenditure on a \*transport facility or on anything else covered by a paragraph of subsection (1); or
  - (b) an \*exempt Australian government agency's capital expenditure on railway rolling-stock.
- (3) ***Transport capital expenditure*** does *not* include expenditure on:
- (a) road vehicles or ships; or
  - (b) railway rolling-stock; or
  - (c) a thing covered by the definition of ***housing and welfare***; or
  - (d) works for providing water, light or power, in connection with a port facility or other facility for ships;
- and does not include expenditure by way of contribution to that expenditure (except expenditure by way of contribution to an \*exempt Australian government agency's capital expenditure on railway rolling-stock).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**40-870 Meaning of *transport facility***

- (1) A *transport facility* is a railway, a road, a pipe-line, a port facility or other facility for ships, or another facility, that is used primarily and principally for transport of:
  - (a) \*minerals or quarry materials obtained by any entity in carrying on \*mining operations; or
  - (b) \*processed minerals produced from minerals or quarry materials.
- (2) However, a facility used for these is not a *transport facility*:
  - (a) transport wholly within the site of \*mining operations;
  - (b) transport of \*petroleum:
    - (i) that has been treated at a refinery; or
    - (ii) that forms part of a system of reticulation to consumers; or
    - (iii) to a particular consumer or consumers.

**40-875 Meaning of *processed minerals and minerals treatment***

- (1) *Processed minerals* are any of the following:
  - (a) materials resulting from \*minerals treatment of \*minerals or quarry materials (except \*petroleum);
  - (b) materials resulting from sintering or calcining;
  - (c) pellets or other agglomerated forms of iron;
  - (d) alumina and blister copper.
- (2) *Minerals treatment* means:
  - (a) cleaning, leaching, crushing, grinding, breaking, screening, grading or sizing; or
  - (b) concentration by a gravity, magnetic, electrostatic or flotation process; or
  - (c) any other treatment:
    - (i) that is applied to \*minerals, or to quarry materials, before that concentration; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 40-880

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- (ii) for a mineral or materials not requiring that concentration, that would, if the mineral or materials had required concentration, have been applied before the concentration;

but does not include:

- (d) sintering or calcining; or
- (e) producing alumina, or pellets or other agglomerated forms of iron, or processing connected with such production.

**40-880 Business related costs**

*Object*

- (1) The object of this section is to make certain \*business capital expenditure deductible over 5 years if:
  - (a) the expenditure is not otherwise taken into account; and
  - (b) a deduction is not denied by some other provision; and
  - (c) the business is, was or is proposed to be \*carried on for a \*taxable purpose.

Note: If Division 250 applies to you and an asset:

- (a) if section 250-150 applies—you can deduct an amount for capital expenditure you incur in relation to the asset to the extent specified in a determination made under subsection 250-150(3); or
- (b) otherwise—you cannot deduct an amount for such expenditure.

*Deduction*

- (2) You can deduct, in equal proportions over a period of 5 income years starting in the year in which you incur it, capital expenditure you incur:
  - (a) in relation to your \*business; or
  - (b) in relation to a business that used to be \*carried on; or
  - (c) in relation to a business proposed to be carried on; or
  - (d) to liquidate or deregister a company of which you were a \*member, to wind up a partnership of which you were a partner or to wind up a trust of which you were a beneficiary, that carried on a business.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Limitations and exceptions*

- (3) You can only deduct the expenditure, for a \*business that you \*carry on, used to carry on or propose to carry on, to the extent that the business is carried on, was carried on or is proposed to be carried on for a \*taxable purpose.
- (4) You can only deduct the expenditure, for a \*business that another entity used to \*carry on or proposes to carry on, to the extent that:
  - (a) the business was carried on or is proposed to be carried on for a \*taxable purpose; and
  - (b) the expenditure is in connection with:
    - (i) your deriving assessable income from the business; and
    - (ii) the business that was carried on or is proposed to be carried on.
- (5) You cannot deduct anything under this section for an amount of expenditure you incur to the extent that:
  - (a) it forms part of the \*cost of a \*depreciating asset that you \*hold, used to hold or will hold; or
  - (b) you can deduct an amount for it under a provision of this Act other than this section; or
  - (c) it forms part of the cost of land; or
  - (d) it is in relation to a lease or other legal or equitable right; or
  - (e) it would, apart from this section, be taken into account in working out:
    - (i) a profit that is included in your assessable income (for example, under section 6-5 or 15-15); or
    - (ii) a loss that you can deduct (for example, under section 8-1 or 25-40); or
  - (f) it could, apart from this section, be taken into account in working out the amount of a \*capital gain or \*capital loss from a \*CGT event; or
  - (g) a provision of this Act other than this section would expressly make the expenditure non-deductible if it were not of a capital nature; or
  - (h) a provision of this Act other than this section expressly prevents the expenditure being taken into account as

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 40-880

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described in paragraphs (a) to (f) for a reason other than the expenditure being of a capital nature; or

- (i) it is expenditure of a private or domestic nature; or
  - (j) it is incurred in relation to gaining or producing \*exempt income or \*non-assessable non-exempt income.
- (6) The exceptions in paragraphs (5)(d) and (f) do not apply to expenditure you incur to preserve (but not enhance) the value of goodwill if the expenditure you incur is in relation to a legal or equitable right and the value to you of the right is solely attributable to the effect that the right has on goodwill.
- (7) You cannot deduct an amount under paragraph (2)(c) in relation to a \*business proposed to be \*carried on unless, having regard to any relevant circumstances, it is reasonable to conclude that the business is proposed to be carried on within a reasonable time.
- (8) You cannot deduct anything under this section for an amount of expenditure that, because of a market value substitution rule, was excluded from the \*cost of a \*depreciating asset or the \*cost base or \*reduced cost base of a \*CGT asset.
- Note: Some examples of market value substitution rules are subsection 40-180(2) (table item 8), subsection 40-190(3) (table item 1) and sections 40-765 and 112-20.
- (9) You cannot deduct anything under this section for an amount of expenditure you incur:
- (a) by way of returning an amount you have received (except to the extent that the amount was included in your assessable income or taken into account in working out an amount so included); or
  - (b) to the extent that, for another entity, the amount is a \*return on or of:
    - (i) an \*equity interest; or
    - (ii) a \*debt interest that is an obligation of yours.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **40-885 Non-arm's length transactions**

If you incurred capital expenditure, or received an amount, under an \*arrangement and:

- (a) there is at least one other party to the arrangement with whom you did not deal at \*arm's length; and
- (b) apart from this section:
  - (i) the amount of the expenditure would be more than the \*market value of what it was for; or
  - (ii) the amount you received would be less than the market value of what it was for;

the amount of expenditure, or the amount received, you take into account under this Subdivision is that market value.

## **Subdivision 40-J—Capital expenditure for the establishment of trees in carbon sink forests**

### **Guide to Subdivision 40-J**

#### **40-1000 What this Subdivision is about**

You can deduct amounts for capital expenditure incurred for establishing trees that meet the requirements for constituting a carbon sink forest.

### **Table of sections**

#### **Operative provisions**

40-1005	Deduction for expenditure for establishing trees in carbon sink forests
40-1010	Expenditure for establishing trees in carbon sink forests
40-1015	Carbon sequestration by trees
40-1020	Certain expenditure disregarded
40-1025	Non-arm's length transactions

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-1005

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**Operative provisions**

**40-1005 Deduction for expenditure for establishing trees in carbon sink forests**

- (1) You can deduct an amount for an income year if:
  - (a) you incur capital expenditure that is covered under section 40-1010 in relation to particular trees established in the income year; and
  - (b) you satisfy a condition in subsection (5) for the trees when they are established.
- (2) The amount of the deduction is the amount of the expenditure.
- (3) You can deduct an amount for an income year if:
  - (a) you incur capital expenditure in the income year or an earlier income year for establishing particular trees; and
  - (b) that expenditure is not covered under section 40-1010 in relation to the trees, because some or all of the trees are established after the end of the income year; and
  - (c) the trees established after the end of the income year are established within 4 months after the end of the income year; and
  - (d) you could deduct the amount for the income year under subsection (1) in respect of the expenditure, assuming that, for the purposes of paragraphs 40-1010(1)(a) and (2)(a), the income year ended 4 months after it actually ended.
- (4) If:
  - (a) you can deduct an amount for an income year under subsection (3) in relation to particular trees; and
  - (b) you incur capital expenditure in the *next* income year for establishing *other* trees;in determining whether you can deduct an amount under subsection (1) for the next income year in respect of the other trees, for the purposes of paragraph 40-1010(2)(a), disregard the trees mentioned in paragraph (a).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(5) The conditions are as follows:

<b>Conditions for deduction for establishing trees in carbon sink forest</b>	
<b>Item</b>	<b>Condition</b>
1	You own the trees and any holder of a lease, lesser interest or licence relating to the land occupied by the trees does not use the land for the primary and principal purpose of *carbon sequestration by the trees.
2	The trees occupy land you hold under a lease, or a *quasi-ownership right granted by an *exempt Australian government agency or an *exempt foreign government agency, and:  (a) the lease or quasi-ownership right enables you to use the land for the primary and principal purpose of *carbon sequestration by the trees; and  (b) any holder of a lesser interest or licence relating to the land does not use the land for the primary and principal purpose of carbon sequestration by the trees.
3	You:  (a) hold a licence relating to the land occupied by the trees; and  (b) use the land for the primary and principal purpose of *carbon sequestration by the trees, as a result of holding the licence.

#### **40-1010 Expenditure for establishing trees in carbon sink forests**

- (1) Expenditure is covered under this section in relation to particular trees if:
- (a) the trees are established in an income year; and
  - (b) you incur the expenditure in the income year or an earlier income year for establishing the trees; and
  - (c) you are carrying on a \*business in the income year; and
  - (d) your primary and principal purpose for establishing the trees is \*carbon sequestration by the trees (see section 40-1015); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-1010

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- (e) your purposes for establishing the trees do not include any of the following:
    - (i) felling the trees;
    - (ii) using the trees for \*commercial horticulture; and
  - (f) you do not incur the expenditure under:
    - (i) a \*managed investment scheme; or
    - (ii) a \*forestry managed investment scheme; and
  - (g) all of the conditions in subsection (2) are satisfied for the trees; and
  - (h) you give the Commissioner, in accordance with subsection (4), a statement that:
    - (i) sets out all information necessary to determine whether all of the conditions in subsection (2) are satisfied for the trees; and
    - (ii) is in the \*approved form.
- (2) The conditions are as follows:
- (a) at the end of the income year, the trees occupy a continuous land area in Australia of 0.2 hectares or more;
  - (b) at the time the trees are established, it is more likely than not that they will:
    - (i) attain a crown cover of 20% or more; and
    - (ii) reach a height of at least 2 metres;
  - (c) on 1 January 1990, the area occupied by the trees was clear of other trees that:
    - (i) attained, or were more likely than not to attain, a crown cover of 20% or more; and
    - (ii) reached, or were more likely than not to reach, a height of at least 2 metres;
  - (d) the establishment of the trees meets the requirements of the guidelines mentioned in subsection (3).
- (3) The \*Climate Change Minister must, by legislative instrument, make guidelines about environmental and natural resource management in relation to the establishment of trees for the purposes of \*carbon sequestration.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4) The statement mentioned in paragraph (1)(h) is to be given to the Commissioner no later than:
  - (a) if you lodge your \*income tax return for the income year within 5 months after the end of the income year—the day you lodge that income tax return; or
  - (b) otherwise—5 months after the end of the income year.
- (5) However, expenditure is *not* covered under this section if the \*Climate Change Secretary gives the Commissioner a notice under subsection (6) in relation to the trees.
- (6) The \*Climate Change Secretary must give the Commissioner a notice in writing under this subsection if the Climate Change Secretary is satisfied that one or more of the conditions in subsection (2) have not been satisfied for the trees.
- (7) A person may apply to the \*AAT for review of a decision (as defined in the *Administrative Appeals Tribunal Act 1975*) of the \*Climate Change Secretary to give a notice under subsection (6).
- (8) The Commissioner may give the \*Climate Change Secretary a copy of the statement mentioned in paragraph (1)(h), for the purposes of subsections (5), (6) and (7).

#### **40-1015 Carbon sequestration by trees**

*Carbon sequestration* by trees means the process by which trees absorb carbon dioxide from the atmosphere.

#### **40-1020 Certain expenditure disregarded**

In working out a deduction under this Subdivision in relation to the establishment of trees, disregard expenditure incurred:

- (a) in draining swamp or low-lying land; or
- (b) in clearing land.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 40-1025

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**40-1025 Non-arm's length transactions**

If an entity incurred capital expenditure under an \*arrangement and:

- (a) there is at least one other party to the arrangement with whom the entity did not deal at \*arm's length; and
- (b) apart from this section, the amount of the expenditure would be more than the \*market value of what it was for;

the amount of expenditure taken into account under this Subdivision is that market value.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 41—Additional deduction for certain new business investment**

### **Guide to Division 41**

#### **41-1 What this Division is about**

You may be able to deduct an amount in relation to a depreciating asset for the 2008-09, 2009-10, 2010-11 or 2011-12 income year if:

- (a) you can deduct an amount for the decline in value for the asset for the relevant year under Subdivision 40-B; and
- (b) you make certain new investments in respect of the asset in the period starting on 13 December 2008 and ending on 31 December 2009; and
- (c) the total of those new investments is at least \$1000 (for small businesses) or \$10,000 (for other businesses).

#### **Table of sections**

##### **Operative provisions**

41-5	Object of Division
41-10	Entitlement to deduction for investment
41-15	Amount of deduction
41-20	Recognised new investment amount
41-25	Investment commitment time
41-30	First use time
41-35	New investment threshold

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 41-5

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## Operative provisions

### 41-5 Object of Division

The object of this Division is to provide a temporary business tax break for Australian businesses using assets in Australia, with a view to encouraging business investment and economic activity.

### 41-10 Entitlement to deduction for investment

- (1) You can deduct an amount for an income year in relation to an asset if:
  - (a) the asset is a \*depreciating asset, other than an intangible asset; and
  - (b) you can deduct an amount under section 40-25 in relation to the asset for the income year; and
  - (c) the income year is the 2008-09, 2009-10, 2010-11 or 2011-12 income year; and
  - (d) the total of the \*recognised new investment amounts for the income year in relation to the asset equals or exceeds the \*new investment threshold for the income year in relation to the asset.
- (2) Subsection 73BA(7) of the *Income Tax Assessment Act 1936* (deductions regarding assets used in research and development activities) does not apply to a deduction under subsection (1).
- (3) For the purposes of paragraph (1)(b), in determining whether you can deduct the amount in relation to the asset under section 40-25 for the income year:
  - (a) disregard section 40-55 if the asset is a \*car for which you use the “12% of original value” method for that income year; and
  - (aa) disregard section 40-90 (reduction in cost where debt is forgiven); and
  - (ab) disregard subsection 40-365(5) (reduction in cost for replacement asset where involuntary disposal); and
  - (b) disregard Subdivision 328-D (capital allowances for small business entities); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) disregard subsection 73BA(7) of the *Income Tax Assessment Act 1936* (deductions regarding assets used in research and development activities).

*Counting additional recognised new investment amounts for the purposes of meeting the threshold*

- (4) For the purposes of paragraph (1)(d), treat each of the following as a \*recognised new investment amount for the income year in relation to the asset (the **relevant asset**):
- (a) a recognised new investment amount for a previous income year in relation to the relevant asset;
  - (b) a recognised new investment amount for the income year or a previous income year in relation to another asset, if:
    - (i) the other asset is part of a set of assets including the relevant asset; or
    - (ii) the other asset is identical, or substantially identical, to the relevant asset;
  - (c) a recognised new investment amount for the income year or a previous income year in relation to an asset \*held by another entity, if:
    - (i) subsection 40-35(1) (jointly held depreciating assets) applies in relation to the relevant asset because it is your interest in an asset (the **underlying asset**); and
    - (ii) the asset held by the other entity is the other entity's interest in the underlying asset.

#### **41-15 Amount of deduction**

- (1) The amount that you can deduct is:
- (a) if the \*new investment threshold for the income year in relation to the asset is \$1000 (small business entities)—50% of the total of the \*recognised new investment amounts for the income year in relation to the asset; or
  - (b) if paragraph (a) does not apply but subsection (3), (4) or (5) applies—10% of that total; or
  - (c) otherwise—the sum of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 41-15

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- (i) 30% of the total of the recognised new investment amounts for the income year in relation to the asset that meet the condition in subsection (2); and
  - (ii) 10% of the total of the other recognised new investment amounts for the income year in relation to the asset.
- (2) A \*recognised new investment amount meets the condition in this subsection if:
  - (a) the \*investment commitment time for the amount occurred before 1 July 2009; and
  - (b) the \*first use time for the amount occurred before 1 July 2010.
- (3) This subsection applies if the income year is the 2011-12 income year.
- (4) This subsection applies if:
  - (a) you can deduct the amount because of paragraph 41-10(4)(a); and
  - (b) the \*new investment threshold for the income year in relation to the asset exceeds the total of the \*recognised new investment amounts for the income year in relation to the asset that meet the condition in subsection (2).
- (5) This subsection applies if:
  - (a) you can deduct the amount because of paragraph 41-10(4)(b) or (c); and
  - (b) the \*new investment threshold for the income year in relation to the asset exceeds the sum of:
    - (i) the total of the \*recognised new investment amounts for the income year in relation to the asset that meet the condition in subsection (2); and
    - (ii) the total of the amounts treated under paragraph 41-10(4)(b) or (c) (as the case requires) as recognised new investment amounts for the income year in relation to the asset that meet the condition in subsection (2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **41-20 Recognised new investment amount**

- (1) An amount is a recognised new investment amount for the income year in relation to the asset if:
  - (a) either:
    - (i) the amount is included in the first element of the asset's \*cost (worked out in accordance with Subdivision 40-C); or
    - (ii) the amount is included in the second element of the asset's cost under paragraph 40-190(2)(a); and
  - (b) the \*investment commitment time for the amount occurs in the period:
    - (i) starting at 12.01 am, by legal time in the Australian Capital Territory, on 13 December 2008; and
    - (ii) ending on 31 December 2009; and
  - (c) the \*first use time for the amount occurs:
    - (i) no later than the end of the income year; and
    - (ii) no later than 31 December 2010; and
  - (d) at the first use time for the amount, it is reasonable to conclude that you will use the asset principally in Australia for the principal purpose of \*carrying on a \*business; and
  - (e) if the amount is included in the first element of the asset's cost—the first use time for the amount is the first time you or any other entity have used the asset, or have it installed ready for use, for any purpose; and
  - (f) you have not been entitled to a deduction under this Division for any previous income year in relation to the amount.
- (2) Treat the requirements in paragraph (1)(d) as *not* being met if, at the first use time for the amount, it is reasonable to conclude that the asset will never be located in Australia.
- (3) For the purposes of paragraph (1)(e), disregard any previous use of the asset that was merely for the purposes of reasonable testing or trialling.
- (4) Treat the requirements in paragraph (1)(e) as *not* being met if the amount becomes included in the first element of the asset's \*cost at

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 41-25

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a time because of paragraph 40-205(a) (splitting depreciating assets) or 40-210(a) (merging depreciating assets).

- (5) In determining the amount of a \*recognised new investment amount, disregard:
- (a) subsection 40-90(2) (reduction in cost where debt is forgiven); and
  - (b) paragraph 40-365(5)(a) (reduction in cost for replacement asset where involuntary disposal).

**41-25 Investment commitment time**

- (1) The *investment commitment time* for the amount is:
- (a) if the amount is included in the first element of the asset's \*cost—the time at which you:
    - (i) enter into a contract under which you \*hold the asset at that time, or will hold the asset at a later time; or
    - (ii) start to construct the asset; or
    - (iii) start to hold the asset in some other way; or
  - (b) if the amount is included in the second element of the asset's cost—the time at which you enter into a contract, or start construction, for the economic benefit in relation to which the amount becomes, or will become, included in that element under paragraph 40-190(2)(a).

*Integrity rule*

- (2) Subsection (3) applies in relation to an amount if:
- (a) at a time, you:
    - (i) enter into a contract under which you \*hold an asset at that time, or will hold the asset at a later time; or
    - (ii) start to construct an asset; or
    - (iii) start to hold an asset in some other way; and
  - (b) at a later time, you engage in conduct that results in you:
    - (i) entering into a contract under which you hold the asset mentioned in paragraph (a) (or an identical or substantially similar asset) at that later time, or will hold

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- that asset (or an identical or substantially similar asset) at an even later time; or
- (ii) starting to construct an asset that is identical or substantially similar to the asset mentioned in paragraph (a); or
  - (iii) starting to hold the asset mentioned in paragraph (a) (or an identical or substantially similar asset) in some other way; and
- (c) you engage in that conduct for the purpose, or for purposes that include the purpose, of becoming entitled to a deduction under this Division.
- (3) Despite paragraph (1)(a), the *investment commitment time* for an amount to which that paragraph would otherwise apply is the time mentioned in paragraph (2)(a).
- (3A) For the purposes of paragraph (1)(a) and subsection (2), treat yourself as having started to construct an asset at a time if you first incur expenditure in respect of the construction of the asset at that time.
- (3B) For the purposes of paragraph (1)(b), treat yourself as having started construction for an economic benefit at a time if you first incur expenditure in respect of the construction for the benefit at that time.

*Options*

- (4) To avoid doubt, for the purposes of this section, you do not enter into a contract under which you \*hold an asset merely because you acquire an option to enter into such a contract.

**41-30 First use time**

The *first use time* for the amount is:

- (a) if the amount is included in the first element of the asset's \*cost—the time at which you start to use the asset, or have it \*installed ready for use; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 41** Additional deduction for certain new business investment

Section 41-35

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- (b) if the amount is included in the second element of the asset's cost—the later of:
  - (i) the time at which it becomes included in that element under paragraph 40-190(2)(a); or
  - (ii) the time mentioned in paragraph (a).

**41-35 New investment threshold**

The *new investment threshold* for an income year (the *relevant income year*) in relation to an asset means:

- (a) \$1000 if you are a \*small business entity during any of the following income years:
  - (i) the income year in which occurs the \*investment commitment time for any \*recognised new investment amount for the asset in relation to the relevant income year;
  - (ii) the income year in which occurs the \*first use time for any such amount;
  - (iii) the relevant income year; or
- (b) otherwise—\$10,000.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 43—Deductions for capital works**

### **Table of Subdivisions**

	Guide to Division 43
43-A	Key operative provisions
43-B	Establishing the deduction base
43-C	Your area and your construction expenditure
43-D	Deductible uses of capital works
43-E	Special rules about uses
43-F	Calculation of deduction
43-G	Undeducted construction expenditure
43-H	Balancing deduction on destruction of capital works

### **Guide to Division 43**

#### **43-1 What this Division is about**

You can deduct certain capital expenditure on assessable income producing buildings and other capital works. This Division sets out the rules for working out those deductions.

#### **Table of sections**

43-2	Key concepts used in this Division
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#### **43-2 Key concepts used in this Division**

The following graphic introduces the key concepts used in this Division and shows the relationships between them.

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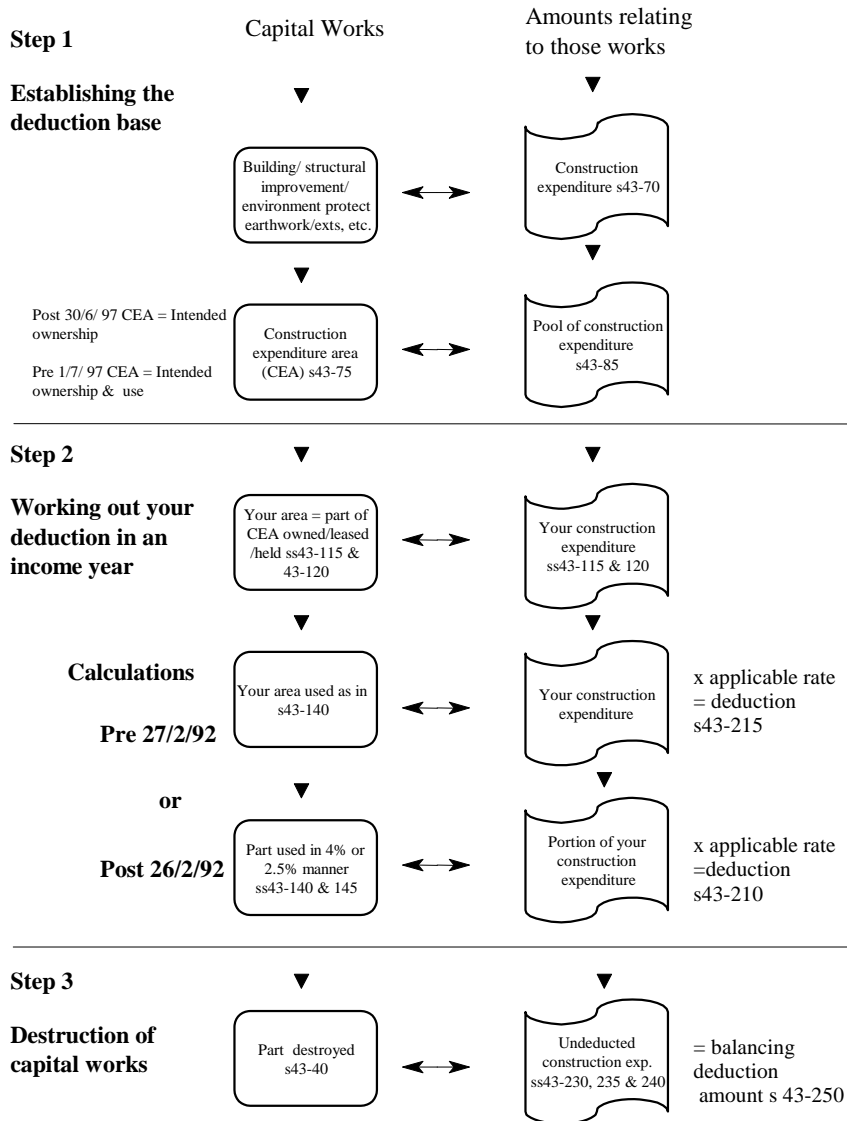
\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

Section 43-2



\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 43-A—Key operative provisions**

### **Guide to Subdivision 43-A**

#### **43-5 What this Subdivision is about**

This Subdivision contains the key operative provisions for this Division, including all of the deduction entitlement provisions. You should read all of this Subdivision to understand how this Division works.

#### **Table of sections**

##### **Operative provisions**

43-10	Deductions for capital works
43-15	Amount you can deduct
43-20	Capital works to which this Division applies
43-25	Rate of deduction
43-30	No deduction until construction is complete
43-35	Requirement for body corporate to be registered under the Industry Research and Development Act
43-40	Deduction for destruction of capital works
43-45	Certain anti-avoidance provisions
43-50	Links and signposts to other parts of the Act
43-55	Anti-avoidance—arrangement etc. with tax-exempt entity

#### **Operative provisions**

##### **43-10 Deductions for capital works**

- (1) You can deduct an amount for capital works for an income year.
- (2) You can only deduct the amount if:
  - (a) the capital works have a \*construction expenditure area; and
  - (b) there is a \*pool of construction expenditure for that area; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

Section 43-15

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(c) you use \*your area in the income year in the way set out in Table 43-140 (Current year use).

Note 1: The deduction is limited to capital works to which this Division applies, see section 43-20.

Note 2: Amongst other things, the definition of *your area* ensures that only owners and certain lessees of capital works, and certain holders of quasi-ownership rights over land on which capital works are constructed, can deduct an amount under this Division.

**43-15 Amount you can deduct**

(1) The amount you can deduct is a portion of \*your construction expenditure. However, it cannot exceed the amount of \*undeducted construction expenditure for \*your area.

Note: The limit in this subsection has 2 effects:

- It ensures that not more than 100% of your construction expenditure can be deducted.
- It imposes a time limit on the period over which your construction expenditure can be deducted. For capital works begun before 27 February 1992, that period will be 25 years if the rate of deduction is 4% or 40 years if the rate is 2.5%. For other capital works, the period will be 25 years or 40 years or some period between 25 and 40 years depending on their use.

(2) Your deduction is calculated under section 43-210 or 43-215.

**43-20 Capital works to which this Division applies**

*Buildings*

(1) This Division applies to capital works being a building, or an extension, alteration or improvement to a building:

- (a) begun in Australia after 21 August 1979; or
- (b) begun outside Australia after 21 August 1990.

Note: Section 43-80 explains when capital works begin.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Structural improvements*

- (2) This Division also applies to capital works (other than capital works referred to in subsection (1)) begun after 26 February 1992 that are structural improvements, or extensions, alterations or improvements to structural improvements, whether they are in or outside Australia.
- (3) Some examples of structural improvements are:
  - (a) sealed roads, sealed driveways, sealed car parks, sealed airport runways, bridges, pipelines, lined road tunnels, retaining walls, fences, concrete or rock dams and artificial sports fields; and
  - (b) earthworks that are integral to the construction of a structural improvement (other than a structural improvement described in subsection (4)), for example, embankments, culverts and tunnels associated with a runway, road or railway.
- (4) This Division does not apply to structural improvements being:
  - (a) earthworks that:
    - (i) are not integral to the installation or construction of a structure; and
    - (ii) are permanent (assuming they are maintained in reasonably good order and condition); and
    - (iii) can be economically maintained in reasonably good order and condition for an indefinite period;  
for example, unlined channels, unlined basins, earth tanks and dirt tracks; or
  - (b) earthworks that merely create artificial landscapes, for example, grass golf course fairways and greens, gardens, and grass sports fields.

*Environment protection earthworks*

- (5) This Division also applies to capital works being earthworks, or extensions, alterations or improvements to earthworks, if:
  - (a) they are constructed as a result of carrying out of  
\*environmental protection activities; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

Section 43-25

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- (b) they can be economically maintained in reasonably good order and condition for an indefinite period; and
- (c) they are not integral to the construction of capital works; and
- (d) the expenditure on the capital works was incurred after 18 August 1992.

Note: This subsection allows you to deduct an amount for some earthworks that are excluded by paragraph (4)(a) if the earthworks are constructed in carrying out an environmental protection activity.

**43-25 Rate of deduction**

- (1) For capital works begun after 26 February 1992, there is a basic entitlement to a rate of 2.5% for parts used as described in Table 43-140 (Current year use). The rate increases to 4% for parts used as described in Table 43-145 (Use in the 4% manner).
- (2) For capital works begun before 27 February 1992 and used as described in Table 43-140, the rate is:
  - (a) 4% if the capital works were begun after 21 August 1984 and before 16 September 1987; or
  - (b) 2.5% in any other case.

Note: Section 43-80 explains when capital works begin.

**43-30 No deduction until construction is complete**

You cannot deduct an amount for any period before the completion of construction of the capital works even though you used them, or part of them, before completion.

**43-35 Requirement for body corporate to be registered under the Industry Research and Development Act**

A body corporate may deduct an amount under this Division on the basis of using capital works for the purpose of carrying on \*research and development activities only if the body corporate is registered under section 39J (Registration of eligible companies) or 39P (Joint registration) of the *Industry Research and Development Act 1986*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: Research and development activities must be carried on in connection with a business carried on for the purpose of producing assessable income, see section 43-195.

#### **43-40 Deduction for destruction of capital works**

- (1) You can deduct an amount if all or a part of \*your area is destroyed in an income year and:
  - (a) you have been allowed, or can claim, a deduction under this Division, or former Division 10C or 10D of Part III of the *Income Tax Assessment Act 1936*, for your area; and
  - (b) there is an amount of \*undeducted construction expenditure for your area; and
  - (c) you were using your area in the way that applies to it under Table 43-140 (Current year use) immediately before the destruction or, if not, neither you nor any other entity used your area for any purpose since it was last used by you in that way.
- (2) The deduction is allowable in the income year in which the destruction occurs, and is calculated under section 43-250.

Note: The effect of this provision is to allow you to deduct an amount in the income year in which the capital works are destroyed for all of your construction expenditure that has not yet been deducted. However, you must reduce the deduction by any insurance and salvage receipts.

#### **43-45 Certain anti-avoidance provisions**

These anti-avoidance provisions:

- (a) section 51AD (Deductions not allowable in respect of property under certain leveraged arrangements) of the *Income Tax Assessment Act 1936*;
  - (b) Division 16D (Certain arrangements relating to the use of property) of Part III of that Act;
- apply to your deductions under this Division for an asset as if you were the owner of the asset instead of any other person.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 43-50

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**43-50 Links and signposts to other parts of the Act**

*Links*

- (1) No part of a \*pool of construction expenditure can be a deduction, or taken into account in working out the amount of a deduction, under a provision of this Act other than this Division.
- (2) No part of an amount incurred by an entity in acquiring capital works for which there is a \*pool of construction expenditure can be a deduction, or taken into account in working out the amount of a deduction, under a provision of this Act other than this Division.
- (3) You will be taken not to be the owner of any part of capital works that are the subject of a lease to which you have chosen to apply section 104-115 (CGT event F2). The lessee or sublessee will be taken to be the owner of that part.

Note 1: Choosing to apply section 104-115 results in the lease being treated for CGT purposes more like an outright disposal.

Note 2: See subsection 43-180(3) for the effect of the rule in subsection (3) of this section on the need to own 10 apartments, units or flats in an apartment building.

*Signposts*

- (6) There are special record-keeping rules that apply to this Division in subsection 262A(4AJA) of the *Income Tax Assessment Act 1936*.
- (7) Your deductions under this Division may be reduced if any of your commercial debts have been forgiven in the income year: see Subdivision 245-E of Schedule 2C to the *Income Tax Assessment Act 1936*.
- (8) Where you have had a deduction under this Division an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**43-55 Anti-avoidance—arrangement etc. with tax-exempt entity**

- (1) You will not be allowed a deduction under this Division for an income year if the Commissioner is satisfied that:
  - (a) you entered into an \*arrangement with:
    - (i) an entity to which section 50-5, 50-10, 50-15, 50-20, 50-25, 50-30, 50-40 or 50-45 (dealing with \*exempt income) applies; or
    - (ii) an STB (within the meaning of Division 1AB of Part III of the *Income Tax Assessment Act 1936*) whose \*ordinary income and \*statutory income is exempt from income tax;  
under which you were to pay an amount, or transfer property, directly or indirectly, to the entity; and
  - (b) the amount of the payment or the value of the property is calculated by reference to the amount of a deduction allowable to you under this Division; and
  - (c) a purpose of the arrangement that is not a merely incidental purpose is to ensure that the benefit of the deduction would pass wholly or substantially to the entity, whether directly or indirectly.
- (2) Subsection (1) applies to \*arrangements entered into with an entity referred to in subparagraph (1)(a)(i) after 1 May 1980 that relate to deductions for \*hotel buildings or \*apartment buildings begun before 1 July 1997.
- (3) Subsection (1) also applies to \*arrangements entered into with an entity referred to in subparagraph (1)(a)(ii) after 30 June 1994 that relate to deductions for \*hotel buildings or \*apartment buildings begun before 1 July 1997.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 43-60

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**Subdivision 43-B—Establishing the deduction base**

**Guide to Subdivision 43-B**

**43-60 What this Subdivision is about**

This Subdivision explains the meaning of the terms *construction expenditure*, *construction expenditure area* and *pool of construction expenditure*.

**Table of sections**

43-65 Explanatory material

**Operative provisions**

43-70 What is construction expenditure?

43-72 Meaning of *forestry road*, *timber operation* and *timber mill building*

43-75 Construction expenditure area

43-80 When capital works begin

43-85 Pools of construction expenditure

43-90 Table of intended use at time of completion of construction

43-95 Meaning of *hotel building* and *apartment building*

43-100 Certificates by Innovation Australia

**43-65 Explanatory material**

Expenditure in respect of the construction of capital works is only eligible for a deduction under this Division if there is a construction expenditure area for the capital works. The area defined as the construction expenditure area may comprise the whole of the capital works or only part of them.

Whether there is a construction expenditure area for capital works and how it is identified depends on the following factors:

- the type of expenditure incurred;
- the time when the capital works began;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- the area of the capital works that is to be owned, leased or held by the entity that incurred the expenditure;
- for capital works begun before 1 July 1997, the area of the capital works that was to be used in a particular manner.

A pool of construction expenditure is that part of an amount of construction expenditure that is attributable to a particular construction expenditure area.

## Operative provisions

### 43-70 What is construction expenditure?

- (1) **Construction expenditure** is capital expenditure incurred in respect of the construction of capital works.
- (2) **Construction expenditure** does not include:
  - (a) expenditure on acquiring land; or
  - (b) expenditure on demolishing existing structures; or
  - (c) expenditure on clearing, levelling, filling, draining or otherwise preparing the construction site prior to carrying out excavation works; or
  - (d) expenditure on landscaping; or
  - (e) expenditure on \*plant; or
  - (f) expenditure on property for which a deduction is allowable, or would be allowable if the property were for use for the \*purpose of producing assessable income, under:
    - (i) Subdivision 40-F (about primary production depreciating assets), Subdivision 40-G (about capital expenditure of primary producers and other landholders), Subdivision 40-H (about capital expenditure that is immediately deductible) or Subdivision 40-I (about capital expenditure that is deductible over time); or
    - (ii) the former Division 330 of this Act or the former Division 10, 10AAA or 10AA of Part III of the *Income Tax Assessment Act 1936* (all of which dealt with mining and/or quarrying); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 43-70

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- (iii) section 73A of the *Income Tax Assessment Act 1936* (about expenditure on scientific research); or
- (iv) the former Subdivision 387-A of this Act or the former section 75D of the *Income Tax Assessment Act 1936* (both of which allowed deductions for capital expenditure to prevent land degradation); or
- (v) the former Subdivision 387-B of this Act or the former section 75B of the *Income Tax Assessment Act 1936* (both of which allowed deductions for capital expenditure on facilities to conserve or convey water); or
- (vi) the former Subdivision 387-G of this Act or the former section 124F or 124JA of the *Income Tax Assessment Act 1936* (all of which allowed deductions for capital expenditure on forestry roads and/or timber mill buildings); or
- (fa) any of these kinds of expenditure if a deduction is allowable for the expenditure, or would be allowable if property had been used for the purpose of producing assessable income:
  - (i) \*mining capital expenditure or \*transport capital expenditure;
  - (ii) expenditure on a \*forestry road in connection with carrying on a \*timber operation for a \*taxable purpose;
  - (iii) expenditure for the construction or acquisition of a \*timber mill building;
  - (iv) expenditure on a \*depreciating asset you can deduct under subsection 40-80(1) (about exploration and prospecting); or
- (g) expenditure on property for which a deduction is allowable, or would be allowable if the property were for use for carrying on \*research and development activities, under section 73B, 73BA or 73BH of the *Income Tax Assessment Act 1936*, or would be allowable under that section of that Act if a company had not chosen a tax offset under section 73I of that Act; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (h) eligible heritage conservation expenditure within the meaning of the former Subdivision AAD of Division 17 of Part III of the *Income Tax Assessment Act 1936*.

Note: Paragraph (2)(g) only affects buildings begun before 21 November 1987, that were acquired or constructed under contracts entered into before that date or that were intended before that date to be used exclusively for research and development activities.

#### **43-72 Meaning of *forestry road, timber operation and timber mill building***

- (1) A ***forestry road*** is a road constructed primarily and principally for the purpose of providing access to an area to enable:

- (a) trees to be planted or tended in the area; or
- (b) timber felled in the area to be removed.

For this purpose, a road includes any bridge, culvert or similar work forming part of the road.

- (2) A ***timber operation*** is:

- (a) planting or tending trees for felling; or
- (b) felling standing timber; or
- (c) removing felled timber; or
- (d) milling felled timber or processing it in another way.

- (3) A ***timber mill building*** is a building:

- (a) for use primarily and principally:
  - (i) in carrying on your <sup>\*</sup>business of milling timber for a <sup>\*</sup>taxable purpose; or
  - (ii) as residential accommodation for your employees engaged in connection with the business, or for their dependants; and
- (b) located in a forest, and in or adjacent to the area where timber milled in the business is, or is to be, felled.

#### **43-75 Construction expenditure area**

- (1) The ***construction expenditure area*** of capital works begun after 30 June 1997 is the part of the capital works on which the <sup>\*</sup>construction expenditure was incurred that, at the time when it

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<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

Section 43-75

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was incurred by an entity, was to be owned or leased by the entity or held by the entity under a \*quasi-ownership right over land granted by an \*exempt Australian government agency or an \*exempt foreign government agency.

Note: Section 43-80 explains when capital works begin.

- (2) The **construction expenditure area** of capital works begun before 1 July 1997 is the part of the capital works on which the \*construction expenditure was incurred that:
- (a) at the time when it was incurred by an entity, was to be owned or leased by the entity or held by the entity under a \*quasi-ownership right over land granted by an \*exempt Australian government agency or an \*exempt foreign government agency; and
  - (b) at the time of completion of construction, was to be used in the way described in Column 3 of Table 43-90 (intended use at completion) for the time period when the capital works began as set out in Column 1.
- (3) There is taken to be a **construction expenditure area** for capital works purchased by an entity from another entity if:
- (a) the capital works would have had a construction expenditure area but for the fact that the other entity did not incur capital expenditure in constructing the capital works; and
  - (b) the other entity is not an \*associate of the entity; and
  - (c) the other entity constructed the capital works on land that it owned or leased in the course of a business that included the construction and sale of capital works of that kind.

Note: Subsection (3) makes capital works purchased from a speculative builder eligible for deduction in the hands of the first and subsequent purchasers.

- (4) The construction of the capital works must be complete before the \*construction expenditure area is determined.
- (5) Only one \*construction expenditure area is created each time an entity constructs capital works.

Example: An entity undertakes the construction of a building. During the course of construction, the entity makes 3 progress payments to the builder. There is still only one construction expenditure area.

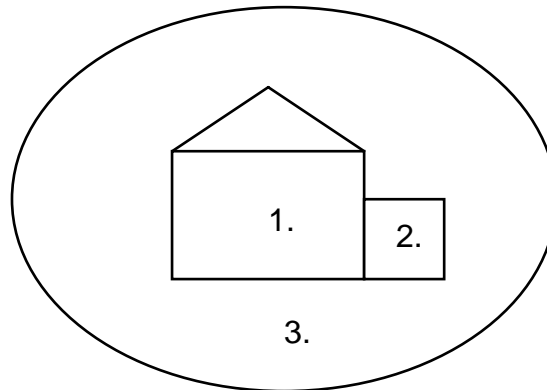
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (6) A separate \*construction expenditure area will be created each time an entity undertakes the construction of capital works.

Example: In the diagram below, area 1 relates to the original construction of a building which gives rise to one *construction expenditure area*. Area 2 is a subsequent extension of the same building which gives rise to another, while area 3 is a later renovation of the entire building which gives rise to another.



#### 43-80 When capital works begin

Capital works are taken to begin when the first step in the construction phase starts. For example, the pouring of foundations or sinking of pilings for a building.

Note 1: Capital works begun after 15 September 1987 are taken to have begun before 16 September 1987 in certain circumstances. See section 43-220.

Note 2: The time when capital works begin is relevant for determining whether the capital works qualify for deduction, the use to which those works must be put, the rate of deduction and the calculation mechanism used. However, the time when capital works begin does not limit what qualifies as construction expenditure.

#### 43-85 Pools of construction expenditure

- (1) A *pool of construction expenditure* is so much of the \*construction expenditure incurred by an entity on capital works as is attributable to the \*construction expenditure area.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

Section 43-90

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- (2) In applying subsection (1) in a case to which subsection 43-75(3) (dealing with purchases from speculative builders) applies, assume that the expenditure incurred by the other entity was capital expenditure, but that the limitations in subsection 43-70(2) (which sets out types of expenditure that are not \*construction expenditure) still apply to the other entity's expenditure.

Note: The builder's profit margin does not form part of the construction expenditure of the purchaser.

**43-90 Table of intended use at time of completion of construction**

<b>Column 1</b> <b>Date capital works begin</b>	<b>Column 2</b> <b>Type of capital works</b>	<b>Column 3</b> <b>Intended use on completion</b>
Time period 1: 22/8/79 to 19/7/82 (inclusive)	Hotel building	For use by any entity wholly or mainly to operate a hotel, motel or guest house that has at least 10 bedrooms that are for use wholly or mainly to provide short-term accommodation for travellers.
	Apartment building	The building consisted of: (a) at least 10 apartments, units or flats each of which was for use wholly or mainly to provide short-term accommodation for travellers; or (b) at least 10 apartments, units or flats each of which was for use for that purpose and facilities that are wholly or mainly for use in association with providing short-term accommodation for travellers in those apartments, units or flats.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Column 1</b> <b>Date capital works begin</b>	<b>Column 2</b> <b>Type of capital works</b>	<b>Column 3</b> <b>Intended use on completion</b>
Time period 2: 20/7/82 to 17/7/85 (inclusive)	Hotel building	As for time period 1.
	Apartment building	As for time period 1.
	Non-residential building	For: (a) use by the entity that incurred the expenditure for the *purpose of producing assessable income or exempt income; or (b) disposal by that entity to another entity for use by the other entity for the purpose of producing assessable income or exempt income.
Time period 3: 18/7/85 to 20/11/87 (inclusive)	Any building	For: (a) use by the entity that incurred the expenditure for the *purpose of producing assessable income or exempt income; or (b) disposal by that entity to another entity for use by the other entity for the purpose of producing assessable income or exempt income; or (c) use by an entity wholly or mainly for, or in association with, residential accommodation.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

Section 43-90

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<b>Column 1</b> <b>Date capital works begin</b>	<b>Column 2</b> <b>Type of capital works</b>	<b>Column 3</b> <b>Intended use on completion</b>
Time period 4: 21/11/87 to 26/2/92 (inclusive)	Any building	For: (a) use by the entity that incurred the expenditure for the *purpose of producing assessable income or exempt income; or (b) disposal by that entity to another entity for use by the other entity for the purpose of producing assessable income or exempt income; or (c) use by an entity wholly or mainly for, or in association with, residential accommodation; or (d) use by the entity that incurred the expenditure to carry on *research and development activities by or for that entity, or for disposal by that entity to another entity for use by the other entity for carrying on research and development activities by or for the other entity.
Time period 5: 27/2/92 to 18/8/92 (inclusive)	Hotel building	As for time period 1.
	Apartment building	As for time period 1.
	Other buildings	As for any building in time period 4.
	Structural improvements	As for any building in time period 4.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Column 1 Date capital works begin	Column 2 Type of capital works	Column 3 Intended use on completion
Time period 6: 19/8/92 to 30/6/97 (inclusive)	Hotel building	As for time period 1.
	Apartment building	As for time period 1.
	Other buildings	As for any building in time period 4.
	Structural improvements	As for any building in time period 4.
	Environment protection earthworks	As for any building in time period 4.

- Note: There are special rules that explain or qualify the uses described in Column 3 of this Table. These rules are set out in Subdivision 43-E (sections 43-155 to 43-195). For example:
- Research and development activities must be carried on in connection with a business carried on for the purpose of producing assessable income, see section 43-195.
  - Certain facilities that are not commonly provided in a hotel, motel or guest house in Australia are taken not to be used or for use to operate a hotel, motel or guest house, see subsection 43-180(6).

### **43-95 Meaning of *hotel building* and *apartment building***

- (1) A *hotel building* is:
- (a) a building begun after 21 August 1979 and before 18 July 1985, or after 26 February 1992 and before 1 July 1997, that, at the time of completion of its construction, was intended to be used in the way referred to in Column 3 of Table 43-90 (intended use at completion) for a hotel building; or
  - (b) a building begun after 30 June 1997 and that, in the income year, is used in the way referred to in Column 3 (time period 2) of Table 43-145 (use in the 4% manner) for a hotel building.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-100

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(2) An *apartment building* is:

- (a) a building begun after 21 August 1979 and before 18 July 1985, or after 26 February 1992 and before 1 July 1997, that, at the time of completion of its construction, was intended to be used in the way referred to in Column 3 of Table 43-90 for an apartment building; or
- (b) a building begun after 30 June 1997 and that, in the income year, is used in the way referred to in Column 3 (time period 2) of Table 43-145 for an apartment building.

**43-100 Certificates by Innovation Australia**

A certificate by\*Innovation Australia stating that activities carried on by or for an entity were or were not \*research and development activities is conclusive for the purposes of this Division.

**Subdivision 43-C—Your area and your construction expenditure**

**Guide to Subdivision 43-C**

**43-105 What this Subdivision is about**

This Subdivision explains *your area* and *your construction expenditure*.

**Table of sections**

43-110 Explanatory material

**Operative provisions**

43-115 Your area and your construction expenditure—owners

43-120 Your area and your construction expenditure—lessees and quasi-ownership right holders

43-125 Lessees' or right holders' pools can revert to owner

43-130 Identifying your area on acquisition or disposal

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **43-110 Explanatory material**

You can only get a deduction under this Division for an income year if you own, lease or hold part of a construction expenditure area of capital works. The area you own, lease or hold is called *your area*.

In working out your deductions, you must identify your area for each construction expenditure area of the capital works.

Your area may comprise the whole of the construction expenditure area or part of it.

Note: In certain circumstances the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

### **Operative provisions**

#### **43-115 Your area and your construction expenditure—owners**

- (1) *Your area* is the part of the \*construction expenditure area that you own.
- (2) *Your construction expenditure* is the portion of the \*pool of construction expenditure that is attributable to your area.

#### **43-120 Your area and your construction expenditure—lessees and quasi-ownership right holders**

##### *Own expenditure*

- (1) *Your area* is the part of the \*construction expenditure area that you lease, or hold under a \*quasi-ownership right over land granted by an \*exempt Australian government agency or an \*exempt foreign government agency, and that:
  - (a) is attributable to a \*pool of construction expenditure that you incurred; and
  - (b) you have continuously leased or held since the construction was completed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-125

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*Earlier lessees' or holders' expenditure*

- (2) **Your area** is the part of the \*construction expenditure area that you lease, or hold under a \*quasi-ownership right over land granted by an \*exempt Australian government agency or an \*exempt foreign government agency, and that:
- (a) is attributable to a \*pool of construction expenditure incurred by another lessee or holder of a quasi-ownership right over land; and
  - (b) has been continuously leased or held since the construction was completed by the lessee or holder who incurred the expenditure or an assignee of that lessee's lease or that holder's quasi-ownership right over land.
- (3) **Your construction expenditure** is the portion of the \*pool of construction expenditure that is attributable to your area.

**43-125 Lessees' or right holders' pools can revert to owner**

- (1) An amount that relates to a \*pool of construction expenditure that arises as a result of expenditure incurred by a lessee or a holder of a \*quasi-ownership right over land:
- (a) can only be deducted by a lessee or a holder of a quasi-ownership right over land who satisfies subsection 43-120(1) or (2); and
  - (b) cannot be deducted by the owner of the capital works while there is a lessee or a holder of a quasi-ownership right over land who satisfies that subsection.
- (2) The owner of the capital works may deduct an amount that relates to that pool if there is no longer a lessee or a holder of a \*quasi-ownership right over land who satisfies subsection 43-120(1) or (2).

**43-130 Identifying your area on acquisition or disposal**

There will be a separate \*your area at each time in an income year when you:

- (a) acquire an additional part of a \*construction expenditure area;
- or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(b) dispose of some but not all of a construction expenditure area.

**Example:** You own half of a building (part A) throughout the income year, and you acquire the other half (part B) on 1 January. This section ensures that part A is your area for the entire year and that part B is your area for the second 6 months of the year.

**Note:** This ensures that the same area is not counted twice in calculating your deduction. You will have to make separate deduction calculations if you have identified more than one area as your area of the capital works.

## **Subdivision 43-D—Deductible uses of capital works**

### **Guide to Subdivision 43-D**

#### **43-135 What this Subdivision is about**

You can only get a deduction under this Division if you use your area in a way described in Table 43-140 or 43-145 of this Subdivision.

#### **Table of sections**

##### **Operative provisions**

43-140	Using your area in a deductible way
43-145	Using your area in the 4% manner
43-150	Meaning of <i>industrial activities</i>

#### **Operative provisions**

##### **43-140 Using your area in a deductible way**

- (1) The following table sets out the way you must use \*your area in an income year for a deduction to be allowed under section 43-10 (the main deduction provision). The relevant use depends on the time when the capital works began (Column 1) and the type of capital works (Column 2). Column 3 sets out the use.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

Section 43-140

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<b>Table 43-140—Current year use</b>		
<b>Column 1</b> <b>Date capital works begin</b>	<b>Column 2</b> <b>Type of capital works</b>	<b>Column 3</b> <b>Use of your area at some time in the income year</b>
Time period 1: After 30/6/97	Any capital works	You use *your area for the purpose of: (a) producing assessable income; or (b) carrying on *research and development activities.
Time period 2: 27/2/92 to 30/6/97 (inclusive)	*Hotel building	You use *your area for the *purpose of producing assessable income.
	*Apartment building	You use *your area for the *purpose of producing assessable income.
	Other capital works	You use *your area for the purpose of: (a) producing assessable income; or (b) carrying on *research and development activities.
Time period 3: Before 27/2/92	*Hotel building	You use *your area for the *purpose of producing assessable income and: (a) all or part of that area is used by any entity wholly or mainly to operate a hotel, motel or guest house; and (b) that hotel, motel or guest house has at least 10 bedrooms that are used or available for use wholly to provide short-term accommodation for travellers.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Table 43-140—Current year use</b>		
<b>Column 1</b> <b>Date capital works begin</b>	<b>Column 2</b> <b>Type of capital works</b>	<b>Column 3</b> <b>Use of your area at some time in the income year</b>
	*Apartment building	You use *your area for the *purpose of producing assessable income and: (a) that area is, is part of or contains an apartment, unit or flat that is used or available for use by any entity wholly to provide short-term accommodation for travellers, and you own or lease at least 9 other apartments, units or flats in the building that are used or available for use by any entity wholly to provide short-term accommodation for travellers; or (b) that area is, is part of or contains a facility that is used or available for use by any entity wholly or mainly in association with providing short-term accommodation for travellers in apartments, units or flats in the building that are used in the way described in paragraph (a).
	Other capital works	You use *your area for the purpose of: (a) producing assessable income; or (b) carrying on *research and development activities.

- Note 1: There are special rules that explain or qualify the uses described in Column 3 of this Table. These rules are set out in Subdivision 43-E (sections 43-155 to 43-195). For example:
- Your area is taken to be used, for use or available for use for a purpose or in a way if it is maintained ready for use for that purpose or in that way. See section 43-160.
  - Research and development activities must be carried on in connection with a business carried on for the purpose of producing assessable income, see section 43-195.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

Section 43-145

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Note 2: If Division 250 applies to you and an asset that is a capital work:

- (a) if section 250-150 applies—you are taken to be using the capital work for the purpose of producing assessable income, or for the purpose of carrying on research and development activities, to the extent specified in a determination made under subsection 250-150(3); or
  - (b) otherwise—you are taken not to be using the capital work for such a purpose.
- (2) This Division applies to an entity as if the entity used property for the \*purpose of producing assessable income if the entity uses the property for:
- (a) \*environmental protection activities; or
  - (b) the environmental impact assessment of a project;
- unless a provision of this Act expressly provides that that use is not for the purpose of producing assessable income.

**43-145 Using your area in the 4% manner**

You use a part of \*your area in the **4% manner** if you use it as described in the following Table. The relevant use depends on the time when the capital works began (Column 1) and the type of capital works (Column 2). Column 3 sets out the use.

<b>Table 43-145—Use in the 4% manner</b>		
<b>Column 1 Date capital works begin</b>	<b>Column 2 Type of capital works</b>	<b>Column 3 Use of a part of *your area at some time in the income year</b>
Time period 1: After 30/6/97	Capital works that are buildings	You use the part of *your area for the *purpose of producing assessable income and: (a) that part is used by any entity wholly or mainly to operate a hotel, motel or guest house; and (b) that hotel, motel or guest house has at least 10 bedrooms that are used or available for use wholly to provide short-term accommodation for travellers.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Table 43-145—Use in the 4% manner</b>		
<b>Column 1 Date capital works begin</b>	<b>Column 2 Type of capital works</b>	<b>Column 3 Use of a part of *your area at some time in the income year</b>
		<p>You use the part of *your area for the *purpose of producing assessable income and:</p> <p>(a) that part is, is part of or contains an apartment, unit or flat that is used or available for use by any entity wholly to provide short-term accommodation for travellers, and you own or lease at least 9 other apartments, units or flats in the building that are used or available for use by any entity wholly to provide short-term accommodation for travellers; or</p> <p>(b) that part is, is part of or contains a facility that is used or available for use by any entity wholly or mainly in association with providing short-term accommodation for travellers in apartments, units or flats in the building that are used in the way described in paragraph (a).</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

Section 43-145

<b>Table 43-145—Use in the 4% manner</b>		
<b>Column 1 Date capital works begin</b>	<b>Column 2 Type of capital works</b>	<b>Column 3 Use of a part of *your area at some time in the income year</b>
		<p>You use the part of *your area for the *purpose of producing assessable income, and that part is used by any entity:</p> <ul style="list-style-type: none"><li>(a) wholly or mainly for *industrial activities; or</li><li>(b) to provide meal rooms, rest rooms, first aid rooms, change rooms or similar facilities that are wholly or mainly for use by:<ul style="list-style-type: none"><li>(i) workers employed wholly or mainly to undertake the work directly involved in carrying out industrial activities; or</li><li>(ii) the immediate supervisors of those workers; or</li></ul></li><li>(c) wholly or mainly as office accommodation for the immediate supervisors of those workers.</li></ul>
Time period 2: 27/2/92 to 30/6/97 (inclusive)	*Hotel building	<p>You use the part of *your area for the *purpose of producing assessable income and:</p> <ul style="list-style-type: none"><li>(a) that part is used by any entity wholly or mainly to operate a hotel, motel or guest house; and</li><li>(b) that hotel, motel or guest house has at least 10 bedrooms that are used or available for use wholly to provide short-term accommodation for travellers.</li></ul>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Table 43-145—Use in the 4% manner</b>		
<b>Column 1 Date capital works begin</b>	<b>Column 2 Type of capital works</b>	<b>Column 3 Use of a part of *your area at some time in the income year</b>
	*Apartment building	<p>You use the part of *your area for the *purpose of producing assessable income and:</p> <p>(a) that part is, is part of or contains an apartment, unit or flat that is used or available for use by any entity wholly to provide short-term accommodation for travellers, and you own or lease at least 9 other apartments, units or flats in the building that are used or available for use by any entity wholly to provide short-term accommodation for travellers; or</p> <p>(b) that part is, is part of or contains a facility that is used or available for use by any entity wholly or mainly in association with providing short-term accommodation for travellers in apartments, units or flats in the building that are used in the way described in paragraph (a).</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

Section 43-150

<b>Table 43-145—Use in the 4% manner</b>		
<b>Column 1 Date capital works begin</b>	<b>Column 2 Type of capital works</b>	<b>Column 3 Use of a part of *your area at some time in the income year</b>
	Other buildings	You use the part of *your area for the *purpose of producing assessable income, and that part is used by any entity: (a) wholly or mainly for *industrial activities; or (b) to provide meal rooms, rest rooms, first aid rooms, change rooms or similar facilities that are wholly or mainly for use by: (i) workers employed wholly or mainly to undertake the work directly involved in carrying out industrial activities; or (ii) the immediate supervisors of those workers; or (c) wholly or mainly as office accommodation for the immediate supervisors of those workers.

Note: There are special rules that explain or qualify the uses described in Column 3 of this Table. These rules are set out in Subdivision 43-E (sections 43-155 to 43-195). For example:

- Your area is taken to be used, for use or available for use for a purpose or in a way if it is maintained ready for use for that purpose or in that way. See section 43-160.
- A suite of rooms in a hotel building may be treated as one bedroom, see subsection 43-180(2).

**43-150 Meaning of *industrial activities***

***Industrial activities*** means:

- (a) any of the following activities (***core activities***):
- (i) operations where manufactured items are derived from other goods even if those manufactured items are themselves used as parts or materials in the manufacture of other items;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) operations (other than packing, placing in containers or labelling) by which manufactured items are brought into or maintained in the form or condition in which they are sold or used, even if they are for sale or use as parts or materials in the manufacture of other items;
  - (iii) the separation of a metal or a compound of a metal from its ore (not including crushing, grinding, breaking, screening or sizing to facilitate that separation) or the treatment or processing of a metal or a compound of a metal after its separation;
  - (iv) for a metal or a compound of a metal not requiring separation—applying to the metal or compound a treatment or process which, if the metal or compound had required separation, would not have been applied until after the separation;
  - (v) refining \*petroleum;
  - (vi) scouring or carbonising wool;
  - (vii) milling timber;
  - (viii) freezing primary products;
  - (ix) printing, lithographing or engraving, or a similar process, in the course of carrying on a business as a publisher, printer, lithographer or engraver;
  - (x) curing meat or fish;
  - (xi) producing chilled or frozen meat;
  - (xii) pasteurising milk;
  - (xiii) canning or bottling foodstuffs;
  - (xiv) producing electric current, hydraulic power, steam, compressed air or gases (other than natural gas) for the purpose of sale, or use wholly or mainly in carrying on another activity mentioned in this paragraph; or
- (b) any of the following activities:
- (i) the packing, placing in containers or labelling of any goods resulting from the carrying on of core activities;
  - (ii) the disposal of waste substances resulting from the carrying on of core activities;
  - (iii) the cleansing or sterilising of bottles, vats or other containers used by the entity to store goods to be used in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 43-155

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carrying on core activities or goods resulting from the carrying on of core activities;

- (iv) the assembly, maintenance, cleansing, sterilising or repair of property used in carrying on core activities;
- (v) the storage, within premises in which core activities are carried on, or premises contiguous to those premises, of goods in carrying on core activities, goods in relation to which core activities have commenced but not finally been completed or goods resulting from core activities;

but does not include the preparation of food or drink (whether for consumption on the premises where it is prepared or elsewhere) in, or in premises occupied in connection with, a hotel, motel, boarding house, catering establishment, restaurant, cafe, milk-bar, coffee shop, retail shop or similar establishment.

**Subdivision 43-E—Special rules about uses**

**Guide to Subdivision 43-E**

**43-155 What this Subdivision is about**

This Subdivision contains special rules about uses of capital works. It is relevant to whether you can get a deduction for capital works and also to the rate of that deduction. The rules in this Subdivision affect the uses of capital works described in Tables 43-90, 43-140 and 43-145.

**Table of sections**

**Operative provisions**

43-160	Your area is used for a purpose if it is maintained ready for use for the purpose
43-165	Temporary cessation of use
43-170	Own use—capital works other than hotel and apartment buildings
43-175	Own use—hotel and apartment buildings
43-180	Special rules for hotel and apartment buildings
43-185	Residential or display use

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- 43-190 Use of facilities not commonly provided, and of certain buildings used to operate a hotel, motel or guest house
- 43-195 Use for research and development activities must be in connection with a business

## **Operative provisions**

### **43-160 Your area is used for a purpose if it is maintained ready for use for the purpose**

A part of \*your area is taken to be used, for use or available for use for a particular purpose or in a particular manner at a time if, at that time:

- (a) it was maintained ready for use for that purpose or in that manner; and
- (b) it was not used or for use for any other purpose or in any other manner; and
- (c) its use or intended use for that purpose or in that manner had not been abandoned.

Note 1: Construction must be complete before you can deduct an amount, see section 43-30.

Note 2: This section affects Tables 43-140 and 43-145.

### **43-165 Temporary cessation of use**

A part of \*your area is taken to be used, for use or available for use for a particular purpose or in a particular manner if its use for that purpose or in that manner temporarily ceases because of:

- (a) the construction of an extension, alteration or improvement, or the making of repairs; or
- (b) seasonal or climatic factors.

Note: This section affects Tables 43-140 and 43-145.

### **43-170 Own use—capital works other than hotel and apartment buildings**

- (1) A part of capital works, other than a \*hotel building or an \*apartment building, is taken not to be used for the \*purpose of producing assessable income if that part is for use mainly for, or in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

Section 43-175

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association with, residential accommodation by you or an \*associate.

Note: This subsection affects Tables 43-140 and 43-145.

- (2) Subsection (1) does not apply to use by an \*associate under an \*arrangement:
- (a) to which you and the associate are parties; and
  - (b) that is of a kind that the parties could reasonably be expected to have entered into if they had been dealing with each other at arm's length; and
  - (c) that was not entered into for the purpose of obtaining a deduction under this Division.
- (3) If property that constitutes the whole or part of capital works, other than a \*hotel building or an \*apartment building, is part of an individual's home, the property is taken to be used, or for use, wholly or mainly for or in association with residential accommodation.

Note: This subsection affects Tables 43-90 and 43-140.

**43-175 Own use—hotel and apartment buildings**

- (1) An entity is taken not to have used a bedroom in a \*hotel building, or an apartment, unit or flat in an \*apartment building, for the \*purpose of producing assessable income at a time if, at that time, the bedroom, apartment, unit or flat is used, or reserved for use, by:
- (a) the entity; or
  - (b) if the entity is a partnership—any of the partners in the partnership.

Note: This subsection affects Tables 43-140 and 43-145.

- (2) Also, an entity is taken not to use a bedroom in a \*hotel building, or an apartment, unit or flat in an \*apartment building for any purpose at a time if:
- (a) at that time, a right to use or occupy the bedroom, apartment, unit or flat was vested in the entity; and
  - (b) that right was vested in the entity because the entity was, at that time, a member of a company, a beneficiary of a trust estate or a partner in a partnership.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: This subsection affects Tables 43-90, 43-140 and 43-145.

### **43-180 Special rules for hotel and apartment buildings**

#### *Rules about counting rooms or apartments etc.*

- (1) A bedroom in a \*hotel building, or an apartment, unit or flat in an \*apartment building, is taken to be used or available for use wholly for short-term accommodation for travellers in a period if it is used or available for use mainly for short-term accommodation for travellers in that period.

Note: This subsection ensures that a limited period of non-short-term traveller accommodation use will be disregarded in counting the number of rooms provided the bedroom, apartment, unit or flat is used mainly for short-term traveller accommodation.

- (2) For the purpose of counting the number of bedrooms in a \*hotel building, if 2 or more rooms that are bedrooms or include a bedroom are for use together as a suite of rooms, the suite is taken to constitute one bedroom.
- (3) Despite subsection 43-50(3) (which treats you as not being the owner of certain capital works), you can still count an apartment, unit or flat in relation to which CGT event F2 has happened in working out whether you own or lease at least 10 apartments, units or flats in an \*apartment building if you own or lease at least one other apartment, unit or flat in the building.

Note 1: CGT event F2 results in a lease with a term of 50 years or more being treated for CGT purposes more like an outright disposal.

Note 2: Subsection 43-50(3) treats you as not being the owner of capital works that are the subject of such a lease.

#### *Rules about hotel or apartment complexes*

- (4) A group of buildings that constitutes a complex of buildings is taken to be one \*hotel building or \*apartment building, and none of the buildings in the group is taken to be a separate building.
- (5) The construction of a \*hotel building or \*apartment building is taken to be an extension of another building if, after completion of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

Section 43-185

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the construction, those buildings are taken to be one building under subsection (4).

Note: Subsections (4) and (5) ensure that a hotel or apartment building that provides short-term traveller accommodation in detached buildings will be treated as a single building so that the 10 hotel room/apartment test is applied to the complex as a whole. It also has the effect that the complex as a whole must be completed before there can be a construction expenditure area.

*Rules about facilities not commonly provided in Australia*

- (6) If a \*hotel building contains a facility of a kind that is not commonly provided in a hotel, motel or guest house in Australia, the facility is taken not to be used or for use to operate a hotel, motel or guest house.
- (7) If an \*apartment building contains a facility of a kind that is not commonly provided in a hotel, motel or guest house in Australia, the facility is taken not to be a facility for use in association with providing short-term accommodation for travellers in apartments, units or flats.

Note: Subsections (6) and (7) exclude areas such as casinos from the construction expenditure area of a hotel building or apartment building.

**43-185 Residential or display use**

- (1) A building, other than a \*hotel building or an \*apartment building, or an extension, alteration or improvement to such a building, begun after 19 July 1982 and before 18 July 1985 is taken not to be used for the \*purpose of producing assessable income or exempt income if it is used or for use wholly or mainly for exhibition or display in connection with:
  - (a) the sale of all or part of any building; or
  - (b) the lease of all or part of any building for use wholly or mainly for or in association with residential accommodation.

Note: Subsection (1) affects time period 2 in Table 43-90 and time period 3 in Table 43-140.

- (2) A building, other than a \*hotel building or an \*apartment building, begun after 19 July 1982 and before 18 July 1985 is taken not to be

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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used for the \*purpose of producing assessable income if it is used or available for use wholly or mainly for or in association with residential accommodation.

Note: Subsection (2) affects time period 2 in Table 43-90 and time period 3 in Table 43-140.

- (3) A building, other than a \*hotel building or an \*apartment building, begun after 17 July 1985 and before 1 July 1997 is taken not to be used for the \*purpose of producing assessable income if it is used or for use wholly or mainly for exhibition or display in connection with the sale of all or part of any building.

Note: Subsection (3) affects time periods 2 and 3 in Table 43-140.

### **43-190 Use of facilities not commonly provided, and of certain buildings used to operate a hotel, motel or guest house**

- (1) A facility in a \*hotel building or an \*apartment building that is not commonly provided in a hotel, motel or guest house in Australia is taken not to be used, or for use, for or in association with residential accommodation if the facility is part of a building begun after 19 July 1982 and before 18 July 1985.

Note: This subsection means that, for time period 2 in Table 43-90, a facility referred to in subsection 43-180(6) or (7) (dealing with facilities not commonly provided in Australia) is taken to be a non-residential building if it satisfies the use test in Column 3 of that table for a building of that kind, and is therefore eligible for deduction even though it would ordinarily be taken to be used for residential accommodation.

- (2) A building, other than a \*hotel building or an \*apartment building, begun after 19 July 1982 and before 18 July 1985 that is used, or for use, wholly or mainly for the purpose of operating a hotel, motel or guest house is taken to be used or for use wholly or mainly for, or in association with, residential accommodation.

Note: This subsection ensures that hotels, motels and guest houses begun in the specified time period that do not satisfy the tests for hotel and apartment buildings (for example, because they had fewer than 10 bedrooms or apartments) do not qualify for a deduction under this Division.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-195

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**43-195 Use for research and development activities must be in connection with a business**

You are taken not to use capital works for \*research and development activities unless you do so in connection with a business that you carry on for the \*purpose of producing assessable income.

Note: This section affects Tables 43-90 and 43-140.

**Subdivision 43-F—Calculation of deduction**

**Guide to Subdivision 43-F**

**43-200 What this Subdivision is about**

This Subdivision shows you how to calculate the amount of a deduction under section 43-10. The calculations must be made separately for each area that is identified as your area.

There are 2 separate calculation provisions: One for capital works begun before 27 February 1992; and the other for capital works begun after 26 February 1992.

**Table of sections**

43-205 Explanatory material

**Operative provisions**

43-210 Deduction for capital works begun after 26 February 1992

43-215 Deduction for capital works begun before 27 February 1992

43-220 Capital works taken to have begun earlier for certain purposes

**43-205 Explanatory material**

*Capital works begun before 27 February 1992*

The calculation for these works is based on \*your construction expenditure and the applicable rate of deduction. There can be only

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

one rate of deduction that applies to \*your area. However, reductions of deductions may apply.

You must reduce your deduction for any period in the income year that you did not own \*your area and use it in the way described in Table 43-140 (Current year use). Because there are 2 use tests in Table 43-140 for \*hotel buildings and \*apartment buildings (a general income producing test and a more specific hotel and short-term traveller accommodation use test), there are 2 reduction steps.

The first step reduces your deduction if part of \*your area was not used as a \*hotel building or \*apartment building. The second step reduces the deduction to the extent that your area is used only partly for the \*purpose of producing assessable income. This occurs, for example, if you \*derive both assessable and exempt income, or if part of your area is not used to produce assessable income for all or part of the period it was used as a hotel building or apartment building.

*Capital works begun after 26 February 1992*

The calculation for these works is based on a portion of \*your construction expenditure and the applicable rate of deduction. There can be 2 rates of deduction for your area depending on the way you use it.

If 2 rates apply, there will be a separate calculation for the part of \*your area used in the way described in Table 43-140 and for the part of \*your area used in the way described in Table 43-145 (Use in the 4% manner). A gross deduction and subsequent reduction is calculated for each.

The reduction is the same as the second reduction for capital works begun before 27 February 1992.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 43-210

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## Operative provisions

### 43-210 Deduction for capital works begun after 26 February 1992

**Step 1** Calculate the amount worked out using the formula:

$$\frac{\text{Portion of your CE} \times \text{Days used} \times 0.04}{365}$$

where:

*portion of your CE* is the portion of \*your construction expenditure that is attributable to the part of \*your area that you used in the \*4% manner.

*days used* is the number of days in the income year that:

- (a) you owned or were the lessee of that part of \*your area and used it in the \*4% manner; or
- (b) you were the holder of that part of \*your area under a \*quasi-ownership right over land granted by an \*exempt Australian government agency or an \*exempt foreign government agency, and used that part of your area in the 4% manner.

**Step 2** Reduce the Step 1 amount by the extent to which the part referred to in Step 1 was used only partly for the \*purpose of producing assessable income.

Note: This Step applies if:

- part of your income from the part referred to in Step 1 is exempt income; or
- part of the part referred to in Step 1 was not used for the purpose of producing assessable income or was not available for that use; or
- the part of the part referred to in Step 1 was not used for such a purpose during a part of the days used period.

**Step 3** Calculate the amount worked out using the formula:

$$\frac{\text{Portion of your CE} \times \text{Days used} \times 0.025}{365}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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where:

**portion of your CE** is the portion of \*your construction expenditure that is attributable to the part of \*your area that you did not use in the \*4% manner but was used as described in Table 43-140 (Current year use).

**days used** is the number of days in the income year that:

- (a) you owned or were the lessee of that part of \*your area and used it in that manner; or
- (b) you were the holder of that part of \*your area under a \*quasi-ownership right over land granted by an \*exempt Australian government agency or an \*exempt foreign government agency, and used that part of your area in that manner.

**Step 4** Reduce the Step 3 amount by the extent to which the part referred to in Step 3:

- (a) for a \*hotel building or \*apartment building—was used only partly for the \*purpose of producing assessable income; or
- (b) for any other capital works—was used only partly for the purpose of \*producing assessable income or carrying on \*research and development activities.

Note: This Step applies if:

- part of your income from the part referred to in Step 3 is exempt income; or
- part of the part referred to in Step 3 was not used for the purpose of producing assessable income (or research and development activities) or was not available for that use; or
- the part of the part referred to in Step 3 was not used for such a purpose during a part of the days used period.

**Step 5** Add the Step 2 and Step 4 amounts.

**Step 6** The amount of your deduction is the lesser of your Step 5 amount or the \*undeducted construction expenditure for \*your area.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 43-215

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**43-215 Deduction for capital works begun before 27 February 1992**

**Step 1** Calculate the amount worked out using the formula:

$$\frac{\text{Your CE} \times \text{Days used} \times \text{Applicable rate}}{365}$$

where:

*your CE* is \*your construction expenditure.

*days used* is the number of days in the income year that you owned or were the lessee of \*your area and used it in the way that applies to the capital works under Table 43-140 (Current year use).

*applicable rate* is:

- (a) 0.04 if the capital works began after 21 August 1984 and before 16 September 1987; or
- (b) 0.025 in any other case.

Note: For the purpose of working out the applicable rate, capital works begun after 15 September 1987 are taken to have begun before 16 September 1987 in certain circumstances. See section 43-220.

**Step 2** This step applies only to \*hotel buildings and \*apartment buildings. Reduce the Step 1 amount by the extent to which:

- (a) for a hotel building—any part of \*your area was not used wholly or mainly to operate a hotel, motel or guest house; or
- (b) for an apartment building—any part of \*your area was not used wholly for or in association with providing short-term accommodation for travellers.

**Step 3** Reduce the Step 1 or 2 amount by the extent to which:

- (a) for a \*hotel building or \*apartment building—\*your area was used only partly for the \*purpose of producing assessable income; or
- (b) for any other capital works—\*your area was used only partly for the \*purpose of producing assessable income or carrying on \*research and development activities.

Note: This Step applies if:

- part of your income from the capital works is exempt income; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- part of the capital works were not used for the purpose of producing assessable income or were not available for that use; or
- the capital works were not used for such a purpose during a part of the days used period.

**Step 4** The amount of your deduction is the lesser of your Step 3 amount or the \*undeducted construction expenditure for \*your area.

#### **43-220 Capital works taken to have begun earlier for certain purposes**

- (1) A building, other than a \*hotel building or an \*apartment building, or an extension, alteration or improvement to such a building, begun after 15 September 1987 is taken to have begun before 16 September 1987 if:
  - (a) the construction was under a contract that was entered into before 16 September 1987, or was under 2 or more contracts any of which was entered into before that date; or
  - (b) money was borrowed for a purpose that included the purpose of financing the construction under a contract or contracts entered into before 16 September 1987 by an entity that was, or by entities each of which was, a \*qualifying investor, and that money was used to finance the construction.
- (2) An entity is a *qualifying investor* for the construction of a building if:
  - (a) at the end of 15 September 1987, the entity was the owner or lessee of the land on which the building was constructed; or
  - (b) the entity became the owner or lessee of the land under a contract entered into before 16 September 1987.
- (3) An entity is a *qualifying investor* for the construction of an extension, alteration or improvement to a building if:
  - (a) at the end of 15 September 1987, the entity was the owner or lessee of the building, or the part of the building to which the extension, alteration or improvement was made; or
  - (b) the entity became the owner or lessee of the building or that part under a contract entered into before 16 September 1987.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 43-225

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**Subdivision 43-G—Undeducted construction expenditure**

**Guide to Subdivision 43-G**

**43-225 What this Subdivision is about**

The undeducted construction expenditure for your area is the part of your construction expenditure you have left to write off. It is used to work out:

- the number of years in which you can deduct amounts for your construction expenditure; and
- the amount that you can deduct under section 43-40 if your area or a part is destroyed.

**Table of sections**

**Operative provisions**

43-230	Calculating undeducted construction expenditure—common step
43-235	Post-26 February 1992 undeducted construction expenditure
43-240	Pre-27 February 1992 undeducted construction expenditure

**Operative provisions**

**43-230 Calculating undeducted construction expenditure—common step**

- (1) Identify the date when the capital works began.

Note 1: The date determines whether your calculation is to be made under section 43-235 (for post-26/2/92 expenditure) or 43-240 (for pre-27/2/92 expenditure).

Note 2: Section 43-80 explains when capital works begin.

- (2) If you are calculating a deduction under Subdivision 43-F, identify the period (*use period*) that:

- (a) started when \*your area, or a part of it, was first used by any entity for any purpose after completion of the relevant construction; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) ended at the end of the preceding income year or, if you acquired your area during the income year, at the end of the day before the time of the acquisition.
- (3) If you are calculating a deduction under Subdivision 43-H, identify the period (*use period*) that started at the time described in paragraph (2)(a) and ended at the time of the destruction.

#### **43-235 Post-26 February 1992 undeducted construction expenditure**

**Step 1** Calculate for each day in the use period the amount worked out using the formula:

$$\frac{\text{Portion of your CE} \times 0.04}{365}$$

where:

*portion of your CE* is the portion of \*your construction expenditure that is attributable to the part of \*your area that you used in the \*4% manner.

**Step 2** Calculate for each day in the use period the amount worked out using the formula:

$$\frac{\text{Portion of your CE} \times 0.025}{365}$$

where:

*portion of your CE* is the portion of \*your construction expenditure that is attributable to the part of \*your area that you did not use in the \*4% manner.

**Step 3** Add the aggregate of the amounts calculated under Steps 1 and 2.

**Step 4** Deduct the sum of those amounts from \*your construction expenditure. The result is the *undeducted construction expenditure* for \*your area.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 43-240

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**43-240 Pre-27 February 1992 undeducted construction expenditure**

**Step 1** Calculate for each day in the use period the amount worked out using the formula:

$$\frac{\text{your CE} \times \text{applicable rate}}{365}$$

where:

*your CE* is \*your construction expenditure.

*applicable rate* is:

- (a) 0.04 if the capital works began after 21 August 1984 and before 16 September 1987; or
- (b) 0.025 in any other case.

Note: For the purpose of working out the applicable rate, capital works begun after 15 September 1987 are taken to have begun before 16 September 1987 in certain circumstances. See section 43-220.

**Step 2** Deduct the sum of the amounts calculated under Step 1 from \*your construction expenditure. The result is the *undeducted construction expenditure* for \*your area.

**Subdivision 43-H—Balancing deduction on destruction of capital works**

**Guide to Subdivision 43-H**

**43-245 What this Subdivision is about**

You may deduct an amount for the undeducted construction expenditure for your area if your area or part of it is destroyed in the circumstances described in section 43-40.

This Subdivision shows you how to work out that deduction.

The calculations in this Subdivision are made separately for each part of the capital works that is identified as your area.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Table of sections

### Operative provisions

43-250	The amount of the balancing deduction
43-255	Amounts received or receivable
43-260	Apportioning amounts received for destruction

## Operative provisions

### 43-250 The amount of the balancing deduction

*Method statement*

Step 1. Calculate the amount (if any) by which the \*undeducted construction expenditure for the part of \*your area that was destroyed exceeds the amounts you have received or have a right to receive for the destruction of that part.

Step 2. Reduce the amount at Step 1 if one or more of these happened to that part of \*your area:

- (a) Step 2 or 4 in section 43-210, or Step 2 or 3 in section 43-215, applied to you or another person for it;
- (b) you were, or another person was, not allowed a deduction for it under this Division;
- (c) a deduction for it was not allowed or was reduced (for you or another person) under former Division 10C or 10D of Part III of the *Income Tax Assessment Act 1936*.

The reduction under this step must be reasonable.

### 43-255 Amounts received or receivable

The amounts you have received or have a right to receive for the destruction of that part of \*your area include:

- (a) an amount received under an insurance policy or otherwise for the destruction of that part; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 2** Liability rules of general application

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

Section 43-260

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- (b) an amount received for disposing of property that was included in that part of your area, less any demolition expenditure incurred on the property.

**43-260 Apportioning amounts received for destruction**

If an amount received or receivable in respect of the destruction of property relates to both the part of \*your area for which you are claiming the balancing deduction and to property:

- (a) the cost of which did not form part of \*your construction expenditure; or
- (b) that is capital works that was not part of your area;

you must apportion the amount received or receivable to the amount that is attributable to the part of your area that was destroyed. The apportionment must be reasonable.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 45—Disposal of leases and leased plant**

### **Guide to Division 45**

#### **45-1 What this Division is about**

This Division is designed to prevent tax being avoided through:

- (a) the disposal of leased plant, or an interest in leased plant; or
- (b) the disposal of a partnership interest in a partnership that leased plant; or
- (c) the disposal of shares in a 100% subsidiary that leased plant;

where amounts have been deducted for the decline in value of the plant.

It includes amounts in assessable income. Any benefit received, and any reduction in a liability, is taken into account in calculating the amounts included.

Where the disposal of shares in a 100% subsidiary is involved, the companies in the former wholly-owned group may be made jointly and severally liable for tax that the former subsidiary does not pay.

#### **Table of sections**

##### **Operative provisions**

45-5	Disposal of leased plant or lease
45-10	Disposal of interest in partnership
45-15	Disposal of shares in 100% subsidiary that leases plant
45-20	Disposal of shares in 100% subsidiary that leases plant in partnership
45-25	Group members liable to pay outstanding tax

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 45-5

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- 45-30 Reduction for certain plant acquired before 21.9.99
- 45-35 Limit on amount included for plant for which there is a CGT exemption
- 45-40 Meaning of *plant* and *written down value*

## Operative provisions

### 45-5 Disposal of leased plant or lease

- (1) An amount is included in your assessable income if:
  - (a) you have deducted or can deduct an amount for the decline in value of \*plant; and
  - (b) for most of the time when you \*held the plant, you leased it to another entity; and
  - (c) all or part of the lease period occurred on or after 22 February 1999; and
  - (d) on or after that day, you dispose of the plant or an interest in the plant, and that disposal constitutes a \*balancing adjustment event; and
  - (e) the sum of the following amounts is *more than* the plant's \*written down value or of that part of it that is attributable to that interest:
    - (i) the money you receive or are entitled to receive for the disposal;
    - (ii) the amount of any reduction in a liability of yours as a result of the disposal;
    - (iii) the \*market value of any other benefit you receive or are entitled to receive as a result of the disposal.
- (2) The amount included is the excess referred to in paragraph (1)(e). It is included for the income year in which the disposal occurred.

Example: Sean owns a leased asset. The asset has a written down value of \$20,000. He has an outstanding loan for the asset of \$60,000.

Sean sells a 50% interest in the asset to Leprechaun Pty Ltd for \$40,000. Leprechaun agrees to take over 50% of Sean's obligation to make debt service payments.

The excess referred to in paragraph 45-5(1)(e) is:

$$\left[ \$40,000 + \$30,000 = \$70,000 \right] - \$10,000 = \$60,000$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

That amount is included in Sean's assessable income.

This amount would be reduced if part of it is included in Sean's assessable income under another provision (see subsection 45-5(5)).

Note 1: There is a reduction of the amount included for certain plant acquired before 21 September 1999: see section 45-30.

Note 2: There is a limit on the amount included for plant for which there is a CGT exemption: see section 45-35.

- (3) An amount is also included in your assessable income if:
- (a) you have deducted or can deduct an amount for the \*plant's decline in value; and
  - (b) for most of the time when you \*held the plant, you leased it to another entity; and
  - (c) all or part of the lease period occurred on or after 22 February 1999; and
  - (d) on or after that day, you dispose of:
    - (i) your interest in the plant, or part of it; or
    - (ii) a right under, or an interest in, the lease;and that disposal does not constitute a \*balancing adjustment event.
- (4) The amount included is the sum of the following amounts:
- (a) the money you receive or are entitled to receive for the disposal;
  - (b) the amount of any reduction in a liability of yours as a result of the disposal;
  - (c) the \*market value of any other benefit you receive or are entitled to receive as a result of the disposal;
- It is included for the income year in which the disposal occurred.
- (5) However, an amount is not included in your assessable income under this section to the extent that:
- (a) it is included in that assessable income under a provision of this Act outside this Division; or
  - (b) you apply it under section 40-365 (about offsetting balancing adjustments); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 45-10

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- (c) roll-over relief is available for the disposal under section 40-340.

Note: There are special rules for disposals between 22 February 1999 and 21 September 1999: see Division 45 of the *Income Tax (Transitional Provisions) Act 1997*.

**45-10 Disposal of interest in partnership**

- (1) An amount is included in your assessable income if:
- (a) a partnership of which you are (or were) a member has deducted or can deduct an amount for the decline in value of \*plant; and
  - (b) the deductions have been or would be reflected in your interest in the partnership net income or partnership loss; and
  - (c) for most of the time when the partnership \*held the plant, it leased it to another entity; and
  - (d) all or part of the lease period occurred on or after 22 February 1999; and
  - (e) on or after that day, you dispose of your interest in the plant, or part of it, and that disposal constitutes a \*balancing adjustment event; and
  - (f) the sum of the following amounts is *more than* that part of the plant's \*written down value that is attributable to that interest:
    - (i) the money you receive or are entitled to receive for the disposal;
    - (ii) the amount of any reduction in a liability of yours as a result of the disposal;
    - (iii) the \*market value of any other benefit you receive or are entitled to receive as a result of the disposal.
- (2) The amount included is the excess referred to in paragraph (1)(f). It is included for the income year in which the disposal occurred.

Example: Chris has a 50% share in a partnership formed to lease an asset. The asset has a written down value of \$124,000 (of which Chris' share is \$62,000).

Chris assigns his partnership share to another entity for \$34,000 plus the other entity agreeing to take over Chris' obligations to service his

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

share of the partnership debt (which is \$165,000). The total consideration is:

$$\$34,000 + \$165,000 = \$199,000$$

The amount assessable under section 45-10 is the excess referred to in paragraph 45-10(1)(f), which is:

$$\$199,000 - \$62,000 = \$137,000$$

This amount would be reduced if part of it is included in Chris' assessable income under another provision (see subsection 45-10(5)).

Note 1: There is a reduction of the amount included for certain plant acquired before 21 September 1999: see section 45-30.

Note 2: There is a limit on the amount included for plant for which there is a CGT exemption: see section 45-35.

- (3) An amount is also included in your assessable income if:
- (a) a partnership of which you are (or were) a member has deducted or can deduct an amount for the decline in value of \*plant; and
  - (b) the deductions have been or would be reflected in your interest in the partnership net income or partnership loss; and
  - (c) for most of the time when the partnership \*held the plant, it leased it to another entity; and
  - (d) all or part of the lease period occurred on or after 22 February 1999; and
  - (e) on or after that day, you dispose of:
    - (i) your interest in the plant, or part of it; or
    - (ii) a right under, or an interest in, the lease;and that disposal does not constitute a \*balancing adjustment event.
- (4) The amount included is the sum of the following amounts:
- (a) the money you receive or are entitled to receive for the disposal;
  - (b) the amount of any reduction in a liability of yours as a result of the disposal;
  - (c) the \*market value of any other benefit you receive or are entitled to receive as a result of the disposal.

It is included for the income year in which the disposal occurred.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 45-15

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- (5) However, an amount is not included in your assessable income under this section to the extent that:
- (a) it is included in that assessable income under a provision of this Act outside this Division; or
  - (b) you apply it under section 40-365 (about offsetting balancing adjustments).

Note: There are special rules for disposals between 22 February 1999 and 21 September 1999: see Division 45 of the *Income Tax (Transitional Provisions) Act 1997*.

**45-15 Disposal of shares in 100% subsidiary that leases plant**

- (1) A company (the *former subsidiary*) is treated as if it had disposed of \*plant, received its \*market value for that disposal and immediately reacquired it for the same amount if:
- (a) the former subsidiary has deducted or can deduct an amount for the decline in value of the plant; and
  - (b) the former subsidiary was a \*100% subsidiary of another company in a \*wholly-owned group at a time when it \*held the plant; and
  - (c) for most of the time when the former subsidiary held the plant, the plant was leased to another entity; and
  - (d) the main \*business of the former subsidiary was to lease assets; and
  - (e) all or part of the lease period occurred on or after 22 February 1999; and
  - (f) on or after that day, the direct or indirect beneficial ownership of more than 50% of the \*shares in the former subsidiary is acquired by an entity or entities none of which is a member of the wholly-owned group; and
  - (g) the plant's \*written down value at the time of that acquisition is less than its market value at that time.
- (2) However, the former subsidiary is not treated as if it had disposed of \*plant and reacquired it if the main business of each of the entities that acquired the direct or indirect beneficial ownership of \*shares in the former subsidiary is the same as the main business of the \*wholly-owned group of which the former subsidiary was a member.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) The disposal and reacquisition of the \*plant:
- (a) is taken to have occurred when that direct or indirect beneficial ownership was acquired; and
  - (b) is taken not to have affected any lease of the plant.

**45-20 Disposal of shares in 100% subsidiary that leases plant in partnership**

- (1) A company (also the *former subsidiary*) is treated as if it had disposed of its interest in \*plant, received its \*market value for that disposal and immediately reacquired it for the same amount if:
- (a) a partnership of which the former subsidiary is (or was) a member has deducted or can deduct an amount for the decline in value of the plant; and
  - (b) the former subsidiary was a \*100% subsidiary of another company in a \*wholly-owned group at a time when:
    - (i) it was a member of that partnership; and
    - (ii) the partnership \*held the plant; and
  - (c) for most of the time when the partnership held the plant, the plant was leased to another entity; and
  - (d) the main \*business of the partnership was to lease assets; and
  - (e) all or part of the lease period occurred on or after 22 February 1999; and
  - (f) on or after that day, the direct or indirect beneficial ownership of more than 50% of the \*shares in the former subsidiary is acquired by an entity or entities none of which is a member of the wholly-owned group; and
  - (g) the plant's \*written down value at the time of that acquisition is less than its market value at that time.
- (2) However, the former subsidiary is not treated as if it had disposed of the interest and reacquired it if the main business of each of the entities that acquired the direct or indirect beneficial ownership of \*shares in the former subsidiary is the same as the main business of the \*wholly-owned group of which the former subsidiary was a member.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 45-25

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- (3) The disposal and reacquisition of the interest:
  - (a) is taken to have occurred when that direct or indirect beneficial ownership was acquired; and
  - (b) is taken not to have affected any lease of the plant.

**45-25 Group members liable to pay outstanding tax**

- (1) The consequences specified in subsection (2) apply if:
  - (a) an amount is included in the former subsidiary's assessable income for an income year because of section 45-15 or 45-20; and
  - (b) the former subsidiary is liable to pay an amount of income tax for that income year; and
  - (c) the former subsidiary does not pay all of that income tax within 6 months after it became payable.
- (2) The consequences are that:
  - (a) the former subsidiary remains liable to pay the outstanding amount of income tax (reduced by any payments of tax imposed by the *New Business Tax System (Former Subsidiary Tax Imposition) Act 1999*); and
  - (b) each company that was, just before the time when the direct or indirect beneficial ownership referred to in paragraph 45-15(1)(f) or 45-20(1)(f) was acquired, a member of the former subsidiary's former \*wholly-owned group, is jointly and severally liable to pay tax imposed by the *New Business Tax System (Former Subsidiary Tax Imposition) Act 1999*.

**45-30 Reduction for certain plant acquired before 21.9.99**

- (1) The amount included in your assessable income under subsection 45-5(2) or 45-10(2) is reduced if:
  - (a) you acquired the \*plant at or before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999 and you disposed of the plant or an interest in it after that time; and
  - (b) the sum of the amounts (your *proceeds*) referred to in paragraph 45-5(1)(e) or 45-10(1)(f) is more than the plant's

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

\*cost, or that part of it that is attributable to the interest you disposed of.

- (2) The amount included is reduced by the lesser of:
- (a) the amount (if any) by which the \*plant's \*cost base exceeds its \*cost, or that part of the excess that is attributable to the interest you disposed of; and
  - (b) the difference between your proceeds and the plant's cost, or that part of its cost that is attributable to the interest you disposed of.
- (3) However, the amount is not reduced under this section if:
- (a) the \*plant was a \*pre-CGT asset at the time of the \*balancing adjustment event; or
  - (b) a \*capital gain or \*capital loss from the plant or interest would be disregarded because of a provision listed in the table in this subsection if:
    - (i) you had made the gain or loss from \*CGT event A1; and
    - (ii) that CGT event had happened at the time of the balancing adjustment event.

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**Plant for which a reduction is not made under this section**

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<b>Item</b>	<b>Provision</b>	<b>Subject matter</b>
1	section 118-5	cars, motor cycles and valour decorations
2	section 118-10	collectables and personal use assets
3	section 118-12	plant used to produce exempt income

**45-35 Limit on amount included for plant for which there is a CGT exemption**

- (1) For \*plant to which subsection 45-30(3) applies there is a limit on the amount that can be included in your assessable income under subsection 45-5(2) or 45-10(2).
- (2) The limit for subsection 45-5(2) is the lesser of:
- (a) the excess referred to in paragraph 45-5(1)(e); and
  - (b) the amounts you have deducted or can deduct for the decline in value of the \*plant or, if you disposed of an interest in the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 45-40

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plant, so much of those amounts as is attributable to that interest.

- (3) The limit for subsection 45-10(2) is the lesser of:
- (a) the excess referred to in paragraph 45-10(1)(f); and
  - (b) that part of the amounts the partnership has deducted or can deduct for the decline in value of the \*plant that has been or would be reflected in your interest in the partnership net income or partnership loss (your *partnership amount*) or, if you disposed of part of your interest in the plant, so much of your partnership amount as is attributable to that part of that interest.

**45-40 Meaning of *plant* and *written down value***

- (1) *Plant* includes:
- (a) articles, machinery, tools and rolling stock; and
  - (b) animals used as beasts of burden or working beasts in a \*business, other than a \*primary production business; and
  - (c) fences, dams and other structural improvements, other than those used for domestic or residential purposes, on land that is used for agricultural or pastoral operations; and
  - (d) structural improvements, other than a \*forestry road or structural improvements used for domestic or residential purposes, on land used in a business involving:
    - (i) planting or tending trees in a plantation or forest that are intended to be felled; or
    - (ii) felling trees in a plantation or forest; or
    - (iii) transporting trees, or parts of trees, that you felled in a plantation or forest to the place where they are first to be milled or processed, or from which they are to be transported to the place where they are first to be milled or processed; and
  - (e) structural improvements, other than those used for domestic or residential purposes, that are used wholly for operations (carried out in the course of a business) relating directly to:
    - (i) taking or culturing pearls or pearl shell; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) taking or catching trochus, bêche-de-mer or green snails;  
and that are situated at or near a port or harbour from which the business is conducted; and
  - (f) structural improvements that are excluded from paragraph (c), (d) or (e) because they are used for domestic or residential purposes if they are provided for the accommodation of employees, tenants or sharefarmers who are engaged in or in connection with the activities referred to in that paragraph.
- (2) **Plant** also includes plumbing fixtures and fittings (including wall and floor tiles) provided by an entity mainly for:
- (a) either or both:
    - (i) employees in a \*business carried on by the entity for the \*purpose of producing assessable income; or
    - (ii) employees in a business carried on for that purpose by a company that is a member of the same \*wholly-owned group of which the entity is a member; or
  - (b) \*children of any of those employees.
- (3) The **written down value** of a \*depreciating asset is its \*cost less the sum of:
- (a) the amounts you have deducted or can deduct for its decline in value; and
  - (b) if section 40-340 applied to your acquisition of it—the amounts the transferor, and earlier successive transferors, deducted or can deduct for its decline in value.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Part 2-15—Non-assessable income**

### **Division 50—Exempt entities**

#### **Table of Subdivisions**

- 50-A Various exempt entities
- 50-B Endorsing charitable entities as exempt from income tax

#### **Subdivision 50-A—Various exempt entities**

##### **Table of sections**

- 50-1 Entities whose ordinary income and statutory income is exempt
- 50-5 Charity, education, science and religion
- 50-10 Community service
- 50-15 Employees and employers
- 50-20 Funds contributing to other funds
- 50-25 Government
- 50-30 Health
- 50-35 Mining
- 50-40 Primary and secondary resources, and tourism
- 50-45 Sports, culture, film and recreation
- 50-50 Special conditions for items 1.1 and 1.2
- 50-52 Special condition for items 1.1, 1.5, 1.5A, 1.5B and 4.1
- 50-55 Special conditions for items 1.3, 1.4, 6.1 and 6.2
- 50-57 Special condition for item 1.5
- 50-60 Special conditions for items 1.5A and 1.5B
- 50-65 Special conditions for item 1.6
- 50-70 Special conditions for items 1.7, 2.1, 9.1 and 9.2
- 50-72 Special condition for item 4.1
- 50-75 Certain distributions may be made overseas
- 50-80 Testamentary trusts may be treated as 2 trusts

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## 50-1 Entities whose ordinary income and statutory income is exempt

The total \*ordinary income and \*statutory income of the entities covered by the following tables is exempt from income tax. In some cases, the exemption is subject to special conditions.

Note 1: Ordinary and statutory income that is exempt from income tax is called exempt income: see section 6-20. The note to subsection 6-15(2) describes some of the other consequences of it being exempt income.

Note 2: Even if you are an exempt entity, the Commissioner can still require you to lodge an income tax return or information under section 161 of the *Income Tax Assessment Act 1936*.

## 50-5 Charity, education, science and religion

Charity, education, science and religion		
Item	Exempt entity	Special conditions
1.1	charitable institution	see sections 50-50 and 50-52
1.2	religious institution	see section 50-50
1.3	scientific institution	see section 50-55
1.4	public educational institution	see section 50-55
1.5	fund established for public charitable purposes by will before 1 July 1997	see sections 50-52 and 50-57
1.5A	trust covered by paragraph 50-80(1)(c)	see sections 50-52 and 50-60
1.5B	fund established in Australia for public charitable purposes by will or instrument of trust (and not covered by item 1.5 or 1.5A)	see sections 50-52 and 50-60
1.6	fund established to enable scientific research to be conducted by or in conjunction with a public university or public hospital	see section 50-65
1.7	society, association or club established for the encouragement of science	see section 50-70

Note 1: Section 50-52 has the effect that certain charitable institutions, funds and trusts are exempt from income tax only if they are endorsed under Subdivision 50-B.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 50** Exempt entities

Section 50-10

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Note 2: Section 50-80 may affect which item a trust is covered by.

**50-10 Community service**

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<b>Community service</b>		
<b>Item</b>	<b>Exempt entity</b>	<b>Special conditions</b>
2.1	society, association or club established for community service purposes (except political or lobbying purposes)	see section 50-70

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**50-15 Employees and employers**

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<b>Employees and employers</b>		
<b>Item</b>	<b>Exempt entity</b>	<b>Special conditions</b>
3.1	(a) employee association; or (b) employer association	the association: (a) is registered or recognised under the <i>Fair Work (Registered Organisations) Act 2009</i> or an *Australian law relating to the settlement of industrial disputes; and (b) is located in Australia, and incurs its expenditure and pursues its objectives principally in Australia
3.2	trade union	located in Australia and incurring its expenditure and pursuing its objectives principally in Australia

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 50-20 Funds contributing to other funds

<b>Funds contributing to other funds</b>		
<b>Item</b>	<b>Exempt entity</b>	<b>Special conditions</b>
4.1	fund established by will or instrument of trust solely for a purpose referred to in paragraph (a) or (b) of the column headed "Recipient" in item 2 of the table in section 30-15 (and not covered by item 1.5, 1.5A or 1.5B of the table in section 50-5)	see sections 50-52 and 50-72

### 50-25 Government

<b>Government</b>		
<b>Item</b>	<b>Exempt entity</b>	<b>Special conditions</b>
5.1	(a) a municipal corporation; or (b) a *local governing body	none
5.2	a public authority constituted under an *Australian law	none
5.3	a *constitutionally protected fund	none

Note: The ordinary and statutory income of a State or Territory body is exempt: see Division 1AB of Part III of the *Income Tax Assessment Act 1936*.

### 50-30 Health

<b>Health</b>		
<b>Item</b>	<b>Exempt entity</b>	<b>Special conditions</b>
6.1	public hospital	see section 50-55
6.2	hospital carried on by a society or association	not carried on for the profit or gain of its individual members, see also section 50-55

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 50** Exempt entities

Section 50-35

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**Health**

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<b>Item</b>	<b>Exempt entity</b>	<b>Special conditions</b>
6.3	private health insurer within the meaning of the <i>Private Health Insurance Act 2007</i>	not carried on for the profit or gain of its individual members

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**50-35 Mining**

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**Mining**

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<b>Item</b>	<b>Exempt entity</b>	<b>Special conditions</b>
7.1	the Phosphate Mining Company of Christmas Island Limited (incorporated in the Australian Capital Territory)	none
7.2	the British Phosphate Commissioners Banaba Contingency Fund (established on 1 June 1981)	none

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**50-40 Primary and secondary resources, and tourism**

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**Primary and secondary resources, and tourism**

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<b>Item</b>	<b>Exempt entity</b>	<b>Special conditions</b>
8.1	a society or association established for the purpose of promoting the development of: (a) aviation; or (b) tourism	not carried on for the profit or gain of its individual members

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 50-45

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**Primary and secondary resources, and tourism**

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Item	Exempt entity	Special conditions
8.2	a society or association established for the purpose of promoting the development of any of the following Australian resources: (a) agricultural resources; (b) horticultural resources; (c) industrial resources; (d) manufacturing resources; (e) pastoral resources; (f) viticultural resources; (g) aquacultural resources; (h) fishing resources	not carried on for the profit or gain of its individual members
8.3	a society or association established for the purpose of promoting the development of Australian information and communications technology resources	not carried on for the profit or gain of its individual members

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**50-45 Sports, culture, film and recreation**

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**Sports, culture, film and recreation**

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Item	Exempt entity	Special conditions
9.1	a society, association or club established for the encouragement of: (a) animal racing; or (b) art; or (c) a game or sport; or (d) literature; or (e) music	see section 50-70
9.2	a society, association or club established for musical purposes	see section 50-70

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 50-50

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<b>Sports, culture, film and recreation</b>		
<b>Item</b>	<b>Exempt entity</b>	<b>Special conditions</b>
9.3	the Australian Film Finance Corporation Pty Limited (incorporated under the <i>Companies Act 1981</i> on 12 July 1988)	none
9.4	the Commonwealth Games Federation	only income *derived on or after 1 January 2000 and before 1 July 2007

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**50-50 Special conditions for items 1.1 and 1.2**

An entity covered by item 1.1 or 1.2 is not exempt from income tax unless the entity:

- (a) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or
- (b) is an institution that meets the description and requirements in item 1 of the table in section 30-15; or
- (c) is a prescribed institution which is located outside Australia and is exempt from income tax in the country in which it is resident; or
- (d) is a prescribed institution that has a physical presence in Australia but which incurs its expenditure and pursues its objectives principally outside Australia.

Note 1: Certain distributions may be disregarded: see section 50-75.

Note 2: The entity must also meet other conditions to be exempt from income tax: see section 50-52.

**50-52 Special condition for items 1.1, 1.5, 1.5A, 1.5B and 4.1**

- (1) An entity covered by item 1.1, 1.5, 1.5A, 1.5B or 4.1 is not exempt from income tax unless the entity is endorsed as exempt from income tax under Subdivision 50-B.

Note: The entity will not be exempt from income tax unless it also meets other conditions: see section 50-50 (for an entity covered by item 1.1), 50-57 (for an entity covered by item 1.5), 50-60 (for an entity covered

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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by item 1.5A or 1.5B) or section 50-72 (for an entity covered by item 4.1).

- (3) This section has effect despite all the other sections of this Subdivision.

Note: This means that an entity covered both by an item other than 1.1, 1.5, 1.5A, 1.5B or 4.1 and by one of those items is not exempt from income tax unless the entity is endorsed under Subdivision 50-B as exempt from income tax and the entity meets the requirements of whichever of sections 50-50, 50-57, 50-60 and 50-72 is relevant.

### **50-55 Special conditions for items 1.3, 1.4, 6.1 and 6.2**

An entity covered by item 1.3, 1.4, 6.1 or 6.2 is not exempt from income tax unless the entity:

- (a) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or
- (b) is an institution that meets the description and requirements in item 1 of the table in section 30-15; or
- (c) is a prescribed institution which is located outside Australia and is exempt from income tax in the country in which it is resident.

Note: Certain distributions may be disregarded: see section 50-75.

### **50-57 Special condition for item 1.5**

A fund covered by item 1.5 is not exempt from income tax unless the fund is applied for the purpose for which it was established.

Note: The fund must also meet another condition to be exempt from income tax: see section 50-52.

### **50-60 Special conditions for items 1.5A and 1.5B**

A fund covered by item 1.5A or 1.5B is not exempt from income tax unless the fund is applied for the purposes for which it was established and:

- (a) incurs, and has at all times since 1 July 1997 incurred, its expenditure principally in Australia and pursues, and has at all times since 1 July 1997 pursued, its charitable purposes solely in Australia; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 50-65**

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- (b) is a fund which is referred to in a table in Subdivision 30-B or in item 2 of the table in section 30-15; or
- (c) distributes solely, and has at all times since 1 July 1997 distributed solely, to either or both of the following:
  - (i) a charitable fund, foundation or institution which, to the best of the trustee's knowledge, is located in Australia and incurs its expenditure principally in Australia and pursues its charitable purposes solely in Australia;
  - (ii) a charitable fund, foundation or institution that, to the best of the trustee's knowledge, meets the description and requirements in item 1 or 2 of the table in section 30-15.

Note 1: Certain distributions may be disregarded: see section 50-75.

Note 2: The fund must also meet other conditions to be exempt from income tax: see section 50-52.

**50-65 Special conditions for item 1.6**

A fund covered by item 1.6 is not exempt from tax unless the fund is applied for the purposes for which it was established and is:

- (a) a fund that is located in, and which incurs its expenditure principally in, Australia and that is established for the purpose of enabling scientific research to be conducted principally in Australia by or in conjunction with a public university or public hospital; or
- (b) a scientific research fund that meets the description and requirements in item 1 or 2 of the table in section 30-15.

Note: Certain distributions may be disregarded: see section 50-75.

**50-70 Special conditions for items 1.7, 2.1, 9.1 and 9.2**

An entity covered by item 1.7, 2.1, 9.1 or 9.2 is not exempt from tax unless the entity is a society, association or club that is not carried on for the purpose of profit or gain of its individual members and that:

- (a) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) is a society, association or club that meets the description and requirements in item 1 of the table in section 30-15; or
- (c) is a prescribed society, association or club which is located outside Australia and is exempt from income tax in the country in which it is resident.

Note: Certain distributions may be disregarded: see section 50-75.

#### **50-72 Special condition for item 4.1**

- (1) A fund covered by item 4.1 is not exempt from income tax unless the fund:
  - (a) is applied for the purposes for which it is established; and
  - (b) distributes solely, and has at all times since the time mentioned in subsection (2) distributed solely, to a fund, authority or institution that:
    - (i) meets the description and requirements in item 1 of the table in section 30-15; and
    - (ii) is an \*exempt entity.
- (2) The time is the start of the income year after the income year in which the *Tax Laws Amendment (2005 Measures No. 3) Act 2005* receives the Royal Assent.

#### **50-75 Certain distributions may be made overseas**

- (1) In determining for the purposes of this Subdivision whether an institution, fund or other body incurs its expenditure or pursues its objectives principally in Australia, distributions of any amount received by the institution, fund or other body as a gift (whether of money or other property) or by way of government grant are to be disregarded.
- (2) In determining for the purposes of this Subdivision whether an institution, fund or other body incurs its expenditure or pursues its objectives principally in Australia, distributions of any amount from a fund that is referred to in a table in Subdivision 30-B and operated by the institution, fund or other body are to be disregarded.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 50-80

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- (3) In determining for the purposes of section 50-60 whether a fund:
- (a) incurs, and has at all times since 1 July 1997 incurred, its expenditure principally in Australia and pursues, and has at all times since 1 July 1997, pursued its charitable purposes solely in Australia; or
  - (b) distributes solely, and has at all times since 1 July 1997 distributed solely, to a charitable fund, foundation or institution described in subparagraph 50-60(c)(i) or (ii);
- distributions of any amount received by the fund as a gift (whether of money or property) or by way of government grant are to be disregarded.

**50-80 Testamentary trusts may be treated as 2 trusts**

- (1) If:
- (a) a trust (the *existing trust*) covered by item 1.5 was in existence immediately before 1 July 1997; and
  - (b) on or after 1 July 1997 one or more assets are given to the existing trust (other than in return for valuable consideration) or become part of the trust property under a will;
- then, for the purposes of this Subdivision and Subdivision 50-B, the existing trust is taken to be 2 separate trusts (the *new trust* and the *old trust*) as follows:
- (c) the new trust is taken to be a trust created after the start of 1 July 1997 that consists of so much of the trust property as consists of those assets together with any income \*derived from those assets; and
  - (d) the old trust is taken to be a trust created before 1 July 1997 that consists of the remainder of the trust property.
- (2) Where an asset is received in substitution for another asset, subsection (1) applies as if the substituted asset were the other asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 50-B—Endorsing charitable entities as exempt from income tax**

### **Guide to Subdivision 50-B**

#### **50-100 What this Subdivision is about**

This Subdivision sets out rules about endorsement of charitable institutions and trust funds for charitable purposes as exempt from income tax. Such entities are only exempt from income tax if they are endorsed.

#### **Table of sections**

##### **Endorsing charitable entities as exempt from income tax**

- 50-105 Endorsement by Commissioner  
50-110 Entitlement to endorsement

### **Endorsing charitable entities as exempt from income tax**

#### **50-105 Endorsement by Commissioner**

The Commissioner must endorse an entity as exempt from income tax if the entity:

- (a) is entitled to be endorsed as exempt from income tax; and
- (b) has applied for that endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: For procedural rules relating to endorsement, see Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.

#### **50-110 Entitlement to endorsement**

##### *General rule*

- (1) An entity is entitled to be endorsed as exempt from income tax if the entity meets all the relevant requirements of this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 50-110

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*Which entities are entitled to be endorsed?*

- (2) To be entitled, the entity must be an entity covered by item 1.1, 1.5, 1.5A or 1.5B of the table in section 50-5 or item 4.1 of the table in section 50-20.

*Requirement for ABN*

- (3) To be entitled, the entity must have an \*ABN.
- (4) However, for a trust:
- (a) covered by item 1.5 of the table in section 50-5 because the trust is covered by paragraph 50-80(1)(d); or
  - (b) covered by item 1.5A of the table in section 50-5 (because the trust is covered by paragraph 50-80(1)(c));
- to be entitled, the existing trust mentioned in paragraph 50-80(1)(a) must have an \*ABN.

*Requirement to meet special conditions*

- (5) To be entitled:
- (a) the entity must meet the relevant conditions referred to in the column headed “Special conditions” of whichever of items 1.1, 1.5, 1.5A and 1.5B of the table in section 50-5 and item 4.1 of the table in section 50-20 covers the entity; or
  - (b) both of the following conditions must be met:
    - (i) the entity must not have carried on any activities as a charitable institution (if the entity is covered by item 1.1 of the table in section 50-5) or for public charitable purposes (if the entity is covered by item 1.5, 1.5A or 1.5B of that table);
    - (ii) there must be reasonable grounds for believing that the entity will meet the relevant conditions referred to in the column headed “Special conditions” of whichever of items 1.1, 1.5, 1.5A or 1.5B of the table in section 50-5 covers the entity; or
  - (c) if the entity is covered by item 4.1 of the table in section 50-20 and has not made any distributions—there must be reasonable grounds for believing that the entity will satisfy section 50-72.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (6) To avoid doubt, the condition set out in section 50-52 (requiring the entity to be endorsed under this Subdivision) is not a relevant condition for the purposes of subsection (5).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 51—Exempt amounts

### Table of sections

51-1	Amounts of ordinary income and statutory income that are exempt
51-5	Defence
51-10	Education and training
51-30	Welfare
51-32	Compensation payments for loss of deployment allowance for warlike service
51-33	Compensation payments for loss of pay and/or allowances as a Defence reservist
51-35	Payments to a full-time student at a school, college or university
51-40	Payments to a secondary student
51-42	Bonuses for early completion of an apprenticeship
51-43	Income collected or derived by a copyright collecting society
51-50	Maintenance payments to a spouse or child
51-52	Income derived from eligible venture capital investments by ESVCLPs
51-54	Gain or profit from disposal of eligible venture capital investments
51-55	Gain or profit from disposal of venture capital equity
51-57	Interest on judgment debt relating to personal injury
51-60	Prime Minister's Prizes

### 51-1 Amounts of ordinary income and statutory income that are exempt

The amounts of \*ordinary income and \*statutory income covered by the following tables are exempt from income tax. In some cases, the exemption is subject to exceptions or special conditions, or both.

Note 1: Ordinary and statutory income that is exempt from income tax is called exempt income: see section 6-20. The note to subsection 6-15(2) describes some of the other consequences of it being exempt income.

Note 2: Even if an exempt payment is made to you, the Commissioner can still require you to lodge an income tax return or information under section 161 of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## 51-5 Defence

<b>Defence</b>			
<b>Item</b>	<b>If you are:</b>	<b>... the following amounts are exempt from income tax:</b>	<b>... subject to these exceptions and special conditions:</b>
1.1	a member of the Defence Force	(a) payments of allowances or bounty of a kind prescribed in the regulations; and  (b) the * market value of rations and quarters supplied to you without charge	none
1.1A	a member of the Defence Force	compensation payments for loss of deployment allowance for warlike service	see section 51-32
1.2	a recipient of a payment in respect of a member of the Defence Force	payments of allowances or bounty of a kind prescribed in the regulations	none
1.4	a member of: (a) the Naval Reserve; or (b) the Army Reserve; or (c) the Air Force Reserve	pay and allowances as a member	except pay and allowances for continuous full time service
1.5	a former member of: (a) the Naval Reserve; or (b) the Army Reserve; or (c) the Air Force Reserve	compensation payments for loss of pay and/or allowances as a member	see section 51-33

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 51** Exempt amounts

Section 51-10

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**Defence**

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<b>Item</b>	<b>If you are:</b>	<b>... the following amounts are exempt from income tax:</b>	<b>... subject to these exceptions and special conditions:</b>
1.6	a recipient of an ex-gratia payment from the Commonwealth known as the F-111 Deseal/Reseal Ex-gratia Lump Sum Payment	the ex-gratia payment	none

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**51-10 Education and training**

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**Education and training**

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<b>Item</b>	<b>If you are:</b>	<b>... the following amounts are exempt from income tax:</b>	<b>... subject to these exceptions and special conditions:</b>
2.1A	a full-time student at a school, college or university	a scholarship, bursary, educational allowance or educational assistance	see section 51-35
2.1B	(a) a student; or (b) a recipient of a payment in respect of a student	a payment under a Commonwealth scheme for assistance of: (a) secondary education; or (b) the education of isolated children	see section 51-40
2.1	a recipient of a grant made by the Australian-American Educational Foundation	the grant	the grant is from funds made available to the Foundation under the agreement establishing it

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Education and training**

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<b>Item</b>	<b>If you are:</b>	<b>... the following amounts are exempt from income tax:</b>	<b>... subject to these exceptions and special conditions:</b>
2.2	an employer	payments under the CRAFT Scheme (the Commonwealth Rebate for Apprentice Full-Time Training Scheme)	each payment is for an apprentice who most recently started work with you before 1 January 1998
2.3	a recipient of a scholarship known as a Commonwealth Trade Learning Scholarship	the scholarship	none
2.4	a recipient of a payment known as the Apprenticeship Wage Top-Up	the payment	none
2.5	a recipient of: (a) a research fellowship under the Endeavour Awards; or (b) an Endeavour Executive Award	the fellowship or award	none
2.6	a recipient of a bonus for early completion of an apprenticeship	so much of the bonus as does not exceed \$1,000	see section 51-42
2.7	a recipient of a payment under the program known as Skills for Sustainability for Australian Apprentices	the payment	none

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 51** Exempt amounts

Section 51-30

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**Education and training**

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<b>Item</b>	<b>If you are:</b>	<b>... the following amounts are exempt from income tax:</b>	<b>... subject to these exceptions and special conditions:</b>
2.8	a recipient of a payment under the program known as Tools for Your Trade (within the program known as the Australian Apprenticeships Incentives Program)	the payment	none

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**51-30 Welfare**

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**Welfare**

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<b>Item</b>	<b>If you are:</b>	<b>... the following amounts are exempt from income tax:</b>	<b>... subject to these exceptions and special conditions:</b>
5.1	an individual in receipt of periodic payments in the nature of maintenance	the payments	see section 51-50

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Welfare**

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<b>Item</b>	<b>If you are:</b>	<b>... the following amounts are exempt from income tax:</b>	<b>... subject to these exceptions and special conditions:</b>
5.2	an individual in receipt of an ex-gratia payment from the Commonwealth known as Income Recovery Subsidy for the Victorian bushfires of January and February 2009	the payment	the payment must be claimed: (a) after 28 January 2009; and (b) before 13 May 2009
5.3	an individual in receipt of an ex-gratia payment from the Commonwealth known as Income Recovery Subsidy for the North Queensland floods of January and February 2009	the payment	the payment must be claimed: (a) after 30 January 2009; and (b) before 13 May 2009

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**51-32 Compensation payments for loss of tax exempt payments**

- (1) A compensation payment for the loss of pay or an allowance for your warlike service is exempt from income tax if:
- (a) the compensation payment is made under the *Safety, Rehabilitation and Compensation Act 1988* in respect of an injury (as defined in that Act) you suffered; and
  - (b) you suffered your injury while covered by a certificate in force under paragraph 23AD(1)(a) of the *Income Tax Assessment Act 1936*; and
  - (c) your injury or disease caused the loss of your pay or allowance; and
  - (d) your pay or allowance was payable under the *Defence Act 1903* or under a determination under that Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 51-32

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- (2) A compensation payment for the loss of pay or an allowance for your warlike service is exempt from income tax if:
- (a) the compensation payment is made under the *Military Rehabilitation and Compensation Act 2004* in respect of a service injury or disease (as defined in that Act); and
  - (b) you sustained your service injury or contracted your service disease, or your service injury or disease was aggravated or materially contributed to, while covered by a certificate in force under paragraph 23AD(1)(a) of the *Income Tax Assessment Act 1936*; and
  - (c) your injury or disease caused the loss of your pay or allowance; and
  - (d) your pay or allowance was payable under the *Defence Act 1903* or under a determination under that Act.
- (3) Subsections (4) and (5) apply to:
- (a) a deployment allowance; or
  - (b) some other allowance that is exempt from income tax specified in writing by the Minister administering section 1 of the *Defence Act 1903* for the purposes of this subsection; that is payable under a determination under that Act for your non-warlike service.
- (4) A compensation payment for the loss of the allowance is exempt from income tax if:
- (a) the compensation payment is made under the *Safety, Rehabilitation and Compensation Act 1988* in respect of an injury (as defined in that Act) you suffered; and
  - (b) your injury caused the loss of your allowance.
- (5) A compensation payment for the loss of the allowance is exempt from income tax if:
- (a) the compensation payment is made under the *Military Rehabilitation and Compensation Act 2004* in respect of a service injury or disease (as defined in that Act); and
  - (b) your injury or disease caused the loss of your allowance.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**51-33 Compensation payments for loss of pay and/or allowances as a Defence reservist**

- (1) A compensation payment for the loss of your pay or an allowance is exempt from income tax if:
  - (a) the compensation payment is made under the *Safety, Rehabilitation and Compensation Act 1988* in respect of an injury (as defined in that Act) you suffered; and
  - (b) you suffered your injury while serving as a member of the Naval Reserve, Army Reserve or Air Force Reserve (but not while on continuous full time service); and
  - (c) your pay or allowance was payable for service of a kind described in paragraph (b).
  
- (2) A compensation payment for the loss of your pay or an allowance is exempt from income tax if:
  - (a) the compensation payment is made under the *Military Rehabilitation and Compensation Act 2004* in respect of a service injury or disease (as defined in that Act); and
  - (b) you sustained your service injury or contracted your service disease, or your service injury or disease was aggravated or materially contributed to, while serving as a member of the Naval Reserve, Army Reserve or Air Force Reserve; and
  - (c) your pay or allowance was payable for service of a kind described in paragraph (b); and
  - (d) the compensation payment is worked out by reference to your normal earnings (as defined in that Act) as a part-time Reservist (as defined in that Act).

**51-35 Payments to a full-time student at a school, college or university**

The following payments made to or on behalf of a full-time student at a school, college or university are *not* exempt from income tax under item 2.1A of the table in section 51-10:

- (a) a payment by the Commonwealth for assistance for secondary education or in connection with education of isolated children;
- (b) a \*Commonwealth education or training payment;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 51-40

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- (c) a payment by an entity or authority on the condition that the student will (or will if required) become, or continue to be, an employee of the entity or authority;
- (d) a payment by an entity or authority on the condition that the student will (or will if required) enter into, or continue to be a party to, a contract with the entity or authority that is wholly or principally for the labour of the student;
- (e) a payment under a scholarship where the scholarship is not provided principally for educational purposes;
- (f) an education entry payment under Part 2.13A of the *Social Security Act 1991*.

Note: The whole or part of a Commonwealth education or training payment may be exempt under Subdivision 52-E or 52-F.

**51-40 Payments to a secondary student**

The following payments made to or on behalf of a student are *not* exempt from income tax under item 2.1B of the table in section 51-10:

- (a) a \*Commonwealth education or training payment;
- (b) an education entry payment under Part 2.13A of the *Social Security Act 1991*.

Note: The whole or part of a Commonwealth education or training payment may be exempt under Subdivision 52-E or 52-F.

**51-42 Bonuses for early completion of an apprenticeship**

- (1) The bonus must be provided under a scheme provided by a State or Territory, and the scheme must be specified in the regulations for the purposes of this section.
- (2) The apprenticeship:
  - (a) must be for an occupation of a kind specified in the regulations; and
  - (b) must be completed within a time frame specified in the regulations for apprenticeships of that kind.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **51-43 Income collected or derived by a copyright collecting society**

- (1) This section applies to a \*copyright collecting society if Division 6 of Part III of the *Income Tax Assessment Act 1936* applies to the income of the society.
- (2) The following are exempt from income tax:
  - (a) \*copyright income collected or \*derived by the society in an income year;
  - (b) \*non-copyright income derived by the society in an income year to the extent that it does not exceed the lesser of:
    - (i) 5% of the total amount of the copyright income and non-copyright income collected and derived by the society in the income year; and
    - (ii) \$5 million or such other amount as is prescribed by the regulations for the purposes of this subparagraph.

### **51-50 Maintenance payments to a spouse or child**

- (1) This section sets out the conditions on which a periodic payment, in the nature of maintenance, that:
  - (a) is made by an individual (the *maintenance payer*); or
  - (b) is attributable to a payment made by an individual (also the *maintenance payer*);is exempt from income tax under item 5.1 of the table in section 51-30.
- (2) The maintenance payment is exempt from income tax only if it is made:
  - (a) to an individual who is or has been the maintenance payer's \*spouse; or
  - (b) to or for the benefit of an individual who is or has been:
    - (i) a \*child of the maintenance payer; or
    - (ii) a child who is or has been a child of an individual who is or has been a \*spouse of the maintenance payer.
- (3) The maintenance payment is *not* exempt if, in order to make it or a payment to which it is attributable, the maintenance payer:
  - (a) divested any income-producing assets; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 51-52

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- (b) diverted \*ordinary income or \*statutory income upon which the maintenance payer would otherwise have been liable to income tax.

**51-52 Income derived from eligible venture capital investments by ESVCLPs**

*General*

- (1) An entity's share of income derived from an \*eligible venture capital investment is exempt from income tax if:
  - (a) the entity is a partner in a \*limited partnership; and
  - (b) the partnership made the investment; and
  - (c) the investment meets all of the \*additional investment requirements for ESVCLPs for the investment; and
  - (d) when the partnership made the investment, the partnership was an \*early stage venture capital limited partnership that was \*unconditionally registered; and
  - (e) when the income was derived, the partnership:
    - (i) owned the investment; and
    - (ii) was an early stage venture capital limited partnership that was unconditionally registered.

*Partners in AFOFs*

- (2) An entity's share of income derived from an \*eligible venture capital investment is exempt from income tax if:
  - (a) the entity is a partner in an \*AFOF; and
  - (b) the AFOF is a partner in a partnership that made the investment; and
  - (c) when the partnership made the investment, the partnership was an \*early stage venture capital limited partnership that was \*unconditionally registered; and
  - (d) the investment meets all of the \*additional investment requirements for ESVCLPs for the investment; and
  - (e) when the income was derived, the partnership:
    - (i) owned the investment; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) was an early stage venture capital limited partnership that was unconditionally registered.

*Residency requirements for general partners*

- (3) However, if the entity is a \*general partner in the partnership, this section does not apply to the entity unless the entity is:
- (a) an Australian resident; or
  - (b) a resident of a foreign country in respect of which a double tax agreement (as defined in Part X of the *Income Tax Assessment Act 1936*) is in force that is an agreement of a kind referred to in subparagraph (b)(i), (ia), (ii), (iii), (iv) or (v) of that definition.
- (4) For the purposes of this section, the place of residence of a \*general partner in a \*limited partnership:
- (a) that is a company or limited partnership; and
  - (b) that is not an Australian resident;
- is the place in which the general partner has its central management and control.

*Beneficiaries' shares of capital gains made by unit trusts*

- (5) For the purposes of this section, an entity's share of income derived from an \*eligible venture capital investment that is an investment in a unit trust includes any present entitlement of the entity, as a beneficiary, to a share of an amount included in the assessable income of the unit trust under section 102-5.

*Carried interests*

- (6) This section does not apply to an entity's share of income derived from an \*eligible venture capital investment to the extent that the income is a payment of a \*carried interest of a \*general partner in an \*ESVCLP or an \*AFOF.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 51-54

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**51-54 Gain or profit from disposal of eligible venture capital investments**

*Partners in VCLPs and ESVCLPs*

- (1) An entity's share of any gain or profit made from the disposal or other realisation of an \*eligible venture capital investment is exempt from income tax if:
  - (a) it is made by a \*VCLP, or an \*ESVCLP, that is \*unconditionally registered; and
  - (b) were that disposal or other realisation to be a \*disposal of a \*CGT asset, the entity's share of any \*capital gain or \*capital loss would be disregarded under section 118-405 or 118-407.

*Partners in AFOFs*

- (2) An entity's share of any gain or profit made from the disposal or other realisation of an \*eligible venture capital investment is exempt from income tax if:
  - (a) it is made by:
    - (i) an \*AFOF that is \*unconditionally registered; or
    - (ii) a \*VCLP, or an \*ESVCLP, that is unconditionally registered and in which an AFOF that is \*unconditionally registered is a partner; and
  - (b) were that disposal or other realisation to be a \*disposal of a \*CGT asset, the entity's share of any \*capital gain or \*capital loss would be disregarded under section 118-410.

*Eligible venture capital investors*

- (3) Any gain or profit made from the disposal or other realisation of an \*eligible venture capital investment is exempt from income tax if:
  - (a) you are an \*eligible venture capital investor; and
  - (b) were that disposal or other realisation to be a \*disposal of a \*CGT asset, any \*capital gain or \*capital loss would be disregarded under section 118-415.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **51-55 Gain or profit from disposal of venture capital equity**

Any gain or profit made from the disposal or other realisation of \*venture capital equity in a \*resident investment vehicle is exempt from income tax if:

- (a) it is made by a \*venture capital entity or a \*limited partnership referred to in subsection 118-515(2); and
- (b) if that disposal or other realisation were a \*disposal of a \*CGT asset, any \*capital gain or \*capital loss would be disregarded under Subdivision 118-G.

### **51-57 Interest on judgment debt relating to personal injury**

(1) An amount paid by way of interest on a judgment debt, whether payable under an \*Australian law, or otherwise, is exempt from income tax if:

- (a) the judgment debt arose from a judgment (the *original judgment*) given by, or entered in, a court for an award of damages for personal injury; and
- (b) the amount is in respect of the whole or any part of the period:
  - (i) beginning at the time of the original judgment, or, if the judgment debt is taken to have arisen at an earlier time, at that earlier time; and
  - (ii) ending when the original judgment is finalised.

(2) For the purposes of subsection (1), an original judgment is *finalised* at whichever of the following times is applicable:

- (a) if the period for lodging an appeal against either the original judgment or a subsequent related judgment ends without an appeal being lodged—the end of the period;
- (b) if an appeal from either the original judgment or a subsequent related judgment is lodged and final judgment on the appeal is given by, or entered in, a court—when the final judgment takes effect;
- (c) if an appeal from either the original judgment or a subsequent related judgment is lodged but is settled or discontinued—when the settlement or discontinuance takes effect.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 51-60

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- (3) For the purposes of paragraph (2)(b), a judgment is a *final judgment* if:
- (a) no appeal lies against the judgment; or
  - (b) leave to appeal against the judgment has been refused.

**51-60 Prime Minister's Prizes**

- (1) To the extent that the Prime Minister's Prize for Australian History would otherwise be assessable income, it is exempt from income tax.
- (2) To the extent that the Prime Minister's Prize for Science would otherwise be assessable income, it is exempt from income tax.
- (3) To the extent that a Prime Minister's Literary Award would otherwise be assessable income, it is exempt from income tax.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 52—Certain pensions, benefits and allowances are exempt from income tax**

### **Guide to Division 52**

#### **52-1 What this Division is about**

Certain payments made under various Acts are wholly or partly exempt from income tax. This Division tells you if a payment is exempt and how much is exempt.

#### **Table of Subdivisions**

52-A	Exempt payments under the Social Security Act 1991
52-B	Exempt payments under the Veterans' Entitlements Act 1986
52-C	Exempt payments made because of the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986
52-CA	Exempt payments under the Military Rehabilitation and Compensation Act 2004
52-CB	Exempt payments under the Australian Participants in British Nuclear Tests (Treatment) Act 2006
52-D	Exempt payments made by the Commonwealth to reimburse certain expenditure
52-E	Exempt payments under the ABSTUDY scheme
52-F	Exemption of Commonwealth education or training payments
52-G	Exempt payments under the A New Tax System (Family Assistance) (Administration) Act 1999
52-H	Other exempt payments

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 52-5

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**Subdivision 52-A—Exempt payments under the Social Security Act 1991**

**Guide to Subdivision 52-A**

**52-5 What this Subdivision is about**

This Subdivision tells you:

- (a) the payments under the *Social Security Act 1991* that are wholly or partly exempt from income tax; and
- (b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and
- (c) how to work out how much of a payment is exempt.

**Table of sections**

**Operative provisions**

52-10	How much of a social security payment is exempt?
52-15	Supplementary amounts of payments
52-20	Tax-free amount of an ordinary payment after the death of your partner
52-25	Tax-free amount of certain bereavement lump sum payments
52-30	Tax-free amount of certain other bereavement lump sum payments
52-35	Tax-free amount of a lump sum payment made because of the death of a person you are caring for
52-40	Provisions of the <i>Social Security Act 1991</i> under which payments are made

**Operative provisions**

**52-10 How much of a social security payment is exempt?**

- (1) The table in this section tells you about the income tax treatment of social security payments, other than payments of:
  - (a) pension bonus and pension bonus bereavement payment; or
  - (aa) child disability assistance; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ab) carer supplement; or
- (b) one-off payment to the aged; or
- (ba) 2006 one-off payment to older Australians; or
- (baa) 2007 one-off payment to older Australians; or
- (bab) 2008 one-off payment to older Australians; or
- (bb) payments under a scheme referred to in subsection (1CB); or
- (c) one-off payment to carers (carer payment related); or
- (d) one-off payment to carers (carer allowance related); or
- (e) 2005 one-off payment to carers (carer payment related); or
- (f) 2005 one-off payment to carers (carer service pension related); or
- (g) 2005 one-off payment to carers (carer allowance related); or
- (h) 2006 one-off payment to carers (carer payment related); or
- (i) 2006 one-off payment to carers (wife pension related); or
- (j) 2006 one-off payment to carers (partner service pension related); or
- (k) 2006 one-off payment to carers (carer service pension related); or
- (l) 2006 one-off payment to carers (carer allowance related); or
- (m) 2007 one-off payment to carers (carer payment related); or
- (n) 2007 one-off payment to carers (wife pension related); or
- (o) 2007 one-off payment to carers (partner service pension related); or
- (p) 2007 one-off payment to carers (carer service pension related); or
- (q) 2007 one-off payment to carers (carer allowance related); or
- (r) 2008 one-off payment to carers (carer payment related); or
- (s) 2008 one-off payment to carers (wife pension related); or
- (t) 2008 one-off payment to carers (partner service pension related); or
- (u) 2008 one-off payment to carers (carer service pension related); or
- (v) 2008 one-off payment to carers (carer allowance related); or
- (w) payments under a scheme referred to in subsection (1E); or
- (x) economic security strategy payment under the *Social Security Act 1991*; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 52** Certain pensions, benefits and allowances are exempt from income tax

Section 52-10

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- (y) training and learning bonus under the *Social Security Act 1991*; or
- (z) farmers hardship bonus under the *Social Security Act 1991*; or
- (za) education entry payment supplement under the *Social Security Act 1991*.

Note: Section 52-40 sets out the provisions of the *Social Security Act 1991* under which the payments are made.

- (1A) Payments of pension bonus and pension bonus bereavement payment under Part 2.2A of the *Social Security Act 1991* are exempt from income tax.
- (1AA) Child disability assistance under Part 2.19AA of the *Social Security Act 1991* is exempt from income tax.
- (1AB) Carer supplement under Part 2.19B of the *Social Security Act 1991* is exempt from income tax.
- (1B) One-off payment to the aged under Division 1 of Part 2.2B of the *Social Security Act 1991* is exempt from income tax.
- (1C) Payments made by the Commonwealth and known as the one-off payment to the aged are exempt from income tax.
- (1CA) The following payments under the *Social Security Act 1991* are exempt from income tax:
  - (a) 2006 one-off payment to older Australians (see Division 2 of Part 2.2B of that Act);
  - (b) 2007 one-off payment to older Australians (see Division 3 of Part 2.2B of that Act);
  - (c) 2008 one-off payment to older Australians (see Division 4 of Part 2.2B of that Act).
- (1CB) Payments to older Australians under the following schemes are exempt from income tax:
  - (a) a scheme determined under item 1 of Schedule 2 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Act 2006*;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) a scheme determined under item 1 of Schedule 2 to the *Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Act 2007*;
  - (c) a scheme determined under item 1 of Schedule 2 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008*.
- (1D) The following payments under the *Social Security Act 1991* are exempt from income tax:
- (a) one-off payment to carers (carer payment related) (see Division 1 of Part 2.5A of that Act);
  - (b) one-off payment to carers (carer allowance related) (see Division 1 of Part 2.19A of that Act);
  - (c) 2005 one-off payment to carers (carer payment related) (see Division 2 of Part 2.5A of that Act);
  - (d) 2005 one-off payment to carers (carer service pension related) (see Division 3 of Part 2.5A of that Act);
  - (e) 2005 one-off payment to carers (carer allowance related) (see Division 2 of Part 2.19A of that Act);
  - (f) 2006 one-off payment to carers (carer payment related) (see Division 4 of Part 2.5A of that Act);
  - (g) 2006 one-off payment to carers (wife pension related) (see Division 5 of Part 2.5A of that Act);
  - (h) 2006 one-off payment to carers (partner service pension related) (see Division 6 of Part 2.5A of that Act);
  - (i) 2006 one-off payment to carers (carer service pension related) (see Division 7 of Part 2.5A of that Act); or
  - (j) 2006 one-off payment to carers (carer allowance related) (see Division 3 of Part 2.19A of that Act);
  - (k) 2007 one-off payment to carers (carer payment related) (see Division 8 of Part 2.5A of that Act);
  - (l) 2007 one-off payment to carers (wife pension related) (see Division 9 of Part 2.5A of that Act);
  - (m) 2007 one-off payment to carers (partner service pension related) (see Division 10 of Part 2.5A of that Act);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 52** Certain pensions, benefits and allowances are exempt from income tax

Section 52-10

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- (n) 2007 one-off payment to carers (carer service pension related) (see Division 11 of Part 2.5A of that Act);
  - (o) 2007 one-off payment to carers (carer allowance related) (see Division 4 of Part 2.19A of that Act);
  - (p) 2008 one-off payment to carers (carer payment related) (see Division 12 of Part 2.5A of that Act);
  - (q) 2008 one-off payment to carers (wife pension related) (see Division 13 of Part 2.5A of that Act);
  - (r) 2008 one-off payment to carers (partner service pension related) (see Division 14 of Part 2.5A of that Act);
  - (s) 2008 one-off payment to carers (carer service pension related) (see Division 15 of Part 2.5A of that Act);
  - (t) 2008 one-off payment to carers (carer allowance related) (see Division 5 of Part 2.19A of that Act).
- (1E) Payments to carers under the following schemes are exempt from income tax:
- (a) a scheme determined under Schedule 3 to the *Family Assistance Legislation Amendment (More Help for Families—One-off Payments) Act 2004*;
  - (b) a scheme determined under Schedule 2 to the *Social Security Legislation Amendment (One-off Payments for Carers) Act 2005*;
  - (c) a scheme determined under Schedule 4 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Act 2006*;
  - (d) a scheme determined under Schedule 4 to the *Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Act 2007*;
  - (e) a scheme determined under Schedule 4 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008*.
- (1F) Economic security strategy payment under the *Social Security Act 1991* is exempt from income tax.
- (1G) Training and learning bonus under the *Social Security Act 1991* is exempt from income tax.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (1H) Farmers hardship bonus under the *Social Security Act 1991* is exempt from income tax.
- (1J) Education entry payment supplement under the *Social Security Act 1991* is exempt from income tax.
- (2) Expressions used in this Subdivision that are also used in the *Social Security Act 1991* have the same meaning as in that Act.
- (3) **Ordinary payment** means a payment other than a payment made because of a person's death.

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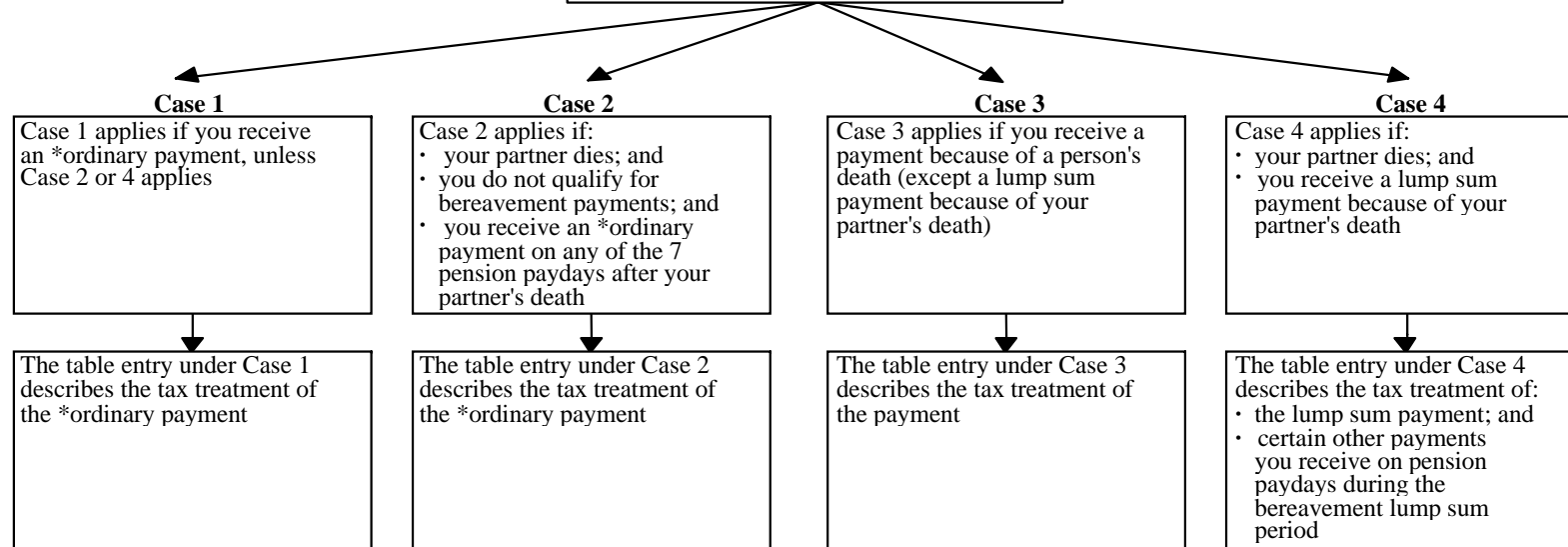
\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Explanation of the table**

The table:  
• lists all the payments under the *Social Security Act 1991* that are wholly or partly exempt from income tax; and  
• deals with 4 different cases.



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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Income tax treatment of social security payments</b>					
<b>Item</b>	<b>Payment</b>	<b>Case 1</b>	<b>Case 2</b>	<b>Case 3</b>	<b>Case 4</b>
1.1	<b>Advance pharmaceutical supplement</b>	Exempt	Exempt	Not applicable	Not applicable
2.1	<b>Age pension</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-25)
2AA.1	<b>Australian Government Disaster Recovery Payment</b>	Exempt	Exempt	Not applicable	Not applicable
2A.1	<b>Austudy payment</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-30)
3.1	<b>Bereavement allowance</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt	Not applicable
3A.1	<b>Carer allowance</b>	Exempt	Exempt	Exempt	Not applicable

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 52** Certain pensions, benefits and allowances are exempt from income tax

Section 52-10

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<b>Income tax treatment of social security payments</b>					
<b>Item</b>	<b>Payment</b>	<b>Case 1</b>	<b>Case 2</b>	<b>Case 3</b>	<b>Case 4</b>
4.1	<b>Carer payment:</b> you are pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt, but if it is made under section 236A of the <i>Social Security Act 1991</i> , exempt only up to the tax-free amount (see section 52-35)	Exempt up to the tax-free amount if it is made under section 239 of the <i>Social Security Act 1991</i> (see section 52-25)
4.2	<b>Carer payment:</b> the care receiver or any of the care receivers is pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt, but if it is made under section 236A of the <i>Social Security Act 1991</i> , exempt only up to the tax-free amount (see section 52-35)	Exempt up to the tax-free amount if it is made under section 239 of the <i>Social Security Act 1991</i> (see section 52-25)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 52-10

<b>Income tax treatment of social security payments</b>					
<b>Item</b>	<b>Payment</b>	<b>Case 1</b>	<b>Case 2</b>	<b>Case 3</b>	<b>Case 4</b>
4.3	<b>Carer payment:</b> both you and the care receiver or all of the care receivers are under pension age	Exempt	Exempt	Exempt, but if it is made under section 236A of the <i>Social Security Act 1991</i> , exempt only up to the tax-free amount (see section 52-35)	Exempt up to the tax-free amount if it is made under section 239 of the <i>Social Security Act 1991</i> (see section 52-25)
4.4	<b>Carer payment:</b> you are under pension age and any of the care receivers has died	Exempt	Exempt	Exempt, but if it is made under section 236A of the <i>Social Security Act 1991</i> , exempt only up to the tax-free amount (see section 52-35)	Exempt up to the tax-free amount if it is made under section 239 of the <i>Social Security Act 1991</i> (see section 52-25)
5.1	<b>Crisis payment</b>	Exempt	Exempt	Not applicable	Not applicable
6.1	<b>Disability support pension:</b> you are pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-25)

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 52** Certain pensions, benefits and allowances are exempt from income tax

Section 52-10

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<b>Income tax treatment of social security payments</b>					
<b>Item</b>	<b>Payment</b>	<b>Case 1</b>	<b>Case 2</b>	<b>Case 3</b>	<b>Case 4</b>
6.2	<b>Disability support pension:</b> you are under pension age	Exempt	Exempt	Exempt	Exempt up to the tax-free amount (see section 52-25)
9.1	<b>Double orphan pension</b>	Exempt	Exempt	Exempt	Not applicable
13A.1	<b>Fares allowance</b>	Exempt	Exempt	Not applicable	Not applicable
15.1	<b>Mature age allowance (paid under Part 2.12A)</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-25)
16.1	<b>Mature age allowance (paid under Part 2.12B)</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-30)
17.1	<b>Mature age partner allowance</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt	Exempt up to the tax-free amount (see section 52-25)
18.1	<b>Mobility allowance</b>	Exempt	Exempt	Not applicable	Not applicable

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 52-10

<b>Income tax treatment of social security payments</b>					
<b>Item</b>	<b>Payment</b>	<b>Case 1</b>	<b>Case 2</b>	<b>Case 3</b>	<b>Case 4</b>
19.1	<b>Newstart allowance</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-30)
21A.1	<b>Parenting payment (benefit PP (partnered))</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt	Exempt up to the tax-free amount (see section 52-30)
21A.3	<b>Parenting payment (pension PP (single))</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt	Not applicable
22.1	<b>Partner allowance</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt	Exempt up to the tax-free amount (see section 52-30)
22A.1	<b>Pensioner education supplement</b>	Exempt	Exempt	Not applicable	Not applicable
22B.1	<b>Seniors concession allowance</b>	Exempt	Exempt	Not applicable	Not applicable

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 52** Certain pensions, benefits and allowances are exempt from income tax

Section 52-10

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<b>Income tax treatment of social security payments</b>					
<b>Item</b>	<b>Payment</b>	<b>Case 1</b>	<b>Case 2</b>	<b>Case 3</b>	<b>Case 4</b>
23.1	<b>Sickness allowance</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-30)
25.1	<b>Special benefit</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-30)
26.1	<b>Special needs age pension</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-25)
27.1	<b>Special needs disability support pension:</b> you are pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-25)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 52-10

<b>Income tax treatment of social security payments</b>					
<b>Item</b>	<b>Payment</b>	<b>Case 1</b>	<b>Case 2</b>	<b>Case 3</b>	<b>Case 4</b>
27.2	<b>Special needs disability support pension:</b> you are under pension age	Exempt	Exempt	Exempt	Exempt up to the tax-free amount (see section 52-25)
29.1	<b>Special needs widow B pension</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Not applicable	Not applicable
30.1	<b>Special needs wife pension:</b> you are pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-25)
30.2	<b>Special needs wife pension:</b> your partner is pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-25)
30.3	<b>Special needs wife pension:</b> both you and your partner are under pension age	Exempt	Exempt	Exempt	Exempt up to the tax-free amount (see section 52-25)

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 52** Certain pensions, benefits and allowances are exempt from income tax

Section 52-10

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<b>Income tax treatment of social security payments</b>					
<b>Item</b>	<b>Payment</b>	<b>Case 1</b>	<b>Case 2</b>	<b>Case 3</b>	<b>Case 4</b>
30.4	<b>Special needs wife pension:</b> you are under pension age and your partner has died	Exempt	Exempt	Exempt	Exempt up to the tax-free amount (see section 52-25)
31.1	<b>Telephone allowance</b>	Exempt	Exempt	Not applicable	Not applicable
31A.1	<b>Utilities allowance</b>	Exempt	Exempt	Not applicable	Not applicable
32.1	<b>Widow allowance</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Not applicable	Not applicable
33.1	<b>Widow B pension</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt	Not applicable
34.1	<b>Wife pension:</b> you are pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt	Exempt up to the tax-free amount (see section 52-25)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Income tax treatment of social security payments</b>					
<b>Item</b>	<b>Payment</b>	<b>Case 1</b>	<b>Case 2</b>	<b>Case 3</b>	<b>Case 4</b>
34.2	<b>Wife pension:</b> your partner is pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt	Exempt up to the tax-free amount (see section 52-25)
34.3	<b>Wife pension:</b> both you and your partner are under pension age	Exempt	Exempt	Exempt	Exempt up to the tax-free amount (see section 52-25)
34.4	<b>Wife pension:</b> you are under pension age and your partner has died	Exempt	Exempt	Exempt	Exempt up to the tax-free amount (see section 52-25)
35.1	<b>Youth allowance</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-30)

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 52-15

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**52-15 Supplementary amounts of payments**

You work out the *supplementary amount* of a social security payment using the following table:

<b>Supplementary amount of a social security payment</b>		
<b>Item</b>	<b>For this category of social security payment:</b>	<b>the <i>supplementary amount</i> is the total of:</b>
1	Age pension Bereavement allowance Carer payment Mature age allowance (paid under Part 2.12A) Mature age partner allowance Sickness allowance Special benefit Special needs age pension Special needs disability support pension Special needs widow B pension Special needs wife pension Widow B pension Wife pension	(a) so much of the payment as is included by way of rental assistance; and (b) so much of the payment as is included by way of remote area allowance; and (c) so much of the payment as is included by way of pharmaceutical allowance

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Supplementary amount of a social security payment**

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<b>Item</b>	<b>For this category of social security payment:</b>	<b>the <i>supplementary amount</i> is the total of:</b>
2	Disability support pension	(a) so much of the payment as is included by way of rental assistance; and (b) so much of the payment as is included by way of remote area allowance; and (c) so much of the payment as is included by way of pharmaceutical allowance; and (d) so much of the payment as is included by way of incentive allowance; and (e) so much of the payment as is included by way of language, literacy and numeracy supplement
3	Mature age allowance (paid under Part 2.12B) Newstart allowance Parenting payment (benefit (PP partnered)) Parenting payment (pension (PP single)) Partner allowance Widow allowance Youth allowance	(a) so much of the payment as is included by way of rental assistance; and (b) so much of the payment as is included by way of remote area allowance; and (c) so much of the payment as is included by way of pharmaceutical allowance; and (d) so much of the payment as is included by way of language, literacy and numeracy supplement

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 52-20

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**Supplementary amount of a social security payment**

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<b>Item</b>	<b>For this category of social security payment:</b>	<b>the <i>supplementary amount</i> is the total of:</b>
4	Austudy payment	(a) so much of the payment as is included by way of rental assistance; and (b) so much of the payment as is included by way of remote area allowance; and (c) so much of the payment as is included by way of pharmaceutical allowance

---

**52-20 Tax-free amount of an ordinary payment after the death of your partner**

- (1) You work out under this section the \*tax-free amount of an \*ordinary payment made under the *Social Security Act 1991* after the death of your partner if:
- (a) you do not qualify for payments under a \*bereavement Subdivision; and
  - (b) the ordinary payment became due to you during the bereavement period.

Note: For the provisions of the *Social Security Act 1991* that tell you if you qualify for payments under a bereavement Subdivision: see subsection (3).

- (2) This is how to work out the *tax-free amount*:

*Method statement*

Step 1. Work out the \*supplementary amount of the payment.

Note: The supplementary amount is also exempt and is worked out under section 52-15.

Step 2. Subtract the \*supplementary amount from the amount of the payment.

Step 3. Work out what would have been the amount of the payment if your partner had not died.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- Step 4. Work out what would have been the \*supplementary amount of the payment if your partner had not died.
- Step 5. Subtract the amount at Step 4 from the amount at Step 3.
- Step 6. Subtract the amount at Step 5 from the amount at Step 2: the result is the *tax-free amount*.

- (3) This table sets out:
- (a) the Subdivisions of the *Social Security Act 1991* that are *bereavement Subdivisions*; and
  - (b) the provision of that Act that tells you if you qualify for payments under the relevant bereavement Subdivision.

<b>Bereavement Subdivisions</b>		
<b>Item</b>	<b>For this bereavement Subdivision:</b>	<b>This provision tells you if you qualify for payments under it:</b>
1	Subdivision A of Division 9 of Part 2.2	paragraph 82(1)(e)
2	Subdivision A of Division 10 of Part 2.3	paragraph 146F(1)(e)
3	Subdivision B of Division 9 of Part 2.5	paragraph 237(1)(e)
5	Subdivision A of Division 10 of Part 2.9	paragraph 469(1)(e)
5A	Division 10 of Part 2.11	paragraph 567(1)(f)
5B	Division 10 of Part 2.11A	paragraph 592(1)(f)
6	Subdivision AA of Division 9 of Part 2.12	paragraph 660LA(1)(f)
7	Subdivision A of Division 11 of Part 2.12A	paragraph 660XKA(1)(e)
8	Subdivision C of Division 11 of Part 2.12B	paragraph 660YKC(1)(e)
9	Subdivision AA of Division 9 of Part 2.14	paragraph 728PA(1)(f)
10	Subdivision AA of Division 9 of Part 2.15	paragraph 768A(1)(f)
11	Subdivision A of Division 10 of Part 2.16	paragraph 822(1)(e)

### **52-25 Tax-free amount of certain bereavement lump sum payments**

- (1) This section applies if a lump sum of any of these categories of social security payments becomes due to you because of your partner's death.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 52-25

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**Category of social security payment**

Age pension

Carer payment

Disability support pension

Mature age allowance (paid under Part 2.12A)

Mature age partner allowance

Special needs age pension

Special needs disability support pension

Special needs wife pension

Wife pension

- (2) The total of the following are exempt up to the \*tax-free amount:
- (a) the lump sum payment;
  - (b) all other payments that become due to you under the *Social Security Act 1991* during the bereavement lump sum period.
- (3) This is how to work out the **tax-free amount**:

*Method statement*

Step 1. Work out the payments under the *Social Security Act 1991* that would have become due to you during the bereavement lump sum period if:

- (a) your partner had not died; and
- (b) your partner had been under pension age; and
- (c) immediately before your partner died, you and your partner had been neither an illness separated couple nor a respite care couple.

Step 2. Work out how much of those payments would have been exempt in those circumstances.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Step 3. Work out the payments under the *Social Security Act 1991* or Part III of the *Veterans' Entitlements Act 1986* that would have become due to your partner during the bereavement lump sum period if:
- (a) your partner had not died; and
  - (b) immediately before your partner died, you and your partner were neither an illness separated couple nor a respite care couple;
- even if the payments would not have been exempt.
- Step 4. Total the payments worked out at Steps 2 and 3: the result is the ***tax-free amount***.

Example: You are receiving a disability support pension of \$300 a fortnight and a pharmaceutical allowance of \$5 a fortnight. You are over pension age. Your partner is receiving a partner allowance of \$250 a fortnight and rental assistance of \$75 a fortnight.

Your partner dies. Seven instalments are due to you during the bereavement lump sum period. You work out the tax-free amount as follows:

Step 1: The instalments that would have become due to you during the bereavement lump sum period are:

$$\$300 + \$5 = \$305$$

The total for the period is \$2,135.

Step 2: The exempt component of each instalment is \$5. The total for the 7 instalments is \$35.

Step 3: The instalments that would have become due to your partner during the same period are:

$$\$250 + \$75 = \$325$$

The total for the period is \$2,275.

Step 4: The tax-free amount is:

$$\$35 + \$2,275 = \$2,310$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 52-30

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**52-30 Tax-free amount of certain other bereavement lump sum payments**

- (1) This section applies if a lump sum of any of these categories of social security payments becomes due to you because of your partner's death.

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**Category of social security payment**

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Austudy payment

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Mature age allowance (paid under Part 2.12B)

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Newstart allowance

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Parenting payment (benefit PP (partnered))

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Partner allowance

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Sickness allowance

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Special benefit

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Youth allowance

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- (2) The total of the following are exempt up to the \*tax-free amount:
- (a) the lump sum payment;
  - (b) all other payments that become due to you under the *Social Security Act 1991* during the bereavement lump sum period.
- (3) This is how to work out the **tax-free amount**:

*Method statement*

Step 1. Work out the payments under the *Social Security Act 1991* that would have become due to you during the bereavement lump sum period if:

- (a) your partner had not died; and
- (b) your partner had been under pension age; and
- (c) immediately before your partner died, you and your partner had been neither an illness separated couple nor a respite care couple.

Step 2. Work out how much of those payments would have been exempt in those circumstances.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- Step 3. Work out the payments under the *Social Security Act 1991* that would have become due to your partner during the bereavement lump sum period if your partner had not died, even if the payments would not have been exempt.
- Step 4. Total the payments worked out at Steps 2 and 3: the result is the *tax-free amount*.

**52-35 Tax-free amount of a lump sum payment made because of the death of a person you are caring for**

- (1) This section applies if a lump sum payment becomes due to you under section 236A of the *Social Security Act 1991* because of the death of the care receiver or any of the care receivers.
- (2) The total of the following are exempt up to the \*tax-free amount:
  - (a) the lump sum payment;
  - (b) all other payments that become due to you under the *Social Security Act 1991* during the bereavement lump sum period.
- (3) This is how to work out the *tax-free amount*:

*Method statement*

- Step 1. Work out the payments under the *Social Security Act 1991* that would have become due to you during the bereavement lump sum period if:
- (a) the care receiver had not died; and
  - (b) the care receiver had been under\* pension age.
- Step 2. Work out how much of those payments would have been exempt in those circumstances.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 52** Certain pensions, benefits and allowances are exempt from income tax

Section 52-40

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- Step 3. Work out the payments under the *Social Security Act 1991* that would have become due to the care receiver during the bereavement lump sum period if the care receiver had not died, even if the payments would not have been exempt.
- Step 4. Total the payments worked out at Steps 2 and 3: the result is the *tax-free amount*.

**52-40 Provisions of the *Social Security Act 1991* under which payments are made**

This table lists the provisions of the *Social Security Act 1991* under which social security payments are made that are wholly or partly exempt from income tax under this Subdivision.

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**Provisions under which social security payments are made**

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<b>Item</b>	<b>Category of social security payment</b>	<b>Ordinary payment</b>	<b>Payment made because of a person's death (unless covered by next column)</b>	<b>Lump sum payment made because of your partner's death</b>
1	Advance pharmaceutical supplement	Part 2.23	Not applicable	Not applicable
2	Age pension	Part 2.2	Sections 83, 86 and 91	Section 84
2AA	Australian Government Disaster Recovery Payment	Part 2.24	Not applicable	Not applicable
2A	Austudy payment	Part 2.11A	Section 592A	Section 592B
3	Bereavement allowance	Part 2.7	Section 359	Not applicable
3A	Carer allowance	Part 2.19	Sections 992K and 992M	Not applicable

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Provisions under which social security payments are made</b>				
<b>Item</b>	<b>Category of social security payment</b>	<b>Ordinary payment</b>	<b>Payment made because of a person's death (unless covered by next column)</b>	<b>Lump sum payment made because of your partner's death</b>
4	Carer payment	Part 2.5	Sections 236A, 238, 241 and 246	Section 239
5	Crisis payment	Part 2.23A	Not applicable	Not applicable
6	Disability support pension	Part 2.3	Sections 146G, 146K and 146Q	Section 146H
9	Double orphan pension	Part 2.20	Sections 1034 and 1034A	Not applicable
13A	Fares allowance	Part 2.26	Not applicable	Not applicable
15	Mature age allowance (paid under Part 2.12A)	Part 2.12A	Sections 660XKB, 660XKE and 660XKG	Section 660XKC
16	Mature age allowance (paid under Part 2.12B)	Part 2.12B	Section 660YKD	Section 660YKE
17	Mature age partner allowance	Part 2.12A	Sections 660XKK and 660XKM	Section 660XKL
18	Mobility allowance	Part 2.21	Not applicable	Not applicable
19	Newstart allowance	Part 2.12	Section 660LB	Section 660LC
21A	Parenting payment (benefit PP (partnered))	Part 2.10	Sections 513A and 514B	Section 514C
21C	Parenting payment (pension PP (single))	Part 2.10	Section 513	Not applicable

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application**Part 2-15** Non-assessable income**Division 52** Certain pensions, benefits and allowances are exempt from income tax

## Section 52-40

<b>Provisions under which social security payments are made</b>				
<b>Item</b>	<b>Category of social security payment</b>	<b>Ordinary payment</b>	<b>Payment made because of a person's death (unless covered by next column)</b>	<b>Lump sum payment made because of your partner's death</b>
22	Partner allowance	Part 2.15A	Section 771NW	Section 771NX
22A	Pensioner education supplement	Part 2.24A	Not applicable	Not applicable
22B	Seniors concession allowance	Part 2.25B	Not applicable	Not applicable
23	Sickness allowance	Part 2.14	Section 728PB	Section 728PC
25	Special benefit	Part 2.15	Section 768B	Section 768C
26	Special needs age pension	Section 77 2	Sections 823, 826 and 830	Section 824
27	Special needs disability support pension	Section 77 3	Sections 823, 826 and 830	Section 824
29	Special needs widow B pension	Section 77 8	Not applicable	Not applicable
30	Special needs wife pension	Section 77 4	Sections 823, 826 and 830	Section 824
31	Telephone allowance	Part 2.25	Not applicable	Not applicable
31A	Utilities allowance	Part 2.25A	Not applicable	Not applicable
32	Widow allowance	Part 2.8A	Not applicable	Not applicable
33	Widow B pension	Part 2.8	Section 407	Not applicable
34	Wife pension	Part 2.4	Sections 189 and 191	Section 190

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Provisions under which social security payments are made**

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<b>Item</b>	<b>Category of social security payment</b>	<b>Ordinary payment</b>	<b>Payment made because of a person's death (unless covered by next column)</b>	<b>Lump sum payment made because of your partner's death</b>
35	Youth allowance	Part 2.11	Section 567A	Section 567B

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**Subdivision 52-B—Exempt payments under the Veterans' Entitlements Act 1986**

**Guide to Subdivision 52-B**

**52-60 What this Subdivision is about**

This Subdivision tells you:

- (a) the payments under the *Veterans' Entitlements Act 1986* that are wholly or partly exempt from income tax; and
- (b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and
- (c) how to work out how much of a payment is exempt.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 52-65

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**Table of sections**

**Operative provisions**

52-65	How much of a veterans' affairs payment is exempt?
52-70	Supplementary amounts of payments
52-75	Provisions of the <i>Veterans' Entitlements Act 1986</i> under which payments are made

**Operative provisions**

**52-65 How much of a veterans' affairs payment is exempt?**

- (1) The table in this section tells you about the income tax treatment of veterans' affairs payments, other than:
- (a) payments of pension bonus, pension bonus bereavement payment, DFISA bonus or DFISA bonus bereavement payment; or
  - (b) 2008 one-off payment to older Australians; or
  - (c) payments under a scheme referred to in subsection (1C); or
  - (d) economic security strategy payment under the *Veterans' Entitlements Act 1986*.

Note: Section 52-75 sets out the provisions of the *Veterans' Entitlements Act 1986* under which the payments are made.

- (1A) The following payments under the *Veterans' Entitlements Act 1986* are exempt from income tax:
- (a) pension bonus and pension bonus bereavement payment under Part IIIAB;
  - (b) DFISA bonus and DFISA bonus bereavement payment under Part VIIAB.
- (1B) Payments of 2008 one-off payment to older Australians under Part VIIF of the *Veterans' Entitlements Act 1986* are exempt from income tax.
- (1C) Payments to older Australians under a scheme determined under item 2 of Schedule 2 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008* are exempt from income tax.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (1D) Economic security strategy payment under the *Veterans' Entitlements Act 1986* is exempt from income tax.
- (2) Expressions (except "pension age") used in this Subdivision that are also used in the *Veterans' Entitlements Act 1986* have the same meaning as in that Act.
- (3) **Pension age** has the meaning given by subsection 23(1) of the *Social Security Act 1991*.
- (4) **Ordinary payment** means a payment other than a payment made because of a person's death.

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**Income tax treatment of veterans' affairs payments**

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Item	Category of veterans' affairs payment	Ordinary payment	Payment made because of a person's death
1.1	<b>Age service pension</b>	Supplementary amount is exempt (see section 52-70)	Exempt
2.1	<b>Attendant allowance</b>	Exempt	Not applicable
3.1	<b>Carer service pension:</b> unless covered by item 3.2 or 3.3	Supplementary amount is exempt (see section 52-70)	Exempt
3.2	<b>Carer service pension:</b> both you and your partner are under pension age and your partner is receiving an invalidity service pension	Exempt	Exempt
3.3	<b>Carer service pension:</b> you are under pension age, your partner has died and was receiving an invalidity service pension at death	Exempt	Exempt
4.1	<b>Clothing allowance</b>	Exempt	Not applicable
5.1	<b>Decoration allowance</b>	Exempt	Not applicable

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 52** Certain pensions, benefits and allowances are exempt from income tax

Section 52-65

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<b>Income tax treatment of veterans' affairs payments</b>			
<b>Item</b>	<b>Category of veterans' affairs payment</b>	<b>Ordinary payment</b>	<b>Payment made because of a person's death</b>
5A.1	<b>Defence Force Income Support Allowance:</b> the whole of the social security pension, or the whole of the social security benefit, that is also payable to you on the day this allowance is payable to you is exempt from income tax under section 52-10	Exempt	Not applicable
6.1	<b>Income support supplement:</b> unless covered by item 6.2, 6.3, 6.4 or 6.5	Supplementary amount is exempt (see section 52-70)	Exempt
6.2	<b>Income support supplement:</b> you are under pension age and receiving the supplement on the grounds of permanent incapacity	Exempt	Exempt
6.3	<b>Income support supplement:</b> both you and the severely handicapped person you are caring for are under pension age and you are receiving the supplement for providing constant care for that person	Exempt	Exempt
6.4	<b>Income support supplement:</b> both you and your partner are under pension age and your partner is an invalidity service pensioner or a disability support pensioner	Exempt	Exempt
6.5	<b>Income support supplement:</b> both you and your partner are under pension age and your partner is receiving the supplement on the grounds of permanent incapacity	Exempt	Exempt

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Income tax treatment of veterans' affairs payments</b>			
<b>Item</b>	<b>Category of veterans' affairs payment</b>	<b>Ordinary payment</b>	<b>Payment made because of a person's death</b>
7.1	<b>Invalidity service pension:</b> you are pension age or over	Supplementary amount is exempt (see section 52-70)	Exempt
7.2	<b>Invalidity service pension:</b> you are under pension age	Exempt	Exempt
8.1	<b>Loss of earnings allowance</b>	Exempt	Not applicable
9.1	<b>Partner service pension:</b> unless covered by item 9.2 or 9.3	Supplementary amount is exempt (see section 52-70)	Exempt
9.2	<b>Partner service pension:</b> both you and your partner are under pension age and your partner is receiving an invalidity service pension	Exempt	Exempt
9.3	<b>Partner service pension:</b> you are under pension age, your partner has died and was receiving an invalidity service pension at death	Exempt	Exempt
10.1	<b>Pension for defence-caused death or incapacity</b>	Exempt	Not applicable
11.1	<b>Pension for war-caused death or incapacity</b>	Exempt	Not applicable
12.1	<b>Pharmaceutical allowance</b>	Exempt	Not applicable
13.1	<b>Recreation transport allowance</b>	Exempt	Not applicable
14.1	<b>Section 98A Bereavement payment</b>	Not applicable	Exempt
14.2	<b>Section 98AA Bereavement payment</b>	Not applicable	Exempt
15.1	<b>Section 99 funeral benefit</b>	Not applicable	Exempt
16.1	<b>Section 100 funeral benefit</b>	Not applicable	Exempt
16A.1	<b>Seniors concession allowance</b>	Exempt	Not applicable

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 52** Certain pensions, benefits and allowances are exempt from income tax

Section 52-70

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<b>Income tax treatment of veterans' affairs payments</b>			
<b>Item</b>	<b>Category of veterans' affairs payment</b>	<b>Ordinary payment</b>	<b>Payment made because of a person's death</b>
17.1	<b>Special assistance</b>	Exempt	Not applicable
18.1	<b>Telephone allowance</b>	Exempt	Not applicable
19.1	<b>Temporary incapacity allowance</b>	Exempt	Not applicable
20.1	<b>Travelling expenses</b>	Exempt	Not applicable
20A.1	<b>Utilities allowance</b>	Exempt	Not applicable
21.1	<b>Vehicle Assistance Scheme</b>	Exempt	Not applicable
22.1	<b>Victoria Cross allowance</b>	Exempt	Not applicable

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**52-70 Supplementary amounts of payments**

The *supplementary amount* of a veterans' affairs payment is the total of:

- (a) so much of the payment as is included by way of rental assistance; and
- (b) so much of the payment as is included by way of an additional amount for each of your dependent \*children; and
- (c) so much of the payment as is included by way of remote area allowance.

**52-75 Provisions of the *Veterans' Entitlements Act 1986* under which payments are made**

This table lists the provisions of the *Veterans' Entitlements Act 1986* under which veterans' affairs payments are made that are wholly or partly exempt from income tax under this Subdivision.

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<b>Provisions under which veterans' affairs payments are made</b>			
<b>Item</b>	<b>Category of veterans' affairs payment</b>	<b>Ordinary payment</b>	<b>Payment made because of a person's death</b>
1C	2008 one-off payment to older Australians	Part VIIF	Not applicable

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Provisions under which veterans' affairs payments are made</b>			
<b>Item</b>	<b>Category of veterans' affairs payment</b>	<b>Ordinary payment</b>	<b>Payment made because of a person's death</b>
1	Age service pension	Division 3 of Part III	Parts III and IIIA
2	Attendant allowance	Section 98	Not applicable
3	Carer service pension	Division 6 of Part III	Parts III and IIIA
4	Clothing allowance	Section 97	Not applicable
5	Decoration allowance	Section 102	Not applicable
5A	<b>Defence Force Income Support Allowance</b>	Part VIIAB	Not applicable
5B	Economic security strategy payment	Part VIIG	Not applicable
6	Income support supplement	Part IIIA	Parts III and IIIB
7	Invalidity service pension	Division 4 of Part III	Parts III and IIIA
8	Loss of earnings allowance	Section 108	Not applicable
9	Partner service pension	Division 5 of Part III	Parts III and IIIA
10	Pension for defence-caused death or incapacity	Part IV	Not applicable
11	Pension for war-caused death or incapacity	Part II	Not applicable
12	Pharmaceutical allowance	Part VIIA	Not applicable
13	Recreation transport allowance	Section 104	Not applicable
14	Section 98A Bereavement payment	Not applicable	Section 98A
14A	Section 98AA Bereavement payment	Not applicable	Section 98AA
15	Section 99 funeral benefit	Not applicable	Section 99
16	Section 100 funeral benefit	Not applicable	Section 100
16A	Seniors concession allowance	Part VIIAD	Not applicable
17	Special assistance	Section 106	Not applicable

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 52** Certain pensions, benefits and allowances are exempt from income tax

Section 52-100

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**Provisions under which veterans' affairs payments are made**

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<b>Item</b>	<b>Category of veterans' affairs payment</b>	<b>Ordinary payment</b>	<b>Payment made because of a person's death</b>
18	Telephone allowance	Part VIIB	Not applicable
19	Temporary incapacity allowance	Section 107	Not applicable
20	Travelling expenses	Section 110	Not applicable
20A	Utilities allowance	Part VIIAC	Not applicable
21	Vehicle Assistance Scheme	Section 105	Not applicable
22	Victoria Cross allowance	Section 103	Not applicable

**Subdivision 52-C—Exempt payments made because of the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986**

**Guide to Subdivision 52-C**

**52-100 What this Subdivision is about**

This Subdivision tells you:

- (a) the payments made because of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* that are wholly or partly exempt from income tax; and
- (b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and
- (c) how to work out how much of a payment is exempt.

**Table of sections**

**Operative provisions**

52-105 Supplementary amount of a payment made under the *Repatriation Act 1920* is exempt

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

52-110 Other exempt payments

## Operative provisions

### **52-105 Supplementary amount of a payment made under the Repatriation Act 1920 is exempt**

- (1) The \*supplementary amount of a payment made to you is exempt from income tax if:
  - (a) you are a \*parent of a \*member of the Forces who has died (but you are neither a widow nor a woman divorced or deserted by her husband) and you are of \*pension age or over; or
  - (b) you are the mother of a \*member of the Forces who has died and you are also a widow, or divorced or deserted by your husband;and the payment is covered by subsection (2).
- (2) The payment must be made in circumstances that are a prescribed case under:
  - (a) Table A in Schedule 3 to the *Repatriation Act 1920*; or
  - (b) that Table as applying because of the *Repatriation (Far East Strategic Reserve) Act 1956*; or
  - (c) that Table as applying because of the *Repatriation (Special Overseas Service) Act 1962*; or
  - (d) that Table as applying because of the *Interim Forces Benefits Act 1947*;as in force because of subsection 4(6) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*.
- (3) The *supplementary amount* is the total of:
  - (a) so much of the payment as is included by way of rental assistance; and
  - (b) so much of the payment as is included by way of an additional amount for each of your dependent \*children; and
  - (c) so much of the payment as is included by way of remote area allowance.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 52-110

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- (4) **Member of the Forces** has the same meaning as in the Act referred to in the relevant paragraph of subsection (2).
- (5) Expressions (except **pension age**) used in this Subdivision that are also used in the *Veterans' Entitlements Act 1986* have the same meaning as in that Act.
- (6) **Pension age** has the meaning given by subsection 23(1) of the *Social Security Act 1991*.

**52-110 Other exempt payments**

Payments (except those covered by section 52-105) made because of subsection 4(6) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* are exempt from income tax.

**Subdivision 52-CA—Exempt payments under the Military Rehabilitation and Compensation Act 2004**

**Guide to Subdivision 52-CA**

**52-112 What this Subdivision is about**

This Subdivision tells you:

- (a) the payments under the *Military Rehabilitation and Compensation Act 2004* that are wholly or partly exempt from income tax; and
- (b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and
- (c) how to work out how much of a payment is exempt.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Table of sections**

**Operative provisions**

52-114 How much of a payment under the Military Rehabilitation and Compensation Act is exempt?

**Operative provisions**

**52-114 How much of a payment under the Military Rehabilitation and Compensation Act is exempt?**

- (1) The table in this section tells you about the income tax treatment of payments under the *Military Rehabilitation and Compensation Act 2004*. References in the table to provisions are to provisions of that Act.
- (2) Expressions used in this Subdivision that are also used in the *Military Rehabilitation and Compensation Act 2004* have the same meanings as in that Act.
- (3) **Ordinary payment** means a payment other than a payment made because of a person's death.

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**Income tax treatment of Military Rehabilitation and Compensation Act payments**

Item	Category of payment and provision under which it is paid	Ordinary payment	Payment because of a person's death
1	Alterations to aids and appliances relating to rehabilitation (section 57)	Exempt	Not applicable
2	Compensation for journey and accommodation costs (sections 47, 290, 291 and 297 and subsection 328(4))	Exempt	Not applicable

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 52** Certain pensions, benefits and allowances are exempt from income tax

Section 52-114

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**Income tax treatment of Military Rehabilitation and Compensation Act payments**

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<b>Item</b>	<b>Category of payment and provision under which it is paid</b>	<b>Ordinary payment</b>	<b>Payment because of a person's death</b>
3	Compensation for permanent impairment (sections 68, 71, 75 and 80)	Exempt	Exempt
4	Compensation for financial advice (sections 81, 205 and 239)	Exempt	Not applicable
5	Compensation for incapacity for Permanent Forces member or continuous full-time Reservist (section 85)	See section 51-32	Exempt
6	Compensation for incapacity for part-time Reservists (section 86)	See section 51-33	Exempt
7	Compensation by way of Special Rate Disability Pension (section 200)	Exempt	Not applicable
8	Compensation under the Motor Vehicle Compensation Scheme (section 212)	Exempt	Not applicable
9	Compensation for household services and attendant care services (sections 214 and 217)	Exempt	Not applicable
10	Telephone allowance (sections 221 and 245)	Exempt	Not applicable

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Income tax treatment of Military Rehabilitation and Compensation Act payments**

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Item	Category of payment and provision under which it is paid	Ordinary payment	Payment because of a person's death
11	Compensation for loss or damage to medical aids (section 226)	Exempt	Not applicable
12	Compensation for a wholly dependent partner for a member's death (section 233)	Not applicable	Exempt
13	Continuing permanent impairment and incapacity etc. compensation for a wholly dependent partner (subparagraphs 242(1)(a)(i) and (iii))	Not applicable	Exempt
14	Compensation for eligible young persons who were dependent on deceased member (section 253)	Not applicable	Exempt
15	Continuing permanent impairment and incapacity etc. compensation for eligible young persons (subparagraphs 255(1)(c)(i) and (iii))	Not applicable	Exempt
16	Education and training, or a payment, under the education scheme for certain eligible young persons (section 258)	Exempt if provided for or made to a person under 16	Exempt

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 52** Certain pensions, benefits and allowances are exempt from income tax

Section 52-117

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**Income tax treatment of Military Rehabilitation and Compensation Act payments**

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<b>Item</b>	<b>Category of payment and provision under which it is paid</b>	<b>Ordinary payment</b>	<b>Payment because of a person's death</b>
17	Compensation for other persons who were dependent on deceased member (section 262)	Not applicable	Exempt
18	Compensation for cost of a funeral (section 266)	Not applicable	Exempt
19	Compensation for treatment costs (sections 271, 272 and 273)	Exempt	Not applicable
20	Pharmaceutical allowance (section 300)	Exempt	Not applicable
21	Special assistance (section 424)	Exempt	Exempt

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**Subdivision 52-CB—Exempt payments under the Australian Participants in British Nuclear Tests (Treatment) Act 2006**

**52-117 Payments of travelling expenses are exempt**

A payment made to you under Part 3 of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* is exempt from income tax.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Subdivision 52-D—Exempt payments made by the Commonwealth to reimburse certain expenditure**

**52-125 Private health insurance incentive payments are exempt**

A payment made to you under Division 26 of the *Private Health Insurance Act 2007* is exempt from income tax.

**Subdivision 52-E—Exempt payments under the ABSTUDY scheme**

**Guide to Subdivision 52-E**

**52-130 What this Subdivision is about**

This Subdivision tells you:

- (a) the payments under the ABSTUDY scheme that are wholly or partly exempt from income tax; and
- (b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and
- (c) how to work out how much of a payment is exempt.

**Table of sections**

**Operative provisions**

52-131	Payments under ABSTUDY scheme
52-132	Supplementary amounts of payments
52-133	Tax-free amount of ordinary payment on death of partner if no bereavement payment payable
52-134	Tax-free amount if you receive a bereavement lump sum payment

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 52-131

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**Operative provisions**

**52-131 Payments under ABSTUDY scheme**

- (1) This section tells you about the income tax treatment of a payment under the ABSTUDY scheme made in respect of a period commencing at a time when you were at least 16 years old.

Note: The whole of a payment made under the ABSTUDY scheme in respect of a period commencing at a time when you are under 16 years old may be exempt under section 51-10.

- (2) A crisis payment made to you under the ABSTUDY scheme is exempt from income tax.

- (3) If:

- (a) an \*ordinary payment becomes due to you; and
- (b) the payment is not covered by subsection (4) or (6);

the \*supplementary amount of the ordinary payment is exempt from income tax.

Note: To work out the supplementary amount of the ordinary payment, see section 52-132.

- (4) If:

- (a) your partner dies; and
- (b) you do not qualify for a payment under the ABSTUDY scheme in respect of that death; and
- (c) an \*ordinary payment becomes due to you during the bereavement period;

the \*supplementary amount and the \*tax-free amount of the ordinary payment are exempt from income tax.

Note 1: To work out the supplementary amount of the ordinary payment, see section 52-132.

Note 2: To work out the tax-free amount of the ordinary payment, see section 52-133.

- (5) If a payment becomes due to you under the ABSTUDY scheme because of a person's death (except a lump sum payment because of your partner's death), the payment is exempt from income tax.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (6) If:
- (a) your partner dies; and
  - (b) a lump sum payment under the ABSTUDY scheme becomes due to you because of your partner's death;
- the total of the following are exempt from income tax up to the \*tax free amount:
- (c) the lump sum payment; and
  - (d) all other payments that become due to you under the ABSTUDY scheme during the bereavement lump sum period.

Note: To work out the tax-free amount, see section 52-134.

- (7) **ABSTUDY scheme** means the scheme known as ABSTUDY.
- (8) **Ordinary payment** means a payment under the ABSTUDY scheme, other than:
- (a) a crisis payment; or
  - (b) a payment made because of a person's death.
- (9) The following expressions used in this Subdivision have the same meaning as in the ABSTUDY Policy Manual:
- (a) bereavement lump sum period;
  - (b) bereavement period;
  - (c) illness separated couple;
  - (d) lump sum payment;
  - (e) partner;
  - (f) pension age;
  - (g) respite care couple.

Note: In 2007, the ABSTUDY Policy Manual was accessible through the website of the Department of Education, Science and Training.

### **52-132 Supplementary amount of payment**

The \*supplementary amount of a payment is the total of:

- (a) so much of the payment as is included to assist you with, or to reimburse you for, the costs of any one or more of the following:
  - (i) rent;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 52** Certain pensions, benefits and allowances are exempt from income tax

Section 52-132

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- (ii) living in a remote area;
  - (iii) commencing employment;
  - (iv) travel to, or participation in, courses, interviews, education or training;
  - (v) a child or children wholly or substantially dependent on you;
  - (vi) telephone bills;
  - (vii) living away from your usual residence;
  - (viii) maintaining your usual residence while living away from that residence;
  - (ix) accommodation, books or equipment;
  - (x) discharging a HEC assessment debt (within the meaning of Chapter 4 of the *Higher Education Funding Act 1988*);
  - (xi) discharging a compulsory repayment amount (within the meaning of the *Higher Education Support Act 2003*);
  - (xii) transport in travelling to undertake education or training, or to visit your usual residence when undertaking education or training away from that residence;
  - (xiii) if you are disabled—acquiring any special equipment, services or transport as a result of the disability;
  - (xiv) anything that would otherwise prevent you from beginning, continuing or completing any education or training; and
- (b) so much of the payment as is included by way of pharmaceutical allowance.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**52-133 Tax-free amount of ordinary payment on death of partner if no bereavement payment payable**

This is how to work out the *tax-free amount* of an \*ordinary payment for the purposes of subsection 52-131(4):

*Method statement*

Step 1. Work out the \*supplementary amount of the payment.

Note: The supplementary amount is also exempt and is worked out under section 52-132.

Step 2. Subtract the \*supplementary amount from the amount of the payment.

Step 3. Work out what would have been the amount of the payment if your partner had not died.

Step 4. Work out what would have been the \*supplementary amount of the payment if your partner had not died.

Step 5. Subtract the amount at Step 4 from the amount at Step 3.

Step 6. Subtract the amount at Step 5 from the amount at Step 2: the result is the *tax-free amount*.

**52-134 Tax-free amount if you receive a bereavement lump sum payment**

This is how to work out the *tax-free amount* for the purposes of subsection 52-131(6):

*Method statement*

Step 1. Work out the payments under the ABSTUDY scheme that would have become due to you during the bereavement lump sum period if:

- (a) your partner had not died; and
- (b) your partner had been under pension age; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 52-140

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- (c) immediately before your partner died, you and your partner had been neither an illness separated couple nor a respite care couple.
- Step 2. Work out how much of those payments would have been exempt in those circumstances.
- Step 3. Work out the payments under the ABSTUDY scheme or the *Social Security Act 1991* that would have become due to your partner during the bereavement lump sum period if your partner had not died, even if the payments would not have been exempt.
- Step 4. Total the payments worked out at Steps 2 and 3: the result is the *tax-free amount*.

**Subdivision 52-F—Exemption of Commonwealth education or training payments**

**Table of sections**

52-140	Supplementary amount of a Commonwealth education or training payment is exempt
52-145	Meaning of Commonwealth education or training payment

**52-140 Supplementary amount of a Commonwealth education or training payment is exempt**

- (1) This section tells you about the income tax treatment of a \*Commonwealth education or training payment (other than a payment to or on behalf of a student under the scheme known as ABSTUDY).

Note: The income tax treatment of payments under the scheme known as ABSTUDY is dealt with in Subdivision 52-E.

- (2) The \*supplementary amount of the payment is exempt from income tax.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) The *supplementary amount* is the total of:
- (a) so much of the payment as is included to assist you with, or to reimburse you for, the costs of any one or more of the following:
    - (i) rent;
    - (ii) living in a remote area;
    - (iii) commencing employment;
    - (iv) travel to, or participation in, courses, interviews, education or training;
    - (v) a child or children wholly or substantially dependent on you;
    - (vi) telephone bills;
    - (vii) living away from your usual residence;
    - (viii) maintaining your usual residence while living away from that residence;
    - (ix) accommodation, books or equipment;
    - (x) discharging a HEC assessment debt (within the meaning of Chapter 4 of the *Higher Education Funding Act 1988*);
    - (xa) discharging a compulsory repayment amount (within the meaning of the *Higher Education Support Act 2003*);
    - (xi) transport in travelling to undertake education or training, or to visit your usual residence when undertaking education or training away from that residence;
    - (xii) if you are disabled—acquiring any special equipment, services or transport as a result of the disability;
    - (xiii) anything that would otherwise prevent you from beginning, continuing or completing any education or training; and
  - (b) so much of the payment as is included by way of pharmaceutical allowance.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**52-145 Meaning of Commonwealth education or training payment**

- (1) A ***Commonwealth education or training payment*** is a payment by the Commonwealth, or in connection with a payment by the Commonwealth, of an allowance or reimbursement:
- (a) to or on behalf of a participant in a \*Commonwealth labour market program; or
  - (b) to or on behalf of a student under:
    - (i) the scheme known as ABSTUDY; or
    - (ii) the scheme known as the Assistance for Isolated Children Scheme; or
    - (iii) the scheme known as the Veterans' Children Education Scheme; or
    - (iiia) the scheme under section 258 of the *Military Rehabilitation and Compensation Act 2004* to provide education and training; or
    - (iv) the scheme known as youth allowance; or
    - (v) the scheme known as austudy payment;in respect of a period commencing at a time when the student was at least 16 years old.
- (2) A ***Commonwealth labour market program*** is a program administered by the Commonwealth under which:
- (a) unemployed persons are given training in skills to improve their employment prospects; or
  - (b) unemployed persons are assisted in obtaining employment or to become self-employed; or
  - (c) employed persons are given training in skills and other assistance to aid them in continuing to be employed by their current employer or in obtaining other employment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Subdivision 52-G—Exempt payments under the A New Tax System (Family Assistance) (Administration) Act 1999**

**52-150 Family assistance payments are exempt**

- (1) A payment of child care benefit, child care rebate, family tax benefit, baby bonus, maternity immunisation allowance, one-off payment to families, economic security strategy payment to families, back to school bonus or single income family bonus made to you under the *A New Tax System (Family Assistance) (Administration) Act 1999* is exempt from income tax.
- (2) Payments to families under the scheme determined under Schedule 3 to the *Family Assistance Legislation Amendment (More Help for Families—One-off Payments) Act 2004* are exempt from income tax.

**Subdivision 52-H—Other exempt payments**

**52-160 Economic security strategy payments are exempt**

Payments under the scheme determined under Schedule 4 to the *Social Security and Other Legislation Amendment (Economic Security Strategy) Act 2008* are exempt from income tax.

**52-165 Household stimulus payments are exempt**

Payments under the scheme determined under Schedule 4 to the *Household Stimulus Package Act (No. 2) 2009* are exempt from income tax.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 53—Various exempt payments**

### **Guide to Division 53**

#### **53-1 What this Division is about**

This Division tells you:

- (a) about various payments that are wholly or partly exempt from income tax; and
- (b) any special conditions that apply to a payment in order for it to be exempt; and
- (c) how to work out how much of a payment is exempt.

#### **Table of sections**

##### **Operative provisions**

53-10	Exemption of various types of payments
53-15	Supplementary amount of exceptional circumstances relief payment or farm help income support
53-20	Exemption of similar Australian and United Kingdom veterans' payments

#### **Operative provisions**

##### **53-10 Exemption of various types of payments**

This table tells you about the income tax treatment of various types of payments.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Exemption of various payments**

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<b>Item</b>	<b>This type of payment:</b>	<b>... made under:</b>	<b>... is exempt subject to these exceptions and special conditions:</b>
1	<b>Carer adjustment payment</b>	The power of the Commonwealth to make ex-gratia payments	None
2	<b>Disability services payment</b>	Part III of the <i>Disability Services Act 1986</i>	None
3	<b>Exceptional circumstances relief payment or farm help income support:</b> payment made other than because of a person's death	The <i>Farm Household Support Act 1992</i>	Only the supplementary amount is exempt (see section 53-15)
4	<b>Exceptional circumstances relief payment or farm help income support:</b> payment made because of a person's death	Paragraph 49(b) of the <i>Farm Household Support Act 1992</i>	None
4B	<b>Sugar industry exit grant</b>	The program known as the Sugar Industry Reform Program	As a condition of receiving the grant, you entered into an undertaking not to become the owner or operator of any agricultural *enterprise within 5 years after receiving the grant
4C	<b>Tobacco industry exit grant</b>	The program known as the Tobacco Growers Adjustment Assistance Programme 2006	As a condition of receiving the grant, you entered into an undertaking not to become the owner or operator of any agricultural *enterprise within 5 years after receiving the grant

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 53-15

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**Exemption of various payments**

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<b>Item</b>	<b>This type of payment:</b>	<b>... made under:</b>	<b>... is exempt subject to these exceptions and special conditions:</b>
5	Wounds and disability pension	Not applicable	The payment must be: (a) of a kind specified in subsection 315(2) of the Income and Corporation Taxes Act 1988 of the United Kingdom; and (b) similar in nature to payments that are exempt under Division 52 or this Division

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Note 1: References in this section to exceptional circumstances relief payment also cover amounts paid as drought relief payment—see item 4 of Schedule 3 to the *Farm Household Support Amendment (Restart and Exceptional Circumstances) Act 1997*.

Note 2: A sugar industry exit grant referred to in table item 4B is included in assessable income if the recipient becomes the owner or operator of an agricultural enterprise (except a sugar industry enterprise) within 5 years after receiving the grant: see subsection 15-65(2).

**53-15 Supplementary amount of exceptional circumstances relief payment or farm help income support**

The *supplementary amount* of an exceptional circumstances relief payment or a payment of farm help income support is the total of:

- (a) so much of the payment as is included by way of rental assistance; and
- (b) so much of the payment as would have been included by way of remote area allowance if it had been a payment of newstart allowance under the *Social Security Act 1991* instead of an exceptional circumstances relief payment or a payment of farm help income support;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**53-20 Exemption of similar Australian and United Kingdom veterans' payments**

The following payments made by the Government of Australia, or the Government of the United Kingdom, are exempt from income tax:

- (a) payments similar to payments under the *Veterans' Entitlements Act 1986* that are exempt under Subdivision 52-B;
- (b) payments similar to payments that are made because of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* and are exempt under Subdivision 52-C.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 54—Exemption for certain payments made under structured settlements and structured orders**

### **Table of Subdivisions**

	Guide to Division 54
54-A	Definitions
54-B	Tax exemption for personal injury annuities
54-C	Tax exemption for personal injury lump sums
54-D	Miscellaneous

### **Guide to Division 54**

#### **54-1 What this Division is about**

Certain annuities and lump sums provided under structured settlements and structured orders are exempt from income tax. This Division tells you what a structured settlement is and what a structured order is, and when such an annuity or lump sum is exempt.

### **Subdivision 54-A—Definitions**

#### **Table of sections**

<b>Operative provisions</b>	
54-5	Definitions
54-10	Meaning of <i>structured settlement</i> and <i>structured order</i>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### 54-5 Definitions

In this Division:

***date of the settlement or order:***

- (a) for a \*structured settlement, means:
  - (i) the date on which the agreement that is the structured settlement was entered into; or
  - (ii) if that agreement depends, for its effectiveness, on being approved (however described) by an order of a court, or on being embodied in a consent order made by a court, the date on which that order was made; and
- (b) for a \*structured order, means the date on which the order was made.

***personal injury annuity*** means an \*annuity:

- (a) that is purchased under the terms of a \*structured settlement as mentioned in paragraph 54-10(1)(e); or
- (b) that is purchased under the terms of a \*structured order as mentioned in paragraph 54-10(1A)(e).

***personal injury lump sum*** means a lump sum:

- (a) that is purchased under the terms of a \*structured settlement as mentioned in paragraph 54-10(1)(e); or
- (b) that is purchased under the terms of a \*structured order as mentioned in paragraph 54-10(1A)(e).

### 54-10 Meaning of *structured settlement* and *structured order*

- (1) A ***structured settlement*** is a settlement of a claim that satisfies the following conditions:
  - (a) the claim:
    - (i) is for compensation or damages for, or in respect of, personal injury suffered by a person (the ***injured person***); and
    - (ii) is made by the injured person or by his or her \*legal personal representative;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 54** Exemption for certain payments made under structured settlements and structured orders

Section 54-10

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- (b) the claim is based on the commission of a wrong, or on a right created by statute;
  - (c) the claim is made against a person (the *defendant*) and satisfies the following conditions:
    - (i) the claim is not made against the defendant in his or her capacity as an employer, or \*associate of an employer, of the injured person;
    - (ii) the claim is not made under a \*workers' compensation law, and is not made as an alternative to a claim under such a law;
  - (d) the settlement takes the form of a written agreement between the parties to the claim (whether or not that agreement is approved by an order of a court, or is embodied in a consent order made by a court);
  - (e) under the terms of the settlement, some or all of the compensation or damages is to be used by the defendant (or by a person with whom the defendant has insurance against the liability to which the claim relates) to purchase from one or more \*life insurance companies or State insurers:
    - (i) an \*annuity or annuities to be paid to the injured person, or to a trustee for the benefit of the injured person; or
    - (ii) such an annuity or annuities, together with one or more lump sums that are also to be paid to the injured person, or to a trustee for the benefit of the injured person.
- (1A) A *structured order* is an order of a court that satisfies the following conditions:
- (a) the order is made in respect of a claim that:
    - (i) is for compensation or damages for, or in respect of, personal injury suffered by a person (the *injured person*); and
    - (ii) is made by the injured person or by his or her \*legal personal representative;
  - (b) the order is not an order approving or endorsing an agreement as mentioned in paragraph (1)(d);
  - (c) the claim is based on the commission of a wrong, or on a right created by statute;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) the claim is made against a person (the *defendant*) and satisfies the following conditions:
  - (i) the claim is not made against the defendant in his or her capacity as an \*employer, or \*associate of an employer, of the injured person;
  - (ii) the claim is not made under a \*workers' compensation law, and is not made as an alternative to a claim under such a law;
- (e) under the terms of the order, some or all of the compensation or damages is to be used by the defendant (or by a person with whom the defendant has insurance against the liability to which the claim relates) to purchase from one or more \*life insurance companies or State insurers:
  - (i) an \*annuity or annuities to be paid to the injured person, or to a trustee for the benefit of the injured person; or
  - (ii) such an annuity or annuities, together with one or more lump sums that are also to be paid to the injured person, or to a trustee for the benefit of the injured person.
- (2) For the purposes of paragraphs (1)(e) and (1A)(e), a *State insurer* is a body that carries on State insurance, within the meaning of paragraph 51(xiv) of the Constitution.
- (3) If a claim is both:
  - (a) for compensation or damages for personal injury suffered by a person; and
  - (b) for some other remedy (for example, compensation or damages for loss of, or damage to, property);this section applies to the claim, but only to the extent that it relates to the compensation or damages referred to in paragraph (a), and only to annuities or lump sums that, in the settlement agreement, or in the order, are identified as being solely in payment of that compensation or those damages.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 54-15

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**Subdivision 54-B—Tax exemption for personal injury annuities**

**Table of sections**

**Operative provisions**

54-15	Personal injury annuity exemption for injured person
54-20	Lump sum compensation etc. would not have been assessable
54-25	Requirements of the annuity instrument
54-30	Requirements for payments of the annuity
54-35	Payments during the guarantee period on the death of the injured person
54-40	Requirement for minimum monthly level of support

**Operative provisions**

**54-15 Personal injury annuity exemption for injured person**

A payment of a \*personal injury annuity that is made to the \*injured person is exempt from income tax if the conditions in this Subdivision are satisfied.

Note: Section 54-70 provides a tax exemption if the payment is instead made to the trustee of a trust.

**54-20 Lump sum compensation etc. would not have been assessable**

If the compensation or damages that were used to purchase the \*annuity had instead been paid to the \*injured person in a single lump sum on the \*date of the settlement or order, the compensation or damages would not have been assessable income.

Note: Paragraph 118-37(1)(b) disregards a capital gain or capital loss that arises from compensation or damages the injured person receives for any wrong he or she suffers personally.

**54-25 Requirements of the annuity instrument**

The \*annuity instrument must:

- (a) identify the \*structured settlement or \*structured order under which the \*annuity is provided; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) only allow for payments of the annuity to be made to:
  - (i) the injured person; or
  - (ii) a trustee of a trust of which the injured person is the beneficiary; or
  - (iii) a reversionary beneficiary, or the injured person's estate, in accordance with section 54-35; and
- (c) contain a statement to the effect that the annuity cannot be assigned, and cannot be commuted except as mentioned in section 54-35.

Note: Division 2A of Part 10 of the *Life Insurance Act 1995* makes a purported assignment or commutation that is contrary to paragraph (c) ineffective.

### **54-30 Requirements for payments of the annuity**

- (1) The \*annuity instrument must provide that payments of the \*annuity are to be made at least annually:
  - (a) over a period of at least 10 years during the life of the \*injured person; or
  - (b) for the life of the injured person.
- (2) The \*annuity instrument must specify:
  - (a) the date of the first payment of the \*annuity; and
  - (b) if the annuity instrument specifies a period of years—the date of the last payment in that period; and
  - (c) the amount of each periodic payment of the annuity.
- (3) The \*annuity instrument may only allow the amount of a payment to be varied by increasing the amount:
  - (a) in order to maintain its real value:
    - (i) by indexation by reference to increases in the \*All Groups Consumer Price Index number; or
    - (ii) by indexation by reference to increases in the full-time adult average weekly ordinary time earnings, published by the Australian Statistician; or
  - (b) by a percentage specified in the annuity instrument.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 54-35

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- (4) The \*annuity instrument may only allow the amount of a particular payment to be varied:
- (a) by only one of the methods referred to in subsection (3); or
  - (b) by whichever of 2 or more of those methods would result in the biggest or smallest increase.
- (5) A reference in this section to specifying a date or percentage requires an actual date or figure to be specified, not merely a method of determining a date or figure.

Example: Under subsection (2), “13 September 2002” would be allowed, but “The date on which the annuitant finishes university” would not be allowed.

**54-35 Payments during the guarantee period on the death of the injured person**

- (1) This section applies if the \*annuity instrument provides for payments to be made to the \*injured person during any part of the period ending 10 years after the \*date of the settlement or order (whether the \*annuity is expressed to be for the life of the person or for a period of years).
- (2) The \*annuity instrument may specify a period (the *guarantee period*) of up to 10 years after the \*date of the settlement or order, during which, if the \*injured person dies, the payments (the *remaining payments*) for the remainder of the guarantee period that would have been paid to the injured person are to be paid instead to:

- (a) the injured person’s estate; or
- (b) a reversionary beneficiary.

Note: For tax exemptions in this situation, see sections 54-65 and 54-70.

- (3) If the \*annuity instrument provides for the remaining payments to be made to a reversionary beneficiary, the instrument must:
- (a) name the beneficiary; and
  - (b) allow the beneficiary to choose either:
    - (i) to be paid the amounts of the remaining payments when the injured person would have received them; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) to commute those payments into a lump sum worked out under subsection (5).
- (4) The \*injured person's estate may only be paid the lump sum worked out under subsection (5) (and not the periodic payments).
- (5) The amount of the lump sum under subparagraph (3)(b)(ii) or subsection (4) is the \*policy termination value of the \*life insurance policy that is the \*annuity instrument, as calculated by an \*actuary as at the date of the injured person's death. In making this calculation, the following are to be disregarded:
  - (a) any payments of the annuity due to be made after the end of the guarantee period;
  - (b) any \*structured settlement lump sums that are also provided for by that policy.
- (6) In this section:

*pay to a person* includes pay to the trustee of a trust of which the person is the beneficiary.

*pay to the injured person's estate* includes pay to the trustee of a trust established by the \*injured person's will.

#### **54-40 Requirement for minimum monthly level of support**

- (1) Either:
  - (a) the \*annuity instrument must provide; or
  - (b) if there is more than one \*annuity provided under the \*structured settlement or \*structured order—the annuity instruments for all of those annuities that satisfy the other conditions in this Subdivision, taken as a whole, must provide;that at least once a month for the life of the \*injured person, he or she is to be paid an amount that equals or exceeds the minimum monthly level of support.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 54-40

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(2) The *minimum monthly level of support* means:

- (a) for the year starting on the \*date of the settlement or order—one twelfth of the amount that is, on that date, the sum of:
  - (i) the maximum basic rate of age pension payable to a person in accordance with item 1 of Table B in point 1064-B1 of Pension Rate Calculator A in section 1064 of the *Social Security Act 1991*; and
  - (ii) the amount of a person's pension supplement, worked out (using that maximum basic rate) in accordance with Module BA of that Pension Rate Calculator; and
- (b) for any subsequent year starting on an anniversary of the date of the settlement or order:
  - (i) if the indexation factor for the year (see subsection (3)) is greater than 1—the amount worked out under subsection (4); or
  - (ii) otherwise—the minimum monthly level of support for the previous year.

Note: In working out the rate and amount that count for the purposes of paragraph (a), the effect of the indexation provisions in sections 1191 to 1195 of the *Social Security Act 1991* must be taken into account. The indexed figures are available from Centrelink.

(3) The *indexation factor* for a year is to be worked out on the anniversary of the \*date of the settlement or order in accordance with the formula:

$$\frac{\text{Most recently published *All Groups Consumer Price Index number for a *quarter}}{\text{*All Groups Consumer Price Index number for the same *quarter in the base year}}$$

where:

*base year* means:

- (a) if there have been one or more previous years for which the indexation factor was greater than 1—the year ending immediately before the most recent year for which the indexation factor was greater than 1; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) otherwise—the year ending immediately before the \*date of the settlement or order.

Note: This has effect subject to subsection (6).

(4) If the indexation factor for a year is greater than 1, then the minimum monthly level of support for the year is the amount worked out in accordance with the following formula:

$$\begin{array}{r} \text{Indexation factor} \\ \text{for the year} \end{array} \times \begin{array}{r} \text{Minimum monthly level of support} \\ \text{for the previous year} \end{array}$$

(5) The results under subsections (3) and (4) must be rounded to 3 decimal places (rounding up if the fourth decimal place is 5 or more).

(6) The indexation factor for a year must be worked out by reference to figures for the same \*quarter (for example, the March quarter) as has been used in previous years, even if, on the anniversary of the \*date of the settlement or order, the \*All Groups Consumer Price Index number for that quarter has not yet been published. If this happens, the calculation must be made as soon as practicable after the number for that quarter is published.

(7) In this section:

*pay to a person* includes pay to the trustee of a trust of which the person is the beneficiary.

### **Subdivision 54-C—Tax exemption for personal injury lump sums**

#### **Table of sections**

##### **Operative provisions**

54-45	Personal injury lump sum exemption for injured person
54-50	Lump sum compensation would not have been assessable
54-55	Requirements of the instrument under which the lump sum is paid
54-60	Requirements for payments of the lump sum

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 54-45

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**Operative provisions**

**54-45 Personal injury lump sum exemption for injured person**

A payment of a \*personal injury lump sum that is made to the \*injured person is exempt from income tax if:

- (a) there is at least one \*personal injury annuity (provided under the same \*structured settlement or \*structured order) that satisfies the conditions in Subdivision 54-B; and
- (b) the other conditions in this Subdivision are satisfied.

Note: Section 54-70 provides a tax exemption if the payment is instead made to the trustee of a trust.

**54-50 Lump sum compensation would not have been assessable**

If the compensation or damages that were used to purchase the \*personal injury lump sum had instead been paid to the \*injured person on the \*date of the settlement or order, the compensation or damages would not have been assessable income.

Note: Paragraph 118-37(1)(b) disregards a capital gain or capital loss that arises from compensation or damages the injured person receives for any wrong he or she suffers personally.

**54-55 Requirements of the instrument under which the lump sum is paid**

The instrument under which the \*personal injury lump sum is paid must:

- (a) identify the \*structured settlement or \*structured order under which the lump sum is provided; and
- (b) only allow for the payment of the lump sum to be made to:
  - (i) the \*injured person; or
  - (ii) a trustee of a trust of which the injured person is the beneficiary; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) contain a statement to the effect that the right to receive the lump sum cannot be assigned, and cannot be commuted or otherwise cashed-out early.

Note: Division 2A of Part 10 of the *Life Insurance Act 1995* makes a purported assignment or commutation (or cashing-out) that is contrary to paragraph (c) ineffective.

### **54-60 Requirements for payments of the lump sum**

- (1) The instrument under which the \*personal injury lump sum is paid must specify the date and amount of the payment of the lump sum.
- (2) The instrument may only allow the amount of the payment to be varied by increasing the amount:
  - (a) in order to maintain its real value:
    - (i) by indexation by reference to increases in the \*All Groups Consumer Price Index number; or
    - (ii) by indexation by reference to increases in the full-time adult average weekly ordinary time earnings, published by the Australian Statistician; or
  - (b) by a percentage specified in the instrument.
- (3) The instrument may only allow the amount of the payment to be varied:
  - (a) by only one of the methods referred to in subsection (2); or
  - (b) by whichever of 2 or more of those methods would result in the biggest or smallest increase.
- (4) A reference in this section to specifying a date or percentage requires an actual date or figure to be specified, not merely a method of determining a date or figure.

Example: Under subsection (1), “13 September 2002” would be allowed, but “The date on which the annuitant finishes university” would not be allowed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 54-65

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**Subdivision 54-D—Miscellaneous**

**Table of sections**

**Operative provisions**

54-65	Exemption for certain payments to reversionary beneficiaries
54-70	Special provisions about trusts
54-75	Minister to arrange for review and report

**Operative provisions**

**54-65 Exemption for certain payments to reversionary beneficiaries**

A payment that is made to the reversionary beneficiary of a \*personal injury annuity for which there is a \*guarantee period is exempt from income tax if:

- (a) the payment is a periodic or lump sum payment made in accordance with subsection 54-35(3); and
- (b) either:
  - (i) if subparagraph 54-35(3)(b)(i) applies—the payment; or
  - (ii) if subparagraph 54-35(3)(b)(ii) applies—each of the payments taken into account in working out the amount of the lump sum under subsection 54-35(5);would be exempt from income tax under this Division if the \*injured person were still alive and the payment, or each of the payments, were instead made to the injured person.

**54-70 Special provisions about trusts**

- (1) A payment of a \*personal injury annuity or a \*personal injury lump sum to the trustee of a trust is exempt from income tax for the trustee if:
  - (a) the beneficiary of the trust is the \*injured person; and
  - (b) because of Subdivision 54-B or 54-C, the payment would have been exempt from income tax if it had been made directly to the beneficiary.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) A payment made in accordance with paragraph 54-35(3)(b) to the trustee of a trust is exempt from income tax for the trustee if:
  - (a) the beneficiary of the trust is the reversionary beneficiary;  
and
  - (b) because of section 54-65, the payment would have been exempt from income tax if it had been made directly to the beneficiary.
- (3) A payment of a lump sum in accordance with subsection 54-35(4) to the trustee of a trust is exempt from income tax for the trustee.
- (4) If a payment is exempt from income tax for a trustee because of this section, the payment is also exempt from income tax for a beneficiary, or the beneficiary, of the trust, even if the trustee:
  - (a) pays all or part of the payment to the beneficiary; or
  - (b) applies all or part of the payment for the benefit of the beneficiary.

#### **54-75 Minister to arrange for review and report**

- (1) The Minister must cause a person to review, and to report to the Minister in writing about, the operation of the following provisions (the *structured settlements and orders provisions*):
  - (a) the other provisions of this Division;
  - (b) Division 2A of Part 10 of the *Life Insurance Act 1995*.
- (2) The person must be someone who, in the Minister's opinion, is suitably qualified and appropriate to conduct the review.
- (3) The review and report must relate to the period beginning when this Division commences and ending after 4 years and 6 months.
- (4) The person must give the report to the Minister as soon as practicable, and in any event within 6 months, after the end of that period.
- (5) The report may include suggestions for changes to the structured settlements and orders provisions that, in the person's opinion, are needed to overcome, or would help overcome, problems identified during the review and set out in the report.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 54** Exemption for certain payments made under structured settlements and structured orders

**Section 54-75**

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- (6) The person must provide a reasonable opportunity for members of the public to make submissions to him or her about matters to which the review relates.
- (7) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 55—Payments that are not exempt from income tax**

### **Guide to Division 55**

#### **55-1 What this Division is about**

A variety of payments are not exempt from income tax even though they are similar in nature to payments that are wholly or partly exempt under this Part.

#### **Table of sections**

##### **Operative provisions**

55-5	Occupational superannuation payments
55-10	Education entry payments

#### **Operative provisions**

##### **55-5 Occupational superannuation payments**

- (1) This Part does not exempt from income tax any amount or pension paid under the following provisions or Acts, or under schemes established under any of them:
  - (a) *Defence Force Retirement and Death Benefits Act 1973*;
  - (b) *Defence Forces Retirement Benefits Act 1948*;
  - (c) *Military Superannuation and Benefits Act 1991*;
  - (d) *Papua New Guinea (Staffing Assistance) Act 1973*;
  - (e) *Parliamentary Contributory Superannuation Act 1948*;
  - (f) section 10 of the *Superannuation (Pension Increases) Act 1971*;
  - (g) section 9 or 14 of the *Superannuation Act (No. 2) 1956*;
  - (h) subsection 8(1) of the *Superannuation Act 1948*;
  - (i) *Superannuation Act 1922*;
  - (j) *Superannuation Act 1976*;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 55** Payments that are not exempt from income tax

Section 55-10

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(k) *Superannuation Act 1990*;

(l) *Superannuation Act 2005*.

- (2) This section operates despite anything contained in any other provision of this Part.

**55-10 Education entry payments**

This Part does not exempt from income tax an education entry payment under Part 2.13A of the *Social Security Act 1991*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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# **Income Tax Assessment Act 1997**

## **Act No. 38 of 1997 as amended**

This compilation was prepared on 2 July 2009  
taking into account amendments up to Act No. 62 of 2009

**Volume 3** includes: Table of Contents  
Sections 58-1 to 122-205

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

## **Chapter 2—Liability rules of general application**

### **Part 2-15—Non-assessable income**



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# Contents

<b>Chapter 2—Liability rules of general application</b>	i
<b>Part 2-15—Non-assessable income</b>	i
<b>Division 58—Capital allowances for depreciating assets     previously owned by an exempt entity</b>	1
<b>Guide to Division 58</b>	1
58-1 What this Division is about .....	1
<b>Subdivision 58-A—Application</b>	1
58-5 Application of Division .....	2
58-10 When an asset is acquired in connection with the acquisition of a business .....	3
<b>Subdivision 58-B—Calculating decline in value of privatised         assets under Division 40</b>	4
58-60 Purpose of rules in this Subdivision .....	5
58-65 Choice of method to work out cost of privatised asset .....	5
58-70 Application of Division 40 .....	5
58-75 Meaning of <i>notional written down value</i> .....	6
58-80 Meaning of <i>undeducted pre-existing audited book value</i> .....	8
58-85 Pre-existing audited book value of depreciating asset .....	9
58-90 Method and effective life for transition entity .....	10
<b>Division 59—Particular amounts of non-assessable non-exempt     income</b>	11
<b>Guide to Division 59</b>	11
59-1 What this Division is about .....	11
<b>Operative provisions</b>	11
59-5 Bonus payments made to certain older Australians .....	11
59-10 Compensation under firearms surrender arrangements.....	12
59-15 Mining payments.....	12
59-20 Taxable amounts relating to franchise fees windfall tax.....	12
59-25 Taxable amounts relating to Commonwealth places windfall tax.....	13
59-30 Amounts you must repay.....	13
59-35 Amounts that would be mutual receipts but for prohibition on distributions to members .....	13
59-40 Issue of rights .....	13
59-45 Tax bonus for the 2007-08 income year .....	14
59-50 Clean-up and Restoration Grants for 2009 Victorian bushfires .....	14

---

<b>Part 2-20—Tax offsets</b>	15
<b>Division 61—Generally applicable tax offsets</b>	15
<b>Subdivision 61-G—Private health insurance offset complementary to Part 2-2 of the Private Health Insurance Act 2007</b>	15
<b>Guide to Subdivision 61-G</b>	15
61-200 What this Subdivision is about .....	15
<b>Operative provisions</b>	16
61-205 Entitlement to the private health insurance tax offset.....	16
61-210 Amount of the private health insurance tax offset .....	17
61-215 Tax offset after a person 65 years or over ceases to be covered by policy .....	18
61-220 How to work out the incentive amount.....	19
<b>Subdivision 61-I—First child tax offset (baby bonus)</b>	20
<b>Guide to Subdivision 61-I</b>	20
61-350 What this Subdivision is about .....	20
<b>Entitlement to a first child tax offset</b>	21
61-355 Who is entitled to a tax offset under this section .....	21
61-360 What is a child event?.....	22
61-365 First child only.....	22
61-370 Another carer with entitlement for another child.....	23
61-375 Selection rules .....	23
61-380 Special rules for death of first child.....	24
<b>Transferring an entitlement</b>	24
61-385 You may transfer your entitlement to a tax offset .....	24
61-390 Transfer is irrevocable.....	25
61-395 Transferor is not entitled to tax offset.....	25
61-400 Transferee is entitled to tax offset.....	25
<b>Claiming a first child tax offset</b>	25
61-405 How to claim a tax offset for a child .....	25
61-410 Claim is irrevocable.....	25
<b>Amount of a first child tax offset</b>	26
61-415 Formula for working out amount of tax offset.....	26
61-420 Component of formula—entitlement amount .....	26
61-425 Component of formula—total of the entitlement days .....	27
61-430 What is your base year?.....	27
<b>Additional tax offset if a child is in your care before you legally adopt the child</b>	28
61-440 Additional tax offset if a child is in your care before you legally adopt the child .....	28
61-445 When a child is first in your care.....	29

---

---

61-450	What is your base year if a child is in your care before you legally adopt the child?.....	29
61-455	Old Subdivision applies if you would be worse off.....	30
<b>Subdivision 61-IA—Child care tax offset</b>		<b>31</b>
<b>Guide to Subdivision 61-IA</b>		<b>31</b>
61-460	What this Subdivision is about .....	31
<b>Operative provisions</b>		<b>32</b>
61-465	Object of this Subdivision .....	32
<b>Entitlement to the child care tax offset</b>		<b>32</b>
61-470	Who is entitled to the tax offset.....	32
61-475	Meaning of <i>approved child care</i> .....	33
61-480	Meaning of <i>entitled to child care benefit</i> and <i>entitlement to child care benefit</i> .....	33
<b>Amount of the child care tax offset</b>		<b>35</b>
61-485	Amount of the child care tax offset .....	35
61-490	Component of formula— <i>approved child care fees</i> .....	36
61-495	Component of formula— <i>child care offset limit</i> .....	37
<b>Transfer of entitlement to unused balance of child care tax offset</b>		<b>37</b>
61-496	Entitlement to transfer .....	37
61-497	Form of transfer.....	38
<b>Subdivision 61-J—25% entrepreneurs’ tax offset</b>		<b>38</b>
<b>Guide to Subdivision 61-J</b>		<b>38</b>
61-500	What this Subdivision is about .....	38
<b>Operative provisions</b>		<b>39</b>
61-505	25% entrepreneurs’ tax offset: individual or company .....	39
61-510	25% entrepreneurs’ tax offset: partner in a partnership .....	41
61-515	25% entrepreneurs’ tax offset: trustee of a trust .....	42
61-520	25% entrepreneurs’ tax offset: beneficiary of a trust .....	44
61-525	Meaning of <i>net small business income</i> and <i>small business entity turnover</i> .....	45
<b>Subdivision 61-K—Mature age worker tax offset</b>		<b>46</b>
<b>Guide to Subdivision 61-K</b>		<b>46</b>
61-550	What this Subdivision is about .....	46
<b>Operative provisions</b>		<b>46</b>
61-555	Object of this Subdivision .....	46
61-560	Entitlement to the mature age worker tax offset .....	47
61-565	The amount of the tax offset.....	47
61-570	Definition of <i>net income from working</i> .....	47

---

---

<b>Subdivision 61-L—Tax offset for Medicare levy surcharge (lump sum payments in arrears)</b>	48
<b>Guide to Subdivision 61-L</b>	48
61-575 What this Subdivision is about .....	48
<b>Operative provisions</b>	49
61-580 Entitlement to a tax offset.....	49
61-585 The amount of a tax offset.....	51
61-590 Definition of <i>MLS lump sums</i> .....	51
<b>Subdivision 61-M—Education expenses tax offset</b>	53
<b>Guide to Subdivision 61-M</b>	53
61-600 What this Subdivision is about .....	53
<b>Entitlement to education expenses tax offset</b>	53
61-610 Entitlement to education expenses tax offset.....	53
61-620 Eligibility in respect of another individual .....	55
61-630 Schooling requirement.....	56
61-640 Education expenses .....	57
<b>Amount of education expenses tax offset</b>	59
61-650 Amount of education expenses tax offset .....	59
61-660 Education expenses tax offset limit .....	61
61-670 Shared care .....	62
61-680 Excess education expenses .....	64
<b>Division 63—Common rules for tax offsets</b>	65
<b>Guide to Division 63</b>	65
63-1 What this Division is about .....	65
63-10 Priority rules.....	65
<b>Division 65—Tax offset carry forward rules</b>	67
<b>Guide to Division 65</b>	67
65-10 What this Division is about .....	67
<b>Operative provisions</b>	67
65-30 Amount carried forward .....	67
65-35 How to apply carried forward tax offsets .....	68
65-40 When a company cannot apply a tax offset .....	68
65-50 Effect of bankruptcy .....	69
65-55 Deduction for amounts paid for debts incurred before bankruptcy .....	69
<b>Division 67—Refundable tax offset rules</b>	71
<b>Guide to Division 67</b>	71
67-10 What this Division is about .....	71

---

---

<b>Operative provisions</b>	71
67-20 Which tax offsets this Division applies to .....	71
67-23 Refundable tax offsets .....	71
67-25 Refundable tax offsets—franked distributions .....	72
<b>Part 2-25—Trading stock</b>	75
<b>Division 70—Trading stock</b>	75
<b>Guide to Division 70</b>	75
70-1 What this Division is about .....	75
70-5 The 3 key features of tax accounting for trading stock .....	76
<b>Subdivision 70-A—What is trading stock</b>	76
70-10 Meaning of <i>trading stock</i> .....	76
<b>Subdivision 70-B—Acquiring trading stock</b>	77
70-15 In which income year do you deduct an outgoing for trading stock?.....	77
70-20 Non-arm’s length transactions .....	78
70-25 Cost of trading stock is not a capital outgoing.....	78
70-30 Starting to hold as trading stock an item you already own .....	78
<b>Subdivision 70-C—Accounting for trading stock you hold at the start or end of the income year</b>	81
<b>General rules</b>	82
70-35 You include the value of your trading stock in working out your assessable income and deductions.....	82
70-40 Value of trading stock at start of income year .....	82
70-45 Value of trading stock at end of income year .....	82
<b>Special valuation rules</b>	84
70-50 Valuation if trading stock obsolete etc.....	84
70-55 Working out the cost of natural increase of live stock.....	84
70-60 Valuation of horse breeding stock .....	84
70-65 Working out the horse opening value and the horse reduction amount.....	85
70-70 Valuing interests in FIFs.....	86
<b>Subdivision 70-D—Assessable income arising from disposals of trading stock and certain other assets</b>	87
<b>Guide to Subdivision 70-D</b>	87
70-75 What this Subdivision is about .....	87
70-80 Why the rules in this Subdivision are necessary.....	87
<b>Operative provisions</b>	88
70-85 Application of this Subdivision to certain other assets .....	88
70-90 Assessable income on disposal of trading stock outside the ordinary course of business .....	88

---



---

70-95	Purchase price is taken to be market value .....	89
70-100	Notional disposal when you stop holding an item as trading stock .....	89
70-105	Death of owner .....	91
70-110	You stop holding an item as trading stock but still own it.....	92
70-115	Compensation for lost trading stock .....	93
<b>Subdivision 70-E—Miscellaneous</b>		<b>93</b>
70-120	Deducting capital costs of acquiring trees .....	93
<b>Part 2-40—Rules affecting employees and other taxpayers receiving PAYG withholding payments</b>		<b>96</b>
<b>Division 80—General rules</b>		<b>96</b>
<b>Guide to Division 80</b>		<b>96</b>
80-1	What this Division is about .....	96
<b>Operative provisions</b>		<b>96</b>
80-5	Holding of an office.....	96
80-10	Application to the termination of employment .....	97
80-15	Transfer of property.....	97
80-20	Payments for your benefit or at your direction or request.....	97
<b>Division 82—Employment termination payments</b>		<b>99</b>
<b>Guide to Division 82</b>		<b>99</b>
82-1	What this Division is about .....	99
<b>Subdivision 82-A—Employment termination payments: life benefits</b>		<b>99</b>
<b>Guide to Subdivision 82-A</b>		<b>99</b>
82-5	What this Subdivision is about .....	99
<b>Operative provisions</b>		<b>100</b>
82-10	Taxation of life benefit termination payments .....	100
<b>Subdivision 82-B—Employment termination payments: death benefits</b>		<b>101</b>
<b>Guide to Subdivision 82-B</b>		<b>101</b>
82-60	What this Subdivision is about .....	101
<b>Operative provisions</b>		<b>102</b>
82-65	Death benefits for dependants .....	102
82-70	Death benefits for non-dependants .....	103
82-75	Death benefits paid to trustee of deceased estate .....	104
<b>Subdivision 82-C—Key concepts</b>		<b>105</b>
<b>Guide to Subdivision 82-C</b>		<b>105</b>
82-125	What this Subdivision is about .....	105

---

---

<b>Operative provisions</b>	106
82-130 What is an <i>employment termination payment</i> ?	106
82-135 Payments that are not <i>employment termination payments</i>	107
82-140 <i>Tax free component</i> of an employment termination payment	109
82-145 <i>Taxable component</i> of an employment termination payment	109
82-150 What is an <i>invalidity segment</i> of an employment termination payment?	109
82-155 What is a <i>pre-July 83 segment</i> of an employment termination payment?	110
82-160 What is the <i>ETP cap amount</i> ?	111
<b>Division 83—Other payments on termination of employment</b>	112
<b>Guide to Division 83</b>	112
83-1 What this Division is about	112
<b>Subdivision 83-A—Unused annual leave payments</b>	112
<b>Guide to Subdivision 83-A</b>	112
83-5 What this Subdivision is about	112
<b>Operative provisions</b>	113
83-10 Unused annual leave payment is assessable	113
83-15 Entitlement to tax offset	114
<b>Subdivision 83-B—Unused long service leave payments</b>	114
<b>Guide to Subdivision 83-B</b>	114
83-65 What this Subdivision is about	114
<b>General</b>	115
83-70 Application—long service leave	115
83-75 Meaning of <i>unused long service leave payment</i>	115
83-80 Taxation of unused long service leave payments	116
83-85 Entitlement to tax offset	116
83-90 Meaning of <i>pre-16/8/78 period, pre-18/8/93 period, post-17/8/93 period</i> and <i>long service leave employment period</i>	117
<b>Employment wholly full-time or wholly part-time</b>	118
83-95 How to work out amount of payment attributable to each period	118
83-100 How to work out <i>unused days of long service leave</i> for each period	118
83-105 How to work out long service leave accrued in each period	119
<b>Employment partly full-time and partly part-time</b>	120
83-110 Leave accrued in pre-16/8/78, pre-18/8/93 and post-17/8/93 periods—employment full-time and part-time	120

---

---

<b>Long service leave taken at less than full pay</b>	121
83-115 Working out used days of long service leave if leave taken at less than full pay .....	121
<b>Subdivision 83-C—Genuine redundancy payments and early retirement scheme payments</b>	122
<b>Guide to Subdivision 83-C</b>	122
83-165 What this Subdivision is about .....	122
<b>Operative provisions</b>	122
83-170 Tax-free treatment of genuine redundancy payments and early retirement scheme payments.....	122
83-175 What is a <i>genuine redundancy payment</i> ?.....	123
83-180 What is an <i>early retirement scheme payment</i> ?.....	124
<b>Subdivision 83-D—Foreign termination payments</b>	126
<b>Guide to Subdivision 83-D</b>	126
83-230 What this Subdivision is about .....	126
<b>Operative provisions</b>	126
83-235 Termination payments tax free—foreign resident period .....	126
83-240 Termination payments tax free—Australian resident period .....	127
<b>Subdivision 83-E—Other payments</b>	128
<b>Guide to Subdivision 83-E</b>	128
83-290 What this Subdivision is about .....	128
<b>Operative provisions</b>	128
83-295 Termination payments made more than 12 months after termination etc. ....	128
<b>Part 2-42—Personal services income</b>	129
<b>Division 84—Introduction</b>	129
<b>Guide to Part 2-42</b>	129
84-1 What this Part is about.....	129
<b>Operative provisions</b>	129
84-5 Meaning of <i>personal services income</i> .....	129
84-10 This Part does not imply that individuals are employees.....	130
<b>Division 85—Deductions relating to personal services income</b>	131
<b>Guide to Division 85</b>	131
85-1 What this Division is about .....	131
<b>Operative provisions</b>	131
85-5 Object of this Division.....	131
85-10 Deductions for non-employees relating to personal services income .....	132
85-15 Deductions for rent, mortgage interest, rates and land tax .....	133

---

---

85-20	Deductions for payments to associates etc.....	133
85-25	Deductions for superannuation for associates.....	133
85-30	Exception: personal services businesses.....	134
85-35	Exception: employees, office holders and religious practitioners.....	134
85-40	Application of Subdivision 900-B to individuals who are not employees.....	135
<b>Division 86—Alienation of personal services income</b>		<b>136</b>
<b>Guide to Division 86</b>		<b>136</b>
86-1	What this Division is about .....	136
86-5	A simple description of what this Division does .....	136
<b>Subdivision 86-A—General</b>		<b>138</b>
86-10	Object of this Division.....	138
86-15	Effect of obtaining personal services income through a personal services entity.....	138
86-20	Offsetting the personal services entity’s deductions against personal services income .....	139
86-25	Apportionment of entity maintenance deductions among several individuals .....	141
86-27	Deduction for net personal services income loss .....	143
86-30	Assessable income etc. of the personal services entity .....	143
86-35	Later payments of, or entitlements to, personal services income to be disregarded for income tax purposes.....	143
86-40	Salary payments shortly after an income year .....	144
<b>Subdivision 86-B—Entitlement to deductions</b>		<b>145</b>
86-60	General rule for deduction entitlements of personal services entities .....	145
86-65	Entity maintenance deductions .....	146
86-70	Car expenses.....	146
86-75	Superannuation.....	147
86-80	Salary or wages promptly paid .....	148
86-85	Deduction entitlements of personal services entities for amounts included in an individual’s assessable income .....	148
86-87	Personal services entity cannot deduct net personal services income loss.....	148
86-90	Application of Divisions 28 and 900 to personal services entities .....	149
<b>Division 87—Personal services businesses</b>		<b>150</b>
<b>Guide to Division 87</b>		<b>150</b>
87-1	What this Division is about .....	150
87-5	Diagram showing the operation of this Division .....	151
<b>Subdivision 87-A—General</b>		<b>153</b>
87-10	Object of this Division.....	153

---

---

87-15	What is a personal services business?.....	153
87-18	The results test for a personal services business .....	155
87-20	The unrelated clients test for a personal services business .....	156
87-25	The employment test for a personal services business.....	157
87-30	The business premises test for a personal services business .....	157
87-35	Personal services income from Australian government agencies .....	158
87-40	Application of this Division to certain agents.....	159
<b>Subdivision 87-B—Personal services business determinations</b>		161
87-60	Personal services business determinations for individuals .....	161
87-65	Personal services business determinations for personal services entities.....	164
87-70	Applying etc. for personal services business determinations.....	166
87-75	When personal services business determinations have effect.....	167
87-80	Revoking personal services business determinations .....	167
87-85	Review of decisions.....	168
<b>Chapter 3—Specialist liability rules</b>		169
<b>Part 3-1—Capital gains and losses: general topics</b>		169
<b>Division 100—A Guide to capital gains and losses</b>		169
<b>General overview</b>		169
100-1	What this Division is about .....	169
100-5	Effect of this Division .....	170
100-10	Fundamentals of CGT .....	170
100-15	Overview of Steps 1 and 2.....	171
<b>Step 1—Have you made a capital gain or a capital loss?</b>		172
100-20	What events attract CGT?.....	172
100-25	What are CGT assets? .....	173
100-30	Does an exception or exemption apply?.....	173
100-33	Can there be a roll-over? .....	174
<b>Step 2—Work out the amount of the capital gain or loss</b>		175
100-35	What is a capital gain or loss? .....	175
100-40	What factors come into calculating a capital gain or loss? .....	175
100-45	How to calculate the capital gain or loss for most CGT events.....	176
<b>Step 3—Work out your net capital gain or loss for the income year</b>		176
100-50	How to work out your net capital gain or loss .....	176
100-55	How do you comply with CGT?.....	177
<b>Keeping records for CGT purposes</b>		177
100-60	Why keep records? .....	177
100-65	What records?.....	177

---

---

100-70	How long you need to keep records.....	178
<b>Division 102—Assessable income includes net capital gain</b>		<b>179</b>
<b>Guide to Division 102</b>		<b>179</b>
102-1	What this Division is about .....	179
102-3	Concessions in working out your net capital gain .....	179
<b>Operative provisions</b>		<b>180</b>
102-5	Assessable income includes net capital gain.....	180
102-10	How to work out your net capital loss .....	182
102-15	How to apply net capital losses .....	183
102-20	Ways you can make a capital gain or a capital loss .....	183
102-22	Amounts of capital gains and losses .....	184
102-23	CGT event still happens even if gain or loss disregarded .....	184
102-25	Order of application of CGT events .....	184
102-30	Exceptions and modifications.....	185
<b>Division 103—General rules</b>		<b>189</b>
<b>Guide to Division 103</b>		<b>189</b>
103-1	What this Division is about .....	189
<b>Operative provisions</b>		<b>189</b>
103-5	Giving property as part of a transaction.....	189
103-10	Entitlement to receive money or property .....	189
103-15	Requirement to pay money or give property .....	190
103-25	Choices.....	190
103-30	Reduction of cost base etc. by net input tax credits .....	191
<b>Division 104—CGT events</b>		<b>192</b>
<b>Guide to Division 104</b>		<b>192</b>
104-1	What this Division is about .....	192
104-5	Summary of the CGT events .....	193
<b>Subdivision 104-A—Disposals</b>		<b>203</b>
104-10	Disposal of a CGT asset: CGT event A1 .....	203
<b>Subdivision 104-B—Use and enjoyment before title passes</b>		<b>205</b>
104-15	Use and enjoyment before title passes: CGT event B1 .....	205
<b>Subdivision 104-C—End of a CGT asset</b>		<b>206</b>
104-20	Loss or destruction of a CGT asset: CGT event C1 .....	206
104-25	Cancellation, surrender and similar endings: CGT event C2.....	207
104-30	End of option to acquire shares etc.: CGT event C3.....	208
<b>Subdivision 104-D—Bringing into existence a CGT asset</b>		<b>209</b>
104-35	Creating contractual or other rights: CGT event D1 .....	209
104-40	Granting an option: CGT event D2.....	211
104-45	Granting a right to income from mining: CGT event D3.....	212
104-47	Conservation covenants: CGT event D4.....	212

---

---

<b>Subdivision 104-E—Trusts</b>	214
104-55 Creating a trust over a CGT asset: CGT event E1 .....	214
104-60 Transferring a CGT asset to a trust: CGT event E2 .....	215
104-65 Converting a trust to a unit trust: CGT event E3 .....	216
104-70 Capital payment for trust interest: CGT event E4.....	216
104-71 Adjustment of non-assessable part .....	218
104-72 Reducing your capital gain under CGT event E4 if you are a trustee .....	221
104-75 Beneficiary becoming entitled to a trust asset: CGT event E5.....	222
104-80 Disposal to beneficiary to end income right: CGT event E6 .....	223
104-85 Disposal to beneficiary to end capital interest: CGT event E7 .....	224
104-90 Disposal by beneficiary of capital interest: CGT event E8.....	225
104-95 Making a capital gain .....	226
104-100 Making a capital loss .....	228
104-105 Creating a trust over future property: CGT event E9.....	230
<b>Subdivision 104-F—Leases</b>	231
104-110 Granting a lease: CGT event F1 .....	231
104-115 Granting a long-term lease: CGT event F2.....	232
104-120 Lessor pays lessee to get lease changed: CGT event F3 .....	233
104-125 Lessee receives payment for changing lease: CGT event F4.....	233
104-130 Lessor receives payment for changing lease: CGT event F5 .....	234
<b>Subdivision 104-G—Shares</b>	234
104-135 Capital payment for shares: CGT event G1 .....	235
104-145 Liquidator or administrator declares shares or financial instruments worthless: CGT event G3.....	236
<b>Subdivision 104-H—Special capital receipts</b>	238
104-150 Forfeiture of deposit: CGT event H1 .....	238
104-155 Receipt for event relating to a CGT asset: CGT event H2.....	239
<b>Subdivision 104-I—Australian residency ends</b>	240
104-160 Individual or company stops being an Australian resident: CGT event I1 .....	240
104-165 Exception for individuals.....	241
104-170 Trust stops being a resident trust: CGT event I2 .....	242
<b>Subdivision 104-J—CGT events relating to roll-overs</b>	243
104-175 Company ceasing to be member of wholly-owned group after roll-over: CGT event J1.....	243
104-180 Sub-group break-up .....	245
104-182 Consolidated group break-up.....	246
104-185 Change in relation to replacement asset or improved asset after a roll-over under Subdivision 152-E: CGT event J2 .....	246
104-190 Modifying or extending the replacement asset period .....	249
104-195 Trust failing to cease to exist after roll-over under Subdivision 124-N: CGT event J4.....	249

---

---

104-197	Failure to acquire replacement asset and to incur fourth element expenditure after a roll-over under Subdivision 152-E: CGT event J5 .....	251
104-198	Cost of acquisition of replacement asset or amount of fourth element expenditure, or both, not sufficient to cover disregarded capital gain: CGT event J6 .....	252
<b>Subdivision 104-K—Other CGT events</b>		<b>253</b>
104-210	Bankrupt pays amount in relation to debt: CGT event K2 .....	253
104-215	Asset passing to tax-advantaged entity: CGT event K3 .....	254
104-220	CGT asset starts being trading stock: CGT event K4 .....	255
104-225	Special collectable losses: CGT event K5 .....	255
104-230	Pre-CGT shares or trust interest: CGT event K6 .....	257
104-235	Balancing adjustment events for depreciating assets and section 73BA depreciating assets: CGT event K7 .....	260
104-240	Working out capital gain or loss for CGT event K7: general case .....	261
104-245	Working out capital gain or loss for CGT event K7: pooled assets .....	262
104-250	Direct value shifts: CGT event K8 .....	264
104-255	Carried interests: CGT event K9 .....	264
104-260	Certain short-term forex realisation gains: CGT event K10 .....	265
104-265	Certain short-term forex realisation losses: CGT event K11 .....	266
104-270	Foreign hybrids: CGT event K12 .....	266
<b>Subdivision 104-L—Consolidated groups and MEC groups</b>		<b>266</b>
104-500	Loss of pre-CGT status of membership interests in entity becoming subsidiary member: CGT event L1 .....	267
104-505	Where pre-formation intra-group roll-over reduction results in negative allocable cost amount: CGT event L2 .....	268
104-510	Where tax cost setting amounts for retained cost base assets exceeds joining allocable cost amount: CGT event L3 .....	269
104-515	Where no reset cost base assets and excess of net allocable cost amount on joining: CGT event L4 .....	269
104-520	Where amount remaining after step 4 of leaving allocable cost amount is negative: CGT event L5 .....	270
104-525	Error in calculation of tax cost setting amount for joining entity's assets: CGT event L6 .....	270
104-530	Discharged amount of liability differs from amount for allocable cost amount purposes: CGT event L7 .....	273
104-535	Where reduction in tax cost setting amounts for reset cost base assets cannot be allocated: CGT event L8 .....	274
<b>Division 106—Entity making the gain or loss</b>		<b>275</b>
<b>Guide to Division 106</b>		<b>275</b>
106-1	What this Division is about .....	275

---



---

<b>Subdivision 106-A—Partnerships</b>	275
106-5 Partnerships .....	275
<b>Subdivision 106-B—Bankruptcy and liquidation</b>	277
106-30 Effect of bankruptcy .....	278
106-35 Effect of liquidation.....	278
<b>Subdivision 106-C—Absolutely entitled beneficiaries</b>	278
106-50 Absolutely entitled beneficiaries .....	278
<b>Subdivision 106-D—Security holders</b>	279
106-60 Acts by security holders .....	279
<b>Division 108—CGT assets</b>	280
<b>Guide to Division 108</b>	280
108-1 What this Division is about .....	280
<b>Subdivision 108-A—What a CGT asset is</b>	280
108-5 CGT assets.....	280
108-7 Interest in CGT assets as joint tenants .....	281
<b>Subdivision 108-B—Collectables</b>	281
108-10 Losses from collectables to be offset only against gains from collectables .....	281
108-15 Sets of collectables .....	282
108-17 Cost base of a collectable .....	283
<b>Subdivision 108-C—Personal use assets</b>	283
108-20 Losses from personal use assets must be disregarded.....	284
108-25 Sets of personal use assets .....	284
108-30 Cost base of a personal use asset .....	285
<b>Subdivision 108-D—Separate CGT assets</b>	285
<b>Guide to Subdivision 108-D</b>	285
108-50 What this Subdivision is about .....	285
<b>Operative provisions</b>	286
108-55 When is a building a separate asset from land? .....	286
108-60 Depreciating asset that is part of a building is a separate asset.....	286
108-65 Land adjacent to land acquired before 20 September 1985 .....	287
108-70 When is a capital improvement a separate asset? .....	287
108-75 Capital improvements to CGT assets for which a roll-over may be available .....	289
108-80 Deciding if capital improvements are related to each other.....	291
108-85 Meaning of improvement threshold.....	291
<b>Division 109—Acquisition of CGT assets</b>	292
<b>Guide to Division 109</b>	292
109-1 What this Division is about .....	292

---

---

<b>Subdivision 109-A—Operative rules</b>	292
109-5 General acquisition rules .....	293
109-10 When you <i>acquire</i> a CGT asset without a CGT event.....	295
109-15 Exceptions .....	296
<b>Subdivision 109-B—Signposts to other acquisition rules</b>	296
109-50 Effect of this Subdivision .....	296
109-55 Other acquisition rules.....	296
109-60 Acquisition rules outside this Part and Part 3-3.....	302
<b>Division 110—Cost base and reduced cost base</b>	305
<b>Guide to Division 110</b>	305
110-1 What this Division is about .....	305
110-5 Modifications to general rules .....	305
110-10 Rules about cost base not relevant for some CGT events .....	305
<b>Subdivision 110-A—Cost base</b>	307
110-25 General rules about <i>cost base</i> .....	308
110-35 Incidental costs .....	310
110-36 Indexation.....	311
<b>What does <i>not</i> form part of the cost base</b>	312
110-37 Expenditure forming part of cost base or element .....	312
110-38 Exclusions .....	313
110-40 Assets acquired <i>before</i> 7.30 pm on 13 May 1997.....	313
110-43 Partnership interests acquired <i>before</i> 7.30 pm on 13 May 1997.....	314
110-45 Assets acquired <i>after</i> 7.30 pm on 13 May 1997 .....	314
110-50 Partnership interests acquired <i>after</i> 7.30 pm on 13 May 1997.....	317
110-53 Exceptions to application of sections 110-45 and 110-50.....	319
110-54 Debt deductions disallowed by thin capitalisation rules .....	319
<b>Subdivision 110-B—Reduced cost base</b>	319
110-55 General rules about <i>reduced cost base</i> .....	320
110-60 Reduced cost base for partnership assets .....	323
<b>Division 112—Modifications to cost base and reduced cost base</b>	325
<b>Guide to Division 112</b>	325
112-1 What this Division is about .....	325
112-5 Discussion of modifications .....	325
<b>Subdivision 112-A—General modifications</b>	326
112-15 General rule for replacement modifications.....	326
112-20 Market value substitution rule .....	326
112-25 Split, changed or merged assets.....	328
112-30 Apportionment rules.....	329
112-35 Assumption of liability rule .....	330
112-37 Put options.....	331

---

---

<b>Subdivision 112-B—Finding tables for special rules</b>	331
112-40 Effect of this Subdivision .....	332
112-45 CGT events.....	332
112-48 Gifts acquired by associates.....	333
112-50 Main residence .....	333
112-53 Scrip for scrip roll-over .....	334
112-53AA Statutory licences.....	334
112-53A MDO roll-over.....	335
112-53B Exchange of stapled ownership interests for units in a unit trust.....	335
112-54 Demergers .....	335
112-55 Effect of you dying .....	336
112-60 Bonus shares or units.....	336
112-65 Rights .....	336
112-70 Convertible interests.....	337
112-75 Employee share schemes .....	337
112-77 Exchangeable interests .....	337
112-80 Leases.....	338
112-85 Options .....	339
112-87 Residency .....	339
112-90 An asset stops being a pre-CGT asset.....	340
112-92 Demutualisation of certain entities .....	340
112-95 Transfer of tax losses and net capital losses within wholly-owned groups of companies.....	340
112-97 Modifications outside this Part and Part 3-3.....	341
<b>Subdivision 112-C—Replacement-asset roll-overs</b>	348
112-100 Effect of this Subdivision .....	348
112-105 What is a replacement-asset roll-over?.....	348
112-110 How is the cost base of the replacement asset modified? .....	349
112-115 Table of replacement-asset roll-overs.....	349
<b>Subdivision 112-D—Same-asset roll-overs</b>	350
112-135 Effect of this Subdivision .....	350
112-140 What is a same-asset roll-over? .....	351
112-145 How is the cost base of the asset modified? .....	351
112-150 Table of same-asset roll-overs .....	351
<b>Division 114—Indexation of cost base</b>	353
114-1 Indexing elements of cost base .....	353
114-5 When indexation relevant.....	354
114-10 Requirement for 12 months ownership.....	355
114-15 Cost base modifications.....	357
114-20 When expenditure is incurred for roll-overs .....	358

---

---

<b>Division 115—Discount capital gains and trusts’ net capital gains</b>	360
<b>Guide to Division 115</b>	360
115-1 What this Division is about .....	360
<b>Subdivision 115-A—Discount capital gains</b>	361
<b>What is a discount capital gain?</b>	361
115-5 What is a <i>discount capital gain</i> ? .....	361
115-10 Who can make a discount capital gain? .....	361
115-15 Discount capital gain must be made after 21 September 1999 .....	362
115-20 Discount capital gain must not have indexed cost base .....	362
115-25 Discount capital gain must be on asset acquired at least 12 months before .....	363
115-30 Special rules about time of acquisition .....	364
<b>What are not discount capital gains?</b>	367
115-40 Capital gain resulting from agreement made within a year of acquisition .....	367
115-45 Capital gain from equity in an entity with newly acquired assets .....	367
115-50 Discount capital gain from equity in certain entities .....	370
<b>Subdivision 115-B—Discount percentage</b>	372
115-100 What is the <i>discount percentage</i> for a discount capital gain .....	372
<b>Subdivision 115-C—Rules about trusts with net capital gains</b>	372
<b>Guide to Subdivision 115-C</b>	372
115-200 What this Division is about .....	372
<b>Operative provisions</b>	373
115-210 When this Subdivision applies .....	373
115-215 Assessing presently entitled beneficiaries .....	374
115-220 Special rule for assessing trustee under paragraph 98(3)(b) of the <i>Income Tax Assessment Act 1936</i> .....	376
115-222 Special rule for assessing trustee under subsection 98(4) of the <i>Income Tax Assessment Act 1936</i> .....	376
115-225 Special rule for assessing trustee under section 99A of the <i>Income Tax Assessment Act 1936</i> .....	377
115-230 Assessing capital gains of resident testamentary trusts .....	377
<b>Subdivision 115-D—Tax relief for shareholders in listed investment companies</b>	380
<b>Guide to Subdivision 115-D</b>	380
115-275 What this Subdivision is about .....	380
<b>Operative provisions</b>	380
115-280 Deduction for certain dividends .....	380
115-285 Meaning of <i>LIC capital gain</i> .....	383

---

---

115-290	Meaning of <i>listed investment company</i> .....	384
115-295	Maintaining records.....	385
<b>Division 116—Capital proceeds</b>		<b>386</b>
<b>Guide to Division 116</b>		<b>386</b>
116-1	What this Division is about .....	386
116-5	General rules.....	387
116-10	Modifications to general rules .....	387
<b>General rules</b>		<b>388</b>
116-20	General rules about <i>capital proceeds</i> .....	388
<b>Modifications to general rules</b>		<b>390</b>
116-25	Table of modifications to the general rules.....	390
116-30	Market value substitution rule: modification 1 .....	392
116-35	Companies and trusts that are not widely held .....	394
116-40	Apportionment rule: modification 2 .....	395
116-45	Non-receipt rule: modification 3 .....	396
116-50	Repaid rule: modification 4 .....	396
116-55	Assumption of liability rule: modification 5.....	397
116-60	Misappropriation rule: modification 6 .....	397
<b>Special rules</b>		<b>398</b>
116-65	Disposal etc. of a CGT asset the subject of an option.....	398
116-70	Option requiring both acquisition and disposal etc.....	398
116-75	Special rule for CGT event happening to a lease.....	399
116-80	Special rule if CGT asset is shares or an interest in a trust .....	399
116-85	Section 47A of 1936 Act applying to rolled-over asset .....	399
116-95	Company changes residence from an unlisted country .....	400
116-100	Gifts of property .....	402
116-105	Conservation covenants.....	402
<b>Division 118—Exemptions</b>		<b>404</b>
<b>Guide to Division 118</b>		<b>404</b>
118-1	What this Division is about .....	404
<b>Subdivision 118-A—General exemptions</b>		<b>405</b>
<b>Exempt assets</b>		<b>406</b>
118-5	Cars, motor cycles and valour decorations .....	406
118-10	Collectables and personal use assets.....	406
118-12	Assets used to produce exempt income etc.....	407
118-13	Shares in a PDF .....	408
<b>Anti-overlap provisions</b>		<b>409</b>
118-20	Reducing capital gains if amount otherwise assessable.....	409
118-21	Carried interests.....	411
118-22	Superannuation lump sums and employment termination payments.....	412

---

---

118-24	Depreciating assets and section 73BA depreciating assets .....	412
118-25	Trading stock .....	412
118-27	Division 230 financial arrangements .....	413
118-30	Film copyright .....	414
118-35	Research and development .....	414
<b>Exempt or loss-denying transactions</b>		415
118-37	Compensation, damages etc. ....	415
118-40	Expiry of a lease .....	418
118-42	Transfer of stratum units.....	418
118-45	Sale of rights to mine.....	418
118-55	Foreign currency hedging gains and losses .....	419
118-60	Certain gifts .....	419
118-65	Later distributions of personal services income.....	420
118-70	Transactions by exempt entities.....	420
118-75	Marriage or relationship breakdown settlements .....	420
<b>Boat capital gains</b>		421
118-80	Reduction of boat capital gain .....	421
<b>Subdivision 118-B—Main residence</b>		421
<b>Guide to Subdivision 118-B</b>		421
118-100	What this Subdivision is about .....	421
118-105	Map of this Subdivision.....	423
<b>Basic case and concepts</b>		424
118-110	Basic case .....	424
118-115	Meaning of <i>dwelling</i> .....	424
118-120	Extension to adjacent land.....	425
118-125	Meaning of <i>ownership period</i> .....	425
118-130	Meaning of <i>ownership interest</i> in land or a dwelling .....	425
<b>Rules that may extend the exemption</b>		426
118-135	Moving into a dwelling.....	426
118-140	Changing main residences .....	426
118-145	Absences.....	427
118-150	If you build, repair or renovate a dwelling .....	428
118-155	Where individual referred to in section 118-150 dies.....	428
118-160	Destruction of dwelling and sale of land .....	429
<b>Rules that may limit the exemption</b>		430
118-165	Separate CGT event for adjacent land or other structures .....	430
118-170	Spouse having different main residence .....	430
118-175	Dependent child having different main residence.....	431
<b>Roll-overs under Subdivision 126-A</b>		431
118-178	Previous roll-over under Subdivision 126-A .....	431

---

---

118-180 Acquisition of dwelling from company or trust on marriage or relationship breakdown—roll-over provision applying.....	432
<b>Partial exemption rules</b>	432
118-185 Partial exemption where dwelling was your main residence during part only of ownership period .....	432
118-190 Use of dwelling for producing assessable income .....	433
118-192 Special rule for first use to produce income .....	435
<b>Dwellings acquired from deceased estates</b>	436
118-195 Dwelling acquired from a deceased estate.....	436
118-197 Special rule for surviving joint tenant.....	438
118-200 Partial exemption for deceased estate dwellings.....	438
118-205 Adjustment if dwelling inherited from deceased individual .....	439
118-210 Trustee acquiring dwelling under will .....	440
<b>Subdivision 118-D—Insurance and superannuation</b>	442
118-300 Insurance policies .....	442
118-305 Superannuation.....	443
118-310 RSA's .....	444
118-313 Superannuation agreements under the Family Law Act .....	444
118-315 Segregated exempt assets of life insurance companies.....	444
118-320 Segregated current pension assets of a complying superannuation entity.....	445
<b>Subdivision 118-E—Units in pooled superannuation trusts</b>	445
118-350 Units in pooled superannuation trusts.....	445
<b>Subdivision 118-F—Venture capital investment</b>	445
<b>Guide to Subdivision 118-F</b>	445
118-400 What this Subdivision is about .....	445
<b>Operative provisions</b>	447
118-405 Exemption for certain foreign venture capital investments through venture capital limited partnerships.....	447
118-407 Exemption for certain venture capital investments through early stage venture capital limited partnerships.....	448
118-410 Exemption for certain foreign venture capital investments through Australian venture capital funds of funds.....	451
118-415 Exemption for certain venture capital investments by foreign residents.....	454
118-420 Meaning of <i>eligible venture capital partner</i> etc. ....	455
118-425 Meaning of <i>eligible venture capital investment</i> —investments in companies.....	457
118-427 Meaning of <i>eligible venture capital investment</i> —investments in unit trusts.....	464
118-428 Additional investment requirements for ESVCLPs .....	471
118-430 Meaning of <i>at risk</i> .....	472

---

---

118-435 Special rule relating to investment in foreign resident holding companies.....	472
118-440 Meaning of <i>permitted entity value</i> .....	473
118-445 Meaning of <i>committed capital</i> .....	476
<b>Subdivision 118-G—Venture capital: investment by superannuation funds for foreign residents</b>	476
<b>Guide to Subdivision 118-G</b>	476
118-500 What this Subdivision is about .....	476
118-505 Exemption for certain foreign venture capital .....	477
118-510 Meaning of <i>resident investment vehicle</i> .....	477
118-515 Meaning of <i>venture capital entity</i> .....	478
118-520 Meaning of <i>superannuation fund for foreign residents</i> .....	479
118-525 Meaning of <i>venture capital equity</i> .....	479
<b>Subdivision 118-H—Demutualisation of Tower Corporation</b>	481
118-550 Demutualisation of Tower Corporation .....	481
<b>Division 121—Record keeping</b>	483
<b>Guide to Division 121</b>	483
121-10 What this Division is about .....	483
<b>Operative provisions</b>	483
121-20 What records you must keep.....	483
121-25 How long you must retain the records .....	485
121-30 Exceptions .....	486
121-35 Asset register entries.....	486
<b>Part 3-3—Capital gains and losses: special topics</b>	488
<b>Division 122—Roll-over for the disposal of assets to, or the creation of assets in, a wholly-owned company</b>	488
<b>Guide to Division 122</b>	488
122-1 What this Division is about .....	488
<b>Subdivision 122-A—Disposal or creation of assets by an individual or trustee to a wholly-owned company</b>	489
<b>Guide to Subdivision 122-A</b>	489
122-5 What this Subdivision is about .....	489
<b>When is a roll-over available</b>	490
122-15 Disposal or creation of assets—wholly-owned company .....	490
122-20 What you receive for the trigger event .....	490
122-25 Other requirements to be satisfied .....	491
122-35 What if the company undertakes to discharge a liability (disposal case) .....	493
122-37 Rules for working out what a liability in respect of an asset is.....	494

---



---

<b>Replacement-asset roll-over if you dispose of a CGT asset</b>	495
122-40 Disposal of a CGT asset .....	495
<b>Replacement-asset roll-over if you dispose of all the assets of a business</b>	496
122-45 Disposal of all the assets of a business .....	496
122-50 All assets acquired on or after 20 September 1985 .....	496
122-55 All assets acquired before 20 September 1985 .....	497
122-60 Assets acquired before and after 20 September 1985 .....	498
<b>Replacement-asset roll-over for a creation case</b>	499
122-65 Creation of asset .....	499
<b>Same-asset roll-over consequences for the company (disposal case)</b>	499
122-70 Consequences for the company (disposal case) .....	499
<b>Same-asset roll-over consequences for the company (creation case)</b>	500
122-75 Consequences for the company (creation case) .....	500
<b>Subdivision 122-B—Disposal or creation of assets by partners to a wholly-owned company</b>	501
<b>Guide to Subdivision 122-B</b>	501
122-120 What this Subdivision is about .....	501
<b>When is a roll-over available</b>	502
122-125 Disposal or creation of assets—wholly-owned company .....	502
122-130 What the partners receive for the trigger event .....	502
122-135 Other requirements to be satisfied .....	503
122-140 What if the company undertakes to discharge a liability (disposal case) .....	505
122-145 Rules for working out what a liability in respect of an interest in an asset is .....	507
<b>Replacement-asset roll-over if partners dispose of a CGT asset</b>	508
122-150 Capital gain or loss disregarded .....	508
122-155 Disposal of post-CGT or pre-CGT interests .....	508
122-160 Disposal of both post-CGT and pre-CGT interests .....	508
<b>Replacement-asset roll-over if the partners dispose of all the assets of a business</b>	509
122-170 Capital gain or loss disregarded .....	509
122-175 Other consequences .....	509
122-180 All interests acquired on or after 20 September 1985 .....	510
122-185 All interests acquired before 20 September 1985 .....	510
122-190 Interests acquired before and after 20 September 1985 .....	511
<b>Replacement-asset roll-over for a creation case</b>	512
122-195 Creation of asset .....	512

---

---

<b>Same-asset roll-over consequences for the company (disposal case)</b>	513
122-200 Consequences for the company (disposal case).....	513
<b>Same-asset roll-over consequences for the company (creation case)</b>	514
122-205 Consequences for the company (creation case).....	514



## **Division 58—Capital allowances for depreciating assets previously owned by an exempt entity**

### **Table of Subdivisions**

	Guide to Division 58
58-A	Application
58-B	Calculating decline in value of privatised assets under Division 40

### **Guide to Division 58**

#### **58-1 What this Division is about**

This Division sets out special rules that apply in calculating deductions for the decline in value of depreciating assets and balancing adjustments for assets previously owned by an exempt entity if the assets:

- continue to be owned by that entity after the entity becomes taxable; or
- are acquired from that entity, in connection with the acquisition of a business, by a purchaser that is a taxable entity.

There is a choice of 2 methods for each depreciating asset:

- the notional written down value method; and
- the undeducted pre-existing audited book value method.

### **Subdivision 58-A—Application**

#### **Table of sections**

58-5	Application of Division
58-10	When an asset is acquired in connection with the acquisition of a business

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 58-5

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**58-5 Application of Division**

- (1) This Division applies in 2 situations.

*Entity sale*

- (2) The first (an *entity sale situation*) is where:
- (a) at a particular time on or after 1 July 2001, an entity is an \*exempt entity; and
  - (b) just after that time, the entity's \*ordinary income or \*statutory income becomes to any extent assessable income.
- (3) In an entity sale situation:
- (a) the entity is a *transition entity*; and
  - (b) the time when the entity's \*ordinary income or \*statutory income becomes to that extent assessable is the *transition time*; and
  - (c) the income year in which the \*transition time occurs is the *transition year* for the entity; and
  - (d) the \*depreciating assets the \*transition entity \*held just before the transition time are *privatised assets*.

*Asset sale*

- (4) The second (an *asset sale situation*) is where:
- (a) at a particular time on or after 1 July 2001, an entity (the *purchaser*) whose \*ordinary income or statutory income is to any extent assessable acquires a \*depreciating asset from the Commonwealth, a State, a Territory or an \*exempt entity; and
  - (b) the asset is acquired in connection with the acquisition of a \*business from the Commonwealth, the State, the Territory or the exempt entity.
- (5) In an asset sale situation:
- (a) the Commonwealth, the State, the Territory or the \*exempt entity is the *tax exempt vendor*; and
  - (b) the time when the \*depreciating asset is acquired is the *acquisition time*; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) the income year in which the \*acquisition time occurs is the *acquisition year*; and
- (d) each \*depreciating asset the purchaser acquires from the \*tax exempt vendor at the acquisition time is a *privatised asset*.

**58-10 When an asset is acquired in connection with the acquisition of a business**

- (1) A \*depreciating asset is taken to be acquired in connection with the acquisition of a \*business from the Commonwealth, the State, the Territory or the \*exempt entity if and only if:
  - (a) the asset was used by the Commonwealth, the State, the Territory or the exempt entity in carrying on a business and the purchaser or another entity uses the asset in carrying on the business; or
  - (b) subsection (2) applies.
- (2) This subsection applies if:
  - (a) the asset was used by the Commonwealth, the State, the Territory or the \*exempt entity in performing functions, or engaging in activities, that did not constitute the carrying on of a \*business by the Commonwealth, the State, the Territory or the exempt entity and the asset is used by the purchaser or another entity in performing those functions or engaging in those activities as part of carrying on a business; or
  - (b) all of these subparagraphs apply:
    - (i) the acquisition by the purchaser of the asset was connected with the acquisition of another asset by the purchaser or another entity from the Commonwealth, the State, the Territory or the exempt entity or from an \*associate of the Commonwealth, the State, the Territory or the exempt entity;
    - (ii) ownership of the other asset gives the purchaser or other entity a right, or imposes on the purchaser or other entity an obligation, to perform functions or engage in activities as part of the carrying on of a business or confers on the purchaser or other entity a commercial advantage or opportunity in connection with performing

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 58** Capital allowances for depreciating assets previously owned by an exempt entity

**Section 58-10**

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functions or engaging in activities as part of the carrying on of a business;

- (iii) the asset is used by the purchaser or other entity in performing those functions or engaging in those activities under the right or obligation or in taking the benefit of the advantage or opportunity; or

- (c) the asset was acquired by the purchaser under an \*arrangement under which the purchaser or another entity acquired another asset from the Commonwealth, the State, the Territory or the exempt entity or from an associate of the Commonwealth, the State, the Territory or the exempt entity and:

- (i) the other asset is taken by paragraph (1)(a), or by paragraph (a) or (b) of this subsection; or

- (ii) where the other asset is not a depreciating asset, it would, if it were a depreciating asset, be taken by paragraph (1)(a), or by paragraph (a) or (b) of this subsection;

to be acquired in connection with the acquisition of a business from the Commonwealth, the State, the Territory or the exempt entity.

- (3) Paragraphs (2)(a), (b) and (c) do not apply if the asset is used by the purchaser solely to \*derive assessable income from the provision of office or residential accommodation.

**Subdivision 58-B—Calculating decline in value of privatised assets under Division 40**

**Table of sections**

58-60	Purpose of rules in this Subdivision
58-65	Choice of method to work out cost of privatised asset
58-70	Application of Division 40
58-75	Meaning of <i>notional written down value</i>
58-80	Meaning of <i>undeducted pre-existing audited book value</i>
58-85	Pre-existing audited book value of depreciating asset
58-90	Method and effective life for transition entity

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **58-60 Purpose of rules in this Subdivision**

This Subdivision sets out rules that affect the way in which the \*transition entity or the purchaser work out the decline in value of, and balancing adjustments for, \*privatised assets under Division 40 after the \*transition time or the \*acquisition time.

### **58-65 Choice of method to work out cost of privatised asset**

- (1) The \*transition entity or the purchaser has a choice to work out the first element of the \*cost of each \*privatised asset.
- (2) The choice is to use either:
  - (a) the \*notional written down value of the asset; or
  - (b) the \*undeducted pre-existing audited book value (if any) of the asset.
- (3) The choice must be made:
  - (a) for the \*transition entity—by the day on which the transition entity lodges its \*income tax return for the \*transition year; or
  - (b) for the purchaser—by the day on which the purchaser lodges the purchaser's income tax return for the \*acquisition year; or within a further period allowed by the Commissioner.
- (4) The choice, once made, cannot be changed.

### **58-70 Application of Division 40**

#### *Application of Division 40*

- (1) The \*transition entity and the purchaser work out the decline in value of, and the effect of a \*balancing adjustment event occurring for, each \*privatised asset using Division 40 (Capital allowances) as if the asset had been acquired under a contract entered into on or after 1 July 2001.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 58** Capital allowances for depreciating assets previously owned by an exempt entity

Section 58-75

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*Entity sale situation*

- (2) Division 40 applies to a \*privatised asset \*held by the \*transition entity as if the asset had not been used, or \*installed ready for use, for any purpose before the \*transition time.
- (3) The first element of the \*cost to the \*transition entity at the \*transition time is the \*notional written down value of the asset or the \*undeducted pre-existing audited book value of the asset (depending on the choice made for the asset).
- (4) No amount incurred before the \*transition time is included in the second element of the \*cost of a \*privatised asset.

*Asset sale situation*

- (5) The first element of the \*cost of a \*privatised asset to the purchaser at the \*acquisition time is the sum of:
  - (a) the \*notional written down value of the asset or the \*undeducted pre-existing audited book value of the asset (depending on the choice made for the asset); and
  - (b) the amount of any incidental costs to the purchaser in acquiring the asset.

**58-75 Meaning of *notional written down value***

- (1) The ***notional written down value*** of a \*privatised asset is its \*adjustable value in the hands of:
  - (a) the \*transition entity just before the \*transition time; or
  - (b) the \*tax exempt vendor just before the \*acquisition time;worked out using the assumptions in this section.

*Application of Division 40*

- (2) Assume that Division 40 had always applied to work out the decline in value of the \*privatised asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Use for taxable purposes*

- (3) Assume that, in applying Division 40 to the \*privatised asset, it had always been used by the \*transition entity or the \*tax exempt vendor wholly for \*taxable purposes.

*Cost and acquisition time: exempt Australian government agency*

- (4) If the \*transition entity or the \*tax exempt vendor was an \*exempt Australian government agency just before the \*transition time and had acquired the \*privatised asset from another exempt Australian government agency:
- (a) assume that the transition entity or tax exempt vendor acquired it at the time when it was acquired or constructed by the other exempt Australian government agency and that the first element of its \*cost to the transition entity or tax exempt vendor is the amount that was its cost to the other exempt Australian government agency; or
  - (b) if it had, before its acquisition by the transition entity or tax exempt vendor, been successively \*held by 2 or more exempt Australian government agencies—assume that:
    - (i) the transition entity or tax exempt vendor acquired it at the time when it was acquired or constructed by the first of those exempt Australian government agencies that owned it; and
    - (ii) the first element of its cost to the transition entity or tax exempt vendor is the sum of the amount that was the first element of its cost to the first of those exempt Australian government agencies that owned it and any amount included in the second element of its cost for that first agency or a later successive agency.

*Effective life*

- (5) Assume that:
- (a) the \*transition entity or the \*tax exempt vendor had chosen to use an \*effective life determined by the Commissioner for the \*privatised asset as in force at the \*transition time or the \*acquisition time; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Section 58-80**

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(b) subsection 40-95(2) did not apply.

(5A) Assume that section 40-102 did not apply to a \*privatised asset unless all of the following are satisfied:

- (a) it is an entity sale situation within the meaning of section 58-5;
- (b) a \*capped life applies to the asset under subsection 40-102(4) or (5) at both the asset's \*start time and the \*transition time;
- (c) the \*transition entity chooses, for the purposes of this section, to have section 40-102 apply to the asset.

If section 40-102 is to be applied to the asset, disregard paragraphs 40-102(2)(a) and (b) and assume that the relevant time for the purposes of the application of that section to the asset were the transition time.

(6) Assume also that section 40-110 (about recalculating effective life) did not apply.

**58-80 Meaning of *undeducted pre-existing audited book value***

- (1) The *undeducted pre-existing audited book value* of a \*privatised asset is its \*adjustable value in the hands of:
  - (a) the \*transition entity just before the \*transition time; or
  - (b) the \*tax exempt vendor just before the \*acquisition time; worked out using the assumptions in this section.

*Application of Division 40*

- (2) Assume that Division 40 had always applied to work out the decline in value of the \*privatised asset.

*Use for taxable purposes*

- (3) Assume that, in applying Division 40 to the \*privatised asset, it had always been used by the \*transition entity or the \*tax exempt vendor wholly for \*taxable purposes.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Cost*

- (4) Assume that:
- (a) the first element of the \*privatised asset's \*cost to the \*transition entity or the \*tax exempt vendor is its \*pre-existing audited book value as at the latest time (the *test time*) at which it had a pre-existing audited book value; and
  - (b) no amount was included in the second element of the asset's cost before the test time; and
  - (c) any amount included in the second element of the asset's cost after the test time had been incurred by the transition entity or the tax exempt vendor.

*Acquisition time*

- (5) Assume that the \*transition entity or the \*tax exempt vendor had acquired the \*privatised asset at the test time.

*Effective life*

- (6) Assume that:
- (a) the \*transition entity or the \*tax exempt vendor had chosen to use an \*effective life determined by the Commissioner for the \*privatised asset as in force at the \*transition time or the \*acquisition time; and
  - (b) subsection 40-95(2) did not apply.

Note: Section 40-102 does not apply to a privatised asset for the purposes of this section.

- (7) Assume also that section 40-110 (about recalculating effective life) did not apply.

**58-85 Pre-existing audited book value of depreciating asset**

- (1) A \*privatised asset has a *pre-existing audited book value* if:
- (a) a balance sheet, as at the end of an annual accounting period (the *balance date*), that was prepared as part of the final accounts of the Commonwealth, a State, a Territory or an \*exempt entity for that period showed the asset as an asset of the relevant entity and specified a value for it; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-15** Non-assessable income

**Division 58** Capital allowances for depreciating assets previously owned by an exempt entity

Section 58-90

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- (b) a qualified independent auditor who was engaged, or was required by law, to undertake an audit of those accounts had prepared and signed, before 4 August 1997, a final audit report on those accounts; and
  - (c) the report did not state that the auditor was not satisfied that the specified value fairly represented the value of the asset.
- The asset is taken to have had a *pre-existing audited book value* at the balance date of an amount equal to the specified value.
- (2) If a balance sheet did not specify a value for the asset but specified a total value for 2 or more assets including the asset, the balance sheet is taken to have specified as the value of the asset so much of that total value as is reasonably attributable to the asset.

**58-90 Method and effective life for transition entity**

- (1) The \*transition entity must, in working out the decline in value of a \*privatised asset, use the \*diminishing value method or the \*prime cost method for the asset that it used to work out the \*notional written down value, or the \*undeducted pre-existing audited book value, of the asset.
- (2) In working out the decline in value of a \*privatised asset held by a \*transition entity:
  - (a) if section 40-102 applied to the asset for the purposes of subsection 58-75(5A)—section 40-102 applies to the asset and applies as if the relevant time for the asset for the purposes of that section were the \*transition time; or
  - (b) if section 40-102 did not apply to the asset for the purposes of subsection 58-75(5A) or section 58-80—section 40-102 does not apply to the asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 59—Particular amounts of non-assessable non-exempt income**

### **Guide to Division 59**

#### **59-1 What this Division is about**

This Division details particular amounts that are non-assessable non-exempt income.

#### **Table of sections**

##### **Operative provisions**

59-5	Bonus payments made to certain older Australians
59-10	Compensation under firearms surrender arrangements
59-15	Mining payments
59-20	Taxable amounts relating to franchise fees windfall tax
59-25	Taxable amounts relating to Commonwealth places windfall tax
59-30	Amounts you must repay
59-35	Amounts that would be mutual receipts but for prohibition on distributions to members
59-40	Issue of rights
59-45	Tax bonus for the 2007-08 income year
59-50	Clean-up and Restoration Grants for 2009 Victorian bushfires

#### **Operative provisions**

##### **59-5 Bonus payments made to certain older Australians**

A payment made to you under the *A New Tax System (Bonuses for Older Australians) Act 1999* is not assessable income and is not \*exempt income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 59-10 Compensation under firearms surrender arrangements

A payment made to you by way of compensation under \*firearms surrender arrangements for any loss of business is not assessable income and is not \*exempt income.

### 59-15 Mining payments

- (1) These are not assessable income and are not \*exempt income:
  - (a) a \*mining payment made to a \*distributing body;
  - (b) a mining payment made to one or more \*Aboriginals, or applied for their benefit.
- (2) A payment:
  - (a) made to a \*distributing body; or
  - (b) made to one or more \*Aboriginals, or applied for their benefit;is not assessable income and is not \*exempt income if the payment is made by a \*distributing body out of a \*mining payment that it has received.
- (3) A payment made to a \*distributing body by another distributing body, out of a \*mining payment received by the other distributing body, is taken to be a mining payment for the purposes of:
  - (a) any further applications of subsection (2); and
  - (b) any further applications of this subsection.
- (4) Subsection (2) does not apply to a payment by a \*distributing body for the purposes of meeting its administrative costs.
- (5) This section does not apply to an amount paid to or applied for the benefit of a person if it is remuneration or consideration for goods or services provided by that person.

### 59-20 Taxable amounts relating to franchise fees windfall tax

Taxable amounts on which tax is imposed by the *Franchise Fees Windfall Tax (Imposition) Act 1997* are not assessable income and are not \*exempt income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **59-25 Taxable amounts relating to Commonwealth places windfall tax**

Taxable amounts on which tax is imposed by the *Commonwealth Places Windfall Tax (Imposition) Act 1998* are not assessable income and are not \*exempt income.

### **59-30 Amounts you must repay**

- (1) An amount you receive is not assessable income and is not \*exempt income for an income year if:
  - (a) you must repay it; and
  - (b) you repay it in a later income year; and
  - (c) you cannot deduct the repayment for any income year.
- (2) It does not matter if:
  - (a) you received the amount as part of a larger amount; or
  - (b) the obligation to repay existed when you received the amount or it came into existence later.
- (3) This section does not apply to an amount you must repay because you received a lump sum as compensation or damages for a wrong or injury you suffered in your occupation.

### **59-35 Amounts that would be mutual receipts but for prohibition on distributions to members**

An amount of \*ordinary income of an entity is not assessable income and not \*exempt income if:

- (a) the amount would be a mutual receipt, but for the entity's constituent document preventing the entity from making any \*distribution, whether in money, property or otherwise, to its members; and
- (b) apart from this section, the amount would be assessable income only because of section 6-5.

### **59-40 Issue of rights**

- (1) The \*market value, as at the time of issue (the *issue time*), of rights issued to you:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 59-45

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(a) by a company to \*acquire \*shares in that company; or  
(b) by a trustee of a unit trust to acquire units in that trust;  
is not assessable income and is not \*exempt income as at the issue time if the conditions in subsection (2) are satisfied.

(2) The conditions are as follows:

- (a) at the issue time, you must already own \*shares in the company or units in the unit trust (the *original interests*);
- (b) the rights must be issued to you because of your ownership of the original interests;
- (c) the original interests and the rights must not be \*revenue assets or \*trading stock at the issue time;
- (d) the rights must not have been acquired (within the meaning of section 139G of the *Income Tax Assessment Act 1936*) under an \*employee share scheme;
- (e) the original interests and the rights must not be \*traditional securities;
- (f) the original interests must not be \*convertible interests.

**59-45 Tax bonus for the 2007-08 income year**

A tax bonus paid in accordance with the *Tax Bonus for Working Australians Act (No. 2) 2009* is not assessable income and is not \*exempt income.

**59-50 Clean-up and Restoration Grants for 2009 Victorian bushfires**

The following payments administered by the Rural Finance Corporation of Victoria in relation to the Victorian bushfires of 2009 are not assessable income and are not \*exempt income:

- (a) Clean-up and Restoration Grants for primary producers;
- (b) Clean-up and Restoration Grants for small businesses.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Part 2-20—Tax offsets**

### **Division 61—Generally applicable tax offsets**

#### **Table of Subdivisions**

61-G	Private health insurance offset complementary to Part 2-2 of the Private Health Insurance Act 2007
61-I	First child tax offset (baby bonus)
61-IA	Child care tax offset
61-J	25% entrepreneurs' tax offset
61-K	Mature age worker tax offset
61-L	Tax offset for Medicare levy surcharge (lump sum payments in arrears)
61-M	Education expenses tax offset

#### **Subdivision 61-G—Private health insurance offset complementary to Part 2-2 of the Private Health Insurance Act 2007**

#### **Guide to Subdivision 61-G**

##### **61-200 What this Subdivision is about**

You can choose to claim a tax offset for a premium, or an amount in respect of a premium, paid under a private health insurance policy instead of having the premium reduced under Division 23 of the *Private Health Insurance Act 2007* or receiving a payment under Division 26 of that Act.

#### **Table of sections**

##### **Operative provisions**

61-205	Entitlement to the private health insurance tax offset
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-20** Tax offsets

**Division 61** Generally applicable tax offsets

Section 61-205

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- 61-210 Amount of the private health insurance tax offset
- 61-215 Tax offset after a person 65 years or over ceases to be covered by policy
- 61-220 How to work out the incentive amount

**Operative provisions**

**61-205 Entitlement to the private health insurance tax offset**

- (1) If you are an individual (other than an individual in the capacity of an employer), you are entitled to a \*tax offset for the 2007-08 income year or a later income year if:
  - (a) a premium, or an amount in respect of a premium, was paid by you, or by your employer as a \*fringe benefit for you, under a complying private health insurance policy (within the meaning of the *Private Health Insurance Act 2007*), on or after 1 July 2007; and
  - (b) the premium, or amount in respect of a premium, was paid during the income year; and
  - (c) each person insured under the complying health insurance policy during the period covered by the premium or amount is, for the whole of the time that he or she is insured under the policy during that period, an eligible person within the meaning of section 3 of the *Health Insurance Act 1973*, or treated as such because of section 6, 6A or 7 of that Act.
- (2) You are also entitled to the \*tax offset if:
  - (a) you are a trustee who is liable to be assessed under section 98 of the *Income Tax Assessment Act 1936* in respect of a share of the net income of a trust estate; and
  - (b) the beneficiary who is presently entitled to the share of the income of the trust estate would be entitled to the tax offset because of subsection (1).
- (3) However, you are not entitled to the \*tax offset in respect of the payment of any premium, or any amount in respect of a premium, if:
  - (a) you have received an amount under Division 26 of the *Private Health Insurance Act 2007* in relation to the payment; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the premium, or the amount in respect of a premium, was less than it would otherwise have been because of the operation of Division 23 of that Act.

Note: In certain circumstances you can get a refund of the tax offset under Division 67.

### **61-210 Amount of the private health insurance tax offset**

- (1) The amount of the \*tax offset for an income year is the sum of:
- (a) 30% of the amount of the premium, or of the amount in respect of a premium, paid by you, or by your employer as a \*fringe benefit for you, under the policy in respect of days in the income year on which no person covered by the policy was aged 65 years or over; and
  - (b) 35% of the amount of the premium, or of the amount in respect of a premium, paid by you, or by your employer as a fringe benefit for you, under the policy in respect of days in the income year on which:
    - (i) at least one person covered by the policy was aged 65 years or over; and
    - (ii) no person covered by the policy was aged 70 years or over; and
  - (c) 40% of the amount of the premium, or of the amount in respect of a premium, paid by you, or by your employer as a fringe benefit for you, under the policy in respect of days in the income year on which at least one person covered by the policy was aged 70 years or over.
- (2) However, if, before 1 January 1999, a person was registered, or eligible to be registered, under the *Private Health Insurance Incentives Act 1997* in respect of the policy for the income year, the amount of the \*tax offset for the income year is the greater of:
- (a) the amount worked out under subsection (1); and
  - (b) the \*incentive amount for the policy for the income year.
- (3) If, because of the operation of Division 23 of the *Private Health Insurance Act 2007*, an amount paid by you, or by your employer as a \*fringe benefit for you, under a policy was less than the amount that would otherwise have been payable, the \*tax offset in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

respect of the amount paid is reduced by the amount of the difference.

**61-215 Tax offset after a person 65 years or over ceases to be covered by policy**

(1) If:

- (a) at any time, the amount of a \*tax offset in respect of premiums payable under an insurance policy (the *original policy*) was 35% or 40% of the premiums payable under the policy because a person aged 65 years or over (the *entitling person*) was insured under the original policy; and
- (b) at that time, another person (other than a dependent child) was insured under the original policy; and
- (c) the entitling person subsequently ceases to be insured under the policy;

subsections 61-210(1) and (2) apply in relation to a complying health insurance policy (whether or not the original policy) under which the other person is insured (other than for the purposes of working out the \*incentive amount) as if:

- (d) the entitling person were also insured under that policy; and
  - (e) the entitling person were the same age as the age at which he or she ceased to be insured under the original policy.
- (2) Subsection (1) ceases to apply if a person (other than a dependent child) who was not insured under the original policy at the time the entitling person ceased to be insured under it becomes insured under the complying health insurance policy.
- (3) Subsection (1) does not apply if its application would result in the amount of the \*tax offset under subsection 61-210(1) or (2) being less than it would otherwise have been.
- (4) Paragraph (1)(a) applies in relation to an amount of a \*tax offset that is 35% or 40% of the premiums payable under an insurance policy whether the tax offset was available under this Subdivision or Subdivision 61-H as in force before 1 July 2007.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(5) In this section:

**complying health insurance policy** has the same meaning as in the *Private Health Insurance Act 2007*.

**dependent child:**

- (a) has the meaning given in the *Private Health Insurance Act 2007*; and
- (b) in paragraph (1)(b), in relation to a time before 1 July 2007, includes a dependent child within the meaning of the *Private Health Insurance Incentives Act 1998*.

### 61-220 How to work out the incentive amount

(1) The **incentive amount** for a complying private health insurance policy (within the meaning of the *Private Health Insurance Act 2007*) for an income year is the amount worked out under this table:

<b>Incentive amount</b>				
<b>Item</b>	<b>Number and kinds of people covered by the policy</b>	<b>Policy covers *hospital treatment but not *general treatment</b>	<b>Policy covers *general treatment but not *hospital treatment</b>	<b>Policy covers *hospital treatment and *general treatment</b>
1	3 or more people	\$350	\$100	\$450
2	One dependent child and one other person	\$350	\$100	\$450
3	2 people neither of whom is a dependent child	\$200	\$50	\$250
4	One person	\$100	\$25	\$125

(2) If the amount of the premium, or the amount in respect of a premium, paid by you, or by your employer as a \*fringe benefit for you, under the policy is for part only of the income year, the **incentive amount** is worked out using this formula:

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 61-350

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$$\text{Amount worked out under subsection (1)} \times \frac{\text{Number of days in that part of the income year}}{365}$$

**Subdivision 61-I—First child tax offset (baby bonus)**

**Guide to Subdivision 61-I**

**61-350 What this Subdivision is about**

You are entitled to a tax offset for your first child, for income years up to and including the year the child turns 5, if you meet certain conditions.

The amount of the offset is usually based on your tax liability in the year before you became responsible for the child, and on a comparison between your taxable income in that year and the year you are claiming for. However, if you are a low income taxpayer, a minimum offset will generally be available.

Instead of claiming the offset yourself, you may transfer your entitlement to your spouse.

If you are entitled to a tax offset because you adopt a child, you might also be entitled to an offset if the child was in your care before the adoption.

**Table of sections**

**Entitlement to a first child tax offset**

61-355	Who is entitled to a tax offset under this section
61-360	What is a child event?
61-365	First child only
61-370	Another carer with entitlement for another child
61-375	Selection rules
61-380	Special rules for death of first child

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Transferring an entitlement**

- 61-385 You may transfer your entitlement to a tax offset  
61-390 Transfer is irrevocable  
61-395 Transferor is not entitled to tax offset  
61-400 Transferee is entitled to tax offset

**Claiming a first child tax offset**

- 61-405 How to claim a tax offset for a child  
61-410 Claim is irrevocable

**Amount of a first child tax offset**

- 61-415 Formula for working out amount of tax offset  
61-420 Component of formula—entitlement amount  
61-425 Component of formula—total of the entitlement days  
61-430 What is your base year?

**Additional tax offset if a child is in your care before you legally adopt the child**

- 61-440 Additional tax offset if a child is in your care before you legally adopt the child  
61-445 When a child is first in your care  
61-450 What is your base year if a child is in your care before you legally adopt the child?  
61-455 Old Subdivision applies if you would be worse off

**Entitlement to a first child tax offset****61-355 Who is entitled to a tax offset under this section**

- (1) You are entitled to a \*tax offset for a child for an income year if you meet the conditions in subsection (3) at any time in the income year.

Note: If you are entitled to a tax offset because you adopt a child, you might also be entitled to an offset if the child was in your care before the adoption (see section 61-440).

- (2) To meet those conditions for a child at a given time is to have a **primary entitlement** to the \*tax offset for the child at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 61-360

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- (3) The conditions are that:
- (a) you have had a \*child event (see section 61-360) in relation to the child (whether or not in the income year); and
  - (b) section 61-365 (first child only) does not prevent you from having a \*primary entitlement to the offset for the child; and
  - (c) at the time:
    - (i) the child is less than 5; and
    - (ii) you are \*legally responsible for the child; and
    - (iii) the child is in your care; and
    - (iv) you are an Australian resident; and
    - (v) section 61-370 (another carer) does not prevent you from having a primary entitlement to the offset for the child; and
    - (vi) if section 61-375 (selection rules) applies—you are selected by subsection (3) of that section.

**61-360 What is a child event?**

You have a *child event* at a particular time (the *event time*) if:

- (a) you become \*legally responsible for a child at the event time; and

Example: Giving birth is generally an example of becoming legally responsible for a child.

- (b) the event time is on or after 1 July 2001 and before 1 July 2004; and
- (c) you are an Australian resident at the event time; and
- (d) you were not legally responsible for the child at any time before 1 July 2001; and
- (e) there is no other person who is also legally responsible for the child at the event time and who was legally responsible for the child at any time before 1 July 2001.

**61-365 First child only**

You cannot have a \*primary entitlement to a \*tax offset under section 61-355 for a child if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) you have had a \*child event in relation to another child that was earlier than the child event you had for the first-mentioned child; and
- (b) you meet, or met at any time, the conditions in subparagraphs 61-355(3)(c)(i) to (iv) for that other child.

**61-370 Another carer with entitlement for another child**

You cannot have a \*primary entitlement to a \*tax offset under section 61-355 for a child at a time if:

- (a) at that time:
  - (i) another person is \*legally responsible for the child; and
  - (ii) the child is in the other person's care; and
- (b) the other person has, or had at any time, a primary entitlement to a tax offset for another child.

**61-375 Selection rules**

- (1) This section applies if the conditions in subsection 61-355(3) (other than subparagraph (c)(vi)) are met by more than one person at the same time in relation to the same child.
- (2) Only one of those persons can have a \*primary entitlement to a \*tax offset under section 61-355 for the child at that time.
- (3) The person who gets the \*primary entitlement to the offset at that time is selected in the following order of priority:
  - (a) the natural mother;
  - (b) if only one is the adoptive mother—the adoptive mother;
  - (c) if only one is a woman—the woman;
  - (d) the natural father;
  - (e) if only one is the adoptive father—the adoptive father;
  - (f) the person determined by the Commissioner, having regard to:
    - (i) any agreement between the persons; and
    - (ii) any other matters that the Commissioner considers relevant.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **61-380 Special rules for death of first child**

*Child dies aged less than 5*

- (1) This section applies if your \*primary entitlement to a \*tax offset under section 61-355 for a child ends because the child dies aged less than 5.

*Special extension of time in year of death*

- (2) Your \*primary entitlement is extended until the end of the income year in which the death occurred.

*Limit on application of first child only rule*

- (3) Section 61-365 does not prevent you from having a \*primary entitlement to a \*tax offset for another child after the end of the income year in which the death occurred.

### **Transferring an entitlement**

#### **61-385 You may transfer your entitlement to a tax offset**

- (1) If you are entitled to a \*tax offset for a child for an income year under section 61-355 or 61-440, you may transfer that entitlement to another person.
- (1A) However, if you are entitled to a \*tax offset for a child for a particular income year under both of sections 61-355 and 61-440, you may only transfer one of those entitlements to another person if you also transfer the other entitlement to the same person.
- (2) A transfer has effect only if:
  - (a) the transferee was your \*spouse at all times when you had a \*primary entitlement for the child for the income year; and
  - (b) the transferee does not have a primary entitlement for that, or another, child for any time during the income year; and
  - (c) you have not already claimed the \*tax offset for the income year; and
  - (d) you make the transfer after the end of the income year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(e) the transfer is in the \*approved form.

### **61-390 Transfer is irrevocable**

A transfer cannot be changed or revoked.

### **61-395 Transferor is not entitled to tax offset**

You are no longer yourself entitled to a \*tax offset for a child for an income year if you transfer the entitlement under section 61-385 for that income year.

### **61-400 Transferee is entitled to tax offset**

If an entitlement to a \*tax offset is transferred under section 61-385, the transferee is entitled to the offset for the income year.

## **Claiming a first child tax offset**

### **61-405 How to claim a tax offset for a child**

If you are entitled under this Subdivision to a \*tax offset for an income year, you may claim the offset only:

- (a) in the \*income tax return you give the Commissioner, before 1 July 2014, for the income year for which you are entitled to the offset; or
- (b) if you are not required to give the Commissioner a return for the income year—in the \*approved form given to the Commissioner before 1 July 2014.

### **61-410 Claim is irrevocable**

A claim for a \*tax offset under this Subdivision cannot be revoked.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Amount of a first child tax offset

### 61-415 Formula for working out amount of tax offset

The amount of your \*tax offset under sections 61-355 and 61-440 for an income year is the amount (rounded up to the nearest whole dollar) worked out using the formula:

$$\text{Entitlement amount} \times \frac{\text{Total of the entitlement days}}{365}$$

where:

*entitlement amount* has the meaning given by section 61-420.

*total of the entitlement days* has the meaning given by section 61-425.

### 61-420 Component of formula—entitlement amount

- (1) In section 61-415, the *entitlement amount* is the amount (rounded up to the nearest whole dollar) worked out using the formula:

$$\text{Base amount} \times \left[ 1 - \frac{\text{Your taxable income for income year}}{\text{Your taxable income for *base year}} \right]$$

where:

*base amount* is the lesser of:

- (a) one-fifth of your basic income tax liability for your \*base year (as worked out in step 2 of the method statement in subsection 4-10(3)); and
  - (b) \$2,500.
- (2) However, if:
- (a) the current income year is not your \*base year; and
  - (b) your taxable income for the current income year is not more than \$25,000; and
  - (c) the amount worked out under subsection (1) is less than \$500;
- then the *entitlement amount* is \$500.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) If the amount worked out under subsection (1) is negative, then, unless subsection (2) applies, the *entitlement amount* is nil.

### **61-425 Component of formula—total of the entitlement days**

- (1) In section 61-415, the *total of the entitlement days* is the total number of days for which the primary person (see subsection (3)) had a \*primary entitlement to a \*tax offset under either or both of sections 61-355 and 61-440 for the child for the income year.
- (2) In addition, if:
- (a) the relevant \*child event happened in the primary person's \*base year; and
  - (b) the primary person did not transfer the entitlement under section 61-385 for the primary person's base year; and
  - (c) the relevant child turns 5 during the income year;
- the *total of the entitlement days* also includes the number of days in the base year for which the primary person had a primary entitlement to a \*tax offset under either or both of sections 61-355 and 61-440 for the child.
- (3) In this section, the *primary person* is:
- (a) if you are claiming the offset as a person who has a \*primary entitlement to the offset for the child—you; or
  - (b) if you are claiming the offset as a transferee under section 61-400—the transferor.

### **61-430 What is your base year?**

#### *Primary entitlement*

- (1) Your *base year* for an entitlement to a \*tax offset for a child under section 61-355 is:
- (a) if you were an Australian resident at any time in the income year just before the income year in which the \*child event for the child happened (the *event year*)—the income year just before the event year; and
  - (b) otherwise—the event year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 61-440

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Note: If a child is in your care before you adopt the child, your base year can instead be the year the child was first in your care or the year before that (see section 61-450).

- (2) If paragraph (1)(a) applies to you, you may choose the event year to be your base year, in the \*approved form. A choice cannot be revoked.
- (3) A choice cannot be made:
  - (a) after you have claimed the \*tax offset under section 61-355 for any income year; or
  - (b) after you have transferred your entitlement to the tax offset under section 61-355 for any income year.

*Transferred entitlement*

- (4) Your **base year** for an entitlement transferred to you under section 61-385 is the income year before the first income year for which the entitlement for the child was transferred to you.

**Additional tax offset if a child is in your care before you legally adopt the child**

**61-440 Additional tax offset if a child is in your care before you legally adopt the child**

- (1) You are entitled to a \*tax offset for a child for an income year if:
  - (a) you meet the conditions in paragraph (3)(a) at any time in the income year; and
  - (b) you meet the conditions in paragraphs (3)(b), (c) and (d).

Note: You are not entitled to a tax offset under this section if section 61-455 applies to you.

- (2) To meet those conditions for a child at a given time is to have a **primary entitlement** to the \*tax offset for the child at that time.
- (3) The conditions are that:
  - (a) at the time:
    - (i) the child is less than 5; and
    - (ii) the child is in your care (but you are not legally responsible for the child); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (iii) you are an Australian resident; and
- (b) you meet the conditions in subsection 61-355(3) in relation to the child in that year or a later income year; and
- (c) you have become legally responsible for the child by adopting the child; and
- (d) the time is on or after 1 July 2001 and before 1 July 2004.

Note: See section 61-445 for when a child is first in your care.

### **61-445 When a child is first in your care**

For the purposes of sections 61-440 and 61-450, a child is first in your care on the date evidenced in writing by a court or relevant department of the relevant State or Territory.

### **61-450 What is your base year if a child is in your care before you legally adopt the child?**

*Your base year can relate to a year during which a child was in your care before you adopted the child*

- (1) This section defines your **base year** if you are entitled to a \*tax offset for a child under section 61-440 (which is where a child is in your care before you legally adopt the child).

*Primary entitlement*

- (2) Your **base year** for a \*tax offset under sections 61-355 and 61-440 is:
  - (a) if you were an Australian resident at any time in the income year (the **previous income year**) just before the income year in which the child was first in your care—the later of the following years:
    - (i) the previous income year;
    - (ii) the income year commencing on 1 July 2000; and
  - (b) otherwise—the later of the following years:
    - (i) the earliest income year in which you were an Australian resident and the child was in your care;
    - (ii) the income year commencing on 1 July 2001.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 2** Liability rules of general application

**Part 2-20** Tax offsets

**Division 61** Generally applicable tax offsets

Section 61-455

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Note: See section 61-445 for when a child is first in your care.

- (3) If paragraph (2)(a) applies to you, you may choose, in the \*approved form, the later of the following years to be your base year:
- (a) the year the child was first in your care;
  - (b) the income year commencing on 1 July 2001.
- A choice cannot be revoked.
- (4) A choice cannot be made:
- (a) after you have claimed the \*tax offset under section 61-440 for any income year; or
  - (b) after you have transferred your entitlement to the tax offset under section 61-440 for any income year.

*Transferred entitlement*

- (5) Your **base year** for an entitlement transferred to you under section 61-385 is the income year before the first income year for which the entitlement for the child was transferred to you.

**61-455 Old Subdivision applies if you would be worse off**

This Subdivision as in force on 30 June 2004 (instead of this Subdivision as amended by Schedule 10 to the *Tax Laws Amendment (2004 Measures No. 6) Act 2005*) continues to apply to you if the amount of all \*tax offsets to which you would be entitled under this Subdivision as in force on that date is more than the amount of all tax offsets to which you would be entitled under the amended Subdivision.

Note: The effect of this is that:

- (a) you are only entitled to a tax offset in respect of days for which you are legally responsible for the child (and not days during which the child is in your care); and
- (b) your base year is the income year in which the child event happened or the year before.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Subdivision 61-IA—Child care tax offset****Guide to Subdivision 61-IA****61-460 What this Subdivision is about**

You are entitled to a tax offset for an income year for child care fees if you meet certain conditions.

The amount of the offset is 30% of the difference between the amounts for each child, in the previous year, of child care fees incurred and child care benefit entitlement. This is subject to an indexed cap of \$4,000 per child.

If the amount of the tax offset exceeds the amount of your income tax liability, the excess may be transferred to your spouse as a tax offset.

**Table of sections****Operative provisions**

61-465 Object of this Subdivision

**Entitlement to the child care tax offset**

61-470 Who is entitled to the tax offset

61-475 Meaning of *approved child care*

61-480 Meaning of *entitled to child care benefit* and *entitlement to child care benefit*

**Amount of the child care tax offset**

61-485 Amount of the child care tax offset

61-490 Component of formula—*approved child care fees*

61-495 Component of formula—*child care offset limit*

**Transfer of entitlement to unused balance of child care tax offset**

61-496 Entitlement to transfer

61-497 Form of transfer

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Operative provisions

### 61-465 Object of this Subdivision

The object of this Subdivision is to provide a \*tax offset to assist families with the cost of child care.

### Entitlement to the child care tax offset

#### 61-470 Who is entitled to the tax offset

- (1) You are entitled to a \*tax offset for an income year ending before 1 July 2007 (the *child care offset year*) for \*approved child care provided in the previous income year (the *child care base year*) if:
- (a) you are an individual; and
  - (b) there is at least 1 \*child care base week for you and a particular child in the child care base year.

Example: If there is at least 1 child care base week for you and a child in the 2004-2005 income year (the child care base year), you are entitled to a tax offset for the child for the 2005-2006 income year (the child care offset year).

- (2) A week is a *child care base week* for you and a particular child in the child care base year if:
- (a) the week starts on a Monday in the child care base year (whether or not it finishes in the child care base year); and
  - (b) you are \*entitled to child care benefit for \*approved child care provided for the child in the week; and
  - (c) one or more of the following limits applies under Subdivision G of Division 4 of Part 3 of the *A New Tax System (Family Assistance) Act 1999* to your \*entitlement to child care benefit for that week:
    - (i) the 50 hour limit (see section 54 of that Act);
    - (ii) the more than 50 hour limit (see section 55 of that Act);
    - (iii) the 24 hour care limit for a particular session (or sessions) of care (see section 56 of that Act).

Note: If one of the paragraph (c) limits applies, you satisfy the paragraph (c) condition even if you have not used approved child care for the child during the week up to the full extent of the limit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) If you are \*entitled to child care benefit subject to a limit of only 24 hours for a week under subsection 53(3) of the *A New Tax System (Family Assistance) Act 1999*, the condition mentioned in paragraph (2)(c) is not satisfied for the week.
- (4) The 50 hour limit is taken, for the purposes of paragraph (2)(c), to apply to your entitlement for child care benefit for the week if it would have applied but for the fact that you failed to meet the requirements of paragraph 17A(1)(b) of the *A New Tax System (Family Assistance) Act 1999* in relation to the week.

### **61-475 Meaning of approved child care**

- (1) **Approved child care**, for a particular child, is care provided for the child by a child care service that is approved under section 195 of the *A New Tax System (Family Assistance) (Administration) Act 1999*.
- (2) **Approved child care** is also taken to have been provided by such a child care service for the child during a period of absence from care if section 10 or 10A of the *A New Tax System (Family Assistance) Act 1999* applies to the period of absence.

Note: If a child is absent from care during a period for which child care fees are incurred for the child, but neither of sections 10 or 10A of the *A New Tax System (Family Assistance) Act 1999* apply to the period of absence, **approved child care** would not be taken to have been provided for the child. As a result, child care fees incurred for the child during the period would not count as **approved child care fees** for which the child care tax offset is payable (see sections 61-485 and 61-490).

### **61-480 Meaning of entitled to child care benefit and entitlement to child care benefit**

- (1) You are **entitled to child care benefit** for \*approved child care for a child as provided in this section, and not otherwise. The amount of your **entitlement to child care benefit** for the care is as provided in this section, and not otherwise.

Note: Child care benefit is a benefit provided for by the *A New Tax System (Family Assistance) Act 1999*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 61-480

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*General rule—actual determination of entitlement must have been made*

- (2) You are only entitled to child care benefit for the care if you are so entitled because of a determination made under section 51B or 52E of the *A New Tax System (Family Assistance) (Administration) Act 1999*. The amount of your entitlement to child care benefit for the care is the amount worked out under that Act by reference to that determination.

*Entitlement based on fee reductions under a determination of conditional entitlement*

- (3) However, if:
- (a) a determination (the **conditional determination**) has been made under section 50F of the *A New Tax System (Family Assistance) (Administration) Act 1999* that you are conditionally eligible for child care benefit by fee reduction for the care; and
  - (b) under section 219A of that Act as it applies in relation to the determination, fees for the care have been reduced;
- you are, subject to subsections (4) and (5), taken to be entitled to child care benefit for the care. The amount of your entitlement to child care benefit for the care is the amount of the reduction.
- (4) Despite subsection (3), if:
- (a) a determination (the **final determination**) is subsequently made under section 51B of the *A New Tax System (Family Assistance) (Administration) Act 1999* of your entitlement to be paid child care benefit by fee reduction for the care; and
  - (b) the amount (the **final determination amount**) of your entitlement to child care benefit for the care, as worked out by reference to the final determination, differs from the amount of the reduction referred to in paragraph (3)(b);
- the amount of your entitlement to child care benefit for the care is taken to be, and always to have been, the final determination amount.
- (5) Despite subsection (3), if a determination is subsequently made under section 51C of the *A New Tax System (Family Assistance)*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*(Administration) Act 1999* that you are not entitled to be paid child care benefit by fee reduction for the care, you are taken not to be, and never to have been, entitled to be paid any child care benefit for the care.

*Entitlement does not end with receipt*

- (6) In applying this Act at a particular time in relation to yourself and the care, the fact that you have, by that time, received some or all of your entitlement to child care benefit for the care does not mean that you are no longer to be regarded as being entitled to child care benefit for the care.

*Later determinations, variations and substitutions to be taken into account*

- (7) If, after applying this Act at a particular time in relation to yourself and the care, a determination mentioned in this section is made or varied, or is set aside and a new determination substituted, the question of your entitlement to child care benefit for the care is to be redetermined taking account of the making, variation or substitution.

## **Amount of the child care tax offset**

### **61-485 Amount of the child care tax offset**

The amount of your \*tax offset for a child care offset year is worked out in this way:

*Method statement*

- Step 1. For each child in relation to whom you are entitled to the \*tax offset for the child care offset year, work out amounts in accordance with steps 2, 3 and 4.
- Step 2. Work out the total amount of your \*approved child care fees for the child in each \*child care base week for you and the child in the child care base year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Step 3. Work out the total amount of your \*entitlement to child care benefit for \*approved child care for the child in each \*child care base week for you and the child in the child care base year.
- Step 4. Work out the lesser of the following amounts (the *child offset*) for the child:
- (a) the amount worked out using the formula:  
$$30\% \times \left( \text{Step 2 amount} - \text{Step 3 amount} \right)$$
  - (b) the \*child care offset limit for the child care base year.
- Step 5. Total the child offsets for each of those children. The result is the amount of your \*tax offset for the child care offset year.

**61-490 Component of formula—*approved child care fees***

*General rule—approved child care fees for a child care base week for you and a child*

- (1) The amount of your *approved child care fees* for a child for a \*child care base week for you and the child is the amount of fees for \*approved child care for the child during the week that are incurred by:
- (a) you; or
  - (b) your partner, within the meaning of the *A New Tax System (Family Assistance) Act 1999*, during the week.

Subject to subsection (2), it does not matter whether you are \*entitled to child care benefit for all of that care.

*Special rule if the week is also a child care base week for your partner and the child*

- (2) If the \*child care base week is also a child care base week for your partner and the child, your approved child care fees for the week

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

do not include any fees incurred by your partner for \*approved child care, for the child in the week, for which you are not \*entitled to child care benefit.

*If fee reduction applies, count unreduced amount of fees*

- (3) If fees for \*approved child care have been reduced under section 219A of the *A New Tax System (Family Assistance) (Administration) Act 1999*, then for this section, a reference to the fees incurred for the care is taken to be a reference to the fees that would have been incurred for the care if they had not been so reduced.

### **61-495 Component of formula—*child care offset limit***

- (1) The *child care offset limit* for the 2004-2005 child care base year is \$4,000. The limit is indexed annually.

Note: Subdivision 960-M shows you how to index amounts.

- (2) In applying the indexation formula in subsection 960-275(1) to determine the child care offset limit for the 2005-2006 child care base year or a later child care base year, the relevant financial year is the child care base year rather than the child care offset year for which the offset is being calculated.

### **Transfer of entitlement to unused balance of child care tax offset**

#### **61-496 Entitlement to transfer**

- (1) You may transfer your entitlement to so much of your \*tax offset as is equal to the excess to the individual who was your \*spouse as at the last day of the child care offset year.

Note: The excess part of a tax offset is worked out under Division 63.

- (2) If you make a transfer:
- the transferee is entitled to the transferred part of the \*tax offset for the child care offset year; and
  - you are no longer entitled to the transferred part of the tax offset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 61-497

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- (3) A transfer cannot be revoked.
- (4) If you die during the child care offset year, the reference to your \*spouse in subsection (1) is taken to be a reference to your spouse just before your death.

**61-497 Form of transfer**

- (1) A transfer has effect only if you have applied for it in the \*approved form.
- (2) The \*approved form must require the inclusion of:
  - (a) your \*tax file number; and
  - (b) the tax file number of the transferee; and
  - (c) the transferee's signed consent to:
    - (i) the transfer; and
    - (ii) the disclosure of his or her tax file number in the form.
- (3) Subsection (2) does not limit what may be required by the \*approved form.

**Subdivision 61-J—25% entrepreneurs' tax offset**

**Guide to Subdivision 61-J**

**61-500 What this Subdivision is about**

This Subdivision provides a 25% tax offset on your income tax liability related to the business income of a small business entity with aggregated turnover of less than \$75,000.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Your entitlement to the offset varies depending on what kind of entity you are. The amount of your offset varies depending on whether your aggregated turnover is \$50,000 or less or is more than \$50,000.

You may be entitled to more than 1 tax offset. For example, if you are an individual running your own small business, you may be entitled to a tax offset under section 61-505. If you are also a beneficiary of a trust that is a small business entity, you may be entitled to a tax offset under section 61-520.

## Table of sections

### Operative provisions

61-505	25% entrepreneurs' tax offset: individual or company
61-510	25% entrepreneurs' tax offset: partner in a partnership
61-515	25% entrepreneurs' tax offset: trustee of a trust
61-520	25% entrepreneurs' tax offset: beneficiary of a trust
61-525	Meaning of <i>net small business income</i> and <i>small business entity turnover</i>

## Operative provisions

### 61-505 25% entrepreneurs' tax offset: individual or company

#### *Entitlement*

- (1) You are entitled to a \*tax offset for an income year if:
  - (a) you are an individual or a company; and
  - (b) you are a \*small business entity for the year; and
  - (c) your \*aggregated turnover for the year is less than \$75,000;  
and
  - (d) you have \*net small business income for the year.

#### *Amount*

- (2) The amount of your \*tax offset is worked out in this way:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Method statement*

- Step 1. Work out your taxable income for the income year.
- Step 2. Work out 25% of your basic income tax liability for the year (as worked out in step 2 of the method statement in subsection 4-10(3)).
- Step 3. Work out the percentage (the *small business percentage*) using the formula:

$$\frac{\text{Your *net small business income for the year}}{\text{Your taxable income for the year}} \times 100$$

If that percentage is more than 100%, the small business percentage is 100%.

- Step 4. If your \*aggregated turnover for the year is \$50,000 or less, multiply the amount at step 2 by the small business percentage: the result is the amount of your \*tax offset.
- Step 5. If your \*aggregated turnover for the year is more than \$50,000, work out the fraction (the *small business phase-out fraction*) using the formula:

$$\frac{\$75,000 - \text{Your *aggregated turnover for the year}}{\$25,000}$$

The amount of your \*tax offset is worked out using the formula:

$$\text{Step 2 amount} \times \frac{\text{Small business percentage}}{\text{Small business percentage}} \times \frac{\text{Small business phase-out fraction}}{\text{Small business phase-out fraction}}$$

Example: A company runs a local sports business. The company is a small business entity for the year. The company's aggregated turnover for the year is \$50,000, the company's net small business income for the year is \$40,000 and the company's taxable income for the year is \$80,000.

The company is entitled to a tax offset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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The amount of the offset is worked out in this way:

The step 1 amount is \$80,000.

The step 2 amount is \$6,000: 25% of the company's basic income tax liability of \$24,000 (\$80,000 multiplied by the 30% company tax rate).

The step 3 small business percentage is:

$$\frac{\$40,000}{\$80,000} \times 100 = 50\%$$

The amount of the company's tax offset (step 4) is:

$$\$6,000 \times 50\% = \$3,000$$

### **61-510 25% entrepreneurs' tax offset: partner in a partnership**

#### *Entitlement*

- (1) You are entitled to a \*tax offset for an income year if:
- (a) you are a partner in a partnership during the year; and
  - (b) the partnership is a \*small business entity for the year; and
  - (c) the partnership's \*aggregated turnover for the year is less than \$75,000; and
  - (d) the partnership has \*net small business income for the year; and
  - (e) your assessable income for the year includes a share (*your net small business income share*) of that net small business income.

#### *Amount*

- (2) The amount of your \*tax offset is worked out in this way:

#### *Method statement*

Step 1. Work out your taxable income for the income year.

Step 2. Work out 25% of your basic income tax liability for the year (as worked out in step 2 of the method statement in subsection 4-10(3)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 61-515

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Step 3. Work out the percentage (the *small business percentage*) using the formula:

$$\frac{\text{Your net small business income share}}{\text{Your taxable income for the year}} \times 100$$

If that percentage is more than 100%, the small business percentage is 100%.

Step 4. If the partnership's \*aggregated turnover for the year is \$50,000 or less, multiply the amount at step 2 by the small business percentage: the result is the amount of your \*tax offset.

Step 5. If the partnership's \*aggregated turnover for the year is more than \$50,000, work out the fraction (the *small business phase-out fraction*) using the formula:

$$\frac{\$75,000 - \text{The partnership's *aggregated turnover for the year}}{\$25,000}$$

The amount of your \*tax offset is worked out using the formula:

$$\text{Step 2 amount} \times \text{Small business percentage} \times \text{Small business phase-out fraction}$$

**61-515 25% entrepreneurs' tax offset: trustee of a trust**

*Entitlement*

- (1) You are entitled to a \*tax offset for an income year if:
- (a) you are a trustee of a trust during the year; and
  - (b) the trust is a \*small business entity for the year; and
  - (c) the trust's \*aggregated turnover for the year is less than \$75,000; and
  - (d) the trust has \*net small business income for the year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (e) you are liable to be assessed under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* on a share (***your net small business income share***) of that net small business income.

*Amount*

- (2) The amount of your \*tax offset is worked out in this way:

*Method statement*

Step 1. Work out the \*net income of the trust for the income year.

Step 2. Work out 25% of the amount of income tax you are liable to pay for the year on that \*net income (apart from any \*tax offsets).

Step 3. Work out the percentage (the ***small business percentage***) using the formula:

$$\frac{\text{Your net small business income share}}{\text{The *net income of the trust for the year}} \times 100$$

If that percentage is more than 100%, the small business percentage is 100%.

Step 4. If the trust's \*aggregated turnover for the year is \$50,000 or less, multiply the amount at step 2 by the small business percentage: the result is the amount of your \*tax offset.

Step 5. If the trust's \*aggregated turnover for the year is more than \$50,000, work out the fraction (the ***small business phase-out fraction***) using the formula:

$$\frac{\$75,000 - \text{The trust's *aggregated turnover for the year}}{\$25,000}$$

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 61-520

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The amount of your \*tax offset is worked out using the formula:

$$\text{Step 2 amount} \times \text{Small business percentage} \times \text{Small business phase-out fraction}$$

**61-520 25% entrepreneurs' tax offset: beneficiary of a trust**

*Entitlement*

- (1) You are entitled to a \*tax offset for an income year if:
  - (a) you are a beneficiary of a trust during the year; and
  - (b) the trust is a \*small business entity for the year; and
  - (c) the trust's \*aggregated turnover for the year is less than \$75,000; and
  - (d) the trust has \*net small business income for the year; and
  - (e) your assessable income for the year includes a share (*your net small business income share*) of that net small business income.

*Amount*

- (2) The amount of your \*tax offset is worked out in this way:

*Method statement*

- Step 1. Work out your taxable income for the income year.
- Step 2. Work out 25% of your basic income tax liability for the year (as worked out in step 2 of the method statement in subsection 4-10(3)).
- Step 3. Work out the percentage (the *small business percentage*) using the formula:

$$\frac{\text{Your net small business income share}}{\text{Your taxable income for the year}} \times 100$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

If that percentage is more than 100%, the small business percentage is 100%.

Step 4. If the trust's \*aggregated turnover for the year is \$50,000 or less, multiply the amount at step 2 by the small business percentage: the result is the amount of your \*tax offset.

Step 5. If the trust's \*aggregated turnover for the year is more than \$50,000, work out the fraction (the *small business phase-out fraction*) using the formula:

$$\frac{\$75,000 - \text{The trust's *aggregated turnover for the year}}{\$25,00}$$

The amount of your \*tax offset is worked out using the formula:

$$\text{Step 2 amount} \times \text{Small business percentage} \times \text{Small business phase-out fraction}$$

### **61-525 Meaning of *net small business income* and *small business entity turnover***

#### *Net small business income*

- (1) An entity's *net small business income* for an income year is the amount by which the entity's \*small business entity turnover for the year is more than the sum of the entity's deductions attributable to that turnover.

#### *Small business entity turnover*

- (2) An entity's *small business entity turnover* for an income year is the total \*ordinary income that the entity \*derives in the income year in the ordinary course of carrying on a \*business.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 61-550

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- (3) In working out an entity's \*small business entity turnover for an income year, do not include any amount that is \*non-assessable non-exempt income under section 17-5 (which is about GST).

**Subdivision 61-K—Mature age worker tax offset**

**Guide to Subdivision 61-K**

**61-550 What this Subdivision is about**

You may get a tax offset under this Subdivision if you are an Australian resident individual who is aged 55 or over at the end of the income year and who has worked during the year.

The amount of the offset depends on the amount of your net income from working, but is up to a maximum of \$500. (Basically, your net income from working is the total of amounts of assessable income that are mainly a reward for your personal efforts or skills, less any relevant deductions.)

**Table of sections**

**Operative provisions**

61-555	Object of this Subdivision
61-560	Entitlement to the mature age worker tax offset
61-565	The amount of the tax offset
61-570	Definition of <i>net income from working</i>

**Operative provisions**

**61-555 Object of this Subdivision**

The object of this Subdivision is to provide a \*tax offset (subject to certain income conditions) as an incentive to Australians aged 55 or over to remain in work.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**61-560 Entitlement to the mature age worker tax offset**

You are entitled to a \*tax offset for an income year if you are an Australian resident individual who is aged 55 or over at the end of the income year.

Note: However, the amount of the tax offset is nil if you have no net income from working or your net income from working is over \$63,000 (or \$58,000 for the 2004-2005 income year).

**61-565 The amount of the tax offset**

(1) If your \*net income from working for the income year is equal to or less than \$53,000, the amount of the \*tax offset is the lesser of the amount worked out under the following formula and \$500:  
 $5\% \times \text{Your net income from working for the year}$

(2) If your \*net income from working for the income year is greater than \$53,000, the amount of the \*tax offset is the amount worked out under the following formula (but not below nil):

$$\$500 - \left[ 5\% \times \left( \text{Your net income from working for the year} - \$53,000 \right) \right]$$

*Special rule for the 2004-2005 income year*

(3) For the 2004-2005 income year, references in subsections (1) and (2) to \$53,000 are taken instead to be references to \$48,000.

**61-570 Definition of *net income from working***

(1) Your *net income from working* for an income year is the sum of the following amounts (excluding amounts covered by subsection (2)):

- (a) your assessable income for the year to the extent that it consists of the following:
  - (i) \*personal services income;
  - (ii) assessable income from a \*business you carry on;
  - (iii) an amount included under section 393-15 of Schedule 2G to the *Income Tax Assessment Act 1936* as

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 61-575

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a result of the repayment of a \*farm management deposit;

(b) your \*reportable fringe benefits total for the year;

(c) the total of your \*reportable employer superannuation contributions for the year;

less the sum of any amounts you can deduct for the year to the extent that they relate to assessable income mentioned in subparagraph (a)(i) or (ii).

(2) Your *net income from working* for an income year does not include your assessable income for the year to the extent that it consists of the following:

(a) amounts of \*superannuation lump sums or \*employment termination payments;

(b) amounts of \*unused annual leave payments or \*unused long service leave payments;

(c) amounts of passive income (within the meaning of section 6 of the *Income Tax Assessment Act 1936*).

**Subdivision 61-L—Tax offset for Medicare levy surcharge  
(lump sum payments in arrears)**

**Guide to Subdivision 61-L**

**61-575 What this Subdivision is about**

You may get a tax offset under this Subdivision if:

(a) Medicare levy surcharge is payable by you for the current year; and

(b) a substantial lump sum was paid to you in the current year; and

(c) the lump sum accrued in whole or in part in a previous year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

The amount of the offset is the amount of additional Medicare levy surcharge payable by you for the current year because of your lump sums and your spouse's lump sums.

Alternatively, you may get a tax offset under this Subdivision if your spouse gets a tax offset under this Subdivision. The amount of the offset is the amount of additional Medicare levy surcharge payable by you for the current year because of your spouse's lump sums.

## Table of sections

### Operative provisions

61-580	Entitlement to a tax offset
61-585	The amount of a tax offset
61-590	Definition of <i>MLS lump sums</i>

## Operative provisions

### 61-580 Entitlement to a tax offset

#### *Tax offset for MLS lump sums paid to you*

- (1) You are entitled to a \*tax offset for the \*current year if:
- (a) you are an individual; and
  - (b) \*Medicare levy surcharge is payable by you for the current year because of:
    - (i) section 8B, 8C or 8D of the *Medicare Levy Act 1986*; or
    - (ii) the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*; and
  - (c) your assessable income or \*exempt foreign employment income for the current year includes one or more \*MLS lump sums paid to you; and
  - (d) the total of the MLS lump sums paid to you is greater than or equal to one-eleventh of the total of the following amounts:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-20** Tax offsets

**Division 61** Generally applicable tax offsets

Section 61-580

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- (i) your normal taxable income (within the meaning of section 159ZR of the *Income Tax Assessment Act 1936*) for the current year;
- (ii) your exempt foreign employment income for the current year;
- (iii) your \*reportable fringe benefits total for the current year;
- (iv) the amounts that would be included in your assessable income for the current year if, and only if, subsection 271-105(1) (family trust distribution tax) in Schedule 2F to the *Income Tax Assessment Act 1936* were ignored;
- (v) your \*reportable superannuation contributions for the current year;
- (vi) your \*total net investment loss for the current year.

Note: The test in paragraph (d) is similar to the 10% test in paragraph 159ZRA(1)(b) of the *Income Tax Assessment Act 1936*, which also deals with a tax offset for lump sum payments in arrears.

*Tax offset for MLS lump sums paid to your spouse*

- (2) You are also entitled to a \*tax offset for the \*current year if:
  - (a) during all or part of the current year, you were married to an individual (within the meaning of section 3 of the *Medicare Levy Act 1986* or section 7 of the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*); and
  - (b) the individual is entitled to a tax offset for the current year under subsection (1); and
  - (c) \*Medicare levy surcharge is payable by you for the current year because of:
    - (i) section 8D of the *Medicare Levy Act 1986*; or
    - (ii) Division 4 of Part 3 of the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*;(which are about Medicare Levy surcharge for individuals who are married); and
  - (d) you are not entitled to a tax offset for the current year under subsection (1); and
  - (e) less of the Medicare levy surcharge referred to in paragraph (c) would be payable by you for the current year if

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the \*MLS lump sums paid to the individual referred to in paragraph (a) were disregarded.

### **61-585 The amount of a tax offset**

- (1) The amount of a \*tax offset under subsection 61-580(1) is the amount worked out using the following formula:

$$\text{Total Medicare levy surcharge} - \frac{\text{Total non-arrears Medicare levy surcharge}}{\text{Medicare levy surcharge}}$$

where:

***total Medicare levy surcharge*** means the total of the \*Medicare levy surcharge referred to in paragraph 61-580(1)(b) that is payable by you for the \*current year.

***total non-arrears Medicare levy surcharge*** means the amount that would be the total Medicare levy surcharge if the \*MLS lump sums paid to you (and the MLS lump sums paid to the individual referred to in paragraph 61-580(2)(a)) were disregarded.

- (2) The amount of a \*tax offset under subsection 61-580(2) is the amount worked out using the following formula:

$$\frac{\text{Total family Medicare levy surcharge}}{\text{Medicare levy surcharge}} - \frac{\text{Total non-arrears family Medicare levy surcharge}}{\text{Medicare levy surcharge}}$$

where:

***total family Medicare levy surcharge*** means the total of the \*Medicare levy surcharge referred to in paragraph 61-580(2)(c) that is payable by you for the \*current year.

***total non-arrears family Medicare levy surcharge*** means the amount that would be the total family Medicare levy surcharge if the \*MLS lump sums referred to in paragraph 61-580(2)(e) were disregarded.

### **61-590 Definition of *MLS lump sums***

Both of the following are ***MLS lump sums*** paid to an individual:

- (a) a lump sum payment of eligible income (within the meaning of section 159ZR of the *Income Tax Assessment Act 1936*)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-20** Tax offsets

**Division 61** Generally applicable tax offsets

Section 61-590

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that is included in the individual's assessable income for the  
\*current year (but only to the extent that it accrued in an  
earlier income year);

- (b) a lump sum payment that is included in the individual's  
\*exempt foreign employment income for the current year (but  
only to the extent that it accrued during a period ending more  
than 12 months before the date on which it was paid).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 61-M—Education expenses tax offset**

### **Guide to Subdivision 61-M**

#### **61-600 What this Subdivision is about**

You may get a refundable tax offset for education expenses incurred for a school student in your care, or for yourself if you are an independent student.

There is a limit on the amount of the tax offset.

Education expenses over the limit can be taken into account in the next year of income.

#### **Table of sections**

##### **Entitlement to education expenses tax offset**

61-610	Entitlement to education expenses tax offset
61-620	Eligibility in respect of another individual
61-630	Schooling requirement
61-640	Education expenses

##### **Amount of education expenses tax offset**

61-650	Amount of education expenses tax offset
61-660	Education expenses tax offset limit
61-670	Shared care
61-680	Excess education expenses

## **Entitlement to education expenses tax offset**

### **61-610 Entitlement to education expenses tax offset**

#### *Entitlement in respect of another individual*

- (1) You are entitled to a \*tax offset for an income year if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 61-610

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- (a) you satisfy subsection 61-620(1), (2), (3) or (4) on a day in the income year for an individual; and
- (b) the individual satisfies the schooling requirement in section 61-630 on that day; and
- (c) an expense covered by section 61-640 for the individual's education is incurred on that day.

*Entitlement for independent students*

- (2) You are also entitled to a \*tax offset for an income year if:
  - (a) on a day in the income year you are receiving:
    - (i) payments under a prescribed educational scheme (within the meaning of the *Social Security Act 1991*); or
    - (ii) a social security pension (within the meaning of that Act); or
    - (iii) a social security benefit (within the meaning of that Act); or
    - (iv) payments under a program included in the programs known as Labour Market Programs; and
  - (b) an independence requirement (however described) that you satisfy is relevant to the amount of the payment; and
  - (c) on that day you are:
    - (i) an Australian resident (within the meaning of the *Social Security Act 1991*) or a special category visa holder (within the meaning of the *Migration Act 1958*); and
    - (ii) residing in Australia; and
  - (d) you are aged under 25 on that day; and
  - (e) you satisfy the schooling requirement in section 61-630 on that day; and
  - (f) another individual or entity is not entitled to a tax offset for the income year for that day in respect of you under subsection (1); and
  - (g) an expense covered by section 61-640 for your education is incurred on that day.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**61-620 Eligibility in respect of another individual**

*You are entitled to Family Tax Benefit (Part A)*

- (1) You satisfy this section on a day in an income year for an individual if:
  - (a) you are entitled to be paid family tax benefit for the individual in relation to that day under the *A New Tax System (Family Assistance) (Administration) Act 1999*; and
  - (b) your daily rate of family tax benefit for that day consists of, or includes, a Part A rate worked out under Part 2 or 3 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* that is greater than nil.

*You care for an individual entitled to certain payments*

- (2) You satisfy this section on a day in an income year for an individual if:
  - (a) one or more of the following:
    - (i) payments under a prescribed educational scheme (within the meaning of the *Social Security Act 1991*); or
    - (ii) a social security pension (within the meaning of that Act); or
    - (iii) a social security benefit (within the meaning of that Act); or
    - (iv) payments under a program included in the programs known as Labour Market Programs;is received on that day by the individual, or by you or another person on the individual's behalf; and
  - (b) the individual would be your FTB child (within the meaning of Subdivision A of Division 1 of Part 3 of the *A New Tax System (Family Assistance) Act 1999*) on that day if that payment were disregarded.

*Approved care organisation*

- (3) An approved care organisation (within the meaning of the *A New Tax System (Family Assistance) Act 1999*) satisfies this section on a day in an income year for an individual if the approved care

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 61-630

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organisation is entitled, under the *A New Tax System (Family Assistance) (Administration) Act 1999*, to be paid family tax benefit for that individual on that day.

*Individual finishing full-time schooling—cut-out amount disregarded*

- (4) You satisfy this section on a day in an income year for an individual if:
- (a) the individual satisfies the schooling requirement in section 61-630 on that day; and
  - (b) during the income year, the individual ceased to be covered by either subsection 61-630(2) or (4); and
  - (c) the individual was not covered by either of those subsections at the end of the year of income; and
  - (d) the Commissioner is of the opinion that you would satisfy one or more of subsections (1), (2) and (3) for the individual on that day if:
    - (i) paragraph (a) of item 2 of the table in subsection 22A(1) of the *A New Tax System (Family Assistance) Act 1999* (which deals with the cut-out amount) were disregarded; or
    - (ii) for approved care organisations (within the meaning of the *A New Tax System (Family Assistance) Act 1999*)—paragraph (a) of item 2 of the table in subsection 35(1) of that Act (which also deals with the cut-out amount) were disregarded.

**61-630 Schooling requirement**

- (1) An individual satisfies the schooling requirement in this section on every day in a 6 month period beginning on 1 July or 1 January if there is at least one day in that 6 month period on which the individual:
- (a) is covered by subsection (2) or (4); and
  - (b) attended the course of study or instruction, or received the home schooling, referred to in that subsection.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Primary school student*

- (2) An individual is covered by this section if the individual is a student enrolled or registered:
- (a) in a course of study or instruction that is a primary course within the meaning of the \*GST Act; or
  - (b) with the education authority of the State or Territory in which the individual resides as a home schooled student (however described) allocated to the primary level of education; or
  - (c) in a course of study or instruction to which subsection (3) applies.
- (3) The Minister administering the *Student Assistance Act 1973* (the **Education Minister**) may, by legislative instrument, determine that a course of study or instruction is a course to which this subsection applies.

*Secondary school student*

- (4) An individual is covered by this section if the individual is a student enrolled or registered:
- (a) in a course of study or instruction that is a secondary course within the meaning of the \*GST Act; or
  - (b) with the education authority of the State or Territory in which the individual resides as a home schooled student (however described) allocated to the secondary level of education; or
  - (c) in a course of study or instruction to which subsection (5) applies.
- (5) The Education Minister may, by legislative instrument, determine that a course of study or instruction is a course to which this subsection applies.

**61-640 Education expenses**

- (1) An expense incurred on a day is covered for you by this section if:
- (a) the expense is incurred by:
    - (i) you; or
    - (ii) your partner (within the meaning of the *Social Security Act 1991*); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 61-640

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- (b) the expense directly relates to the education of:
    - (i) one or more individuals in relation to whom paragraphs 61-610(1)(a) and (b) are satisfied on the day; or
    - (ii) if you are covered by paragraphs 61-610(2)(a), (b), (c), (d), (e) and (f) on the day—yourself; and
  - (c) the expense is of a kind mentioned in subsection (4).
- (2) However, an expense is not covered by this section to the extent that the expense:
- (a) is deductible under this Act; or
  - (b) is subject to a \*tax offset under this Act (other than this Subdivision); or
  - (c) is covered by a payment or property you receive, or are entitled to receive, as reimbursement or payment of your expenses under a benefit, grant or subsidy:
    - (i) the provision of which was authorised under a \*Commonwealth law or an instrument of a legislative character made under a Commonwealth law; or
    - (ii) to which paragraph (3)(a) applies.
- (3) The regulations may provide the following:
- (a) that a benefit, grant or subsidy is a benefit, grant or subsidy to which this paragraph applies;
  - (b) that an expense of a particular kind is not an expense covered by this section.
- (4) The expenses are those mentioned in column 3 of an item in the following table relating to a thing mentioned in column 2 of that item.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Item</b>	<b>Thing to which expense relates</b>	<b>Kind of expense</b>
1	Computer for: (a) home use (including, in the case of an individual who has no home, use in a setting that equates to a residential setting for the person); or (b) use in an educational institution in place of paper based educational material	(a) cost of acquiring (whether by way of purchase, lease, hire or hire-purchase); and (b) cost of repairing; and (c) costs associated with running.
2	Computer-related equipment for a use referred to in item 1, including: (a) printers; and (b) disability aids	(a) cost of acquiring (whether by way of purchase, lease, hire or hire-purchase); and (b) cost of repairing; and (c) costs associated with running.
3	Home internet connection	(a) cost of establishing; and (b) cost of maintaining.
4	Item of computer software	cost of acquiring (whether by way of purchase, lease, hire or hire-purchase).
5	School textbooks, other paper based school learning material and stationery	cost of acquiring (whether by way of purchase, lease, hire or hire-purchase).
6	A tool of trade	cost of acquiring (whether by way of purchase, lease, hire or hire-purchase).

## Amount of education expenses tax offset

### 61-650 Amount of education expenses tax offset

- (1) The amount of your \*tax offset for an income year (the *current year*) is the amount (rounded up to the nearest whole dollar) that is the lesser of:
- (a) one half of the sum of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 61-650

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- (i) all of the expenses covered for you by section 61-640 for the current year; and
  - (ii) your expenses covered by section 61-680 (about excess education expenses) for the income year ending immediately before the current year; and
- (b) your offset limit under section 61-660 for the current year.

*Effect of shared care arrangements*

(2) If:

- (a) on a particular day, you and your partner (within the meaning of the *Social Security Act 1991*) (your *partner*) satisfy subsection 61-620(1) for an individual; and
- (b) a determination has been made under section 28 or 29 of the *A New Tax System (Family Assistance) Act 1999* of your percentage, and of your partner's percentage, of the family tax benefit for the individual for a period that includes that day; and
- (c) an expense covered for you by section 61-640 was incurred on that day;

for the purposes of subparagraph (1)(a)(i) you and your partner may each count only a portion of the expense corresponding to your percentage.

(3) If:

- (a) on a particular day, you are a member of a couple (within the meaning of the *Social Security Act 1991*); and
- (b) both you and your partner (within the meaning of that Act) (your *partner*) satisfy subsection 61-620(2) or (4) for one or more individuals on that day; and
- (c) an expense covered for you by section 61-640 was incurred on that day;

for the purposes of subparagraph (1)(a)(i) the expense only counts as follows:

- (d) if you and your partner have made a written agreement nominating one of you as the member who can claim the offset under this Subdivision in respect of the individual or individuals for a period including that day:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) the nominated member may count the whole of each expense covered for you by section 61-640 incurred on that day; and
- (ii) the other member must not count any of the expense; or
- (e) if paragraph (d) does not apply—you and your partner may each count only half of the expense.

### **61-660 Education expenses tax offset limit**

- (1) Your offset limit is:
  - (a) if you satisfy paragraphs 61-610(1)(a), (b) and (c) for one or more individuals in the current year—the sum of the amounts worked out under the method statement for each such individual; and
  - (b) if you are an independent student covered by subsection 61-610(2)—the amount worked out for yourself under the method statement.

#### *Method statement*

##### Step 1. Start with this amount:

- (a) for an individual who satisfies the schooling requirement in subsection 61-630(4) (for secondary school students) on a day in the current year—\$750; or
- (b) if paragraph (a) does not apply and the individual satisfies the schooling requirement in subsection 61-630(2) (for primary school students) on a day in the current year—\$375.

Note: The effect of step 1 is that the secondary school student starting amount applies for the whole year where an individual completes primary school in the first half of the financial year and starts secondary school in the second half of the financial year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 61-670

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Step 2. Add up the number of days in the current year on which:

- (a) paragraphs 61-610(1)(a) and (b) are satisfied for you and the individual; or

Note: There are modifications to step 2(a) in section 61-670.

- (b) if you are an independent student covered by subsection 61-610(2)—paragraphs 61-610(2)(a), (b), (c), (d), (e) and (f) apply to you.

Step 3. Divide the result of step 2 by the number of days in the current year. Round the result to 2 decimal places (rounding up if the third decimal place is 5 or more).

Step 4. Multiply the result from step 1 by the result from step 3.

- (2) The amounts specified in step 1 of the method statement in subsection (1) are indexed annually.

Note: Subdivision 960-M shows you how to index amounts.

**61-670 Shared care**

- (1) This section modifies the operation of step 2 of the method statement in subsection 61-660(1).

*Modification for shared care determinations*

- (2) If:

- (a) on a particular day, you satisfy subsection 61-620(1) for an individual; and
- (b) a determination has been made under section 28 or 29 of the *A New Tax System (Family Assistance) Act 1999* of your percentage of the family tax benefit for the individual for a period that includes that day; and
- (c) step 2 applies to that day;

only a portion of that day corresponding to that percentage may be counted for the purposes of step 2.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## (3) If:

- (a) on a particular day, you satisfy subsection 61-620(1) for an individual; and
- (b) you have a shared care percentage under section 59 of the *New Tax System (Family Assistance) Act 1999* for the individual for a period that includes that day; and
- (c) step 2 (including that step as affected by subsection (2)) applies to that day;

only a portion of that day (or only a portion of the portion referred to in subsection (2)) corresponding to the shared care percentage may be counted for the purposes of step 2 (or that step as affected by subsection (2)).

*Modification for members of a couple*

## (4) If:

- (a) on a particular day, you are a member of a couple (within the meaning of the *Social Security Act 1991*); and
- (b) both you and your partner (within the meaning of that Act) (your *partner*) satisfy subsection 61-620(2) or (4) for one or more individuals on that day; and
- (c) step 2 applies to that day;

for the purposes of step 2 the day only counts as follows:

- (d) if you and your partner have made a written agreement nominating one of you as the member who can claim the offset under this Subdivision in respect of the individual or individuals for that period:
  - (i) the nominated member may, subject to subsection (5), count the whole of each day in the period for each such individual; and
  - (ii) the other member must not count any days in the period for each such individual; or
- (e) if paragraph (d) does not apply—only half of each day in the period may, subject to subsection (5), be counted.

*Modification for individuals not members of a couple*

- (5) If you and one or more other entities (other than your partner (within the meaning of the *Social Security Act 1991*)) each satisfy

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 61-680

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subsection 61-620(2) or (4) for an individual on a day, you may only count for the purposes of step 2 (or that step as affected by subsection (4)) a portion of that day that is reasonable having regard to:

- (a) the objects of this subsection; and
  - (b) the living arrangements of the individual.
- (6) The objects of subsection (5) are:
- (a) to determine the extent to which the individual was in your care on a day; and
  - (b) to prevent double counting in distributing the tax offset under this Subdivision between you and others who share the care of the individual.

**61-680 Excess education expenses**

- (1) You have an amount covered by this section from an income year if the amount worked out under paragraph 61-650(1)(a) for the year exceeds your offset limit for the year under section 61-660.
- (2) The amount that is covered by this section is the lesser of:
  - (a) all of the expenses covered for you by section 61-640 for the year that can be counted for the purposes of subparagraph 61-650(1)(a)(i); and
  - (b) twice the amount of the excess.

**Note:** The excess is worked out by comparing half of the education expenses to the offset limit (see section 61-650). Paragraph (b) doubles any excess so that the excess expenses have their original value and can be counted in full the next year.

**Example:** A family with one child in full-time secondary schooling has incurred education expenses of \$2,000 in an income year. Under section 61-650, these expenses are halved (\$1,000) and then compared to the offset limit (\$750). The excess of \$250 is doubled under subsection (2) to restore it to the original expense amount. In the next year, the family can count this \$500 of expenses towards the offset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Division 63—Common rules for tax offsets****Guide to Division 63****63-1 What this Division is about**

This Division sets out some rules that are common to all tax offsets.

**Table of sections**

63-10 Priority rules

**63-10 Priority rules**

- (1) If you have one or more \*tax offsets for an income year, apply them against your basic income tax liability in the order shown in the table. To the extent that an amount of a tax offset remains, the table tells you what happens to it.

**Order of applying tax offsets**

<b>Item</b>	<b>Tax offset</b>	<b>What happens to any excess</b>
5	*Tax offset under section 160AAAA of the <i>Income Tax Assessment Act 1936</i> (tax offset for low income aged persons)	Your entitlement to it is transferred in accordance with regulations made under that Act
10	*Tax offset under section 160AAAB of the <i>Income Tax Assessment Act 1936</i> (tax offset for low income aged persons—trustee assessed under section 98)	Your entitlement to it is transferred in accordance with regulations made under that Act
15	*Tax offset under section 160AAA of the <i>Income Tax Assessment Act 1936</i> (tax offset in respect of certain pensions)	Your entitlement to it is transferred in accordance with regulations made under that Act

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-20** Tax offsets

**Division 63** Common rules for tax offsets

Section 63-10

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**Order of applying tax offsets**

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<b>Item</b>	<b>Tax offset</b>	<b>What happens to any excess</b>
20	Any * tax offset not covered by another item in this table	You cannot get a refund of it, you cannot transfer it and you cannot carry it forward to a later income year
22	*Tax offset for *foreign income tax under Division 770	You cannot get a refund of it, you cannot transfer it and you cannot carry it forward to a later income year
25	Child care *tax offset under Subdivision 61-IA	You may transfer your entitlement to it to your *spouse (under sections 61-496 and 61-497)
30	Landcare and water facility *tax offset under the former Subdivision 388-A	You may carry it forward to a later income year (under Division 65)
40	*Tax offset that is subject to the refundable tax offset rules (see Division 67)	You can get a refund of the remaining amount
45	*Tax offset arising from payment of *franking deficit tax (see section 205-70)	You may carry it forward to a later income year (under section 205-70)

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Note 1: Section 13-1 lists tax offsets.

Note 2: Former Division 388 was repealed by the *New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001*.

Note 4: The remaining amount of a carry forward tax offset may be reduced by section 65-30 or 65-35 to take account of net exempt income.

Note 5: Tax offsets mentioned in items 5 and 10 are more commonly referred to as the Senior Australians Tax Offset.

(2) Within each item, apply the tax offsets in the order in which they arose.

Note: This would be relevant if you have carry forward tax offsets of the same category for different income years.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 65—Tax offset carry forward rules**

### **Guide to Division 65**

#### **65-10 What this Division is about**

This Division sets out the rules about carrying forward excess tax offsets to later income years.

You can only carry forward certain tax offsets.

Before you can apply a tax offset to reduce the amount of income tax that you will pay in a later year, you must apply it to reduce certain amounts of net exempt income.

The same rules that prevent companies from using certain losses that are carried forward prevent companies from applying tax offsets that they have carried forward.

#### **Table of sections**

##### **Operative provisions**

65-30	Amount carried forward
65-35	How to apply carried forward tax offsets
65-40	When a company cannot apply a tax offset
65-50	Effect of bankruptcy
65-55	Deduction for amounts paid for debts incurred before bankruptcy

#### **Operative provisions**

##### **65-30 Amount carried forward**

The amount of the \*tax offset that is carried forward is the amount of the excess worked out under Division 63. However, if you have a taxable income for the income year, reduce the tax offset by the following amount:

\*Net exempt income  $\times$  0.3

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**65-35 How to apply carried forward tax offsets**

- (1) A \*tax offset that you have carried forward decreases the amount of income tax that you would otherwise have to pay under section 4-10 in a later income year.
- (2) You apply a \*tax offset that is carried forward to a later year in accordance with the priorities set out in Division 63 as if it were a tax offset for that later year.
- (3) Before you apply a \*tax offset to reduce the amount of income tax that you pay in a later income year in which you have a taxable income, you must apply it to reduce to nil any \*net exempt income for:
  - (a) that later income year; or
  - (b) any income year after the year in which the tax offset arose and before the later income year in which you had a taxable income but did not apply the tax offset to reduce the amount of income tax you had to pay.

In reducing net exempt income, each 30 cents of tax offset reduces the net exempt income by \$1.

Note: Paragraph (b) would apply to cases such as where your taxable income was below your tax-free threshold or where you had other tax offsets that reduced your income tax to nil.

- (4) You can only apply a \*tax offset that you have carried forward to the extent that it has not already been applied.

Note: Section 65-40 contains special restrictions on applying carried forward tax offsets.

**65-40 When a company cannot apply a tax offset**

- (1) In working out its \*tax offset for the \*current year, a company cannot apply a \*tax offset it has carried forward if, assuming:
  - (a) the tax offset were a \*tax loss of the company for the income year in which it became entitled to the tax offset; and
  - (b) section 165-20 (deducting part of a tax loss) were disregarded;Subdivision 165-A would prevent the company from deducting it for the current year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: Subdivision 165-A deals with the deductibility of a company's tax loss for an earlier income year if there has been a change in the ownership or control of the company in the loss year or the income year.

- (2) If subsection (1) prevents the company from applying the \*tax offset, it can apply the *part* of the tax offset that it is reasonable to consider relates to a *part* of the income year in which it became entitled to the tax offset, but only if, assuming that part of that income year had been treated as the whole of it, the company would have been entitled to apply the tax offset.

### **65-50 Effect of bankruptcy**

- (1) If during the \*current year:
- (a) you became bankrupt; or
  - (b) you were released from debts under a law relating to bankruptcy;
- you cannot apply a \*tax offset that you have carried forward from an earlier income year in working out the tax offset for the current year or a later income year.
- (2) Subsection (1) applies even though your bankruptcy is annulled if:
- (a) the annulment happens under section 74 of the *Bankruptcy Act 1966* because your creditors have accepted your proposal for a composition or scheme of arrangement; and
  - (b) under the composition or scheme of arrangement concerned, you were, will be or may be released from debts from which you would have been released if instead you had been discharged from the bankruptcy.

### **65-55 Deduction for amounts paid for debts incurred before bankruptcy**

- (1) If:
- (a) you pay an amount in the \*current year for a debt that you incurred in an earlier income year; and
  - (b) you have a \*tax offset referred to in section 65-50 for that earlier income year;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 65-55

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you can deduct the amount paid, but only to the extent that it does not exceed so much of the debt as the Commissioner is satisfied was taken into account in calculating the amount of the tax offset.

- (2) The total of the following amounts cannot exceed the total of the expenditure that the Commissioner is satisfied was taken into account in calculating the amount of the \*tax offset that you are unable to apply because of section 66-50:
- (a) your deductions under subsection (1) for amounts paid in the \*current year or an earlier income year for debts incurred in the income year for which you have the tax offset; and
  - (b) the expenditure that the Commissioner is satisfied was taken into account in calculating any amounts of the tax offset that, apart from section 65-50, would have been applied in reducing your \*net exempt income for the current year or earlier income years.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 67—Refundable tax offset rules

### Guide to Division 67

#### 67-10 What this Division is about

If your total tax offsets exceed your basic income tax liability, and some of those offsets are subject to the refundable tax offset rules, you may get a refund instead of paying income tax (see section 63-10). This Division tells you which tax offsets are subject to the refundable tax offset rules.

#### Table of sections

##### Operative provisions

- 67-20 Which tax offsets this Division applies to
- 67-23 Refundable tax offsets
- 67-25 Refundable tax offsets—franked distributions

### Operative provisions

#### 67-20 Which tax offsets this Division applies to

This Division only applies to a \*tax offset if it is stated to be subject to the refundable tax offset rules.

#### 67-23 Refundable tax offsets

The following \*tax offsets are subject to the refundable tax offset rules:

Refundable tax offsets		
Item	Subject matter	Tax offset
5	private health insurance	private health insurance tax offsets under Subdivision 61-G, other than those arising

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-20** Tax offsets

**Division 67** Refundable tax offset rules

Section 67-25

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**Refundable tax offsets**

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<b>Item</b>	<b>Subject matter</b>	<b>Tax offset</b>
		under subsection 61-205(2)
10	children	first child tax offsets under Subdivision 61-I
15	no-TFN contributions income	the *tax offset available under Subdivision 295-J
20	films	the *tax offsets available under Division 376
25	National Urban Water and Desalination Plan	urban water tax offset under Subdivision 402-W
30	life insurance company's subsidiary joining consolidated group	the *tax offset available under subsection 713-545(5)
35	research and development	the *tax offset available under section 73I of the <i>Income Tax Assessment Act 1936</i>

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Note 1: Subsection 61-205(2) of this Act deals with tax offsets for trustees who are assessed and liable to pay tax under section 98 of the *Income Tax Assessment Act 1936*.

Note 2: For the tax offsets available under Division 207 and Subdivision 210-H (franked distributions), see section 67-25.

**67-25 Refundable tax offsets—franked distributions**

(1) \*Tax offsets available under Division 207 (which sets out the effects of receiving a \*franked distribution) or Subdivision 210-H (which sets out the effects of receiving a \*distribution \*franked with a venture capital credit) are subject to the refundable tax offset rules, unless otherwise stated in this section.

(1A) Where the trustee of a \*non-complying superannuation fund or a \*non-complying approved deposit fund is entitled to a \*tax offset under Division 207 because a \*franked distribution is made to, or \*flows indirectly to, the trustee, the tax offset is not subject to the refundable tax offset rules.

(1B) If:

(a) the trustee of a trust to whom a \*franked distribution \*flows indirectly under subsection 207-50(4) is entitled to a \*tax offset under Division 207 for an income year because of the distribution; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the trustee is liable to be assessed under section 98 or 99A of the *Income Tax Assessment Act 1936* on a share of, or all or a part of, the trust's \*net income for that income year;  
the tax offset is not subject to the refundable tax offset rules.
- (1C) Where a \*corporate tax entity is entitled to a \*tax offset under Division 207 because a \*franked distribution is made to the entity, the tax offset is not subject to the refundable tax offset rules unless:
- (a) the entity is an \*exempt institution that is eligible for a refund; or
  - (b) the entity is a \*life insurance company and the \*membership interest on which the distribution was made was not held by the company on behalf of its shareholders at any time during the period:
    - (i) starting at the beginning of the income year of the company in which the distribution is made; and
    - (ii) ending when the distribution is made.
- (1D) Where a \*corporate tax entity is entitled to a \*tax offset under Division 207 because a \*franked distribution \*flows indirectly to the entity, the tax offset is not subject to the refundable tax offset rules unless:
- (a) the entity is an \*exempt institution that is eligible for a refund; or
  - (b) the entity is a \*life insurance company and the company's interest in the \*membership interest on which the distribution was made was not held by the company on behalf of its shareholders at any time during the period:
    - (i) starting at the beginning of the income year of the company in which the distribution is made; and
    - (ii) ending when the distribution is made.
- (1DA) A \*tax offset is not subject to the refundable tax offset rules if:
- (a) an entity is entitled to the tax offset under Division 207 because a \*franked distribution is made, or \*flows indirectly, to the entity; and
  - (b) the entity is a foreign resident and carries on business in Australia at or through a permanent establishment of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 67-25

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entity in Australia, being a permanent establishment within the meaning of:

- (i) a double tax agreement (as defined in Part X of the *Income Tax Assessment Act 1936*) that relates to a foreign country and affects the entity; or
  - (ii) subsection 6(1) of that Act, if there is no such agreement; and
- (c) the distribution is attributable to the permanent establishment.
- (1E) Where a \*corporate tax entity is entitled to a \*tax offset under Subdivision 210-H because a \*distribution \*franked with a venture capital credit is made to the entity, the tax offset is not subject to the refundable tax offset rules unless:
- (a) the entity is a \*life insurance company; and
  - (b) the \*membership interest on which the distribution was made was not held by the company on behalf of its shareholders at any time during the period:
    - (i) starting at the beginning of the income year of the company in which the distribution is made; and
    - (ii) ending when the distribution is made.

*Education expenses tax offset*

- (7) The \*tax offset available under Subdivision 61-M is subject to the refundable tax offset rules.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Part 2-25—Trading stock**

### **Division 70—Trading stock**

#### **Table of Subdivisions**

	Guide to Division 70
70-A	What is trading stock
70-B	Acquiring trading stock
70-C	Accounting for trading stock you hold at the start or end of the income year
70-D	Assessable income arising from disposals of trading stock and certain other assets
70-E	Miscellaneous

#### **Guide to Division 70**

##### **70-1 What this Division is about**

This Division deals with amounts you can deduct, and amounts included in your assessable income, because of these situations:

- you acquire an item of trading stock;
- you carry on a business and hold trading stock at the start or the end of the income year;
- you dispose of an item of trading stock outside the ordinary course of business, or it ceases to be trading stock in certain other circumstances.

#### **Table of sections**

70-5	The 3 key features of tax accounting for trading stock
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 70-5 The 3 key features of tax accounting for trading stock

The purpose of income tax accounting for trading stock is to produce an overall result that (apart from concessions) properly reflects your activities with your trading stock during the income year.

There are 3 key features:

- (1) You bring your gross outgoings and earnings to account, not your net profits and losses on disposal of trading stock.
- (2) Those outgoings and earnings are on revenue account, not capital account. As a result:
  - (a) the gross outgoings are usually deductible as general deductions under section 8-1 (when the trading stock becomes trading stock on hand); and
  - (b) the gross earnings are usually assessable as ordinary income under section 6-5 (when the trading stock stops being trading stock on hand).
- (3) You must bring to account any difference between the value of your trading stock on hand at the start and at the end of the income year. This is done in such a way that, in effect:
  - (a) you account for the value of your trading stock as assessable income; and
  - (b) you carry that value over as a corresponding deduction for the next income year.

Note: You may not have to bring to account that difference if you are a small business entity: see Division 328.

### Subdivision 70-A—What is trading stock

#### Table of sections

70-10 Meaning of *trading stock*

#### 70-10 Meaning of *trading stock*

*Trading stock* includes:

- (a) anything produced, manufactured or acquired that is held for purposes of manufacture, sale or exchange in the ordinary course of a \*business; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) \*live stock;

but does not include a \*Division 230 financial arrangement.

Note 1: Shares in a PDF are not trading stock. See section 124ZO of the *Income Tax Assessment Act 1936*.

Note 2: If a company becomes a PDF, its shares are taken not to have been trading stock before it became a PDF. See section 124ZQ of the *Income Tax Assessment Act 1936*.

## **Subdivision 70-B—Acquiring trading stock**

### **Table of sections**

70-15	In which income year do you deduct an outgoing for trading stock?
70-20	Non-arm's length transactions
70-25	Cost of trading stock is not a capital outgoing
70-30	Starting to hold as trading stock an item you already own

### **70-15 In which income year do you deduct an outgoing for trading stock?**

- (1) This section tells you in which income year to deduct under section 8-1 (about general deductions) an outgoing incurred in connection with acquiring an item of \*trading stock. (The outgoing must be deductible under that section.)
- (2) If the item becomes part of your \*trading stock on hand before or during the income year in which you incur the outgoing, deduct it in that income year.
- (3) Otherwise, deduct the outgoing in the first income year:
  - (a) during which the item becomes part of your \*trading stock on hand; or
  - (b) for which an amount is included in your assessable income in connection with the disposal of that item.

Note You can deduct your capital costs of acquiring land carrying trees or of acquiring a right to fell trees, to the extent that the trees are felled for sale, or for use in manufacture, by you. (This is because the trees will then usually become your trading stock.) See section 70-120.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



### 70-20 Non-arm's length transactions

If:

- (a) you incur an outgoing that is directly attributable to your buying or obtaining delivery of an item of your \*trading stock; and
- (b) you and the seller of the item did not deal with each other at arm's length; and
- (c) the amount of the outgoing is greater than the \*market value of what the outgoing is for;

the amount of the outgoing is instead taken to be that market value. This has effect for the purposes of applying this Act to you and also to the seller.

Note 1: This section also affects the value of the item of trading stock at the end of an income year if you value it at its cost under section 70-45 (Value of trading stock at end of income year).

Note 2: This section is disregarded in applying Division 13 (about transfer-pricing arrangements) of Part III of the *Income Tax Assessment Act 1936*.

### 70-25 Cost of trading stock is not a capital outgoing

An outgoing you incur in connection with acquiring an item of \*trading stock is not an outgoing of capital or of a capital nature.

Note: This means that paragraph 8-1(2)(a) does not prevent the outgoing from being a general deduction under section 8-1.

### 70-30 Starting to hold as trading stock an item you already own

- (1) If you start holding as \*trading stock an item you already own, but do not hold as trading stock, you are treated as if:
  - (a) just before it became trading stock, you had sold the item to someone else (at arm's length) for whichever of these amounts you elect:
    - its cost (as worked out under subsection (3) or (4));
    - its \*market value just before it became trading stock; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) you had immediately bought it back for the same amount.

**Example:** You start holding a depreciating asset as part of your trading stock. You are treated as having sold it just before that time, and immediately bought it back, for its cost or market value, whichever you elect. (Subdivision 40-D provides for the consequences of selling depreciating assets.)

The same amount is normally a general deduction under section 8-1 as an outgoing in connection with acquiring trading stock. The amount is also taken into account in working out the item's cost for the purposes of section 70-45 (about valuing trading stock at the end of the income year).

**Note:** Depending on how you elect under paragraph (1)(a), the sale may or may not give rise to a capital gain or a capital loss for the purposes of Parts 3-1 and 3-3 (about CGT). It does not if you elect to be treated as having sold the item for what would have been its cost: see subsection 118-25(2). However, it can if you elect market value.

#### *When you must make the election*

- (2) You must make the election by the time you lodge your \*income tax return for the income year in which you start holding the item as \*trading stock. (If you do not make the election by then because you do not realise until later that you started to hold the item as trading stock, you must make the election as soon as is reasonable after realising that.)

However, the Commissioner can allow you to make it later (in either case).

#### *How to work out the item's cost*

- (3) The item's cost is what would have been its cost for the purposes of section 70-45 (about valuing trading stock at the end of the income year) if it had been your \*trading stock ever since you last acquired it. In working that out, disregard section 70-55 (about acquiring live stock by natural increase).
- (4) However, if you last acquired the item for no consideration, its cost is worked out using this table:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Cost of item acquired for no consideration</b>		
<b>Item</b>	<b>In this case:</b>	<b>The cost is:</b>
1	you acquired the item during or after the 1998-99 income year, and the acquisition involved a *CGT event	the item's *market value when you last acquired it
2	you acquired the item before or during the 1997-98 income year, and the acquisition involved a disposal of the item to you within the meaning of former Part IIIA (Capital gains and capital losses) of the <i>Income Tax Assessment Act 1936</i>	the item's *market value when you last acquired it
3	your acquisition of the item involved the item: (a) devolving to you as someone's *legal personal representative; or (b) *passing to you as a beneficiary in someone's estate; and, if a *CGT event had happened in relation to the item just before you started holding it as *trading stock, a *capital gain or *capital loss could have resulted that would have been taken into account in working out your *net capital gain or *net capital loss for the income year of the event	(a) if the person died during or after his or her 1998-99 income year—the dead person's *cost base for the item just before his or her death; or (b) if the person died before or during his or her 1997-98 income year—the dead person's indexed cost base (within the meaning of former Part IIIA (Capital gains and capital losses) of the <i>Income Tax Assessment Act 1936</i> ) for the item just before his or her death (but worked out disregarding former section 160ZG (which affects the indexed cost base for a non-listed personal use asset) of that Act)
4	any other case where you last acquired the item for no consideration	a nil amount

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Exceptions*

(5) Subsection (1) does not apply if you start holding any of the following as \*trading stock because they are severed from land:

- (a) standing or growing crops;
- (b) crop-stools;
- (c) trees planted and tended for sale.

(This does not prevent subsection (1) from applying to a severed item that you later start holding as \*trading stock.)

Note: A transaction that this section treats as having occurred is disregarded for the purposes of these provisions of the *Income Tax Assessment Act 1936*:

- subsection 47A(10) (which treats certain benefits as dividends paid by a CFC)
- paragraph 103A(3A)(c) (which affects whether a company is a public company for an income year).

### **Subdivision 70-C—Accounting for trading stock you hold at the start or end of the income year**

#### **Table of sections**

##### **General rules**

70-35	You include the value of your trading stock in working out your assessable income and deductions
70-40	Value of trading stock at start of income year
70-45	Value of trading stock at end of income year

##### **Special valuation rules**

70-50	Valuation if trading stock obsolete etc.
70-55	Working out the cost of natural increase of live stock
70-60	Valuation of horse breeding stock
70-65	Working out the horse opening value and the horse reduction amount
70-70	Valuing interests in FIFs

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## General rules

### 70-35 You include the value of your trading stock in working out your assessable income and deductions

- (1) If you carry on a \*business, you compare:
  - (a) the \*value of all your \*trading stock on hand at the start of the income year; and
  - (b) the \*value of all your \*trading stock on hand at the end of the income year.

Note: You may not need to do this stocktaking if you are a small business entity: see Division 328.

- (2) Your assessable income includes any excess of the \*value at the *end* of the income year over the value at the *start* of the income year.
- (3) On the other hand, you can deduct any excess of the \*value at the *start* of the income year over the value at the *end* of the income year.

### 70-40 Value of trading stock at start of income year

- (1) The *value* of an item of \*trading stock on hand at the start of an income year is the same amount at which it was taken into account under this Division or Subdivision 328-E (about trading stock for small business entities) at the end of the last income year.
- (2) The *value* of the item is a nil amount if the item was not taken into account under this Division or Subdivision 328-E (about trading stock for small business entities) at the end of the last income year.

### 70-45 Value of trading stock at end of income year

- (1) You must elect to *value* each item of \*trading stock on hand at the end of an income year at:
  - (a) its \*cost; or
  - (b) its market selling value; or
  - (c) its replacement value.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: An item's market selling value at a particular time may not be the same as its market value.

- (1A) In working out the \*cost, market selling value or replacement value of an item of \*trading stock (other than an item the \*supply of which cannot be a \*taxable supply) at the end of an income year, disregard an amount equal to the amount of the \*input tax credit (if any) to which you would be entitled if:
- (a) you had \*acquired the item at that time; and
  - (b) the acquisition had been solely for a \*creditable purpose; and

Note: Some assets, such as shares, cannot be the subject of a taxable supply.

- (2) The rest of this Subdivision deals with cases where the normal operation of this section is modified, or where a different valuation method may or must be used. The table sets out other cases where that happens because of provisions outside this Subdivision.

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**Rules about the value of trading stock**

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Item	For this situation:	See:
2	In working out the attributable income of a non-resident trust estate, trading stock is taken to be valued at cost.	Section 102AAY of the <i>Income Tax Assessment Act 1936</i>
3	In working out the attributable income of a controlled foreign corporation, the corporation must value at cost.	Section 397 of the <i>Income Tax Assessment Act 1936</i>
4	Some anti-avoidance provisions reduce the amount that is taken to be the cost of an item of trading stock.	Subsections 52A(7), 82KH(1N), 82KL(6) and 100A(6B) of the <i>Income Tax Assessment Act 1936</i>
5	The value of the item at the end of an income year may be the same as at the start of the year for a small business entity	Subdivision 328-E of this Act

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Special valuation rules

### 70-50 Valuation if trading stock obsolete etc.

You may elect to *value* an item of your \*trading stock below all the values in section 70-45 if:

- (a) that is warranted because of obsolescence or any other special circumstances relating to that item; and
- (b) the value you elect is reasonable.

### 70-55 Working out the cost of natural increase of live stock

- (1) The *cost* of an animal you hold as \*live stock that you acquired by natural increase is whichever of these you elect:
  - (a) the actual cost of the animal;
  - (b) the cost prescribed by the regulations for each animal in the applicable class of live stock.
- (2) However, if you incur a service fee for insemination and, as a result, acquire a horse by natural increase, its *cost* is the greater of:
  - (a) the amount worked out under subsection (1); and
  - (b) the part of the service fee that is attributable to your acquiring the horse.
- (3) An election under this section must be made by the time you lodge your \*income tax return for the income year in which you acquired the animal. However, the Commissioner can allow you to make it later.

### 70-60 Valuation of horse breeding stock

- (1) For a horse at least 3 years old that you acquired under a contract and hold for breeding, you can elect a *value* other than the values in section 70-45.
- (2) The *value* you can elect for the horse at the end of the income year is worked out using the table:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Value of horse breeding stock</b>	
<b>If the horse is:</b>	<b>... you can value it at this amount:</b>
female 12 years or over	\$1
any other horse	the *horse opening value less the *horse reduction amount (see section 70-65)

- (3) However, if the value worked out under subsection (2) would be less than \$1, you must elect the *value* of \$1.
- (4) A horse's age is to be measured in whole years as at the end of the relevant income year. The age of a horse not born on 1 August is determined as if the horse had been born on the last 1 August before it was actually born.

**70-65 Working out the horse opening value and the horse reduction amount**

- (1) The *horse opening value* is:
- (a) if the horse has been your \*live stock ever since the start of the income year—its \*value as \*trading stock at the start of the income year; or
- (b) otherwise—the horse's base amount (see subsection (3)).

- (2) The *horse reduction amount* is worked out as follows:

- (a) for female horses under 12 years of age:

$$\frac{\text{Base amount}}{\text{Reduction factor}} \times \frac{\text{Breeding days}}{\text{Days in income year}}$$

- (b) for any male horse:

$$\text{Base amount} \times \frac{\text{Nominated percentage}}{100} \times \frac{\text{Breeding days}}{\text{Days in income year}}$$

- (3) In this section:

*base amount* is the lesser of:

- (a) the horse's \*cost; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 70-70

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- (b) the horse's \*adjustable value when it most recently became your \*live stock.

**breeding days** is the number of whole days in the income year since you most recently began to hold the horse for breeding.

**nominated percentage** is any percentage, up to 25%, you nominate when you make the election in section 70-60.

**reduction factor** is the greater of:

- (a) 3; and  
(b) the difference between 12 and the horse's age when you most recently began to hold it for breeding.

### 70-70 Valuing interests in FIFs

- (1) You must **value** at its cost an item of your \*trading stock that is an interest in a \*foreign investment fund (a \*FIF).

Note: For special rules about valuing an interest in a FIF that was an item of your trading stock on hand at the start of the 1991-92 income year, see section 70-70 of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) However, you may elect to value all your interests in \*FIFs at their \*market value instead. If you make this election, then for the income year of the election, and for all later income years, you must **value** at their market value all your interests in FIFs.
- (3) You can only make this election *before* you lodge your \*income tax return for the *first* income year in which a \*notional accounting period of any \*FIF you have an interest in ends.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Subdivision 70-D—Assessable income arising from disposals of trading stock and certain other assets****Guide to Subdivision 70-D****70-75 What this Subdivision is about**

Your assessable income includes the market value of an item of trading stock if you dispose of it outside the ordinary course of business or it ceases to be trading stock in certain other circumstances.

This Subdivision treats certain other assets in the same way as trading stock.

**Table of sections**

70-80 Why the rules in this Subdivision are necessary

**Operative provisions**

70-85 Application of this Subdivision to certain other assets

70-90 Assessable income on disposal of trading stock outside the ordinary course of business

70-95 Purchase price is taken to be market value

70-100 Notional disposal when you stop holding an item as trading stock

70-105 Death of owner

70-110 You stop holding an item as trading stock but still own it

70-115 Compensation for lost trading stock

**70-80 Why the rules in this Subdivision are necessary**

- (1) When you dispose of an item of your trading stock in the ordinary course of business, what you get for it is included in your assessable income (under section 6-5) as ordinary income.
- (2) If an item stops being your trading stock for certain other reasons, an amount is generally included in your assessable income to balance the reduction in trading stock on hand, which is a transaction on revenue account.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) The other reasons for an item to stop being your trading stock are:
- (a) you dispose of it outside the ordinary course of \*business; or
  - (b) interests in it change; or
  - (c) you die; or
  - (d) you stop holding it as trading stock.

## **Operative provisions**

### **70-85 Application of this Subdivision to certain other assets**

This Subdivision (except section 70-115) applies to certain assets of a \*business as if they were \*trading stock on hand of the entity that carries on that business. The assets are:

- (a) standing or growing crops; and
- (b) crop-stools; and
- (c) trees planted and tended for sale.

Note: Section 70-115 assesses insurance or indemnity amounts for lost trading stock.

### **70-90 Assessable income on disposal of trading stock outside the ordinary course of business**

- (1) If you dispose of an item of your \*trading stock outside the ordinary course of a \*business:
- (a) that you are carrying on; and
  - (b) of which the item is an asset;
- your assessable income includes the \*market value of the item on the day of the disposal.
- (1A) If the disposal is the giving of a gift of property by you for which a valuation under section 30-212 is obtained, you may choose that the \*market value is replaced with the value of the property as determined under the valuation. You can only make this choice if the valuation was made no more than 90 days before or after the disposal.
- (2) Any amount that you actually receive for the disposal is not included in your assessable income (nor is it \*exempt income).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- Note 1: In the case of an asset covered by section 70-85 (which applies this Subdivision to certain other assets), the disposal will usually involve disposing of the land of which the asset forms part.
- Note 2: For certain disposals of live stock by primary producers, special rules apply: see Subdivision 385-E.
- Note 3: If the disposal is by way of gift, you may be able to deduct the gift: see Division 30 (Gifts).
- Note 4: If the disposal is of trees, you can deduct the relevant portion of your capital costs of acquiring the land carrying the trees or of acquiring a right to fell the trees: see section 70-120.
- Note 5: This section and section 70-95 also apply to disposals of certain items on hand at the end of 1996-97 that are not trading stock but were trading stock as defined in the *Income Tax Assessment Act 1936*: see section 70-10 of the *Income Tax (Transitional Provisions) Act 1997*.

### **70-95 Purchase price is taken to be market value**

If an entity disposes of an item of the entity's \*trading stock outside the ordinary course of \*business, the entity acquiring the item is treated as having bought it for the amount included in the disposing entity's assessable income under section 70-90.

### **70-100 Notional disposal when you stop holding an item as trading stock**

- (1) An item of \*trading stock is treated as having been disposed of outside the ordinary course of \*business if it stops being trading stock on hand of an entity (the *transferor*) and, immediately afterwards:
- (a) the transferor is not the item's sole owner; but
  - (b) an entity that owned the item (alone or with others) immediately beforehand still has an interest in the item.

**Example:** A grocer decides to take her daughters into partnership with her. Her trading stock becomes part of the partnership assets, owned by the partners equally. As a result, it becomes trading stock on hand of the partnership instead of the grocer. This section treats the grocer as having disposed of the trading stock to the partnership outside the ordinary course of her business.

**Note:** If the transferor *is* the item's sole owner after it stops being trading stock on hand of the transferor, section 70-110 applies instead of this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 70-100

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- (2) As a result, the transferor's assessable income includes the \*market value of the item on the day it stops being \*trading stock on hand of the transferor.
- (3) The entity or entities (the *transferee*) that own the item immediately *after* it stops being \*trading stock on hand of the transferor are treated as having bought the item for the same value on that day.

*Election to treat item as disposed of at closing value*

- (4) However, an election can be made to treat the item as having been disposed of for what would have been its \*value as \*trading stock of the *transferor* on hand at the end of an income year ending on that day.
- (5) If this election is made, this \*value is included in the transferor's assessable income for the income year that includes that day. The transferee is treated as having bought the item for the same value on that day.
- (6) This election can only be made if:
  - (a) immediately *after* the item stops being \*trading stock on hand of the transferor, it is an asset of a \*business carried on by the transferee; and
  - (b) immediately *after* the item stops being \*trading stock on hand of the transferor, the entities that owned it immediately beforehand have (between them) interests in the item whose total value is at least 25% of the item's \*market value on that day; and
  - (c) the \*value elected is *less than* that market value; and
  - (d) the item is not a thing in action.
- (7) Also, the election can only be made before 1 September following the end of the \*financial year in which the item stops being \*trading stock on hand of the transferor. However, the Commissioner can allow the election to be made later.
- (8) An election must be in writing and signed by or on behalf of each of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the entities that own the item immediately before it stops being \*trading stock on hand of the transferor; and
  - (b) the entities that own it immediately afterwards.
- (9) If a person whose signature is required for the election has died, the \*legal personal representative of that person's estate may sign instead.

*When election has no effect*

- (10) An election has no effect if:
- (a) the item stops being \*trading stock on hand of the transferor outside the course of ordinary family or commercial dealing; and
  - (b) the \*consideration receivable by the transferor (or by any of the entities constituting the transferor) substantially exceeds what would reasonably be expected to be the consideration receivable by the entity concerned if the \*market value of the item immediately before it stops being \*trading stock on hand of the transferor were the \*value elected under subsection (4).

Note: Section 960-255 may be relevant to determining family relationships for the purposes of paragraph (10)(a).

- (11) ***Consideration receivable*** by an entity means so much of the value of any benefit as it is reasonable to expect that the entity will obtain in connection with the item ceasing to be \*trading stock on hand of the transferor.

### **70-105 Death of owner**

- (1) When you die, your assessable income up to the time of your death includes the \*market value at that time of the \*trading stock of your \*business (if any).

Note: In the case of trees, you can deduct the relevant portion of your capital costs of acquiring the land carrying the trees or of acquiring a right to fell the trees: see section 70-120.

- (2) The entity on which the \*trading stock devolves is treated as having bought it for its \*market value at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 70-110

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- (3) However, your \*legal personal representative can elect to have included in your assessable income (instead of the \*market value) the amount that would have been the \*value of the \*trading stock at the end of an income year ending on the day of your death.
- (4) In the case of an asset covered by section 70-85 (which applies this Subdivision to certain other assets), your \*legal personal representative can elect to have a nil amount included in your assessable income (instead of the \*market value).
- (5) Your \*legal personal representative can make an election only if:
  - (a) the \*business is carried on after your death; and
  - (b) the \*trading stock continues to be held as trading stock of that business, or the asset continues to be held as an asset of that business, as appropriate.
- (6) If an election is made, the entity on which the \*trading stock devolves is treated as having bought it for the amount referred to in subsection (3) or (4).
- (7) An election can only be made on or before the day when your \*legal personal representative lodges your \*income tax return for the period up to your death. However, the Commissioner can allow it to be made later.

**70-110 You stop holding an item as trading stock but still own it**

If you stop holding an item as \*trading stock, but still own it, you are treated as if:

- (a) just before it stopped being trading stock, you had sold it to someone else (at arm's length and in the ordinary course of business) for its \*cost; and
- (b) you had immediately bought it back for the same amount.

Example 1: You are a sheep grazier and take a sheep from your stock to slaughter for personal consumption. You are treated as having sold it for its cost. This amount is assessable income, just like the proceeds of sale of any of your trading stock.

Although you are also treated as having bought the sheep for the same amount, it would not be deductible because the sheep is for personal consumption.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Example 2: You stop holding an item as trading stock and begin to use it as a depreciating asset for the purpose of producing your assessable income. You are treated as having sold it for its cost. This amount is assessable income, just like the proceeds of sale of any of your trading stock.

You are also treated as having bought the item for the same amount, which is relevant to working out the item's cost for capital allowance purposes (see Subdivision 40-C) and the item's cost base for CGT purposes (see Division 110).

Note: A transaction that this section treats as having occurred is disregarded for the purposes of these provisions of the *Income Tax Assessment Act 1936*:

- subsection 47A(10) (which treats certain benefits as dividends paid by a CFC)
- paragraph 103A(3A)(c) (which affects whether a company is a public company for an income year).

### **70-115 Compensation for lost trading stock**

Your assessable income includes an amount that:

- (a) you receive by way of insurance or indemnity for a loss of \*trading stock; and
- (b) is not assessable as \*ordinary income under section 6-5.

### **Subdivision 70-E—Miscellaneous**

#### **Table of sections**

70-120    Deducting capital costs of acquiring trees

#### **70-120 Deducting capital costs of acquiring trees**

- (1) This section gives you deductions for your capital costs of acquiring land carrying trees or of acquiring a right to fell trees.

Note: This section is included in this Division because:

- trees felled for sale, or for use in manufacture, by you will usually become your trading stock; and
- before they are felled, the trees are covered by sections 70-90 and 70-105 because of section 70-85.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



*Land carrying trees*

(2) You can deduct the amount you paid to acquire land carrying trees if:

- (a) some or all of the trees are felled during the income year for sale, or for use in manufacture, by you for the \*purpose of producing assessable income; or
- (b) some or all of the trees are felled during the income year under a right you granted to another entity in consideration of payments as or by way of \*royalty; or
- (c) the \*market value of some or all of the trees is included in your assessable income for the income year by section 70-90 (because you disposed of the trees outside the ordinary course of \*business) or section 70-105 (because of your death).

(It does not matter when you acquired the land.)

Note: The market value of trees is *not* included in your assessable income for the income year by section 70-105 (because of your death) if your legal personal representative elects under subsection 70-105(4) to have a nil amount included instead.

*Right to fell trees*

(3) You can deduct the amount you paid to acquire a right to fell trees if:

- (a) some or all of the trees are felled during the income year for sale, or for use in manufacture, by you for the \*purpose of producing assessable income; or
- (b) some or all of the trees are felled during the income year under a right you granted to another entity in consideration of payments as or by way of \*royalty.

(It does not matter when you acquired the right.)

*How much you can deduct for costs of acquiring land or right*

(4) You can deduct for the income year so much of the amount you paid as is attributable to the trees covered by a paragraph of subsection (2) or (3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (5) If you can deduct an amount because of paragraph (2)(c), you can also deduct for the income year so much of any other capital expenditure you incurred as is attributable to acquiring the trees covered by that paragraph (except so far as you have deducted it, or can deduct it, for any income year under a provision of this Act outside this section).

*No deduction for carbon sink forests*

- (5A) You cannot deduct under this section so much of an amount you paid or incurred as is attributable to the establishment of trees for which any entity has deducted, or can deduct, an amount for any income year under Subdivision 40-J.

*Non-arm's length transactions*

- (6) If:
- (a) you can deduct an amount under this section for expenditure incurred in connection with a transaction; and
  - (b) the parties to the transaction did not deal with each other at arm's length; and
  - (c) the amount of the expenditure is greater than the \*market value of what the expenditure is for;
- the amount of the expenditure is instead taken to be that market value. This has effect for the purposes of working out what you can deduct under this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Part 2-40—Rules affecting employees and other taxpayers receiving PAYG withholding payments**

### **Division 80—General rules**

#### **Table of Subdivisions**

Guide to Division 80

#### **Guide to Division 80**

##### **80-1 What this Division is about**

This Division sets out rules that apply throughout the Part. The rules are about holding an office, the termination of employment, the transfer of property and receiving and making payments.

#### **Table of sections**

##### **Operative provisions**

80-5	Holding of an office
80-10	Application to the termination of employment
80-15	Transfer of property
80-20	Payments for your benefit or at your direction or request

#### **Operative provisions**

##### **80-5 Holding of an office**

If a person holds (or has held) an office, this Part applies to the person in the same way as it would apply if the person were (or had been) employed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **80-10 Application to the termination of employment**

For the purposes of this Part, treat the termination of employment as including:

- (a) retirement from employment; and
- (b) the cessation of employment because of death.

### **80-15 Transfer of property**

- (1) Any of the following payments covered by this Part (but no others covered by this Part) can be or include a transfer of property:
  - (a) an \*employment termination payment;
  - (b) a \*genuine redundancy payment;
  - (c) an \*early retirement scheme payment;
  - (d) a payment covered by Subdivision 83-D (Foreign termination payments);
  - (e) a payment that would be an employment termination payment but for paragraph 82-130(1)(b) (see Subdivision 83-E).

Note: An unused annual leave payment or an unused long service leave payment cannot include a transfer of property.

- (2) The amount of the payment is or includes the \*market value of the property.
- (3) The \*market value is reduced by the value of any consideration given for the transfer of the property.

### **80-20 Payments for your benefit or at your direction or request**

- (1) This section applies for the purposes of:
  - (a) determining whether Division 82 or 83 applies to a payment; and
  - (b) determining whether a payment mentioned in Division 82 or 83 is made to you, or received by you.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-40** Rules affecting employees and other taxpayers receiving PAYG withholding payments

**Division 80** General rules

Section 80-20

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- (2) A payment is treated as being made to you, or received by you, if it is made:
- (a) for your benefit; or
  - (b) to another person or to an entity at your direction or request.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 82—Employment termination payments**

### **Table of Subdivisions**

	Guide to Division 82
82-A	Employment termination payments: life benefits
82-B	Employment termination payments: death benefits
82-C	Key concepts

### **Guide to Division 82**

#### **82-1 What this Division is about**

This Division tells you how employment termination payments are treated for the purpose of income tax.

#### **Subdivision 82-A—Employment termination payments: life benefits**

### **Guide to Subdivision 82-A**

#### **82-5 What this Subdivision is about**

If you receive a life benefit termination payment, part of the payment may be tax free (the tax free component).

You are entitled to a tax offset on the remaining part of the payment (the taxable component), subject to limitations.

The extent of your entitlement to the offset depends on your age in the year you receive the offset, on the total amount of payments you receive in the same year, and on the total amount of payments you receive in consequence of the same employment termination.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 82-10

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**Table of sections**

**Operative provisions**

82-10 Taxation of life benefit termination payments

**Operative provisions**

**82-10 Taxation of life benefit termination payments**

*Tax free component*

- (1) The \*tax free component of a \*life benefit termination payment you receive is not assessable income and is not \*exempt income.

*Taxable component*

- (2) The \*taxable component of the payment is assessable income.
- (3) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount mentioned in subsection (4) does not exceed:
- (a) if you are your \*preservation age or older on the last day of the income year in which you receive the payment—15%; or
  - (b) otherwise—30%.

Note: The remainder of the taxable component is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (4) The amount is so much of the \*taxable component of the payment as does not exceed the *lesser* of:
- (a) the \*ETP cap amount, reduced (but not below zero) by the amount worked out under this subsection for each \*life benefit termination payment you have received earlier in the income year; and
  - (b) the ETP cap amount, reduced (but not below zero) by the amount worked out under this subsection for each life benefit termination payment you have received earlier in consequence of the same employment termination, whether in the income year or an earlier income year.

Note 1: For the ETP cap amount, see section 82-160.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- Note 2: If you have also received a death benefit termination payment in the same income year, your entitlement to a tax offset under this section is not affected by your entitlement (if any) to a tax concession for the death benefit termination payment (under section 82-65 or 82-70).
- Note 3: Certain other life benefit termination payments made before 1 July 2012 may be treated as earlier payments under paragraph (4)(b): see section 82-10H of the *Income Tax (Transitional Provisions) Act 1997*.

## **Subdivision 82-B—Employment termination payments: death benefits**

### **Guide to Subdivision 82-B**

#### **82-60 What this Subdivision is about**

If you receive a death benefit termination payment after the death of a person, part of the payment may be tax free (the tax free component).

You are entitled to a tax offset on the remaining part of the payment (the taxable component), subject to limitations.

The extent of your entitlement to the offset depends on whether or not you were a death benefits dependant of the deceased, and on the total amount of payments you receive in consequence of the same employment termination.

If a death benefit termination payment is payable to the trustee of the estate of the deceased for the benefit of another person, the payment is taxed in the hands of the trustee in the same way as it would be taxed if it had been paid directly to the other person.

#### **Table of sections**

##### **Operative provisions**

82-65	Death benefits for dependants
82-70	Death benefits for non-dependants
82-75	Death benefits paid to trustee of deceased estate

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 82-65

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**Operative provisions**

**82-65 Death benefits for dependants**

*Tax free component*

- (1) The \*tax free component of a \*death benefit termination payment that you receive after the death of a person of whom you are a \*death benefits dependant is not assessable income and is not \*exempt income.

*Taxable component*

- (2) If you receive a \*death benefit termination payment after the death of a person of whom you are a \*death benefits dependant:
- (a) the part of the \*taxable component of the payment mentioned in subsection (3) is not assessable income and is not \*exempt income; and
  - (b) the remainder of the taxable component (if any) of the payment is assessable income.

Note: The remainder of the taxable component is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (3) The amount is so much of the \*taxable component of the payment as does not exceed the \*ETP cap amount.

Note: For the ETP cap amount, see section 82-160.

- (4) The \*ETP cap amount is reduced (but not below zero) by the amount worked out under subsection (3) for each \*death benefit termination payment (if any) you have received earlier in consequence of the same employment termination, whether in the income year or an earlier income year.

Note 1: See subsection 82-75(2) for the tax treatment of any amount by which you may have benefited from an employment termination payment to the trustee of the estate of the deceased.

Note 2: If you have also received a life benefit termination payment in the same income year, your entitlement to a tax concession under this section is not affected by your entitlement (if any) to an offset for the life benefit termination payment (under section 82-10).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## 82-70 Death benefits for non-dependants

### *Tax free component*

- (1) The \*tax free component of a \*death benefit termination payment that you receive after the death of a person of whom you are *not* a \*death benefits dependant is not assessable income and is not \*exempt income.

### *Taxable component*

- (2) If you receive a \*death benefit termination payment after the death of a person of whom you are *not* a \*death benefits dependant, the \*taxable component of the payment is assessable income.
- (3) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount mentioned in subsection (4) does not exceed 30%.

Note: The remainder of the taxable component is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (4) The amount is so much of the \*taxable component of the payment as does not exceed the \*ETP cap amount.

Note: For the ETP cap amount, see section 82-160.

- (5) The \*ETP cap amount is reduced (but not below zero) by the amount worked out under subsection (4) for each \*death benefit termination payment (if any) you have received earlier in consequence of the same employment termination, whether in the income year or an earlier income year.

Note 1: See subsection 82-75(3) for the tax treatment of any amount by which you may have benefited from an employment termination payment to the trustee of the estate of the deceased.

Note 2: If you have also received a life benefit termination payment in the same income year, your entitlement to a tax offset under this section is not affected by your entitlement (if any) to an offset for the life benefit termination payment (under section 82-10).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-40** Rules affecting employees and other taxpayers receiving PAYG withholding payments

**Division 82** Employment termination payments

Section 82-75

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**82-75 Death benefits paid to trustee of deceased estate**

- (1) This section applies to you if:
- (a) you are the trustee of a deceased estate; and
  - (b) a \*death benefit termination payment is made to you in your capacity as trustee.

Note: See also subsection 101A(3) of the *Income Tax Assessment Act 1936*.

*Dependants of deceased benefit from payment*

- (2) To the extent that 1 or more beneficiaries of the estate who were \*death benefits dependants of the deceased have benefited, or may be expected to benefit, from the payment:
- (a) the payment is treated as if it had been made to you as a person who was a death benefits dependant of the deceased; and
  - (b) the payment is taken to be income to which no beneficiary is presently entitled.

Note: Section 82-65 deals with the taxation of employment termination payments made to persons who are death benefits dependants of deceased persons.

*Non-dependants of deceased benefit from payment*

- (3) To the extent that 1 or more beneficiaries of the estate who were *not* \*death benefits dependants of the deceased have benefited, or may be expected to benefit, from the payment:
- (a) the payment is treated as if it had been made to you as a person who was *not* a death benefits dependant of the deceased; and
  - (b) the payment is taken to be income to which no beneficiary is presently entitled.

Note: Section 82-70 deals with the taxation of employment termination payments made to persons who are *not* death benefits dependants of deceased persons.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 82-C—Key concepts

### Guide to Subdivision 82-C

#### 82-125 What this Subdivision is about

This Subdivision defines an *employment termination payment* as a payment made in consequence of the termination of a person's employment that is received no later than 12 months after the termination (though the 12 month restriction is relaxed in some circumstances).

An employment termination payment can be a life benefit termination payment (received by the person whose employment is terminated) or a death benefit termination payment (received by another person after the death of a person whose employment is terminated).

Certain types of payments are declared not to be employment termination payments.

Various other terms used in describing the taxation treatment of employment termination payments are defined in the Subdivision.

#### Table of sections

##### Operative provisions

82-130	What is an <i>employment termination payment</i> ?
82-135	Payments that are not <i>employment termination payments</i>
82-140	<i>Tax free component</i> of an employment termination payment
82-145	<i>Taxable component</i> of an employment termination payment
82-150	What is an <i>invalidity segment</i> of an employment termination payment?
82-155	What is a <i>pre-July 83 segment</i> of an employment termination payment?
82-160	What is the <i>ETP cap amount</i> ?

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### 82-130 What is an *employment termination payment*?

- (1) A payment is an *employment termination payment* if:
- (a) it is received by you:
    - (i) in consequence of the termination of your employment; or
    - (ii) after another person's death, in consequence of the termination of the other person's employment; and
  - (b) it is received no later than 12 months after that termination (but see subsection (4)); and
  - (c) it is *not* a payment mentioned in section 82-135.

Note 1: If a payment would be an employment termination payment but for paragraph (b), see subsection (4) and section 83-295.

Note 2: The holding of an office is treated as employment for this Part: see section 80-5. Also, the termination of employment is treated as including the termination of employment by retirement or by death: see section 80-10.

#### *Types of employment termination payment*

- (2) A *life benefit termination payment* is an \*employment termination payment to which subparagraph (1)(a)(i) applies.
- (3) A *death benefit termination payment* is an \*employment termination payment to which subparagraph (1)(a)(ii) applies.

#### *Exemption from 12 month rule*

- (4) Paragraph (1)(b) does not apply to you if:
- (a) you are covered by a determination under subsection (5) or (7); or
  - (b) the payment is a \*genuine redundancy payment or an \*early retirement scheme payment.

Note: The part of a genuine redundancy payment or an early retirement scheme payment worked out under section 83-170 is not an employment termination payment: see section 82-135.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (5) The Commissioner may determine, in writing, that paragraph (1)(b) does not apply to you if the Commissioner considers the time between the employment termination and the payment to be reasonable, having regard to the following:
  - (a) the circumstances of the employment termination, including any dispute in relation to the termination;
  - (b) the circumstances of the payment;
  - (c) the circumstances of the person making the payment;
  - (d) any other relevant circumstances.
- (6) A determination under subsection (5) is not a legislative instrument.
- (7) The Commissioner may, by legislative instrument, determine that paragraph (1)(b) does not apply to either or both of the following, as specified in the determination:
  - (a) a class of payments;
  - (b) a class of recipients of payments.
- (8) A determination under subsection (7) may provide for paragraph (1)(b) not to apply in circumstances relating to any (or all) of the following, as specified in the determination:
  - (a) a class of employment termination (including a class described by reference to disputes of a specified type);
  - (b) a class of payments;
  - (c) a class of persons making payments;
  - (d) the period after the employment termination until payment is received;
  - (e) any other relevant circumstances.

### **82-135 Payments that are not *employment termination payments***

The following payments you receive are *not employment termination payments*:

- (a) a \*superannuation benefit (see Divisions 301 to 307);
- (b) a payment of a pension or an \*annuity (whether or not the payment is a superannuation benefit); and
- (c) an \*unused annual leave payment (see Subdivision 83-A);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-40** Rules affecting employees and other taxpayers receiving PAYG withholding payments

**Division 82** Employment termination payments

Section 82-135

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- (d) an \*unused long service leave payment (see Subdivision 83-B);
- (e) the part of a \*genuine redundancy payment or an \*early retirement scheme payment worked out under section 83-170 (see Subdivision 83-C);
- (f) a payment to which Subdivision 83-D (Foreign termination payments) applies;
- (fa) a payment (or part of one) made by a company or trust as mentioned in subsection 152-310(2);
- (g) a payment that is an advance or a loan to you on terms and conditions that would apply if you and the payer were dealing at \*arm's length;
- (h) a payment that is deemed to be a \*dividend under this Act;
- (i) a capital payment for, or in respect of, personal injury to you so far as the payment is reasonable having regard to the nature of the personal injury and its likely effect on your capacity to \*derive income from personal exertion (within the meaning of the definition of *income derived from personal exertion* in subsection 6(1) of the *Income Tax Assessment Act 1936*);
- (j) a capital payment for, or in respect of, a legally enforceable contract in restraint of trade by you so far as the payment is reasonable having regard to the nature and extent of the restraint;
- (k) a payment:
  - (i) received by you, or to which you are entitled, as the result of the commutation of a pension payable from a \*constitutionally protected fund; and
  - (ii) wholly applied in paying any superannuation contributions surcharge (as defined in section 37 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*);
- (l) a payment:
  - (i) received by you, or to which you are entitled, as the result of the commutation of a pension payable by a superannuation provider (within the meaning of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Superannuation Contributions Tax (Assessment and Collection) Act 1997*); and

- (ii) wholly applied in paying any superannuation contributions surcharge (as defined in section 43 of that Act);
- (m) an amount included in your assessable income under Division 13A of Part III of the *Income Tax Assessment Act 1936* (which deals with employee share schemes).

Note: For paragraph (e)—the remaining part of a genuine redundancy payment or an early retirement scheme payment (apart from the amount mentioned in the paragraph) is an employment termination payment if section 82-130 applies to that part.

### **82-140 Tax free component of an employment termination payment**

The *tax free component* of an \*employment termination payment is so much of the payment as consists of the following:

- (a) the \*invalidity segment of the payment;
- (b) the \*pre-July 83 segment of the payment.

### **82-145 Taxable component of an employment termination payment**

The *taxable component* of an \*employment termination payment is the amount of the payment less the \*tax free component of the payment (see section 82-140).

### **82-150 What is an *invalidity segment* of an employment termination payment?**

- (1) An \*employment termination payment includes an *invalidity segment* if:
  - (a) the payment was made to a person because he or she stops being \*gainfully employed; and
  - (b) the person stopped being gainfully employed because he or she suffered from ill-health (whether physical or mental); and
  - (c) the gainful employment stopped before the person's \*last retirement day; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 2** Liability rules of general application

**Part 2-40** Rules affecting employees and other taxpayers receiving PAYG withholding payments

**Division 82** Employment termination payments

Section 82-155

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(d) 2 legally qualified medical practitioners have certified that, because of the ill-health, it is unlikely that the person can ever be gainfully employed in capacity for which he or she is reasonably qualified because of education, experience or training.

(2) Work out the amount of the *invalidity segment* by applying the following formula:

$$\text{Amount of *employment termination payment} \times \frac{\text{Days to retirement}}{\text{Employment days} + \text{Days to retirement}}$$

where:

*days to retirement* is the number of days from the day on which the person's employment was terminated to the \*last retirement day.

*employment days* is the number of days of employment to which the payment relates.

**82-155 What is a *pre-July 83 segment* of an employment termination payment?**

- (1) An \*employment termination payment includes a *pre-July 83 segment* if any of the employment to which the payment relates occurred before 1 July 1983.
- (2) Work out the amount of the *pre-July 83 segment* as follows:

Step 1. Subtract the \*invalidity segment (if any) from the \*employment termination payment.

Step 2. Multiply the amount at step 1 by the fraction:

$$\frac{\text{Number of days of employment to which the payment relates that occurred before 1 July 1983}}{\text{Total number of days of employment to which the payment relates}}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**82-160 What is the *ETP cap amount*?**

The *ETP cap amount* for the 2007-2008 income year is \$140,000. This amount is indexed annually.

Note 1: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the ETP cap amount: see section 960-285.

Note 2: The ETP cap amount may be reduced for the purpose of working out tax offsets for individual employment termination payments.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-40** Rules affecting employees and other taxpayers receiving PAYG withholding payments

**Division 83** Other payments on termination of employment

Section 83-1

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## **Division 83—Other payments on termination of employment**

### **Table of Subdivisions**

	Guide to Division 83
83-A	Unused annual leave payments
83-B	Unused long service leave payments
83-C	Genuine redundancy payments and early retirement scheme payments
83-D	Foreign termination payments
83-E	Other payments

### **Guide to Division 83**

#### **83-1 What this Division is about**

This Division sets out the taxation treatment for a variety of payments, other than employment termination payments, that are made in consequence of the termination of employment.

#### **Subdivision 83-A—Unused annual leave payments**

##### **Guide to Subdivision 83-A**

#### **83-5 What this Subdivision is about**

You are entitled to a tax offset for a payment that you receive in consequence of the termination of your employment that is for unused annual leave.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Table of sections

### Operative provisions

83-10	Unused annual leave payment is assessable
83-15	Entitlement to tax offset

## Operative provisions

### 83-10 Unused annual leave payment is assessable

#### *Application—annual leave*

- (1) This section applies to leave (*annual leave*) of the following types (whether it is made available as an entitlement or as a privilege):
  - (a) leave ordinarily known as annual leave, including recreational leave and annual holidays;
  - (b) any other leave made available in circumstances similar to those in which the leave mentioned in paragraph (a) is ordinarily made available.

#### *Unused annual leave payments*

- (2) Your assessable income includes an \*unused annual leave payment that you receive.
- (3) A payment that you receive in consequence of the termination of your employment is an *unused annual leave payment* if:
  - (a) it is for annual leave you have not used; or
  - (b) it is a bonus or other additional payment for annual leave you have not used; or
  - (c) it is for annual leave, or is a bonus or other additional payment for annual leave, to which you were not entitled just before the employment termination, but that would have been made available to you at a later time if it were not for the employment termination.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-40** Rules affecting employees and other taxpayers receiving PAYG withholding payments

**Division 83** Other payments on termination of employment

Section 83-15

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**83-15 Entitlement to tax offset**

You are entitled to a \*tax offset to ensure that the rate of tax on an \*unused annual leave payment does not exceed 30%, to the extent that:

- (a) the payment was made in connection with a payment that includes, or consists of, any of the following:
  - (i) a \*genuine redundancy payment;
  - (ii) an \*early retirement scheme payment;
  - (iii) the \*invalidity segment of an \*employment termination payment or \*superannuation benefit; or
- (b) the payment was made in respect of employment before 18 August 1993.

**Subdivision 83-B—Unused long service leave payments**

**Guide to Subdivision 83-B**

**83-65 What this Subdivision is about**

You are entitled to a tax offset for a payment that you receive in consequence of the termination of your employment that is for unused long service leave.

**Table of sections**

**General**

- 83-70 Application—long service leave
- 83-75 Meaning of *unused long service leave payment*
- 83-80 Taxation of unused long service leave payments
- 83-85 Entitlement to tax offset
- 83-90 Meaning of *pre-16/8/78 period, pre-18/8/93 period, post-17/8/93 period* and *long service leave employment period*

**Employment wholly full-time or wholly part-time**

- 83-95 How to work out amount of payment attributable to each period
- 83-100 How to work out *unused days of long service leave* for each period

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

83-105 How to work out long service leave accrued in each period

**Employment partly full-time and partly part-time**

83-110 Leave accrued in pre-16/8/78, pre-18/8/93 and post-17/8/93 periods—  
employment full-time and part-time

**Long service leave taken at less than full pay**

83-115 Working out used days of long service leave if leave taken at less than full  
pay

**General**

**83-70 Application—long service leave**

This Subdivision applies to leave (*long service leave*) of the following types (whether it is made available as an entitlement or as a privilege), other than annual leave to which section 83-10 applies:

- (a) leave ordinarily known as long service leave, including long leave, furlough and extended leave;
- (b) any other leave made available in circumstances similar to those in which the leave mentioned in paragraph (a) is ordinarily made available;
- (c) if your employer has entered into a \*scheme or \*arrangement for leave and, because of the existence and nature of the scheme or arrangement, the employer does not have to comply with the requirements of a law of the Commonwealth, or of a State or Territory, relating to leave mentioned in paragraph (a) or (b)—leave made available under the scheme or arrangement.

**83-75 Meaning of *unused long service leave payment***

A payment that you receive in consequence of the termination of your employment is an *unused long service leave payment* if:

- (a) it is for long service leave you have not used; or
- (b) it is for long service leave to which you were not entitled just before the employment termination, but that would have been

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-40** Rules affecting employees and other taxpayers receiving PAYG withholding payments

**Division 83** Other payments on termination of employment

Section 83-80

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made available to you at a later time if it were not for the employment termination.

**83-80 Taxation of unused long service leave payments**

*Assessable and tax-free parts of unused long service leave payments*

- (1) If you receive an \*unused long service leave payment, your assessable income includes the part of the payment shown in this table:

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**\*Unused long service leave payments**

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<b>Item</b>	<b>To the extent the payment is attributable to the ...</b>	<b>Your assessable income includes this part of it ...</b>
1	*pre-16/8/78 period	5%
2	*pre-18/8/93 period	100%
3	*post-17/8/93 period	100%

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- (2) The remainder of that part (if any) of an \*unused long service leave payment that is attributable to the \*pre-16/8/78 period is not assessable income and is not \*exempt income.

Note 1: If your employment was wholly full-time or wholly part-time during a period, see sections 83-95, 83-100 and 83-105 to work out the amount of an unused long service leave payment that is attributable to the period.

Note 2: If your employment was partly full-time and partly part-time during a period, see section 83-110 to work out the amount of an unused long service leave payment that is attributable to the period.

**83-85 Entitlement to tax offset**

- (1) You are entitled to a \*tax offset on an \*unused long service leave payment that ensures that the rate of income tax on the amount of the payment mentioned in subsection (2) does not exceed 30%.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The amount is the part of the \*unused long service leave payment included in your assessable income under subsection 83-80(1):
- (a) to the extent that it is attributable to the \*pre-18/8/93 period; and
  - (b) to the extent that it is attributable to the \*post-17/8/93 period, if the payment was made in connection with a payment that includes, or consists of, any of the following:
    - (i) a \*genuine redundancy payment; or
    - (ii) an \*early retirement scheme payment; or
    - (iii) an \*invalidity segment of an \*employment termination payment or a \*superannuation benefit.

**83-90 Meaning of *pre-16/8/78 period*, *pre-18/8/93 period*, *post-17/8/93 period* and *long service leave employment period***

- (1) The *pre-16/8/78 period* consists of each day (if any) in your \*long service leave employment period that occurred before 16 August 1978.
- (2) The *pre-18/8/93 period* consists of each day (if any) in your \*long service leave employment period to which the payment relates that occurred after 15 August 1978 and before 18 August 1993.
- (3) The *post-17/8/93 period* consists of each day (if any) in your \*long service leave employment period to which the payment relates that occurred after 17 August 1993.
- (4) Your *long service leave employment period*, for a period of long service leave, is:
  - (a) the period of employment to which the long service leave relates; or
  - (b) if your entitlement to long service leave changes so that it accrues over a shorter period—the period that would apply under paragraph (a) assuming the change had not happened.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Employment wholly full-time or wholly part-time

### 83-95 How to work out amount of payment attributable to each period

- (1) Work out how much of an \*unused long service leave payment is attributable to a period as follows:
  - (a) for the \*pre-18/8/93 period or to the \*post-17/8/93 period—use the formula in subsection (2);
  - (b) for the \*pre-16/8/78 period—subtract the sum of the amounts (if any) worked out for paragraph (a) for the other 2 periods from the total amount of the payment.
- (2) For the \*pre-18/8/93 period or the \*post-17/8/93 period, the formula is:

$$\text{Amount of payment} \times \frac{\text{Unused long service leave days in the relevant period}}{\text{Total unused long service leave days}}$$

where:

***total unused long service leave days*** means the total number of unused days of long service leave in the \*long service leave employment period for the payment.

***unused long service leave days in the relevant period*** means the number of unused days of long service leave in the \*pre-18/8/93 period or the \*post-17/8/93 period (as applicable), worked out under section 83-100.

Note 1: For the meaning of *unused days of long service leave*, see section 83-100.

Note 2: Section 83-110 explains how to work out the period of unused long service leave if your employment was partly full-time and partly part-time during the period.

### 83-100 How to work out unused days of long service leave for each period

- (1) The number of ***unused days of long service leave*** for each of the \*pre-16/8/78 period, the \*pre-18/8/93 period and the \*post-17/8/93

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

period is the number of days of long service leave that accrued to you during that period less the number of days of long service leave that you used in the period.

*Exception if days used exceed days accrued in the pre-18/8/93 period and the post-17/8/93 period*

- (2) To the extent that the number of days of long service leave that you used during the \*pre-18/8/93 period or the \*post-17/8/93 period exceeds the number of days of long service leave that accrued to you during the period, apply the excess days as shown in this table:

**How to apply excess days**

Item	If there are excess days in this period:	Apply the excess days as follows:	If, after you apply the excess days as shown in column 2, excess days remain, apply the remaining days as follows:
1	*pre-18/8/93 period	Subtract the excess days from the unused days in the *post-17/8/93 period	Subtract the excess days from the unused days in the *pre-16/8/78 period
2	*post-17/8/93 period	Subtract the excess days from the unused days in the *pre-18/8/93 period	Subtract the excess days from the unused days in the *pre-16/8/78 period

- (3) The number of *unused days of long service leave* in each period is the number of days after applying the table.

Note: Section 83-115 explains how to work out the number of days of long service leave you are taken to have used if you took long service leave at less than the full pay rate.

**83-105 How to work out long service leave accrued in each period**

- (1) Work out the number of days of long service leave that accrued to you during each part of your \*long service leave employment period as follows:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-40** Rules affecting employees and other taxpayers receiving PAYG withholding payments

**Division 83** Other payments on termination of employment

Section 83-110

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- (a) for the \*pre-18/8/93 period or the \*post-17/8/93 period—use the formula in subsection (2);
  - (b) for the \*pre-16/8/78 period—subtract the sum of the number of days (if any) worked out under paragraph (a) for the other 2 periods from the total number of days of long service leave accrued to you during the long service leave employment period.
- (2) For the \*pre-18/8/93 period or the \*post-17/8/93 period, the formula is:

$$\frac{\text{Days of long service leave accrued during *long service leave employment period}}{\text{Days in *long service leave employment period}} \times \frac{\text{Days in relevant period}}{\text{Days in *long service leave employment period}}$$

where:

**relevant period** means the \*pre-18/8/93 period or the \*post 17/8/93 period (as applicable).

*How to treat fraction of day*

- (3) If long service leave accrued to you during the \*pre-18/8/93 period and the \*post-17/8/93 period but not during the \*pre-16/8/78 period, and the number of days worked out under subsection (2) for the post-17/8/93 period includes a fraction, treat the fraction as having accrued during the pre-18/8/93 period.
- (4) If long service leave accrued to you during all 3 periods and the number of days worked out under subsection (2) for the \*post-17/8/93 period or the \*pre-18/8/93 period includes a fraction, treat the fraction as having accrued during the \*pre-16/8/78 period.

**Employment partly full-time and partly part-time**

**83-110 Leave accrued in pre-16/8/78, pre-18/8/93 and post-17/8/93 periods—employment full-time and part-time**

- (1) This section applies if the \*long service leave employment period for an \*unused long service leave payment includes:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) 1 or more periods when you were employed on a full-time basis; and
  - (b) 1 or more periods when you were employed on a part-time basis.
- (2) Work out how much of the payment is attributable to the period or periods when you were employed on a full-time basis (the *full-time payment*) and how much to the period or periods when you were employed on a part-time basis (the *part-time payment*).
- (3) The amount of the payment that is attributable to each of the \*pre-16/8/78 period, the \*pre-18/8/93 period and the \*post-17/8/93 period is the sum of the amounts worked out in accordance with sections 83-95, 83-100 and 83-105 that would be attributable to those periods if the full-time payment and the part-time payment were each \*unused long service leave payments.

### Long service leave taken at less than full pay

#### 83-115 Working out used days of long service leave if leave taken at less than full pay

If you used days of long service leave at a rate of pay that is less than the rate to which you are entitled, the number of days of long service leave you are taken to have used (disregarding fractions of days) is as follows:

$$\text{Actual days of long service leave} \times \frac{\text{Rate of pay at which leave was actually taken}}{\text{Rate of pay to which you were entitled when taking leave}}$$

Example: If you took 100 actual days of long service leave at a rate of pay of \$30 per hour, while the rate of pay to which you were entitled when taking leave is \$40 per hour, you are taken to have used 75 days of long service leave, worked out as follows:

$$100 \text{ actual days of long service leave} \times \frac{30}{40} = 75 \text{ days of long service leave you are taken to have used}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-40** Rules affecting employees and other taxpayers receiving PAYG withholding payments

**Division 83** Other payments on termination of employment

Section 83-165

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**Subdivision 83-C—Genuine redundancy payments and early retirement scheme payments**

**Guide to Subdivision 83-C**

**83-165 What this Subdivision is about**

This Subdivision defines what are genuine redundancy payments and early retirement scheme payments.

If you receive a genuine redundancy payment or an early retirement scheme payment, you do not have to pay income tax on the payment so far as it does not exceed a certain amount worked out under this Subdivision.

A part of a genuine redundancy payment or an early retirement scheme payment that is not tax free under this Subdivision will normally be an employment termination payment.

**Table of sections**

**Operative provisions**

- 83-170 Tax-free treatment of genuine redundancy payments and early retirement scheme payments
- 83-175 What is a *genuine redundancy payment*?
- 83-180 What is an *early retirement scheme payment*?

**Operative provisions**

**83-170 Tax-free treatment of genuine redundancy payments and early retirement scheme payments**

- (1) This section applies if you receive a \*genuine redundancy payment or an \*early retirement scheme payment.

Note: A payment cannot be both a genuine redundancy payment and an early retirement scheme payment, because of the nature of each of these types of payment: see sections 83-175 and 83-180.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(2) So much of the relevant payment as does not exceed the amount worked out under subsection (3) is not assessable income and is not \*exempt income.

(3) Work out the amount using the formula:

$$\text{Base amount} + \left( \text{Service amount} \times \text{Years of service} \right)$$

where:

**base amount** means:

- (a) for the income year 2006-2007—\$6,783; and
- (b) for a later income year—the amount mentioned in paragraph (a) indexed annually.

Note: Subdivision 960-M shows you how to index the base amount.

**service amount** means:

- (a) for the income year 2006-2007—\$3,392; and
- (b) for a later income year—the amount mentioned in paragraph (a) indexed annually.

Note: Subdivision 960-M shows you how to index the service amount.

**years of service** means the number of whole years in the period, or sum of periods, of employment to which the payment relates.

Note: The remaining part of a genuine redundancy payment or an early retirement scheme payment (apart from the amount mentioned in subsection (3)) is an employment termination payment if section 82-130 applies to that part.

### **83-175 What is a *genuine redundancy payment*?**

(1) A ***genuine redundancy payment*** is so much of a payment received by an employee who is dismissed from employment because the employee's position is genuinely redundant as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of the dismissal.

(2) A ***genuine redundancy payment*** must satisfy the following conditions:

- (a) the employee is dismissed before the earlier of the following:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-40** Rules affecting employees and other taxpayers receiving PAYG withholding payments

**Division 83** Other payments on termination of employment

Section 83-180

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- (i) the day he or she turned 65;
  - (ii) if the employee's employment would have terminated when he or she reached a particular age or completed a particular period of service—the day he or she would reach the age or complete the period of service (as the case may be);
  - (b) if the dismissal was not at \*arm's length—the payment does not exceed the amount that could reasonably be expected to be made if the dismissal were at arm's length;
  - (c) at the time of the dismissal, there was no \*arrangement between the employee and the employer, or between the employer and another person, to employ the employee after the dismissal.
- (3) However, a ***genuine redundancy payment*** does not include any part of a payment that was received by the employee in lieu of \*superannuation benefits to which the employee may have become entitled at the time the payment was received or at a later time.

*Payments not covered*

- (4) A payment is *not* a ***genuine redundancy payment*** if it is a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

Note: Paragraph 82-135(e) provides that the part of a genuine redundancy payment or an early retirement scheme payment worked out under section 83-170 is not an employment termination payment.

**83-180** What is an ***early retirement scheme payment***?

- (1) An ***early retirement scheme payment*** is so much of a payment received by an employee because the employee retires under an \*early retirement scheme as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of the retirement.
- (2) An ***early retirement scheme payment*** must satisfy the following conditions:
- (a) the employee retires before the earlier of the following:
    - (i) the day he or she turned 65;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) if the employee's employment would have terminated when he or she reached a particular age or completed a particular period of service—the day he or she would reach the age or complete the period of service (as the case may be);
  - (b) if the retirement is not at \*arm's length—the payment does not exceed the amount that could reasonably be expected to be made if the retirement were at arm's length;
  - (c) at the time of the retirement, there was no \*arrangement between the employee and the employer, or between the employer and another person, to employ the employee after the retirement.
- (3) A scheme is an *early retirement scheme* if:
  - (a) all the employer's employees who comprise such a class of employees as the Commissioner approves may participate in the scheme; and
  - (b) the employer's purpose in implementing the scheme is to rationalise or re-organise the employer's operations by making any change to the employer's operations, or the nature of the work force, that the Commissioner approves; and
  - (c) before the scheme is implemented, the Commissioner, by written instrument, approves the scheme as an early retirement scheme for the purposes of this section.
- (4) A scheme is also an *early retirement scheme* if:
  - (a) paragraph (3)(a) or (b) does not apply; and
  - (b) the Commissioner is satisfied that special circumstances exist in relation to the scheme that make it reasonable to approve the scheme; and
  - (c) before the scheme is implemented, the Commissioner, by written instrument, approves the scheme as an early retirement scheme for the purposes of this section.
- (5) However, an *early retirement scheme payment* does not include any part of the payment that was paid to the employee in lieu of \*superannuation benefits to which the employee may have become entitled at the time the payment was made or at a later time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-40** Rules affecting employees and other taxpayers receiving PAYG withholding payments

**Division 83** Other payments on termination of employment

Section 83-230

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*Payments not covered*

- (6) A payment is *not* an **early retirement scheme payment** if it is a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

Note: Paragraph 82-135(e) provides that the part of a genuine redundancy payment or an early retirement scheme payment worked out under section 83-170 is not an employment termination payment.

**Subdivision 83-D—Foreign termination payments**

**Guide to Subdivision 83-D**

**83-230 What this Subdivision is about**

This Subdivision deals with termination payments that arise out of foreign employment.

These payments are not employment termination payments, and are tax free (except for amounts worked out under this Subdivision).

**Table of sections**

**Operative provisions**

- 83-235 Termination payments tax free—foreign resident period  
83-240 Termination payments tax free—Australian resident period

**Operative provisions**

**83-235 Termination payments tax free—foreign resident period**

A payment received by you is not assessable income and is not \*exempt income if:

- (a) it was received in consequence of the termination of your employment in a foreign country; and  
(b) it is not a \*superannuation benefit; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) it is not a payment of a pension or an \*annuity (whether or not the payment is a superannuation benefit); and
- (d) it relates only to a period of employment when you were not an Australian resident.

**83-240 Termination payments tax free—Australian resident period**

- (1) A payment received by you is not assessable income and is not \*exempt income if:
  - (a) it was received in consequence of:
    - (i) the termination of your employment in a foreign country; or
    - (ii) the termination of your engagement on qualifying service on an approved project (within the meaning of section 23AF of the *Income Tax Assessment Act 1936*), in relation to a foreign country; and
  - (b) it relates only to the period of that employment or engagement; and
  - (c) it is not a \*superannuation benefit; and
  - (d) it is not a payment of a pension or an \*annuity (whether or not the payment is a superannuation benefit); and
  - (e) you were an Australian resident during the period of the employment or engagement; and
  - (f) the payment is not exempt from income tax under the law of the foreign country; and
  - (g) for a period of employment—your foreign earnings from the employment are exempt from income tax under section 23AG of the *Income Tax Assessment Act 1936*; and
  - (h) for a period of engagement—your \*eligible foreign remuneration from the service is exempt from income tax under section 23AF of that Act.
- (2) For the purposes of subparagraph (1)(a)(ii), treat the termination of engagement on qualifying service on an approved project as including:
  - (a) retirement from the engagement; and
  - (b) cessation of the engagement because of the person's death.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-40** Rules affecting employees and other taxpayers receiving PAYG withholding payments

**Division 83** Other payments on termination of employment

Section 83-290

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Note: The termination of a person's employment is treated in the same way: see section 80-10.

**Subdivision 83-E—Other payments**

**Guide to Subdivision 83-E**

**83-290 What this Subdivision is about**

If a payment you receive in consequence of the termination of your employment is made more than 12 months after the termination of your employment, it does not qualify as an employment termination payment, subject to certain exceptions (see section 82-130).

The payment is treated as assessable income and no tax concession is allowed under Division 82.

**Table of sections**

**Operative provisions**

83-295 Termination payments made more than 12 months after termination etc.

**Operative provisions**

**83-295 Termination payments made more than 12 months after termination etc.**

A payment received by you that would be an \*employment termination payment but for paragraph 82-130(1)(b) is assessable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Part 2-42—Personal services income**

### **Division 84—Introduction**

#### **Guide to Part 2-42**

#### **84-1 What this Part is about**

This Part is about 2 issues relating to personal services income.

Division 85 limits the entitlements of individuals to deductions relating to their personal services income.

Division 86 sets out the tax consequences of individuals' personal services income being diverted to other entities (often called alienation of the income).

These Divisions do not affect individuals or other entities that conduct personal services businesses. Division 87 defines personal services businesses.

Note: This Part may not apply until the 2002-03 income year to participants in the prescribed payments system on 13 April 2000: see item 26 of Schedule 1 to the *New Business Tax System (Alienation of Personal Services Income) Act 2000*.

#### **Table of sections**

84-5	Meaning of <i>personal services income</i>
84-10	This Part does not imply that individuals are employees

### **Operative provisions**

#### **84-5 Meaning of *personal services income***

- (1) Your \*ordinary income or \*statutory income, or the ordinary income or statutory income of any other entity, is your ***personal services income*** if the income is mainly a reward for your personal

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 84-10

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efforts or skills (or would mainly be such a reward if it was your income).

Example 1: NewIT Pty. Ltd. provides computer programming services, but Ron does all the work involved in providing those services. Ron uses the clients' equipment and software to do the work. NewIT's ordinary income from providing the services is Ron's personal services income because it is a reward for his personal efforts or skills.

Example 2: Trux Pty. Ltd. owns one semi-trailer, and Tom is the only person who drives it. Trux's ordinary income from transporting goods is not Tom's personal services income because it is produced mainly by use of the semi-trailer, and not mainly as a reward for Tom's personal efforts or skills.

Example 3: Jim works as an accountant for a large accounting firm that employs many accountants. None of the firm's ordinary income or statutory income is Jim's personal services income because it is produced mainly by the firm's business structure, and not mainly as a reward for Jim's personal efforts or skills.

- (2) Only individuals can have personal services income.
- (3) This section applies whether the income is for doing work or is for producing a result.
- (4) The fact that the income is payable under a contract does not stop the income being mainly a reward for your personal efforts or skills.

**84-10 This Part does not imply that individuals are employees**

The application of this Part to an individual does not imply, for the purposes of any \*Australian law or any instrument made under an Australian law, that the individual is an employee.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 85—Deductions relating to personal services income**

### **Guide to Division 85**

#### **85-1 What this Division is about**

This Division sets out amounts, relating to personal services income, that an individual cannot deduct. In particular, deductions that are unavailable to an employee are similarly unavailable to an individual who has personal services income and who is not an employee.

However, this Division does not apply if the individual is conducting a personal services business or receives the income as an employee or office holder.

#### **Table of sections**

85-5	Object of this Division
85-10	Deductions for non-employees relating to personal services income
85-15	Deductions for rent, mortgage interest, rates and land tax
85-20	Deductions for payments to associates etc.
85-25	Deductions for superannuation for associates
85-30	Exception: personal services businesses
85-35	Exception: employees, office holders and religious practitioners
85-40	Application of Subdivision 900-B to individuals who are not employees

### **Operative provisions**

#### **85-5 Object of this Division**

The object of this Division is to ensure that individuals who are not conducting \*personal services businesses cannot deduct certain amounts (such as amounts that employees cannot deduct).

Note: This Division also affects the extent to which a personal services entity is entitled to deductions relating to gaining or producing an individual's personal services income: see section 86-60.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**85-10 Deductions for non-employees relating to personal services income**

- (1) You cannot deduct under this Act an amount to the extent that it relates to gaining or producing that part of your \*ordinary income or \*statutory income that is your \*personal services income if:
- (a) the income is not payable to you as an employee; and
  - (b) you would not be able to deduct the amount under this Act if the income were payable to you as an employee.

**Example:** Ruth is an architect who works as an independent contractor for one firm. She is not conducting a personal services business. On most days she travels from her home to the business premises of the firm, where she does her work. She also has a home office, where she does some of her work.

This section confirms that Ruth cannot deduct her expenses of travelling between her home and the firm's premises because she could not deduct them if she were an employee.

- (2) Subsection (1) does not stop you deducting an amount to the extent that it relates to:
- (a) gaining work; or  
**Examples:** Advertising, tendering and quoting for work.
  - (b) insuring against loss of your income or your income earning capacity; or  
**Examples:** Sickness, accident and disability insurance.
  - (c) insuring against liability arising from your acts or omissions in the course of earning income; or  
**Examples:** Public liability insurance and professional indemnity insurance.
  - (d) engaging an entity that is not your \*associate to perform work; or
  - (e) engaging your \*associate to perform work that forms part of the principal work for which you gain or produce your \*personal services income; or
  - (f) contributing to a fund in order to obtain \*superannuation benefits for yourself or for your \*SIS dependants in the event of your death; or

**Note:** For deductions for superannuation contributions: see Subdivision 290-C.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (g) meeting your obligations under a \*workers' compensation law to pay premiums, contributions or similar payments or to make payments to an employee in respect of \*compensable work-related trauma; or
- (h) meeting your obligations, or exercising your rights, under the \*GST law.

### **85-15 Deductions for rent, mortgage interest, rates and land tax**

You cannot deduct under this Act an amount of rent, mortgage interest, rates or land tax:

- (a) for some or all of your residence; or
  - (b) for some or all of your \*associate's residence;
- to the extent that the amount relates to gaining or producing your \*personal services income.

### **85-20 Deductions for payments to associates etc.**

- (1) You cannot deduct under this Act:
  - (a) any payment you make to your \*associate; or
  - (b) any amount you incur arising from an obligation you have to your associate;to the extent that the payment or amount relates to gaining or producing your \*personal services income.
- (2) Subsection (1) does not stop you deducting a payment or amount to the extent that it relates to engaging your \*associate to perform work that forms part of the principal work for which you gain or produce your \*personal services income.
- (3) An amount or payment that you cannot deduct because of this section is neither assessable income nor \*exempt income of your \*associate.

### **85-25 Deductions for superannuation for associates**

- (1) You cannot deduct under this Act a contribution you make to a fund or an \*RSA to provide for \*superannuation benefits payable

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 85-30

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for your \*associate, to the extent that the associate's work for you relates to gaining or producing your \*personal services income.

- (2) Subsection (1) does not stop you deducting a contribution to the extent that your \*associate's performance of work forms part of the principal work for which you gain or produce your \*personal services income.
- (3) However, if subsection (2) applies, your deduction cannot exceed the amount you would have to contribute, for the benefit of the \*associate, to a \*complying superannuation fund or an \*RSA in order to ensure that you did not have any \*individual superannuation guarantee shortfalls in respect of the associate for any of the \*quarters in the income year.
- (4) To work out the amount you would have to contribute for the purposes of subsection (3), the \*associate's salary or wages, for the purposes of the *Superannuation Guarantee (Administration) Act 1992*, are taken to be the amount that neither section 85-10 nor 85-20 prevent you deducting for salary or wages you paid to the associate.

Note: See paragraph 85-10(2)(e) for deductions relating to employment of associates.

**85-30 Exception: personal services businesses**

This Division does not apply to an amount, payment or contribution to the extent that the amount, payment or contribution relates to income from you conducting a \*personal services business.

**85-35 Exception: employees, office holders and religious practitioners**

- (1) This Division does not apply to an amount, payment or contribution to the extent that the amount, payment or contribution relates to \*personal services income that you receive as:
  - (a) an employee; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) an individual referred to in paragraph 12-45(1)(a), (b), (c), (d) or (e) (about payments to office holders) in Schedule 1 to the *Taxation Administration Act 1953*.
- (2) This Division does not apply to an amount, payment or contribution to the extent that the amount, payment or contribution relates to a payment referred to in section 12-47 in Schedule 1 to the *Taxation Administration Act 1953* (payments to \*religious practitioners).

**85-40 Application of Subdivision 900-B to individuals who are not employees**

This Division does not have the effect of applying Subdivision 900-B (about substantiating work expenses) to an individual who is not an employee.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 86—Alienation of personal services income**

### **Table of Subdivisions**

#### **Guide to Division 86**

- 86-A General
- 86-B Entitlement to deductions

### **Guide to Division 86**

#### **86-1 What this Division is about**

Income from the rendering of your personal services is treated as your assessable income if it is the income of another entity and is not promptly paid to you as salary.

However, this does not apply if the other entity is conducting a personal services business.

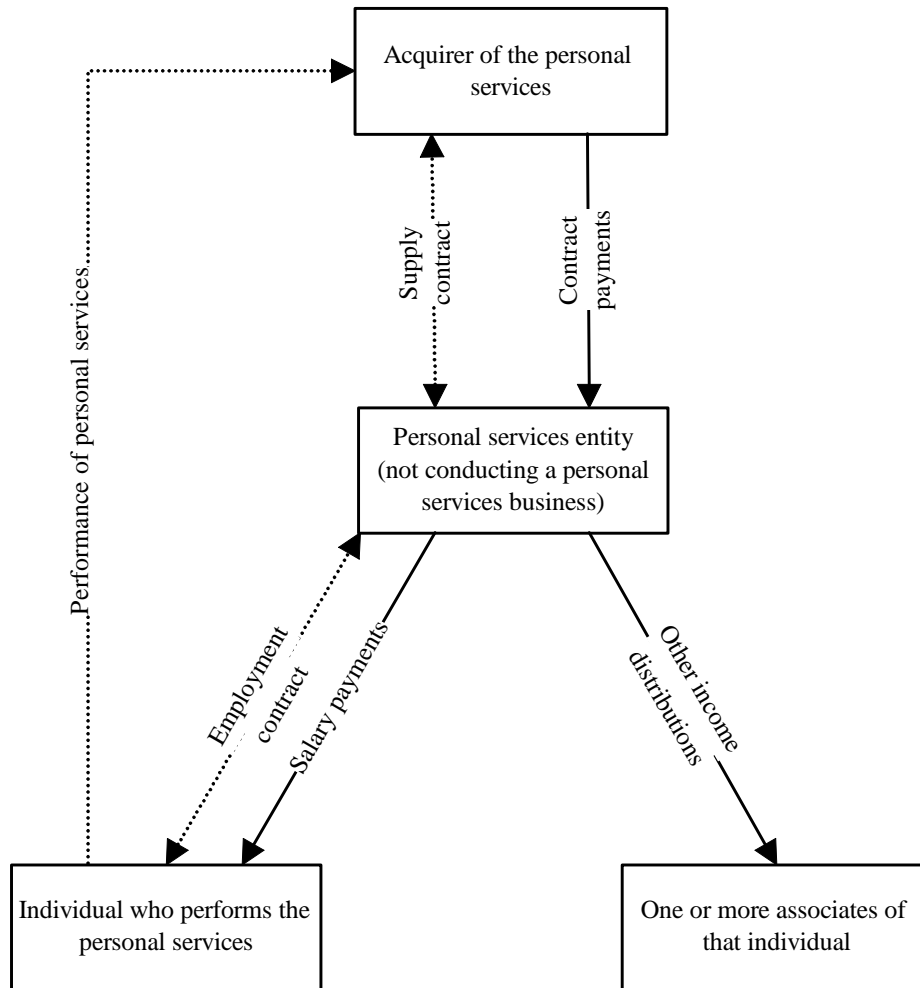
There are limits to the other entity's entitlement to deductions to offset against the amount treated as your income.

#### **86-5 A simple description of what this Division does**

- (1) This diagram shows an example of a simple arrangement for the alienation of personal services income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Note 1: Solid lines indicate actual payments between the parties. Dotted lines indicate other interactions between the parties.

Note 2: This Division also applies to different and more complex arrangements.

- (2) This Division has the effect of attributing the personal services entity's income from the personal services to the individual who performed them (unless the income is promptly paid to the individual as salary). Certain deduction entitlements of the personal services entity can reduce the amount of the attribution.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 86-A—General**

### **Table of sections**

86-10	Object of this Division
86-15	Effect of obtaining personal services income through a personal services entity
86-20	Offsetting the personal services entity's deductions against personal services income
86-25	Apportionment of entity maintenance deductions among several individuals
86-27	Deduction for net personal services income loss
86-30	Assessable income etc. of the personal services entity
86-35	Later payments of, or entitlements to, personal services income to be disregarded for income tax purposes
86-40	Salary payments shortly after an income year

### **86-10 Object of this Division**

The object of this Division is to ensure that individuals cannot reduce or defer their income tax (and other liabilities) by alienating their \*personal services income through companies, partnerships or trusts that are not conducting \*personal services businesses.

Note: The general anti-avoidance provisions of Part IVA of the *Income Tax Assessment Act 1936* may still apply to cases of alienation of personal services income that fall outside this Division.

### **86-15 Effect of obtaining personal services income through a personal services entity**

#### *Amounts included in your assessable income*

- (1) Your assessable income includes an amount of \*ordinary income or \*statutory income of a \*personal services entity that is your \*personal services income.

Example: Continuing example 1 in section 84-5: Assume that NewIT only provides services to one client. Ron's assessable income includes ordinary income of NewIT from providing the computer programming services, because the income is Ron's personal services income.

Note: The amount included in your assessable income can be reduced by certain deductions to which the personal services entity is entitled: see section 86-20.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) A **personal services entity** is a company, partnership or trust whose \*ordinary income or \*statutory income includes the \*personal services income of one or more individuals.

*Exception: personal services businesses*

- (3) This section does not apply if that amount is income from the \*personal services entity conducting a \*personal services business.

Note: Even if the entity is conducting a personal services business, it is possible that some of its income is not income from conducting that business.

*Exception: amounts promptly paid to you as salary or wages*

- (4) This section does not apply to the extent that:
- (a) the \*personal services entity pays that amount to you, as an employee, as salary or wages; and
  - (b) the payment is made before the end of the 14th day after the \*PAYG payment period during which the amount became \*ordinary income or \*statutory income of the entity.

Note: The entity is obliged to withhold amounts from salary or wages paid before the end of that day: see section 12-35 in Schedule 1 to the *Taxation Administration Act 1953*.

*Exception: exempt income etc.*

- (5) This section only applies to the extent that that amount would be assessable income of the personal services entity if this Division did not apply.

Example: If the entity's income includes an amount that is your personal services income for a service on which GST is payable, the amount included in your assessable income will not include the GST, because the GST is neither assessable income nor exempt income of the entity: see section 17-5.

### **86-20 Offsetting the personal services entity's deductions against personal services income**

- (1) The amount of your \*personal services income included in your assessable income under section 86-15 may be reduced (but not

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 86-20

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below nil) by the amount of certain deductions to which the \*personal services entity is entitled.

Note 1: Subdivision 86-B limits a personal services entity's entitlement to deductions.

Note 2: If the amount of the deductions exceeds the amount of the personal services income, a deduction for the excess is available to you under section 86-27. The personal services entity cannot deduct the amount of the excess: see section 86-87.

- (2) Use this method statement to work out whether, and by how much, the amount is reduced:

*Method statement*

Step 1. Work out, for the income year, the amount of any deductions (other than \*entity maintenance deductions or deductions for amounts of salary or wages paid to you) to which the \*personal services entity is entitled that are deductions relating to your \*personal services income.

Step 2. Work out, for the income year, the amount of any \*entity maintenance deductions to which the \*personal services entity is entitled.

Step 3. Work out the \*personal services entity's assessable income for that income year, disregarding any income it receives that is your \*personal services income or the personal services income of anyone else.

Step 4. Subtract the amount under step 3 from the amount under step 2.

Note 1: Step 4 ensures that, before entity maintenance deductions can contribute to the reduction, they are first exhausted against any income of the entity that is not personal services income.

Note 2: If the personal services entity receives another individual's personal services income, see section 86-25.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- Step 5. If the amount under step 4 is greater than zero, the amount of the reduction under subsection (1) is the sum of the amounts under steps 1 and 4.
- Step 6. If the amount under step 4 is not greater than zero, the amount of the reduction under subsection (1) is the amount under step 1.

Example 1: Continuing example 1 in section 84-5: Assume these additional facts:

- \$120,000 of NewIT's income is Ron's personal services income;
- NewIT has deductions (including superannuation contributions) of \$50,000 relating to Ron's personal services income (step 1);
- NewIT has entity maintenance deductions of \$8,000 (step 2);
- NewIT has investments that produce income. NewIT's assessable income, disregarding Ron's or anyone else's personal services income, is \$20,000 (step 3).

Because the step 4 amount is less than zero (-\$12,000), step 5 does not apply and, under step 6, the amount of the reduction is \$50,000. Therefore the amount included in Ron's assessable income is:

$$\$120,000 - \$50,000 = \$70,000$$

Example 2: Assume, as an alternative set of facts, that NewIT's assessable income under step 3 was only \$2,000.

The step 4 amount would have been \$6,000, and, under step 5, the amount of the reduction would have been \$56,000 (adding the amounts under steps 1 and 4). The amount included in Ron's assessable income would then have been:

$$\$120,000 - \$56,000 = \$64,000$$

Note: The personal services entity's deductions that do not relate to your personal services income and that are not entity maintenance deductions cannot reduce the amount included in your assessable income under section 86-15.

## **86-25 Apportionment of entity maintenance deductions among several individuals**

If, in the income year:

- (a) the amount worked out under step 4 of the method statement in section 86-20 is greater than zero; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 86-25

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Note: This happens if the entity has entity maintenance deductions that form some or all of the reduction under section 86-20.

- (b) the \*ordinary income or \*statutory income of the \*personal services entity includes another individual's \*personal services income (as well as your personal services income); and
- (c) the other individual's personal services income is included in the other individual's assessable income under section 86-15; the amount worked out under step 4 is taken to be:

$$\text{Original step 4 amount} \times \frac{\text{Your personal services income}}{\text{Total personal services income}}$$

where:

**original step 4 amount** is the amount that would be the amount worked out under step 4 if this section did not apply.

**total personal services income** is the sum of all the amounts of personal services income (whether your personal services income or someone else's) that are included in the personal services entity's ordinary income or statutory income for the income year.

**your personal services income** is the sum of all the amounts of your personal services income that are included in the personal services entity's ordinary income or statutory income for the income year.

Example: Continuing example 2 in section 86-20: Assume that Robyn, another computer consultant, joined NewIT, and NewIT's ordinary income from providing the services also includes Robyn's personal services income of \$168,000.

Because NewIT now receives the personal services income of someone else, Ron's step 4 amount is reduced as follows:

$$\$6,000 \times \frac{\$120,000}{\$288,000} = \$2,500$$

Under step 5 of the method statement in section 86-20, the amount of the reduction under that section is therefore \$52,500, and the amount included in Ron's assessable income is \$67,500.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **86-27 Deduction for net personal services income loss**

If your personal services deduction amount exceeds your unreduced personal services income, then you can deduct the excess amount. For this purpose:

- (a) your *personal services deduction amount* is the amount of deductions relating to your \*personal services income worked out under step 1 of the method statement in section 86-20, increased by the amount (if greater than zero) worked out under step 4 of the method statement; and
- (b) your *unreduced personal services income* is the personal services income that would have been included in your assessable income for the income year if there had not been any reduction under section 86-20.

### **86-30 Assessable income etc. of the personal services entity**

\*Ordinary income or \*statutory income of the \*personal services entity is neither assessable income nor \*exempt income of the entity, to the extent that it is \*personal services income included in your assessable income under section 86-15.

Note: Subsection 118-20(4) prevents this income being treated as a capital gain.

### **86-35 Later payments of, or entitlements to, personal services income to be disregarded for income tax purposes**

- (1) To the extent that a payment by the \*personal services entity, or by your \*associate, is a payment to you or any of your associates of:
  - (a) \*personal services income included in your assessable income under section 86-15; or
  - (b) any other amount that is attributable to that income;the payment:
  - (c) is neither assessable income nor \*exempt income of the entity receiving it; andNote: Subsection 118-20(4) prevents this income being treated as a capital gain.
  - (d) is not an amount that the entity making it can deduct.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 86-40

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Note: Section 118-65 prevents this amount being treated as a capital loss.

Example: Continuing example 2 in section 86-20: Assume that NewIT had paid Jill, Ron's wife, an amount for work that is not the principal work of NewIT. The payment is made from money already included in Ron's assessable income under section 86-15.

The amount is neither assessable income nor exempt income of Jill, and NewIT cannot deduct the amount.

- (2) To the extent that you are entitled, or any of your \*associates are entitled, to a share of the net income of the \*personal services entity, or of any of your associates, and that income is:
- (a) \*personal services income included in your assessable income under section 86-15; or
  - (b) any other amount that is attributable to that income;
- that share is neither assessable income nor \*exempt income of the entity receiving it or entitled to receive it.

**86-40 Salary payments shortly after an income year**

- (1) If:
- (a) before the end of 14 July in a particular income year, you receive, as salary or wages, \*personal services income of yours from the \*personal services entity; and
  - (b) failure to make the payment before the end of 14 July would have resulted in an amount of income being included in your assessable income under section 86-15 for the preceding income year;
- you are taken to have received the payment on 30 June of that preceding income year.

Example: Continuing example 2 in section 86-20: Assume that NewIT is a small withholder for PAYG withholding purposes, and its PAYG payment period covering April 2001 to June 2001 is the quarter ending on 30 June 2001. NewIT's income for that period (after taking into account any reductions under sections 86-20 and 86-25) includes \$20,000 that is Ron's personal services income, and NewIT pays this to Ron on 12 July 2001.

The \$20,000 that Ron receives is assessable income for the income year ended on 30 June 2001.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) However, this section does not affect the time at which the \*personal services entity is treated as having paid the salary or wages.

Note 1: Therefore neither the timing of the entity's deduction for the payment, nor the timing of the obligation to withhold amounts under section 12-35 in Schedule 1 to the *Taxation Administration Act 1953*, is affected.

Note 2: However, these payments are treated as relating to the preceding income year for the purposes of the rules relating to payment summaries and PAYG credits (see Subdivisions 16-C and 18-A in Schedule 1 to the *Taxation Administration Act 1953*).

### **Subdivision 86-B—Entitlement to deductions**

#### **Table of sections**

86-60	General rule for deduction entitlements of personal services entities
86-65	Entity maintenance deductions
86-70	Car expenses
86-75	Superannuation
86-80	Salary or wages promptly paid
86-85	Deduction entitlements of personal services entities for amounts included in an individual's assessable income
86-87	Personal services entity cannot deduct net personal services income loss
86-90	Application of Divisions 28 and 900 to personal services entities

#### **86-60 General rule for deduction entitlements of personal services entities**

A \*personal services entity cannot deduct under this Act an amount to the extent that it relates to gaining or producing an individual's \*personal services income, unless:

- (a) the individual could have deducted the amount under this Act if the circumstances giving rise to the entity's entitlement to deduct the amount had applied instead to the individual; or

Note: In particular, Division 85 specifies limits on an individual's entitlements to deductions relating to the individual's personal services income.

- (b) the entity receives the individual's \*personal services income in the course of conducting a \*personal services business.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 86-65 Entity maintenance deductions

- (1) Section 86-60 does not stop a \*personal services entity deducting an amount to the extent that it is an \*entity maintenance deduction.

Note: See section 86-25 for how entity maintenance deductions are offset against a personal services entity's income.

- (2) Each of these is an *entity maintenance deduction*:
- (a) any fee or charge payable by the entity for opening, operating or closing an account with an \*ADI;
  - (b) any deduction under section 25-5 (about tax-related expenses);
  - (c) any loss or outgoing incurred in relation to preparation or lodgment of any document the entity is required to lodge under the *Corporations Act 2001*;
  - (d) any fee or charge payable by the entity to an \*Australian government agency for any licence, permission, approval, authorisation, registration or certification (however described) that is granted or given under an \*Australian law.
- (3) However, paragraph (2)(c) does not include any payment that the entity makes to an \*associate.

### 86-70 Car expenses

#### *Cars used solely for business*

- (1) Section 86-60 does not stop a \*personal services entity deducting a \*car expense for a \*car of which there is no \*private use.

#### *Other cars*

- (2) Section 86-60 does not stop a \*personal services entity deducting:
- (a) a \*car expense; or
  - (b) an amount of tax payable under the *Fringe Benefits Tax Assessment Act 1986* for a \*car fringe benefit;
- for a \*car of which there is \*private use. However, there cannot be, at the same time, more than one car for which such deductions can arise in relation to gaining or producing the same individual's \*personal services income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) If there is more than one \*car to which subsection (2) could apply at the same time, the entity must choose the car to which subsection (2) applies at that time. The choice remains in effect until the entity ceases to \*hold that car.

Example: Continuing example 2 in section 86-20: Assume that NewIT provides 3 cars to Ron. Car 1 is used solely for business purposes and cars 2 and 3 are used for private purposes.

NewIT can deduct all the car expenses it incurs for car 1. It can also deduct all the car expenses it incurs for its choice of either car 2 or car 3, as well as the fringe benefits tax it pays for that car. However, it cannot deduct any car expenses or fringe benefits tax for the car that it does not choose.

Note: If car expenses for a car are not deductible because of section 86-60, the car benefit being provided is an exempt benefit for the purposes of fringe benefits tax: see subsection 8(4) of the *Fringe Benefits Tax Assessment Act 1986*.

### 86-75 Superannuation

- (1) Section 86-60 does not stop a \*personal services entity deducting a contribution the entity makes to a fund or an \*RSA for the purpose of making provision for \*superannuation benefits payable for an individual whose \*personal services income is included in the entity's \*ordinary income or \*statutory income.

For deductions for superannuation contributions: see Subdivision AA of Division 3 of Part III of the *Income Tax Assessment Act 1936*.

- (2) However, if:
- (a) the individual performs less than 20% (by \*market value) of the entity's principal work; and
  - (b) the individual is an \*associate of another individual whose \*personal services income is included in the entity's \*ordinary income or \*statutory income;
- the entity's deduction cannot exceed the amount it would have to contribute, for the benefit of the individual, to a \*complying superannuation fund or an \*RSA in order to ensure that it did not have any \*individual superannuation guarantee shortfalls in respect of the individual for any of the \*quarters in the income year.
- (3) To work out the amount the entity would have to contribute for the purposes of subsection (2), the individual's salary or wages, for the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 86-80

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purposes of the *Superannuation Guarantee (Administration) Act 1992*, are taken to be the amount that section 86-60 does not prevent the entity deducting for salary or wages it paid to the individual.

Note: Section 86-60 will apply the limitations under sections 85-10 and 85-20 on an individual's entitlement to deductions (but see paragraph 85-10(2)(e) on employment of associates).

**86-80 Salary or wages promptly paid**

Section 86-60 does not stop a \*personal services entity deducting an amount for salary or wages it pays to the individual referred to in that section before the end of the 14th day after the \*PAYG payment period during which the amount became \*ordinary income or \*statutory income of the entity.

**86-85 Deduction entitlements of personal services entities for amounts included in an individual's assessable income**

The fact that a \*personal services entity:

- (a) incurs an amount in gaining or producing an individual's assessable income; or
- (b) uses a \*depreciating asset, or has it installed ready for use, for the \*purpose of producing assessable income of an individual;

does not stop the entity deducting the loss or outgoing, or deducting an amount for the decline in value of the asset, under this Act if:

- (c) the entity incurs the amount in gaining or producing, or uses or installs the depreciating asset for the purpose of producing, its \*ordinary income or \*statutory income; and
- (d) the income is included in the individual's assessable income under section 86-15.

**86-87 Personal services entity cannot deduct net personal services income loss**

The total amount of the deductions to which a \*personal services entity is entitled for an income year is reduced by the amount of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

any deduction that an individual, whose \*personal services income is ordinary or statutory income of the entity for that income year, is entitled to under section 86-27.

### **86-90 Application of Divisions 28 and 900 to personal services entities**

This Division does not have the effect of applying Division 28 (about car expenses) or Division 900 (about substantiation rules) to a \*personal services entity.

Note: Divisions 28 and 900 can still apply to a personal services entity that is a partnership: see subsections 28-10(2) and 900-5(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 87—Personal services businesses**

### **Table of Subdivisions**

#### **Guide to Division 87**

87-A General

87-B Personal services business determinations

### **Guide to Division 87**

#### **87-1 What this Division is about**

Divisions 85 and 86 do not apply to personal services income that is income from conducting a personal services business.

It is not intended that the Divisions apply to independent contractors.

A personal services business exists if there is a personal services business determination or if one or more of 4 tests for what is a personal services business are met.

Regardless of how much of your personal services income is paid from one source, you can self-assess against the results test to determine whether you are an independent contractor. The results test is based on the traditional tests for determining independent contractors and it is intended that it apply accordingly.

However, you cannot “self-assess” whether you meet any of the other 3 tests if 80% or more of your personal services income is from one source. In these cases, you need a personal services business determination in order to be treated as conducting a personal services business.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**87-5 Diagram showing the operation of this Division**

This diagram shows how this Division operates to ascertain whether personal services income is income from conducting a personal services business.

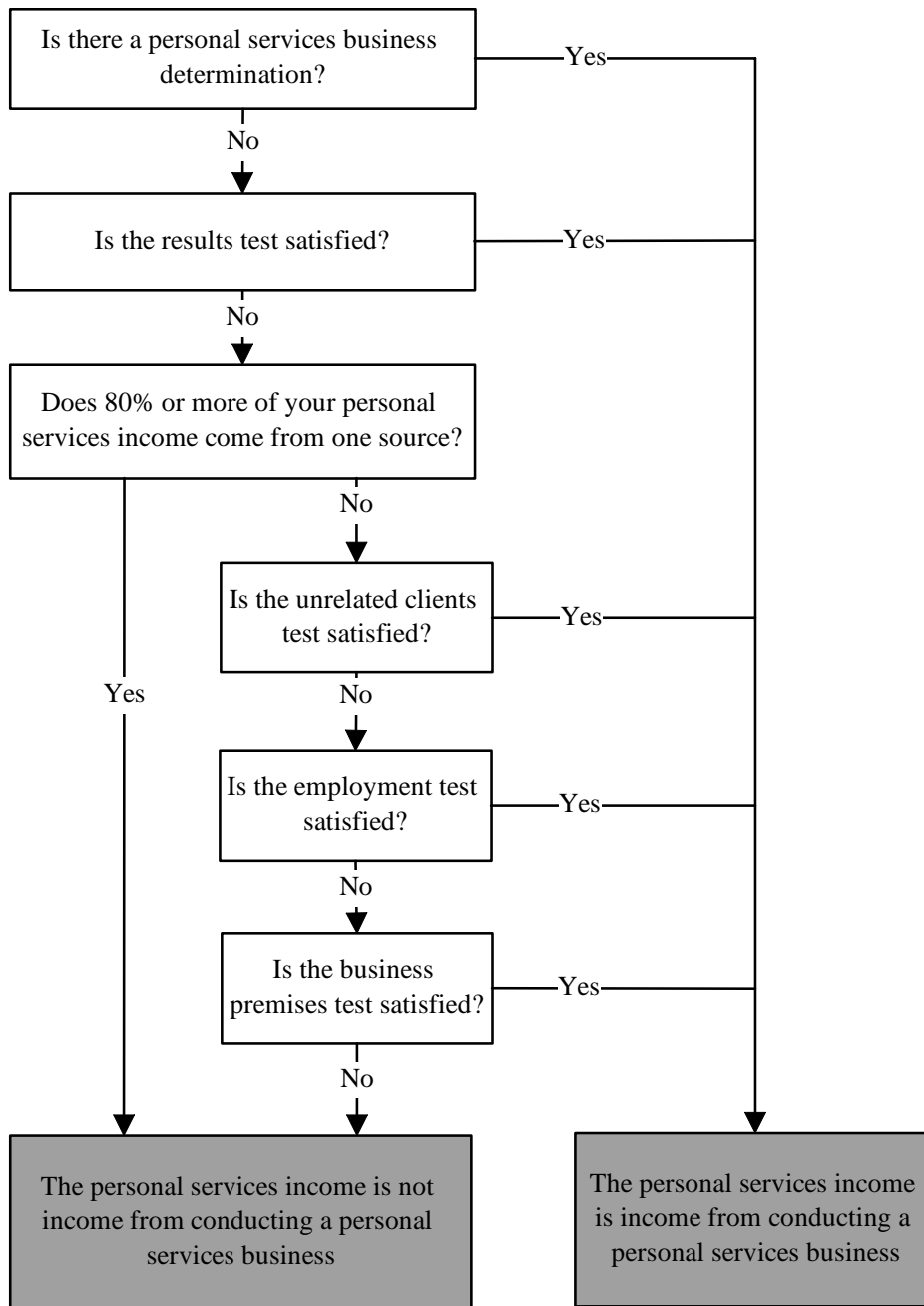
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 87-5

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 87-A—General

### Table of sections

87-10	Object of this Division
87-15	What is a personal services business?
87-18	The results test for a personal services business
87-20	The unrelated clients test for a personal services business
87-25	The employment test for a personal services business
87-30	The business premises test for a personal services business
87-35	Personal services income from Australian government agencies
87-40	Application of this Division to certain agents

### 87-10 Object of this Division

The object of this Division is to define \*personal services businesses in a way that ensures that it covers genuine businesses but not situations that are merely arrangements for dealing with the \*personal services income of individuals.

### 87-15 What is a personal services business?

- (1) An individual or \*personal services entity conducts a *personal services business* if:
- (a) for an individual—a \*personal services business determination is in force relating to the individual's \*personal services income; or
  - (b) for a personal services entity—a personal services business determination is in force relating to an individual whose personal services income is included in the entity's \*ordinary income or \*statutory income; or
  - (c) in any case—the individual or entity meets at least one of the 4 \*personal services business tests in the income year for which the question whether the individual or entity is conducting a personal services business is in issue.

Note 1: For personal services business determinations, see Subdivision 87-B.

Note 2: Under subsection (3), the personal services business tests, apart from the results test under section 87-18, do not apply if 80% or more of your personal services income is from one source (but they can still be

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 87-15

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used in deciding whether to make a personal services business determination).

- (2) The 4 *personal services business tests* are:
- (a) the results test under section 87-18; and
  - (b) the unrelated clients test under section 87-20; and
  - (c) the employment test under section 87-25; and
  - (d) the business premises test under section 87-30.
- (3) However, if 80% or more of an individual's \*personal services income (not including income referred to in subsection (4)) during an income year is income from the same entity (or one entity and its \*associates), and:
- (a) the individual's personal services income is not included in a \*personal services entity's \*ordinary income or \*statutory income during an income year, and the individual does not meet the results test under section 87-18 in that income year; or
  - (b) the individual's personal services income is included in a personal services entity's ordinary income or statutory income during an income year, and the entity does not, in relation to the individual, meet the results test under section 87-18 in that income year;
- the individual's personal services income is *not* taken to be from conducting a \*personal services business unless:
- (c) when the personal services income is gained or produced, a \*personal services business determination is in force relating to the individual's personal services income; and
  - (d) if the determination was made on the application of a personal services entity—the individual's personal services income is income from the entity conducting the personal services business.
- Note: Sections 87-35 and 87-40 affect the operation of subsection (3) in relation to Australian government agencies and certain agents.
- (4) Subsection (3) does not apply to income:
- (a) that the individual receives as an employee; or
  - (b) that the individual receives as an individual referred to in paragraph 12-45(1)(a), (b), (c), (d) or (e) (payments to office

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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holders) in Schedule 1 to the *Taxation Administration Act 1953*; or

- (c) to the extent that it is a payment referred to in section 12-47 (payments to \*religious practitioners) in that Schedule.

### **87-18 The results test for a personal services business**

- (1) An individual meets the results test in an income year if, in relation to at least 75% of the individual's \*personal services income (not including income referred to in subsection (2)) during the income year:
- (a) the income is for producing a result; and
  - (b) the individual is required to supply the \*plant and equipment, or tools of trade, needed to perform the work from which the individual produces the result; and
  - (c) the individual is, or would be, liable for the cost of rectifying any defect in the work performed.
- (2) Paragraph (1)(a) does not apply to income:
- (a) that the individual receives as an employee; or
  - (b) that the individual receives as an individual referred to in paragraph 12-45(1)(a), (b), (c), (d) or (e) (payments to office holders) in Schedule 1 to the *Taxation Administration Act 1953*; or
  - (c) to the extent that it is a payment referred to in section 12-47 (payments to \*religious practitioners) in that Schedule.
- (3) A \*personal services entity meets the results test in an income year if, in relation to at least 75% of the \*personal services income of one or more individuals that is included in the personal services entity's \*ordinary income or \*statutory income during the income year:
- (a) the income is for producing a result; and
  - (b) the personal services entity is required to supply the \*plant and equipment, or tools of trade, needed to perform the work from which the personal services entity produces the result; and
  - (c) the personal services entity is, or would be, liable for the cost of rectifying any defect in the work performed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 87-20

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- (4) For the purposes of paragraph (1)(a), (b) or (c) or (3)(a), (b) or (c), regard is to be had to whether it is the custom or practice, when work of the kind in question is performed by an entity other than an employee:
- (a) for the \*personal services income from the work to be for producing a result; and
  - (b) for the entity to be required to supply the \*plant and equipment, or tools of trade, needed to perform the work; and
  - (c) for the entity to be liable for the cost of rectifying any defect in the work performed;
- as the case requires.

**87-20 The unrelated clients test for a personal services business**

- (1) An individual or a \*personal services entity meets the unrelated clients test in an income year if:
- (a) during the year, the individual or personal services entity gains or produces income from providing services to 2 or more entities that are not \*associates of each other, and are not associates of the individual or of the personal services entity; and
  - (b) the services are provided as a direct result of the individual or personal services entity making offers or invitations (for example, by advertising), to the public at large or to a section of the public, to provide the services.

Note: Sections 87-35 and 87-40 affect the operation of paragraph (1)(a) in relation to Australian government agencies and certain agents.

- (2) The individual or \*personal services entity is *not* treated, for the purposes of paragraph (1)(b), as having made offers or invitations to provide services merely by being available to provide the services through an entity that conducts a \*business of arranging for persons to provide services directly for clients of the entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **87-25 The employment test for a personal services business**

- (1) An individual meets the employment test in an income year if:
  - (a) the individual engages one or more entities (other than \*associates of the individual that are not individuals) to perform work; and
  - (b) that entity performs, or those entities together perform, at least 20% (by \*market value) of the individual's principal work for that year.
- (2) A \*personal services entity meets the employment test in an income year if:
  - (a) the entity engages one or more other entities to perform work, other than:
    - (i) individuals whose \*personal services income is included in the entity's \*ordinary income or \*statutory income; or
    - (ii) \*associates of the entity that are not individuals; and
  - (b) that other entity performs, or those other entities together perform, at least 20% (by \*market value) of the entity's principal work for that year.
- (2A) If the \*personal services entity is a partnership, work that a partner performs is taken, for the purposes of subsection (2), to be work that the personal services entity engages another entity to perform.
- (3) An individual or a \*personal services entity also meets the employment test in an income year if, for at least half the income year, the individual or entity has one or more apprentices.

### **87-30 The business premises test for a personal services business**

- (1) An individual or a \*personal services entity meets the business premises test in an income year if, at all times during the income year, the individual or entity maintains and uses business premises:
  - (a) at which the individual or entity mainly conducts activities from which \*personal services income is gained or produced; and
  - (b) of which the individual or entity has exclusive use; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 87-35

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- (c) that are physically separate from any premises that the individual or entity, or any \*associate of the individual or entity, uses for private purposes; and
  - (d) that are physically separate from the premises of the entity to which the individual or entity provides services and from the premises of any associate of the entity to which the individual or entity provides services.
- (2) The individual or entity need not maintain and use the same business premises throughout the income year.

**87-35 Personal services income from Australian government agencies**

- (1) \*Australian government agencies are not treated as \*associates of each other for the purposes of subsection 87-15(3) and paragraph 87-20(1)(a).

Example: You receive 60% of your personal services income from a Department of a State government and 40% of your personal services income from a corporation in which that State has a majority shareholding.

You are not treated as if 80% or more of your personal services income is income from the same entity and that entity's associates, and therefore you will not need a personal services business determination to satisfy subsection 87-15(3).

In addition, you satisfy the first limb (but not necessarily the second limb) of the unrelated clients test in subsection 87-20(1), because you receive your personal services income from 2 entities that are not treated as associates of each other.

- (2) Each Agency within the meaning of the *Public Service Act 1999*:
- (a) is treated as a separate entity; and
  - (b) is not treated as an \*associate of any other such Agency, or of any \*Australian government agency;
- for the purposes of subsection 87-15(3) and paragraph 87-20(1)(a).

Example: You receive 70% of your personal services income from the Commonwealth Department of Treasury and 30% of your personal services income from the Australian Taxation Office (neither body has a legal identity separate from the Commonwealth Government).

You are not treated as if 80% or more of your personal services income is income from the same entity, or from the same entity and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

that entity's associates, and therefore you will not need a personal services business determination to satisfy subsection 87-15(3).

In addition, you satisfy the first limb (but not necessarily the second limb) of the unrelated clients test in subsection 87-20(1), because you receive your personal services income from 2 bodies that are treated as separate entities and that are not treated as associates of each other.

- (3) Each part of the government of a State or Territory, and each part of an authority of the State or Territory, that has, under a law of the State or Territory, a status corresponding to an Agency within the meaning of the *Public Service Act 1999*:
- (a) is treated as a separate entity; and
  - (b) is not treated as an \*associate of any other part of such a government or authority, or of any \*Australian government agency;
- for the purposes of subsection 87-15(3) and paragraph 87-20(1)(a).

### **87-40 Application of this Division to certain agents**

#### *Object of this section*

- (1) The object of this section is to modify the operation of this Division for \*agents who bear entrepreneurial risk in the way they provide services.

#### *Agent rules do not apply*

- (1A) The rules in section 960-105 (Certain entities treated as agents) do not apply to this section.

#### *Agents covered by this section*

- (2) Subsection 87-15(3) and section 87-20 apply, in the manner specified in this section, to an individual or \*personal services entity if:
- (a) the individual or personal services entity is an \*agent of another entity (the *principal*) but not the principal's employee; and
  - (b) the agent receives income from the principal that is for services that the agent provides to other entities (*customers*) on the principal's behalf; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 87-40

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- (c) at least 75% of that income is commissions, or fees, based on the agent's performance in providing services to the customers on the principal's behalf; and
- (d) the agent actively seeks other entities to whom the agent could provide services on the principal's behalf; and
- (e) the agent does not provide any services to the customers, on the principal's behalf, using premises:
  - (i) that the principal or an \*associate of the principal owns; or
  - (ii) in which the principal or an associate of the principal has a leasehold interest;unless the agent uses the premises under an arrangement entered into at arm's length.

*Whether personal services income is from one source*

- (3) If the \*agent is an individual, in applying subsection 87-15(3) to the \*personal services income of the agent during an income year, any part of the agent's personal services income from the principal that:
  - (a) the agent gains or produces during the income year; and
  - (b) is for services that the agent provided to a customer on the principal's behalf in the income year or an earlier income year;is treated as if it were personal services income from the customer, and not personal services income from the principal.
- (4) If the \*agent is a \*personal services entity, in applying subsection 87-15(3) to an individual's \*personal services income that is included in the entity's \*ordinary income or \*statutory income during an income year, any part of the individual's personal services income from the principal that:
  - (a) the agent gains or produces during the income year; and
  - (b) is for services that the individual or the agent provided to a customer on the principal's behalf in the income year or an earlier income year;is treated as if it were personal services income from the customer, and not personal services income from the principal.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*The unrelated clients test for a personal services business*

- (5) In determining whether, during an income year, the \*agent meets the unrelated clients test under section 87-20, any services the agent provided in the income year or an earlier income year:
- (a) for which the agent gains or produces, during the income year, personal services income from the principal; and
  - (b) that were provided to a customer on the principal's behalf;
- are treated for the purposes of paragraph 87-20(1)(a) as if the agent, and not the principal, provided them to the customer.

**Subdivision 87-B—Personal services business determinations**

**Table of sections**

87-60	Personal services business determinations for individuals
87-65	Personal services business determinations for personal services entities
87-70	Applying etc. for personal services business determinations
87-75	When personal services business determinations have effect
87-80	Revoking personal services business determinations
87-85	Review of decisions

**87-60 Personal services business determinations for individuals**

*Making etc. personal services business determinations*

- (1) The Commissioner may, by giving written notice to an individual:
- (a) make a personal services business determination relating to the individual; or
  - (b) vary such a determination.
- (2) The Commissioner may, in the notice, specify:
- (a) the day on which the determination or variation takes effect, or took effect;
  - (b) the period for which the determination has effect;
  - (c) conditions to which the determination is subject.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 87-60

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*Matters about which the Commissioner must be satisfied*

- (3) The Commissioner must not make the determination unless satisfied that, in the income year during which the determination first has effect, or is taken to have first had effect, the conditions in one or more of subsections (3A), (3B), (5) and (6) are met.

*First alternative—results, employment or business premises test met or reasonably expected to be met*

- (3A) The conditions in this subsection are that:
- (a) the individual could reasonably be expected to meet, or met, the results test under section 87-18, the employment test under section 87-25, the business premises test under section 87-30 or more than one of those tests; and
  - (b) the individual's \*personal services income could reasonably be expected to be, or was, from the individual conducting activities that met one or more of those tests.

*Second alternative—unusual circumstances prevented the results, employment or business premises test from being met*

- (3B) The conditions in this subsection are that:
- (a) but for unusual circumstances applying to the individual in that year, the individual could reasonably have been expected to meet, or would have met, the results test under section 87-18, the employment test under section 87-25, the business premises test under section 87-30 or more than one of those tests; and
  - (b) the individual's \*personal services income could reasonably be expected to be, or was, from the individual conducting activities that met one or more of those tests.
- (4) For the purposes of paragraph (3B)(a) but without limiting the scope of that paragraph, unusual circumstances include providing services to an insufficient number of entities to meet the unrelated clients test under section 87-20 if:
- (a) the individual starts a \*business during the income year, and can reasonably be expected to meet the test in subsequent income years; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the individual provides services to only one entity during the income year, but met the test in one or more preceding income years and can reasonably be expected to meet the test in subsequent income years.

*Third alternative—unrelated clients test was met but 80% or more of income from same source because of unusual circumstances*

- (5) The conditions in this subsection are that:
  - (a) the individual could reasonably be expected to meet, or met, the unrelated clients test under section 87-20; and
  - (b) because of unusual circumstances applying to the individual in the income year, 80% or more of the individual's \*personal services income (not including income mentioned in subsection 87-15(4)) could reasonably have been expected to be, or would have been, income from the same entity (or one entity and its \*associates); and
  - (c) the individual's personal services income could reasonably be expected to be, or was, from the individual conducting activities that met the unrelated clients test under section 87-20.

*Fourth alternative—unrelated clients test not met because of unusual circumstances*

- (6) The conditions in this subsection are that:
  - (a) but for unusual circumstances applying to the individual in that year, the individual could reasonably have been expected to meet, or would have met, the unrelated clients test under section 87-20; and
  - (b) if 80% or more of the individual's \*personal services income (not including income mentioned in subsection 87-15(4)) could reasonably have been expected to be, or would have been, income from the same entity (or one entity and its \*associates)—that is the case only because of unusual circumstances applying to the individual in the income year; and
  - (c) the individual's personal services income could reasonably be expected to be, or was, from the individual conducting

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 87-65

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activities that met the unrelated clients test under section 87-20.

**87-65 Personal services business determinations for personal services entities**

*Making etc. personal services business determinations*

- (1) The Commissioner may, by giving written notice to a \*personal services entity whose \*ordinary income or \*statutory income includes some or all of an individual's \*personal services income:
  - (a) make a personal services business determination relating to the individual's personal services income included in the entity's ordinary income or statutory income; or
  - (b) vary such a determination.
- (2) The Commissioner may, in the notice, specify:
  - (a) the day on which the determination or variation takes effect, or took effect;
  - (b) the period for which the determination has effect;
  - (c) conditions to which the determination is subject.

*Matters about which the Commissioner must be satisfied*

- (3) The Commissioner must not make the determination unless satisfied that, in the income year during which the determination first has effect, or is taken to have first had effect, the conditions in one or more of subsections (3A), (3B), (5) and (6) are met.

*First alternative—results, employment or business premises test met or reasonably expected to be met*

- (3A) The conditions in this subsection are that:
  - (a) the entity could reasonably be expected to meet, or met, the results test under section 87-18, the employment test under section 87-25, the business premises test under section 87-30 or more than one of those tests; and
  - (b) the individual's \*personal services income included in the entity's \*ordinary income or \*statutory income could

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

reasonably be expected to be, or was, from the entity conducting activities that met one or more of those tests.

*Second alternative—unusual circumstances prevented the results, employment or business premises test from being met*

- (3B) The conditions in this subsection are that:
- (a) but for unusual circumstances applying to the entity in that year, the entity could reasonably have been expected to meet, or would have met, the results test under section 87-18, the employment test under section 87-25, the business premises test under section 87-30 or more than one of those tests; and
  - (b) the individual's \*personal services income included in the entity's \*ordinary income or \*statutory income could reasonably be expected to be, or was, from the entity conducting activities that met one or more of those tests.
- (4) For the purposes of paragraph (3B)(a) but without limiting the scope of that paragraph, unusual circumstances include providing services to an insufficient number of entities to meet the unrelated clients test under section 87-20 if:
- (a) the \*personal services entity starts a \*business during the income year, and can reasonably be expected to meet that test in subsequent income years; or
  - (b) the personal services entity provides services to only one entity during the income year, but met the test in one or more preceding income years and can reasonably be expected to meet the test in subsequent income years.

*Third alternative—unrelated clients test was met but 80% or more of income from same source because of unusual circumstances*

- (5) The conditions in this subsection are that:
- (a) the entity could reasonably be expected to meet, or met, the unrelated clients test under section 87-20; and
  - (b) because of unusual circumstances applying to the entity in the income year, 80% or more of the individual's \*personal services income (not including income mentioned in subsection 87-15(4)) included in the entity's \*ordinary income or \*statutory income could reasonably have been

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 87-70

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expected to be, or would have been, income from the same entity (or one entity and its \*associates); and

- (c) the individual's personal services income included in the entity's ordinary income or statutory income could reasonably be expected to be, or was, from the entity conducting activities that met the unrelated clients test under section 87-20.

*Fourth alternative—unrelated clients test not met because of unusual circumstances*

- (6) The conditions in this subsection are that:
  - (a) but for unusual circumstances applying to the entity in that year, the entity could reasonably have been expected to meet, or would have met, the unrelated clients test under section 87-20; and
  - (b) if 80% or more of the individual's \*personal services income (not including income mentioned in subsection 87-15(4)) included in the entity's \*ordinary income or \*statutory income could reasonably have been expected to be, or would have been, income from the same entity (or one entity and its \*associates)—that is the case only because of unusual circumstances applying to the entity in the income year; and
  - (c) the individual's personal services income included in the entity's ordinary income or statutory income could reasonably be expected to be, or was, from the entity conducting activities that met the unrelated clients test under section 87-20.

**87-70 Applying etc. for personal services business determinations**

- (1) An individual or a \*personal services entity may apply to the Commissioner, in the \*approved form:
  - (a) for a \*personal services business determination; or
  - (b) for a variation of a personal services business determination.
- (2) The Commissioner may request the applicant to give the Commissioner specified information, or a specified document, that the Commissioner needs to decide the application.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) If the Commissioner has not decided the application within 60 days after it is made, the applicant may, at any time, give the Commissioner written notice that the applicant wishes to treat the application as having been refused.
- (4) If the applicant gives notice under subsection (3), the Commissioner is taken, for the purposes of section 87-85, to have refused the application on the day on which the notice is given.
- (5) For the purposes of measuring the 60 days mentioned in subsection (3), disregard each period (if any):
  - (a) starting on the day when the Commissioner requests the applicant under subsection (2) to give the Commissioner specified information or a specified document; and
  - (b) ending at the end of the day the applicant gives the Commissioner the specified information or document.

#### **87-75 When personal services business determinations have effect**

- (1) The determination, or a variation of the determination, has effect, or is taken to have had effect, on and from:
  - (a) the day specified in the notice as the day on which the determination or variation takes effect, or took effect; or
  - (b) if a day is not specified—the day on which the notice is given.
- (2) The determination ceases to have effect at the end of the earliest day on which one or more of these occurs:
  - (a) one or more conditions to which the determination is subject are not met;
  - (b) the Commissioner revokes the determination;
  - (c) the period for which the determination has effect comes to an end.

#### **87-80 Revoking personal services business determinations**

The Commissioner must, by giving written notice to the individual or \*personal services entity on whose application a \*personal services business determination was made, revoke the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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determination if the Commissioner is no longer satisfied that there are grounds on which the determination could be made.

**87-85 Review of decisions**

A person who is dissatisfied with;

- (a) a decision of the Commissioner to make, vary or revoke a \*personal services business determination; or
- (b) the Commissioner's refusal of an application for a personal services business determination or for a variation of a personal services business determination;

may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Chapter 3—Specialist liability rules**

### **Part 3-1—Capital gains and losses: general topics**

#### **Division 100—A Guide to capital gains and losses**

##### **General overview**

##### **100-1 What this Division is about**

This Division is a simplified outline of the capital gains and capital losses provisions, commonly referred to as capital gains tax (*CGT*). It will help you to understand your current liabilities, and to factor CGT into your on-going financial affairs.

##### **Table of sections**

- 100-5 Effect of this Division
- 100-10 Fundamentals of CGT
- 100-15 Overview of Steps 1 and 2

##### **Step 1—Have you made a capital gain or a capital loss?**

- 100-20 What events attract CGT?
- 100-25 What are CGT assets?
- 100-30 Does an exception or exemption apply?
- 100-33 Can there be a roll-over?

##### **Step 2—Work out the amount of the capital gain or loss**

- 100-35 What is a capital gain or loss?
- 100-40 What factors come into calculating a capital gain or loss?
- 100-45 How to calculate the capital gain or loss for most CGT events

##### **Step 3—Work out your net capital gain or loss for the income year**

- 100-50 How to work out your net capital gain or loss
- 100-55 How do you comply with CGT?

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 100** A Guide to capital gains and losses

Section 100-5

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**Keeping records for CGT purposes**

- 100-60 Why keep records?
- 100-65 What records?
- 100-70 How long you need to keep records

**100-5 Effect of this Division**

This Division is a \*Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

**100-10 Fundamentals of CGT**

- (1) CGT affects your income tax liability because your assessable income includes your net capital gain for the income year. Your net capital gain is the total of your capital gains for the income year, reduced by certain capital losses you have made.

See later in this Guide (section 100-50) for more detail.

- (2) When you prepare your income tax return, you need to check whether you have made any capital gains for the income year.

You also need to check whether you have made any capital losses. You cannot deduct a capital loss from your assessable income, but it will reduce your capital gain in the current income year or later income years.

- (3) You will also need to consider the impact of CGT when doing your financial planning. In particular, you will need adequate record-keeping to deal most effectively with any immediate or future CGT liability.

To give you a sense of the range of things affected by CGT, if you are involved with any of the following, you may have a CGT liability now or at some time in the future:

leases	marriage or relationship breakdown
inheritance	working from home
subdividing land	shares
goodwill	a civil court case

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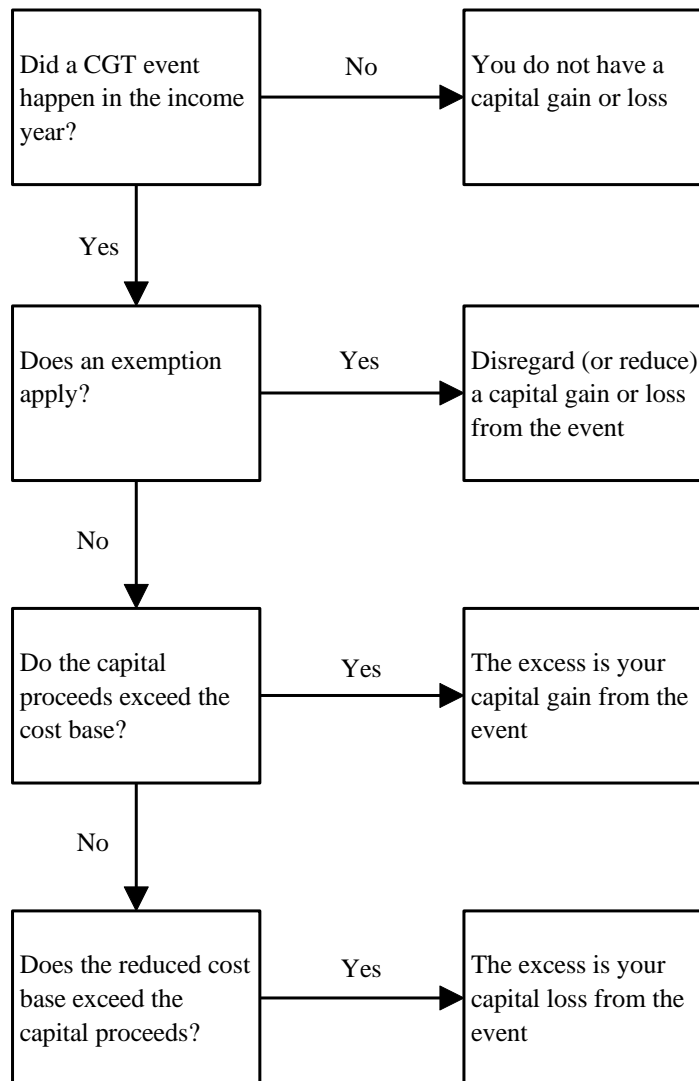
\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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contracts  
options  
a company liquidation  
leaving Australia

trusts  
bankruptcy  
incorporating a company

**100-15 Overview of Steps 1 and 2**



\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 100** A Guide to capital gains and losses

Section 100-20

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Note: Capital proceeds and cost base are not relevant for some CGT events, for example CGT event K7 or any of the CGT events created by Subdivision 104-L.

**Step 1—Have you made a capital gain or a capital loss?**

**100-20 What events attract CGT?**

- (1) You can make a capital gain or loss *only if* a CGT event happens.
- (2) There are a wide range of CGT events. Some happen often and affect many different taxpayers. Others are rare and affect only a few.

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**Some examples of CGT events**

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<b>Situation</b>	<b>Event</b>	<b>Which CGT event?</b>
You own shares you acquired on or after 20 September 1985	You sell them	CGT event A1
You sell a business	You agree with the purchaser not to operate a similar business in the same area	CGT event D1
You are a lessor	You receive a payment for changing the lease	CGT event F5
You own shares in a company	The company makes a payment (not a dividend) to you as a shareholder	CGT event G1

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A summary of all the CGT events is in section 104-5.

*Identifying the time of a CGT event*

- (3) The specific time when a CGT event happens is important for various reasons: in particular, for working out whether a capital gain or loss from the event affects your income tax for the current or another income year.

If a CGT event involves a contract, the time of the event will often be when the contract is *made*, not when it is completed.

The time of each CGT event is explained early in the relevant section in Division 104.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **100-25 What are CGT assets?**

- (1) Most CGT events involve a CGT asset. (For many, there is an *exception* if the CGT asset was acquired *before 20 September 1985*.) However, many CGT events are concerned directly with capital receipts and do *not* involve a CGT asset.

See the summary of the CGT events in section 104-5.

- (2) Some CGT assets are reasonably well-known:

- land and buildings, for example, a weekender;
- shares;
- units in a unit trust;
- collectables which cost over \$500, for example, jewellery or an artwork;
- personal use assets which cost over \$10,000, for example, a boat.

- (3) Other CGT assets are not so well-known. For example:

- your home;
- contractual rights;
- goodwill;
- foreign currency.

For a full explanation of what things are CGT assets: see Division 108.

### **100-30 Does an exception or exemption apply?**

- (1) Once you identify a CGT event which applies to you, you need to know if there is an exception or exemption that would reduce the capital gain or loss or allow you to disregard it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 100-33

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(2) There are 4 categories of exemptions:

1. exempt assets: for example, cars;
2. exempt or loss-denying transactions: for example, compensation for personal injury or your tenancy comes to an end;
3. anti-overlap provisions (that reduce your capital gain by the amount that is otherwise assessable);
4. small business relief.

Note: Most of the exceptions are in Division 104. You will find most of the possible exemptions in Division 118. The small business relief provisions are in Division 152.

*Some exemptions are limited*

(3) Take the family home for example. Generally, you are exempt from CGT when you make a capital gain on disposing of your main residence.

But this can change depending on how you came to own the house and what you have done with it. For example, if you rent it out, you may be liable to CGT when you sell it.

For the limits on the general exemption of your main residence:  
see Subdivision 118-B.

**100-33 Can there be a roll-over?**

(1) Roll-overs allow you to defer or disregard a capital gain or loss from a CGT event. They apply in specific situations. Some require a choice (for example, where an asset is compulsorily acquired: see Subdivision 124-B) and some are automatic (for example, where an asset is transferred because of marriage or relationship breakdown: see Subdivision 126-A).

(2) There are 2 types of roll-over:

1. a *replacement-asset roll-over* allows you to defer a capital gain or loss from one CGT event until a later CGT event happens where a CGT asset is replaced with another one;
2. a *same-asset roll-over* allows you to disregard a capital gain or loss from a CGT event where the same CGT asset is involved.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: The replacement-asset roll-overs are listed in section 112-115, and the same-asset roll-overs are listed in section 112-150.

## Step 2—Work out the amount of the capital gain or loss

### 100-35 What is a capital gain or loss?

For most CGT events:

- You make a capital gain if you receive (or are entitled to receive) capital amounts from the CGT event which exceed your total costs associated with that event.
- You make a capital loss if your total costs associated with the CGT event exceed the capital amounts you receive (or are entitled to receive) from the event.

### 100-40 What factors come into calculating a capital gain or loss?

#### *Capital proceeds*

- (1) For most CGT events, the capital amounts you receive (or are entitled to receive) from the event are called the *capital proceeds*.

To work out the capital proceeds: see Division 116.

#### *Cost base and reduced cost base*

- (2) For most CGT events, your total costs associated with the event are worked out in 2 different ways:
  - For the purpose of working out a capital *gain*, those costs are called the *cost base* of the CGT asset.
  - For the purpose of working out a capital *loss*, those costs are called the *reduced cost base* of the asset.

One of the main differences is that the costs may be indexed for inflation occurring before 1 October 1999 in working out a capital *gain* for a CGT asset acquired at or before 11.45 am on 21 September 1999 (which reduces the size of the gain), but not in working out a capital *loss*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

To work out the cost base and reduced cost base: see Division 110.

### **100-45 How to calculate the capital gain or loss for most CGT events**

1. Work out your capital proceeds from the CGT event.
2. Work out the cost base for the CGT asset.
3. Subtract the cost base from the capital proceeds.
4. If the proceeds exceed the cost base, the difference is your capital *gain*.
5. If not, work out the reduced cost base for the asset.
6. If the reduced cost base exceeds the capital proceeds, the difference is your capital *loss*.
7. If the capital proceeds are less than the cost base but more than the reduced cost base, you have neither a capital *gain* nor a capital *loss*.

### **Step 3—Work out your net capital gain or loss for the income year**

#### **100-50 How to work out your net capital gain or loss**

1. Reduce your capital gains for the income year, in the order you choose, by your capital losses for the income year. (If the capital losses for the income year exceed the capital gains, the difference is your net capital loss. You cannot deduct a net capital loss from your assessable income.)
2. Reduce any remaining capital gains, in the order you choose, by any unapplied net capital losses for previous income years.
3. Reduce any remaining discount capital gains by the discount percentage.

To find out what is a discount capital gain and the discount percentage:  
see Division 115.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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4. If you carry on a small business, apply the small business concessions in further reduction of your capital gains (whether or not the gains are discount capital gains).

For the small business concessions:  
see Division 152.

5. Add up:
  - (a) any remaining capital gains that are not discount capital gains; and
  - (b) any remaining discount capital gains.

The total is your net capital gain.

For the rules on working out your *net* capital gain or loss:  
see Division 102.

### **100-55 How do you comply with CGT?**

Declare any net capital gain as assessable income in your income tax return.

Defer any net capital loss to the next income year for which you have capital gains that exceed the capital losses for that income year.

### **Keeping records for CGT purposes**

#### **100-60 Why keep records?**

1. To ensure you do not disadvantage yourself.
2. To comply as easily as possible.
3. To plan for your CGT position in future income years.
4. The law requires you to: see Division 121.

#### **100-65 What records?**

Keeping full records will make it easier for you to comply. For example, keep records of:

- receipts of purchase or transfer;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 100** A Guide to capital gains and losses

Section 100-70

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- interest on money you borrowed;
- costs of agents, accountants, legal, advertising etc.;
- insurance costs and land rates or taxes;
- any market valuations;
- costs of maintenance, repairs or modifications;
- brokerage on shares;
- legal costs.

**100-70 How long you need to keep records**

The law requires you to keep records for 5 years after a CGT event has happened.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 102—Assessable income includes net capital gain

### Guide to Division 102

#### 102-1 What this Division is about

This Division tells you how to work out if you have made a net capital gain or a net capital loss for the income year. A net capital gain is included in your assessable income. However, you cannot deduct a net capital loss. (Amounts otherwise included in your assessable income do not form part of a net capital gain.)

#### 102-3 Concessions in working out your net capital gain

- (1) Concessional rules apply to working out the net capital gain of some entities (see subsection (2)) if:
  - (a) they have a capital gain (a *discount capital gain*) from a CGT asset acquired at least 12 months before the CGT event that caused the capital gain; and
  - (b) they have not chosen to include indexation in the cost base of the asset for working out the capital gain (if relevant).

Note 1: Division 115 explains what is a discount capital gain.

Note 2: Under Division 110, the entity can choose to include indexation in the cost base of a CGT asset acquired at or before 11.45 am on 21 September 1999.

- (2) Only these entities get the concession:
  - (a) individuals;
  - (b) complying superannuation entities;
  - (c) trusts;
  - (d) life insurance companies, in relation to discount capital gains for CGT events in respect of CGT assets that are complying superannuation/FHSA assets.

Note: Shareholders in a listed investment company can also receive a concession equivalent to a discount capital gain: see Subdivision 115-D.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 102** Assessable income includes net capital gain

Section 102-5

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- (3) The concession is that the net capital gain includes only *part* of the amount of the discount capital gain left after applying capital losses and net capital losses from earlier income years.

See subsection 102-5(1).

**Table of sections**

**Operative provisions**

102-5	Assessable income includes net capital gain
102-10	How to work out your net capital loss
102-15	How to apply net capital losses
102-20	Ways you can make a capital gain or a capital loss
102-22	Amounts of capital gains and losses
102-23	CGT event still happens even if gain or loss disregarded
102-25	Order of application of CGT events
102-30	Exceptions and modifications

**Operative provisions**

**102-5 Assessable income includes net capital gain**

- (1) Your assessable income includes your net capital gain (if any) for the income year. You work out your *net capital gain* in this way:

*Working out your net capital gain*

Step 1. Reduce the \*capital gains you made during the income year by the \*capital losses (if any) you made during the income year.

Note 1: You choose the order in which you reduce your capital gains. You have a net capital loss for the income year if your capital losses exceed your capital gains: see section 102-10.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 2: Some provisions of this Act (such as Divisions 104 and 118) permit or require you to disregard certain capital gains or losses when working out your net capital gain. Subdivision 152-B permits you, in some circumstances, to disregard a capital gain on an asset you held for at least 15 years.

Step 2. Apply any previously unapplied \*net capital losses from earlier income years to reduce the amounts (if any) remaining after the reduction of \*capital gains under step 1 (including any capital gains not reduced under that step because the \*capital losses were less than the total of your capital gains).

Note 1: Section 102-15 explains how to apply net capital losses.

Note 2: You choose the order in which you reduce the amounts.

Step 3. Reduce by the \*discount percentage each amount of a \*discount capital gain remaining after step 2 (if any).

Note: Only some entities can have discount capital gains, and only if they have capital gains from CGT assets acquired at least a year before making the gains. See Division 115.

Step 4. If any of your \*capital gains (whether or not they are \*discount capital gains) qualify for any of the small business concessions in Subdivisions 152-C, 152-D and 152-E, apply those concessions to each capital gain as provided for in those Subdivisions.

Note 1: The basic conditions for getting these concessions are in Subdivision 152-A.

Note 2: Subdivision 152-C does not apply to CGT events J2, J5 and J6. In addition, Subdivision 152-E does not apply to CGT events J5 and J6.

Step 5. Add up the amounts of \*capital gains (if any) remaining after step 4. The sum is your *net capital gain* for the income year.

Note: For exceptions and modifications to these rules: see section 102-30.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 102-10

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- (2) However, if during the income year:
- (a) you became bankrupt; or
  - (b) you were released from debts under a law relating to bankruptcy;
- any \*net capital loss you made for an earlier income year must be disregarded in working out whether you made a \*net capital gain for the income year or a later one.
- (3) Subsection (2) applies even though your bankruptcy is annulled if:
- (a) the annulment happens under section 74 of the *Bankruptcy Act 1966*; and
  - (b) under the composition or scheme of arrangement concerned, you were, will be or may be released from debts from which you would have been released if instead you had been discharged from the bankruptcy.

**102-10 How to work out your net capital loss**

- (1) You work out if you have a *net capital loss* for the income year in this way:

**Working out your net capital loss**

- Step 1. Add up the \*capital losses you made during the income year. Also add up the \*capital gains you made.
- Step 2. Subtract your \*capital gains from your \*capital losses.
- Step 3. If the Step 2 amount is *more than zero*, it is your *net capital loss* for the income year.

Note: For exceptions and modifications to these rules: see section 102-30.

- (2) You *cannot* deduct from your assessable income a \*net capital loss for any income year.

Note: However, it can be applied against your capital gains for a later income year: see section 102-5 and subsection 102-15(3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **102-15 How to apply net capital losses**

- (1) In working out if you have a \*net capital gain, your \*net capital losses are applied in the order in which you made them.
- (2) A \*net capital loss can be applied only to the extent that it has not already been applied.
- (3) To the extent that a \*net capital loss cannot be applied in an income year, it can be carried forward to a later income year.

**Example:** You have capital gains for the income year of \$1,000 and capital losses for the income year of \$600. Your capital losses are subtracted from your capital gains to leave a balance of \$400.

You have available net capital losses of \$300 (for last year) and \$200 (for the year before that).

The \$400 is reduced to zero by applying the available net capital losses in the order in which you made them. This leaves \$100 of the \$300 to be carried forward and extinguishes the \$200.

**Note:** For applying a net capital loss for the 1997-98 income year or an earlier income year: see section 102-15 of the *Income Tax (Transitional Provisions) Act 1997*.

### **102-20 Ways you can make a capital gain or a capital loss**

You can make a \*capital gain or \*capital loss if and only if a \*CGT event happens. The gain or loss is made at the time of the event.

**Note 1:** The full list of CGT events is in section 104-5.

**Note 2:** The gain or loss may be affected by an exemption, or may be able to be rolled-over. For exemptions generally, see Division 118. For roll-overs, see Divisions 122, 123, 124 and 126.

**Note 3:** You may make a capital gain or capital loss as a result of a CGT event happening to another entity: see subsections 115-215(3), 170-275(1) and 170-280(3).

**Note 4:** You cannot make a capital loss from a CGT event that happens to your original interests during a trust restructuring period if you choose a roll-over under Subdivision 124-N.

**Note 5:** The capital loss may be affected if the CGT asset was owned by a member of a demerger group just before a demerger: see section 125-170.

**Note 5:** Under subsection 230-310(4) gains and losses are taken to arise from a CGT event in particular circumstances.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **102-22 Amounts of capital gains and losses**

Most \*CGT events provide for calculating a \*capital gain or \*capital loss by comparing 2 different amounts. The amount of the gain or loss is the difference between those amounts.

### **102-23 CGT event still happens even if gain or loss disregarded**

A \*CGT event still happens even if:

- (a) it does not result in a \*capital gain or \*capital loss; or
- (b) a capital gain or capital loss from the event is disregarded.

Example: Lindy sells a car. Section 118-5 says that any capital gain or loss from a CGT event happening to a car is disregarded. However, the sale is still an example of CGT event A1.

### **102-25 Order of application of CGT events**

- (1) Work out if a \*CGT event (except \*CGT events D1 and H2) happens to your situation. If more than one event can happen, the one you use is the one that is the most specific to your situation.
- (2) However, there are 3 exceptions: one for \*CGT event J2, one for CGT event K5 and one for CGT event K12.
- (2A) If the circumstances that gave rise to \*CGT event J2 constitute another CGT event, CGT event J2 applies in addition to the other event.

Example: CGT event J2 happens because a replacement asset for a small business roll-over under Subdivision 152-E becomes your trading stock (in circumstances where CGT event K4 happens). Both CGT events apply.

- (2B) \*CGT event K5 happens if CGT event A1, C2 or E8 happens. CGT event K5 applies in addition to the other event.
- (2C) If:
  - (a) \*CGT events happen for which you make \*capital gains or \*capital losses; and
  - (b) the capital gains or losses are taken into account in working out a \*foreign hybrid net capital loss amount; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) the foreign hybrid net capital loss amount is itself taken into account in determining that \*CGT event K12 happens; CGT event K12 applies in addition to the other CGT events.
- (3) If no \*CGT event (except \*CGT events D1 and H2) happens:
- (a) work out if CGT event D1 happens and use that event if it does; and
  - (b) if it does not, work out if CGT event H2 happens and use that event if it does.

Note: The full list of CGT events is in section 104-5.

### 102-30 Exceptions and modifications

Provisions of this Act are in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

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#### Special rules affecting capital gains and capital losses

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<b>Item</b>	<b>For this kind of entity:</b>	<b>There are these special rules:</b>	<b>See:</b>
1	All entities	You can subtract capital losses from collectables only from your capital gains from collectables.	section 108-10
2	All entities	Disregard capital losses you make from personal use assets.	section 108-20

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 102** Assessable income includes net capital gain

Section 102-30

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**Special rules affecting capital gains and capital losses**

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<b>Item</b>	<b>For this kind of entity:</b>	<b>There are these special rules:</b>	<b>See:</b>
2AA	Beneficiary of trust whose net income includes a net capital gain	The beneficiary is treated as having: (a) an extra capital gain equal to each amount of the beneficiary's share of the net income that is attributable to the trust's capital gains that are <i>not</i> reduced under step 3 of the method statement in subsection 102-5(1) <i>or</i> Subdivision 152-C; and (b) an extra capital gain of double each amount of the beneficiary's share of the net income that is attributable to the trust's capital gains that are reduced under <i>either</i> step 3 of the method statement <i>or</i> Subdivision 152-C but not both; and (c) an extra capital gain of 4 times each amount of the beneficiary's share of the net income that is attributable to the trust's capital gains that are reduced under <i>both</i> step 3 of the method statement <i>and</i> Subdivision 152-C.	Subdivision 115-C
3	All entities	If any of your commercial debts have been forgiven in the income year, your net capital losses (including net capital losses from collectables) may be reduced.	sections 245-130 and 245-135 of Schedule 2C to the <i>Income Tax Assessment Act 1936</i>
4	A company	If it has a change of ownership or control during the income year, and has not satisfied the same business test, it works out its net capital gain and net capital loss in a special way.	Subdivision 165-CB

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Special rules affecting capital gains and capital losses**

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Item	For this kind of entity:	There are these special rules:	See:
5	A company	It cannot apply a net capital loss unless: <ul style="list-style-type: none"> <li>• the same people owned the company during the loss year, the income year and any intervening year; and</li> <li>• no person controlled the company's voting power at any time during the income year who did not also control it during the whole of the loss year and any intervening year;</li> </ul> or the company has satisfied the same business test.	Subdivision 165-CA
6	A company	If one or more of these things happen: <ul style="list-style-type: none"> <li>• a capital gain or loss is injected into it;</li> <li>• a tax benefit is obtained from its available net capital losses or current year capital losses;</li> <li>• a tax benefit is obtained because of its available capital gains;</li> </ul> the Commissioner can disallow its net capital losses or current year capital losses, and it may have to work out its net capital loss in a special way.	Division 175
7	A company	A company can transfer a surplus amount of its net capital loss to another company so that the other company can apply the amount in the income year of the transfer. (Both companies must be members of the same wholly-owned group.)	Subdivision 170-B
7A	The head company of a consolidated group or a MEC group	The head company of a consolidated group or a MEC group must apply the capital loss from CGT event L1 over at least 5 income years	section 104-500

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 102** Assessable income includes net capital gain

Section 102-30

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**Special rules affecting capital gains and capital losses**

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<b>Item</b>	<b>For this kind of entity:</b>	<b>There are these special rules:</b>	<b>See:</b>
8	A PDF	If it is a PDF at the end of an income year for which it has a net capital loss, it can apply the loss in a later income year only if it is a PDF throughout the last day of the later income year.	section 195-25
9	A PDF	If it becomes a PDF during an income year, it works out its net capital gain and net capital loss for the income year in a special way.	section 195-35
10	Body that has ceased to be an STB	Net capital losses made before cessation disregarded. Special rules apply in cessation year where net capital gain before cessation and net capital loss after cessation.	<b>section 24AX</b>
11	A life insurance company	Division 320 contains special rules that apply to capital gains and capital losses	Division 320
12	A company	The capital gain or capital loss a company makes from a CGT event that happened to a share in a company that is a foreign resident may be reduced.	Subdivision 768-G
13	A PDF	Sections 102-5 and 102-10 do not apply to the calculation of net capital gains and losses. Capital gains and losses are instead allocated to separate classes of income.	<b>Subdivision C of Division 10E of Part III</b>
14	A CFC	In calculating the CFC's attributable income, pre-1 July 1990 capital losses are disregarded.	section 409

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 103—General rules**

### **Guide to Division 103**

#### **103-1 What this Division is about**

This Division sets out some general rules that apply to the provisions dealing with capital gains and capital losses.

#### **Table of sections**

##### **Operative provisions**

103-5	Giving property as part of a transaction
103-10	Entitlement to receive money or property
103-15	Requirement to pay money or give property
103-25	Choices
103-30	Reduction of cost base etc. by net input tax credits

#### **Operative provisions**

##### **103-5 Giving property as part of a transaction**

There are a number of provisions in this Part and Part 3-3 that say that a payment, cost or expenditure can include giving property.

To the extent that such a provision does say that a payment, cost or expenditure can include giving property, use the \*market value of the property in working out the amount of the payment, cost or expenditure.

##### **103-10 Entitlement to receive money or property**

- (1) This Part and Part 3-3 apply to you as if you had received money or other property if it has been applied for your benefit (including by discharging all or part of a debt you owe) or as you direct.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 103-15

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- (2) Those Parts apply to you as if you are entitled to receive money or other property:
  - (a) if you are entitled to have it so applied; or
  - (b) if:
    - (i) you will not receive it until a later time; or
    - (ii) the money is payable by instalments.

**103-15 Requirement to pay money or give property**

This Part and Part 3-3 apply to you as if you are required to pay money or give other property even if:

- (a) you do not have to pay or give it until a later time; or
- (b) the money is payable by instalments.

**103-25 Choices**

- (1) A choice you can make under this Part or Part 3-3 must be made:
  - (a) by the day you lodge your \*income tax return for the income year in which the relevant \*CGT event happened; or
  - (b) within a further time allowed by the Commissioner.
- (2) The way you (and any other entity making the choice) prepare your \*income tax returns is sufficient evidence of the making of the choice.
- (3) However, there are some exceptions:
  - (aa) subsection 115-230(3) (relating to assessment of \*capital gains of resident testamentary trusts) requires a trustee to make a choice by the time specified in subsection 115-230(5); and
  - (a) subsections 124-380(7) and 124-465(5) (relating to replacement asset roll-overs) require a company to make the choice at the earlier time specified in those subsections; and
  - (b) subsections 152-315(4) and (5) (relating to the small business retirement exemption) require a choice to be made in writing.

Note: This section is modified in calculating the attributable income of a CFC: see section 421 of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**103-30 Reduction of cost base etc. by net input tax credits**

Reduce the \*cost base and \*reduced cost base of a \*CGT asset, and any other amount that could be involved in the calculation of an entity's \*capital gain or \*capital loss, by the amount of any \*net input tax credit of the entity in relation to that amount.

Example: The other amount could be expenditure in the case of some CGT events (see, for example, CGT event D1).

Note: Subsection 116-20(5) deals with the effect of net GST on supplies for the purposes of capital proceeds.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 104—CGT events**

### **Table of Subdivisions**

	Guide to Division 104
104-A	Disposals
104-B	Use and enjoyment before title passes
104-C	End of a CGT asset
104-D	Bringing into existence a CGT asset
104-E	Trusts
104-F	Leases
104-G	Shares
104-H	Special capital receipts
104-I	Australian residency ends
104-J	CGT events relating to roll-overs
104-K	Other CGT events
104-L	Consolidated groups and MEC groups

### **Guide to Division 104**

#### **104-1 What this Division is about**

This Division sets out all the CGT events for which you can make a capital gain or loss. It tells you how to work out if you have made a gain or loss from each event and the time of each event. It also contains exceptions for gains and losses for many events (such as the exception for CGT assets acquired before 20 September 1985) and some cost base adjustment rules.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 104-5 Summary of the CGT events

<b>CGT events</b>			
<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
A1 Disposal of a CGT asset  <i>[See section 104-10]</i>	when disposal contract is entered into or, if none, when entity stops being asset's owner	capital proceeds from disposal <i>less</i> asset's cost base	asset's reduced cost base <i>less</i> capital proceeds
B1 Use and enjoyment before title passes  <i>[See section 104-15]</i>	when use of CGT asset passes	capital proceeds <i>less</i> asset's cost base	asset's reduced cost base <i>less</i> capital proceeds
C1 Loss or destruction of a CGT asset  <i>[See section 104-20]</i>	when compensation is first received or, if none, when loss discovered or destruction occurred	capital proceeds <i>less</i> asset's cost base	asset's reduced cost base <i>less</i> capital proceeds
C2 Cancellation, surrender and similar endings  <i>[See section 104-25]</i>	when contract ending asset is entered into or, if none, when asset ends	capital proceeds from ending <i>less</i> asset's cost base	asset's reduced cost base <i>less</i> capital proceeds
C3 End of option to acquire shares etc.  <i>[See section 104-30]</i>	when option ends	capital proceeds from granting option <i>less</i> expenditure in granting it	expenditure in granting option <i>less</i> capital proceeds
D1 Creating contractual or other rights  <i>[See section 104-35]</i>	when contract is entered into or right is created	capital proceeds from creating right <i>less</i> incidental costs of creating it	incidental costs of creating right <i>less</i> capital proceeds

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-5

<b>CGT events</b>			
<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
D2 Granting an option  <i>[See section 104-40]</i>	when option is granted	capital proceeds from grant <i>less</i> expenditure to grant it	expenditure to grant option <i>less</i> capital proceeds
D3 Granting a right to income from mining  <i>[See section 104-45]</i>	when contract is entered into or, if none, when right is granted	capital proceeds from grant of right <i>less</i> expenditure to grant it	expenditure to grant right <i>less</i> capital proceeds
D4 Entering into a conservation covenant  <i>[See section 104-47]</i>	when covenant is entered into	capital proceeds from covenant <i>less</i> cost base apportioned to the covenant	reduced cost base apportioned to the covenant <i>less</i> capital proceeds from covenant
E1 Creating a trust over a CGT asset  <i>[See section 104-55]</i>	when trust is created	capital proceeds from creating trust <i>less</i> asset's cost base	asset's reduced cost base <i>less</i> capital proceeds
E2 Transferring a CGT asset to a trust  <i>[See section 104-60]</i>	when asset transferred	capital proceeds from transfer <i>less</i> asset's cost base	asset's reduced cost base <i>less</i> capital proceeds
E3 Converting a trust to a unit trust  <i>[See section 104-65]</i>	when trust is converted	market value of asset at that time <i>less</i> its cost base	asset's reduced cost base <i>less</i> that market value

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**CGT events**

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**Event number and description**

**Time of event is:**

**Capital gain is:**

**Capital loss is:**

E4 Capital payment for trust interest

when trustee makes payment

non-assessable part of the payment *less* cost base of the trust interest

*no capital loss*

*[See section 104-70]*

E5 Beneficiary becoming entitled to a trust asset

when beneficiary becomes absolutely entitled

for trustee—market value of CGT asset at that time *less* its cost base; for beneficiary—that market value *less* cost base of beneficiary's capital interest

for trustee—reduced cost base of CGT asset at that time *less* that market value; for beneficiary—reduced cost base of beneficiary's capital interest *less* that market value

*[See section 104-75]*

E6 Disposal to beneficiary to end income right

the time of the disposal

for trustee—market value of CGT asset at that time *less* its cost base; for beneficiary—that market value *less* cost base of beneficiary's right to income

for trustee—reduced cost base of CGT asset at that time *less* that market value; for beneficiary—reduced cost base of beneficiary's right to income *less* that market value

*[See section 104-80]*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-5

<b>CGT events</b>			
<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
E7 Disposal to beneficiary to end capital interest  <i>[See section 104-85]</i>	the time of the disposal	for trustee—market value of CGT asset at that time <i>less</i> its cost base; for beneficiary—that market value <i>less</i> cost base of beneficiary's capital interest	for trustee—reduced cost base of CGT asset at that time <i>less</i> that market value; for beneficiary—reduced cost base of beneficiary's capital interest <i>less</i> that market value
E8 Disposal by beneficiary of capital interest  <i>[See section 104-90]</i>	when disposal contract entered into or, if none, when beneficiary ceases to own CGT asset	capital proceeds <i>less</i> appropriate proportion of the trust's net assets	appropriate proportion of the trust's net assets <i>less</i> capital proceeds
E9 Creating a trust over future property  <i>[See section 104-105]</i>	when entity makes agreement	market value of the property (as if it existed when agreement made) <i>less</i> incidental costs in making agreement	incidental costs in making agreement <i>less</i> market value of the property (as if it existed when agreement made)

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**CGT events**

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**Event number and description**

**Time of event is:**

**Capital gain is:**

**Capital loss is:**

F1 Granting a lease

for grant of lease—when entity enters into lease contract or, if none, at start of lease;  
 for lease renewal or extension—at start of renewal or extension

capital proceeds *less* expenditure on grant, renewal or extension

expenditure on grant, renewal or extension *less* capital proceeds

*[See section 104-110]*

F2 Granting a long term lease

for grant of lease—when lessor grants lease;  
 for lease renewal or extension—at start of renewal or extension

capital proceeds from grant, renewal or extension *less* cost base of leased property

reduced cost base of leased property *less* capital proceeds from grant, renewal or extension

*[See section 104-115]*

F3 Lessor pays lessee to get lease changed

when lease term is varied or waived

*no capital gain*

amount of expenditure to get lessee's agreement

*[See section 104-120]*

F4 Lessee receives payment for changing lease

when lease term is varied or waived

capital proceeds *less* cost base of lease

*no capital loss*

*[See section 104-125]*

F5 Lessor receives payment for changing lease

when lease term is varied or waived

capital proceeds *less* expenditure in relation to variation or waiver

expenditure in relation to variation or waiver *less* capital proceeds

*[See section 104-130]*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules  
**Part 3-1** Capital gains and losses: general topics  
**Division 104** CGT events

Section 104-5

<b>CGT events</b>			
<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
G1 Capital payment for shares <i>[See section 104-135]</i>	when company pays non-assessable amount	payment <i>less</i> cost base of shares	<i>no capital loss</i>
G3 Liquidator or administrator declares shares or financial instruments worthless <i>[See section 104-145]</i>	when declaration was made	<i>no capital gain</i>	shares' or financial instruments' reduced cost base
H1 Forfeiture of a deposit <i>[See section 104-150]</i>	when deposit is forfeited	deposit <i>less</i> expenditure in connection with prospective sale	expenditure in connection with prospective sale <i>less</i> deposit
H2 Receipt for event relating to a CGT asset <i>[See section 104-155]</i>	when act, transaction or event occurred	capital proceeds <i>less</i> incidental costs	incidental costs <i>less</i> capital proceeds
I1 Individual or company stops being an Australian resident <i>[See section 104-160]</i>	when individual or company stops being Australian resident	for each CGT asset the person owns, its market value <i>less</i> its cost base	for each CGT asset the person owns, its reduced cost base <i>less</i> its market value
I2 Trust stops being a resident trust <i>[See section 104-170]</i>	when trust ceases to be resident trust for CGT purposes	for each CGT asset the trustee owns, its market value of asset <i>less</i> its cost base	for each CGT asset the trustee owns, its reduced cost base <i>less</i> its market value

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**CGT events**

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Event number and description	Time of event is:	Capital gain is:	Capital loss is:
J1 Company stops being member of wholly-owned group after roll-over <i>[See section 104-175]</i>	when the company stops	market value of asset at time of event <i>less</i> its cost base	reduced cost base of asset <i>less</i> that market value
J2 Change in relation to replacement asset or improved asset after a roll-over under Subdivision 152-E <i>[See section 104-185]</i>	when the change happens	the amount mentioned in subsection 104-185(5)	<i>no capital loss</i>
J4 Trust fails to cease to exist after a roll-over under Subdivision 124-N <i>[See section 104-195]</i>	when the failure happens	market value of asset less asset's cost base	reduced cost base of asset less asset's market value
J5 Failure to acquire replacement asset and to incur fourth element expenditure after a roll-over under Subdivision 152-E <i>[See section 104-197]</i>	at the end of the replacement asset period	the amount of the capital gain that you disregarded under Subdivision 152-E	<i>no capital loss</i>
J6 Cost of acquisition of replacement asset or amount of fourth element expenditure, or both, not sufficient to cover disregarded capital gain <i>[See section 104-198]</i>	at the end of the replacement asset period	the amount mentioned in subsection 104-198(3)	<i>no capital loss</i>
K2 Bankrupt pays amount in relation to debt  <i>[See section 104-210]</i>	when payment is made	<i>no capital gain</i>	so much of payment as relates to denied part of a net capital loss

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-5

<b>CGT events</b>			
<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
K3 Asset passing to tax-advantaged entity  <i>[See section 104-215]</i>	when individual dies	market value of asset at death <i>less</i> its cost base	reduced cost base of asset <i>less</i> that market value
K4 CGT asset starts being trading stock <i>[See section 104-220]</i>	when asset starts being trading stock	market value of asset <i>less</i> its cost base	reduced cost base of asset <i>less</i> its market value
K5 Special capital loss from collectable that has fallen in market value  <i>[See section 104-225]</i>	when CGT event A1, C2 or E8 happens to shares in the company, or an interest in the trust, that owns the collectable	<i>no capital gain</i>	market value of the shares or interest (as if the collectable had not fallen in market value) <i>less</i> the capital proceeds from CGT event A1, C2 or E8
K6 Pre-CGT shares or trust interest  <i>[See section 104-230]</i>	when another CGT event involving the shares or interest happens	capital proceeds from the shares or trust interest (so far as attributable to post-CGT assets owned by the company or trust) <i>less</i> the assets' cost bases	<i>no capital loss</i>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>CGT events</b>			
<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
K7 Balancing adjustment occurs for a depreciating asset that you used for purposes other than taxable purposes <i>[See section 104-235]</i>	When balancing adjustment event occurs	Termination value less cost times fraction	Cost less termination value times fraction
K8 Direct value shifts affecting your equity or loan interests in a company or trust <i>[See section 104-250 and Division 725]</i>	the decrease time for the interests	the gain worked out under section 725-365	<i>no capital loss</i>
K9 Entitlement to receive payment of a carried interest <i>[See section 104-255]</i>	when you become entitled to receive payment	capital proceeds from entitlement	<i>no capital loss</i>
K10 You make a forex realisation gain covered by item 1 of the table in subsection 775-70(1) <i>[See section 104-260]</i>	when the forex realisation event happens	the forex realisation gain	<i>no capital loss</i>
K11 You make a forex realisation loss covered by item 1 of the table in subsection 775-75(1) <i>[See section 104-265]</i>	when the forex realisation event happens	<i>no capital gain</i>	the forex realisation loss
K12 Foreign hybrid loss exposure adjustment <i>[See section 104-270]</i>	just before the end of the income year	<i>no capital gain</i>	the amount stated in subsection 104-270(3)

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-5

<b>CGT events</b>			
<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
L1 Reduction under section 705-57 in tax cost setting amount of assets of entity becoming subsidiary member of consolidated group or MEC group <i>[See section 104-500]</i>	Just after entity becomes subsidiary member	<i>no capital gain</i>	amount of reduction
L2 Amount remaining after step 3A etc. of joining allocable cost amount is negative <i>[See section 104-505]</i>	Just after entity becomes subsidiary member	amount remaining	<i>no capital loss</i>
L3 Tax cost setting amounts for retained cost base assets exceed joining allocable cost amount <i>[See section 104-510]</i>	Just after entity becomes subsidiary member	amount of excess	<i>no capital loss</i>
L4 No reset cost base assets against which to apply excess of net allocable cost amount on joining <i>[See section 104-515]</i>	Just after entity becomes subsidiary member	<i>no capital gain</i>	amount of excess
L5 Amount remaining after step 4 of leaving allocable cost amount is negative <i>[See section 104-520]</i>	When entity ceases to be subsidiary member	amount remaining	<i>no capital loss</i>
L6 Error in calculation of tax cost setting amount for joining entity's assets: CGT event L6 <i>[See section 104-525]</i>	start of the income year when the Commissioner becomes aware of the errors	the net overstated amount resulting from the errors, or a portion of that amount	the net understated amount resulting from the errors, or a portion of that amount

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**CGT events**

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Event number and description	Time of event is:	Capital gain is:	Capital loss is:
L7 Discharged amount of liability differs from amount for allocable cost amount purposes: CGT event L7 <i>[See section 104-530]</i>	start of the income year in which the liability is realised	your allocable cost amount less what it would have been had you used the correct amount for the liability	what your allocable cost amount would have been had you used the correct amount for the liability less your allocable cost amount
L8 Reduction in tax cost setting amount for reset cost base assets on joining cannot be allocated <i>[See section 104-535]</i>	Just after entity becomes subsidiary member	<i>no capital gain</i>	amount of reduction that cannot be allocated

Note: Subsection 230-310(4) (which deals with hedging financial arrangements) provides that in certain circumstances a CGT event is taken to have occurred in relation to a hedging financial arrangement at the same time as a CGT event actually occurs in relation to a hedged item covered by the arrangement.

**Subdivision 104-A—Disposals**

**104-10 Disposal of a CGT asset: CGT event A1**

- (1) *CGT event A1* happens if you \*dispose of a \*CGT asset.
- (2) You *dispose of* a \*CGT asset if a change of ownership occurs from you to another entity, whether because of some act or event or by operation of law. However, a change of ownership does not occur:
  - (a) if you stop being the legal owner of the asset but continue to be its beneficial owner; or
  - (b) merely because of a change of trustee.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-10

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- (3) The time of the event is:
- (a) when you enter into the contract for the \*disposal; or
  - (b) if there is no contract—when the change of ownership occurs.

Example: In June 1999 you enter into a contract to sell land. The contract is settled in October 1999. You make a capital gain of \$50,000.

The gain is made in the 1998-99 income year (the year you entered into the contract) and not the 1999-2000 income year (the year that settlement takes place).

Note 1: If the contract falls through before completion, this event does not happen because no change in ownership occurs.

Note 2: If the asset was compulsorily acquired from you: see subsection (6).

- (4) You make a **capital gain** if the \*capital proceeds from the disposal are *more* than the asset's \*cost base. You make a **capital loss** if those capital proceeds are *less* than the asset's \*reduced cost base.

*Exceptions*

- (5) A \*capital gain or \*capital loss you make is disregarded if:
- (a) you \*acquired the asset before 20 September 1985; or
  - (b) for a lease that you granted:
    - (i) it was granted before that day; or
    - (ii) if it has been renewed or extended—the start of the last renewal or extension occurred before that day.

Note 1: You can make a gain if you dispose of shares in a company, or an interest in a trust, that you acquired before that day: see CGT event K6.

Note 2: A capital gain or loss you make because you assign a right under or in relation to a general insurance policy you held with an HIH company to the Commonwealth, the trustee of the HIH Trust or a prescribed entity is also disregarded: see section 322-15.

Note 3: A capital gain or loss made by a demerging entity from CGT event A1 happening as a result of a demerger is also disregarded: see section 125-155.

Note 4: A capital gain or loss you make because of section 16AI of the *Banking Act 1959* is disregarded: see section 253-10 of this Act. Section 16AI of the *Banking Act 1959*:

- (a) reduces your right to be paid an amount by an ADI in connection with an account to the extent of your entitlement under

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 2AA of Part II of that Act to be paid an amount by APRA; and

- (b) provides that, to the extent of the reduction, the right becomes a right of APRA.

Note 5: A capital gain or loss you make because, under section 62ZZL of the *Insurance Act 1973*, you dispose of a CGT asset consisting of your rights against a general insurance company to APRA is disregarded: see section 322-30 of this Act.

#### *Compulsory acquisition*

- (6) If the asset was \*acquired from you by an entity under a power of compulsory acquisition conferred by an \*Australian law or a \*foreign law, the time of the event is the earliest of:
- (a) when you received compensation from the entity; or
  - (b) when the entity became the asset's owner; or
  - (c) when the entity entered it under that power; or
  - (d) when the entity took possession under that power.

Note: You may be able to choose a roll-over if an asset is compulsorily acquired: see Subdivision 124-B.

- (7) **CGT event A1** does not happen if the \*disposal of the asset was done:
- (a) to provide or redeem a security; or
  - (b) because of the vesting of the asset in a trustee under the *Bankruptcy Act 1966* or under a similar \*foreign law; or
  - (c) because of the vesting of the asset in a liquidator of a company, or the holder of a similar office under a foreign law.

### **Subdivision 104-B—Use and enjoyment before title passes**

#### **104-15 Use and enjoyment before title passes: CGT event B1**

- (1) **CGT event B1** happens if you enter into an agreement with another entity under which:
- (a) the right to the use and enjoyment of a \*CGT asset you own passes to the other entity; and
  - (b) title in the asset will or may pass to the other entity at or before the end of the agreement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 104-20

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Note: Division 240 provides for the inclusion of amounts under hire purchase agreements in assessable income.

- (2) The time of the event is when the other entity first obtains the use and enjoyment of the asset.
- (3) You make a **capital gain** if the \*capital proceeds from the agreement are *more* than the asset's \*cost base. You make a **capital loss** if those capital proceeds are *less* than the asset's \*reduced cost base.

*Exceptions*

- (4) A \*capital gain or \*capital loss you make is disregarded if:
  - (a) title in the asset does not pass to the other entity at or before the end of the agreement; or
  - (b) you \*acquired the asset before 20 September 1985.

**Subdivision 104-C—End of a CGT asset**

**Table of sections**

104-20	Loss or destruction of a CGT asset: CGT event C1
104-25	Cancellation, surrender and similar endings: CGT event C2
104-30	End of option to acquire shares etc.: CGT event C3

**104-20 Loss or destruction of a CGT asset: CGT event C1**

- (1) **CGT event C1** happens if a \*CGT asset you own is lost or destroyed.

Note: This event can apply to part of a CGT asset: see section 108-5 (definition of **CGT asset**).

- (2) The time of the event is:
  - (a) when you first receive compensation for the loss or destruction; or
  - (b) if you receive no compensation—when the loss is discovered or the destruction occurred.
- (3) You make a **capital gain** if the \*capital proceeds from the loss or destruction are *more* than the asset's \*cost base. You make a

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**capital loss** if those capital proceeds are *less* than the asset's  
\*reduced cost base.

*Exception*

- (4) A \*capital gain or \*capital loss you make is disregarded if you  
\*acquired the asset before 20 September 1985.

**104-25 Cancellation, surrender and similar endings: CGT event C2**

- (1) **CGT event C2** happens if your ownership of an intangible \*CGT  
asset ends by the asset:
- (a) being redeemed or cancelled; or
  - (b) being released, discharged or satisfied; or
  - (c) expiring; or
  - (d) being abandoned, surrendered or forfeited; or
  - (e) if the asset is an option—being exercised; or
  - (f) if the asset is a \*convertible interest—being converted.
- (2) The time of the event is:
- (a) when you enter into the contract that results in the asset  
ending; or
  - (b) if there is no contract—when the asset ends.
- (3) You make a **capital gain** if the \*capital proceeds from the ending  
are *more* than the asset's \*cost base. You make a **capital loss** if  
those capital proceeds are *less* than the asset's \*reduced cost base.

Note: The capital proceeds referred to in this subsection are reduced if the  
gain or loss was for shares and an amount was taken into account as a  
capital gain for the shares under former section 160ZL of the *Income  
Tax Assessment Act 1936* for the 1997-98 income year or an earlier  
income year: see section 104-25 of the *Income Tax (Transitional  
Provisions) Act 1997*.

- (4) A lease is taken to have expired even if it is extended or renewed.

*Exceptions*

- (5) A \*capital gain or \*capital loss you make is disregarded if:
- (a) you \*acquired the asset before 20 September 1985; or
  - (b) for a lease that you granted:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-30

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- (i) it was granted before that day; or
- (ii) if it has been renewed or extended—the start of the last renewal or extension occurred before that day.

Note 1: There are other exceptions if:

- your lease expires and you did not use it mainly to produce assessable income: see section 118-40; or
- you exercise rights to acquire shares or units: see section 130-40; or
- you acquire shares or units by converting a convertible interest: see section 130-60; or
- you exercise an option: see section 134-1.

Note 2: A company can agree to forgo any capital loss it makes as a result of forgiving a commercial debt owed to it by another company where the companies are under common ownership: see section 245-90 of Schedule 2C to the *Income Tax Assessment Act 1936*.

Note 3: A capital gain or loss a company makes because shares in its 100% subsidiary are cancelled (an example of CGT event C2) on the liquidation of the subsidiary may be reduced if there was a roll-over for a CGT asset under Subdivision 126-B: see section 126-85.

Note 4: A capital gain on the repayment of certain debt given to an ultimate holding company is disregarded where an entity obtains a roll-over under Subdivision 124-M for interests acquired or cancelled: see section 124-784.

Note 5: Cost base adjustments are made only under Subdivision 125-B if there is a roll-over under that Subdivision for CGT event C2 happening as a result of a demerger.

Note 6: A capital gain or loss made by a demerging entity from CGT event C2 happening as a result of a demerger is also disregarded: see section 125-155.

Note 7: A capital gain or loss you make from the meeting of your entitlement under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* or Part VC (Financial claims scheme for account-holders with insolvent general insurers) of the *Insurance Act 1973* is disregarded: see sections 253-10 and 322-30 of this Act.

### **104-30 End of option to acquire shares etc.: CGT event C3**

- (1) **CGT event C3** happens if an option a company or a trustee of a unit trust granted to an entity to \*acquire a \*CGT asset that is:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) \*shares in the company or units in the unit trust; or
  - (b) \*debentures of the company or unit trust;
- ends in one of these ways:
- (c) it is not exercised by the latest time for its exercise;
  - (d) it is cancelled;
  - (e) it is released or abandoned.
- (2) The time of the event is when the option ends.
- (3) The company or trustee makes a **capital gain** if the \*capital proceeds from the grant of the option are *more* than the expenditure incurred in granting it. It makes a **capital loss** if those capital proceeds are *less*.
- (4) The expenditure can include giving property: see section 103-5. However, it does not include an amount you have received as \*recoupment of it and that is not included in your assessable income.

*Exception*

- (5) A \*capital gain or \*capital loss the company or trustee makes is disregarded if it granted the option before 20 September 1985.

Note: This subsection is modified for the purpose of calculating the attributable income of a CFC: see section 418 of the *Income Tax Assessment Act 1936*.

## **Subdivision 104-D—Bringing into existence a CGT asset**

### **Table of sections**

104-35	Creating contractual or other rights: CGT event D1
104-40	Granting an option: CGT event D2
104-45	Granting a right to income from mining: CGT event D3
104-47	Conservation covenants: CGT event D4

### **104-35 Creating contractual or other rights: CGT event D1**

- (1) **CGT event D1** happens if you create a contractual right or other legal or equitable right in another entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-35

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Example: You enter into a contract with the purchaser of your business not to operate a similar business in the same town. The contract states that \$20,000 was paid for this.

You have created a contractual right in favour of the purchaser. If you breach the contract, the purchaser can enforce that right.

- (2) The time of the event is when you enter into the contract or create the other right.
- (3) You make a *capital gain* if the \*capital proceeds from creating the right are *more* than the \*incidental costs you incurred that relate to the event. You make a *capital loss* if those capital proceeds are *less*.

Example: To continue the example: If you paid your lawyer \$1,500 to draw up the contract, you make a capital gain of:

$$\$20,000 - \$1,500 = \$18,500$$

- (4) The costs can include giving property: see section 103-5. However, they do not include an amount you have received as \*recoupment of them and that is not included in your assessable income, or an amount to the extent that you have deducted or can deduct it.

*Exceptions*

- (5) **CGT event D1** does not happen if:
- (a) you created the right by borrowing money or obtaining credit from another entity; or
  - (b) the right requires you to do something that is another \*CGT event that happens to you; or
  - (c) a company issues or allots \*equity interests or \*non-equity shares in the company; or
  - (d) the trustee of a unit trust issues units in the trust; or
  - (e) a company grants an option to acquire equity interests, non-equity shares or \*debentures in the company; or
  - (f) the trustee of a unit trust grants an option to acquire units or debentures in the trust.

Example: You agree to sell land. You have created a contractual right in the buyer to enforce completion of the transaction. The sale results in you disposing of the land, an example of CGT event A1. This means that CGT event D1 does not happen.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 104-40 Granting an option: CGT event D2

- (1) **CGT event D2** happens if you grant an option to an entity, or renew or extend an option you had granted.  
Note: Some options are not covered: see subsections (6) and (7).
- (2) The time of the event is when you grant, renew or extend the option.
- (3) You make a **capital gain** if the \*capital proceeds from the grant, renewal or extension of the option are *more* than the expenditure you incurred to grant, renew or extend it. You make a **capital loss** if those capital proceeds are *less*.
- (4) The expenditure can include giving property: see section 103-5. However, it does not include an amount you have received as \*recoupment of it and that is not included in your assessable income, or an amount to the extent that you have deducted or can deduct it.

#### *Exceptions*

- (5) A \*capital gain or \*capital loss you make from the grant, renewal or extension of the option is disregarded if the option is exercised.  
Note 1: Section 134-1 sets out the consequences of an option being exercised.  
Note 2: A capital gain or capital loss you made for the 1997-98 income year or an earlier income year under former Part IIIA of the *Income Tax Assessment Act 1936* is also disregarded where the option is exercised in the 1998-99 income year or a later one: see section 104-40 of the *Income Tax (Transitional Provisions) Act 1997*.
- (6) This section does not apply to an option granted, renewed or extended by a company or the trustee of a unit trust to \*acquire a \*CGT asset that is:
  - (a) \*shares in the company or units in the unit trust; or
  - (b) debentures of the company or unit trust.Note: Section 104-30 deals with this situation.
- (7) Nor does it apply to an option relating to a \*personal use asset or a \*collectable.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 104-45 Granting a right to income from mining: CGT event D3

- (1) **CGT event D3** happens if you own a \*prospecting entitlement or \*mining entitlement, or an interest in one, and you grant another entity a right to receive \*ordinary income or \*statutory income from operations permitted to be carried on by the entitlement.

Note: If this event applies, there is no disposal of the entitlement.

- (2) The time of the event is:
- (a) when you enter into the contract with the other entity; or
  - (b) if there is no contract—when you grant the right to receive \*ordinary income or \*statutory income.
- (3) You make a **capital gain** if the \*capital proceeds from the grant of the right are *more* than the expenditure you incurred in granting it. You make a **capital loss** if those capital proceeds are *less*.
- (4) The expenditure can include giving property: see section 103-5. However, it does not include an amount you have received as \*recoupment of it and that is not included in your assessable income, or an amount to the extent that you have deducted or can deduct it.

### 104-47 Conservation covenants: CGT event D4

- (1) **CGT event D4** happens if you enter into a \*conservation covenant over land you own.
- (2) The time of the event is when you enter into the covenant.
- (3) You make a \*capital gain if the \*capital proceeds from entering into the covenant are *more* than that part of the \*cost base of the land that is apportioned to the covenant. You make a \*capital loss if those capital proceeds are *less* than the part of the \*reduced cost base of the land that is apportioned to the covenant.

Note: The capital proceeds from entering into the covenant are modified if you do not receive anything for entering into the covenant: see section 116-105.

- (4) The part of the \*cost base of the land that is apportioned to the covenant is worked out in this way:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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$$\text{*Cost base of land} \times \frac{\text{*Capital proceeds from entering into the covenant}}{\text{Those capital proceeds plus the *market value of the land just after you enter into the covenant}}$$

The part of the \*reduced cost base of the land that is apportioned to the covenant is worked out similarly.

- (5) The \*cost base and \*reduced cost base of the land are reduced by the part of the cost base or reduced cost base of the land that is apportioned to the covenant.

Example: Lisa receives \$10,000 for entering into a conservation covenant that covers 15% of the land she owns. Lisa uses the following figures in calculating the cost base of the land that is apportioned to the covenant:

The cost base of the entire land is \$200,000.

The market value of the entire land before entering into the covenant is \$300,000, and its market value after entering into the covenant is \$285,000.

Lisa calculates the cost base of the land that is apportioned to the covenant to be:

$$\$200,000 \times 10,000 \div \left[ 10,000 + 285,000 \right] = \$6,780$$

She reduces the cost base of the land by the part that is apportioned to the covenant:

$$\$200,000 - \$6,780 = \$193,220$$

#### *Exceptions*

- (6) \*CGT event D4 does not happen if:
- (a) you did not receive any \*capital proceeds for entering into the covenant; and
  - (b) you cannot deduct an amount under Division 31 for entering into the covenant.

Note: In this case, CGT event D1 will apply.

- (7) A \*capital gain or \*capital loss you make is disregarded if you \*acquired the land before 20 September 1985.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 104-E—Trusts

### Table of sections

104-55	Creating a trust over a CGT asset: CGT event E1
104-60	Transferring a CGT asset to a trust: CGT event E2
104-65	Converting a trust to a unit trust: CGT event E3
104-70	Capital payment for trust interest: CGT event E4
104-71	Adjustment of non-assessable part
104-72	Reducing your capital gain under CGT event E4 if you are a trustee
104-75	Beneficiary becoming entitled to a trust asset: CGT event E5
104-80	Disposal to beneficiary to end income right: CGT event E6
104-85	Disposal to beneficiary to end capital interest: CGT event E7
104-90	Disposal by beneficiary of capital interest: CGT event E8
104-95	Making a capital gain
104-100	Making a capital loss
104-105	Creating a trust over future property: CGT event E9

### 104-55 Creating a trust over a CGT asset: CGT event E1

- (1) **CGT event E1** happens if you create a trust over a \*CGT asset by declaration or settlement.
- (2) The time of the event is when the trust over the asset is created.
- (3) You make a **capital gain** if the \*capital proceeds from the creation are *more* than the asset's \*cost base. You make a **capital loss** if those capital proceeds are *less* than the asset's \*reduced cost base.

#### *Cost base rule*

- (4) If you are the trustee of the trust and no beneficiary is absolutely entitled to the asset as against you (disregarding any legal disability), the first element of the asset's \*cost base and \*reduced cost base in your hands is its \*market value when the trust is created.

#### *Exceptions*

- (5) **CGT event E1** does not happen if:
  - (a) you are the sole beneficiary of the trust and:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) you are absolutely entitled to the asset as against the trustee (disregarding any legal disability); and
  - (ii) the trust is not a unit trust; or
  - (b) the trust is created by transferring the asset from another trust, and the beneficiaries and terms of both trusts are the same.
- (6) A \*capital gain or \*capital loss you make is disregarded if you \*acquired the asset before 20 September 1985.

**104-60 Transferring a CGT asset to a trust: CGT event E2**

- (1) **CGT event E2** happens if you transfer a \*CGT asset to an existing trust.
- (2) The time of the event is when the asset is transferred.
- (3) You make a **capital gain** if the \*capital proceeds from the transfer are *more* than the asset's \*cost base. You make a **capital loss** if those capital proceeds are *less* than the asset's \*reduced cost base.
- (4) If you are the trustee of the trust and no beneficiary is absolutely entitled to the asset as against you (disregarding any legal disability), the first element of the asset's \*cost base and \*reduced cost base in your hands is its \*market value when the asset is transferred.

*Exceptions*

- (5) **CGT event E2** does not happen if:
- (a) you are the sole beneficiary of the trust and:
    - (i) you are absolutely entitled to the asset as against the trustee (disregarding any legal disability); and
    - (ii) the trust is not a unit trust; or
  - (b) you transferred the asset from another trust and the beneficiaries and terms of both trusts are the same.

Note: There is also an exception for employee share trusts: see section 130-90.

- (6) A \*capital gain or \*capital loss you make is disregarded if you \*acquired the asset before 20 September 1985.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 104-65 Converting a trust to a unit trust: CGT event E3

- (1) *CGT event E3* happens if:
  - (a) a trust (that is not a unit trust) over a \*CGT asset is converted to a unit trust; and
  - (b) just before the conversion, a beneficiary under the trust was absolutely entitled to the asset as against the trustee (disregarding any legal disability the beneficiary is under).
- (2) The time of the event is when the trust is converted.
- (3) The beneficiary makes a *capital gain* if the \*market value of the asset (when the trust is converted) is *more* than the asset's \*cost base. The beneficiary makes a *capital loss* if that market value is *less* than the asset's \*reduced cost base.

#### *Exception*

- (4) A \*capital gain or \*capital loss the beneficiary makes is disregarded if it \*acquired the asset before 20 September 1985.

### 104-70 Capital payment for trust interest: CGT event E4

- (1) *CGT event E4* happens if:
  - (a) the trustee of a trust makes a payment to you in respect of your unit or your interest in the trust (except for \*CGT event A1, C2, E1, E2, E6 or E7 happening in relation to it); and
  - (b) some or all of the payment (the *non-assessable part*) is not included in your assessable income.

To avoid doubt, in applying paragraph (b) to work out what part of the payment is included in your assessable income, disregard your share of the trust's net income that is subject to the rules in subsection 115-215(3).

Note 1: Subsections 104-71(1) (tax-exempted amounts), 104-71(3) (tax-free amounts) and 104-71(4) (CGT concession amounts) can affect the calculation of the non-assessable part.

Note 2: The non-assessable part includes amounts (tax-deferred amounts) associated with the small business 50% reduction, frozen indexation, building allowance and accounting differences in income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note 3: A payment made to you after you stop owning the unit or interest in the trust forms part of the capital proceeds for the CGT event that happened when you stopped owning it.

- (2) The payment can include giving property (see section 103-5).
- (3) The time of the event is:
  - (a) just before the end of the income year in which the trustee makes the payment; or
  - (b) if another \*CGT event (except CGT event E4) happens in relation to the unit or interest or part of it after the trustee makes the payment but before the end of that income year—just before the time of that other CGT event.
- (4) You make a **capital gain** if the sum of the amounts of the non-assessable parts of the payments made in the income year made by the trustee in respect of the unit or interest is *more* than its \*cost base.

Note: You cannot make a capital loss.

- (5) If you make a \*capital gain, the \*cost base and \*reduced cost base of the unit or interest are reduced to nil.

Note: A capital gain under former section 160ZM of the *Income Tax Assessment Act 1936* is also taken into account for the purposes of this subsection: see subsection 104-70(3) of the *Income Tax (Transitional Provisions) Act 1997*.

- (6) However, if that sum is not more than the \*cost base:
  - (a) the cost base is reduced by that sum; and
  - (b) the \*reduced cost base is reduced by that sum (without the adjustment in subsection 104-71(3)).

Example: Mandy owns units in a unit trust that she bought on 1 July 1998 for \$10 each. During the 1999-2000 income year the trustee makes 4 non-assessable payments of \$0.50 per unit. If at the end of the income year Mandy's cost base for each unit (including indexation) would otherwise be \$10.10, the payments require that it be reduced by \$2, giving a new cost base of \$8.10. If Mandy sells the units (CGT event A1) in the 2000-01 year for more than their cost base at that time, she will make a capital gain equal to the difference.

Note: Cost base adjustments are made only under Subdivision 125-B if there is a roll-over under that Subdivision for CGT event E4 happening as a result of a demerger.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-71

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*Exceptions*

- (7) A \*capital gain you make from \*CGT event E4 is disregarded if you \*acquired the \*CGT asset that is the unit or interest before 20 September 1985.
- (8) **CGT event E4** does not happen to the extent that the payment is reasonably attributable to a \*LIC capital gain.
- (9) **CGT event E4** does not happen for a payment made to a foreign resident to the extent that the payment is reasonably attributable to \*ordinary income or \*statutory income from sources other than an \*Australian source. However, this exception does not apply if the trust is a \*corporate unit trust or a \*public trading trust.

**104-71 Adjustment of non-assessable part**

- (1) In working out the non-assessable part referred to in section 104-70, disregard any part of the payment that is:
  - (a) \*non-assessable non-exempt income; or
  - (c) paid from an amount that has been assessed to the trustee; or
  - (d) paid from an amount that is \*personal services income included in your assessable income, or another entity's assessable income, under section 86-15; or
  - (e) repaid by you; or
  - (f) compensation you paid that can reasonably be regarded as a repayment of all or part of the payment; or
  - (g) an amount referred to in section 152-125 (which exempts a payment of a small business 15-year exemption amount) as an exempt amount.The payment can include giving property (see section 103-5).
- (2) However, the non-assessable part is not reduced by any part of the payment that you can deduct.
- (3) The amount of the non-assessable part referred to in section 104-70 is adjusted to exclude any part of it that is attributable to:
  - (a) an amount that is not included in the assessable income of an entity because of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) section 124ZM or 124ZN (which exempt income arising from \*shares in a \*PDF) of the *Income Tax Assessment Act 1936*; or
- (ii) section 159GZZZZE (which exempts certain payments related to infrastructure borrowings) of that Act; or
- (b) proceeds from a \*CGT event that happens in relation to \*shares in a company that was a \*PDF when that event happened.
- (4) The amount of the non-assessable part referred to in section 104-70 for an entity shown in the table is adjusted to exclude the amount or amounts applicable to the entity under the table.

**Adjustment of non-assessable part**

Item	Entity	Amount excluded
1	Any entity	So much of the amount of a *discount capital gain excluded from the *net capital gain of the trust making the payment because of step 3 of the method statement in subsection 102-5(1) and that is reflected in the payment to the entity
2	Individual, company or trust that has a *capital loss or *net capital loss to reduce its *capital gain described in paragraph 115-215(3)(b) where the trust gain referred to in subsection 115-215(3) is reduced under Subdivision 152-C	1/2 of the amount of the capital loss or net capital loss
3	Individual or trust that has a *capital loss or *net capital loss to reduce its *capital gain described in paragraph 115-215(3)(c)	1/4 of the amount of the capital loss or net capital loss

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-71

<b>Adjustment of non-assessable part</b>		
<b>Item</b>	<b>Entity</b>	<b>Amount excluded</b>
4	Company that has a * capital loss or *net capital loss to reduce its * capital gain described in paragraph 115-215(3)(c) where: (a) that capital loss or net capital loss is more than 1/2 of the trust gain referred to in subsection 115-215(3); and (b) that trust gain is reduced by an amount (the reduction amount) under Subdivision 152-C	The excess of the reduction amount over the Subdivision 152-C reduction to the paragraph 115-215(3)(c) amount
5	*Complying superannuation entity that has a * capital loss or *net capital loss to reduce its * capital gain described in paragraph 115-215(3)(b) where: (a) that capital loss or net capital loss is more than 1/2 of the trust gain referred to in subsection 115-215(3); and (b) that trust gain is reduced under Subdivision 152-C	1/2 of the amount of the capital loss or net capital loss
6	*Complying superannuation entity that has a * capital loss or *net capital loss to reduce its * capital gain described in paragraph 115-215(3)(c) where: (a) that capital loss or net capital loss is more than 1/4 of the trust gain referred to in subsection 115-215(3); and (b) that trust gain is reduced by an amount (also the reduction amount) under Subdivision 152-C	The excess of the reduction amount over the Subdivision 152-C reduction to the paragraph 115-215(3)(c) amount
7	Any entity receiving the payment where the trust making the payment, or another trust that is part of the same *chain of trusts, has a * capital loss or *net capital loss to reduce its * capital gain described in subsection 115-215(3)	The proportion of the capital loss or net capital loss reflected in the payment

Example: Claude is paid \$100 by the trustee of a unit trust. The trustee advises that the amount comprises \$50 CGT discount, \$25 small business 50% reduction and \$25 net income from a capital gain made by the trust.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

In applying the rules in Subdivision 115-C of the *Income Tax Assessment Act 1997*, Claude reduces his capital gain of \$100 by a \$20 net capital loss from an earlier year. He then reduces the remaining \$80 gain by \$40 (CGT discount) and \$20 (small business 50% reduction) leaving a net capital gain of \$20.

In applying the rules in CGT event E4, the \$100 payment is reduced by \$25 (being the amount assessed under section 97 of the *Income Tax Assessment Act 1936*). It is further reduced by \$50 under item 1 of the table and \$5 under item 3. Claude's non-assessable part is \$20.

Effectively, CGT event E4 applies to the \$20 small business 50% reduction allowed to Claude in applying Subdivision 115-C of the *Income Tax Assessment Act 1997*.

- Note 1: Step 3 of the method statement in subsection 102-5(1) (see table item 1) reduces by 50% the trust's discount capital gains remaining after applying capital losses and earlier net capital losses. That 50% is excluded from the trust's net capital gain.
- Note 2: Subdivision 152-C (small business 50% reduction—see table items 2, 3, 4, 5, 6 and 7) reduces by 50% the trust's capital gains or discount capital gains remaining after applying step 3 of the method statement in subsection 102-5(1). That 50% is also excluded from the trust's net capital gain.
- Note 3: Paragraph 115-215(3)(b) or (c) (see table items 2, 3, 4, 5 and 6) treats a beneficiary as having an extra capital gain if an amount of the trust's net income that is included in the beneficiary's assessable income is attributable to trust gains that were reduced by step 3 of the method statement in subsection 102-5(1) and/or the small business 50% reduction.

- (5) A ***chain of trusts*** consists of 2 or more trusts where at least one of these conditions is satisfied for each of the trusts:
- (a) the trustee of the trust owns units or interests in another of the trusts; or
  - (b) the trustee of another of the trusts owns units or interests in the trust.

### **104-72 Reducing your capital gain under CGT event E4 if you are a trustee**

- (1) A \*capital gain you make under subsection 104-70(4) is reduced if:
- (a) you are the trustee of another trust that is a \*fixed trust and is not a \*complying superannuation entity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-75

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- (b) you are taken to have a \*capital gain under paragraph 115-215(3)(b) or (c) (your *notional gain*) in respect of a corresponding trust gain (the *trust gain*); and
  - (c) some or all (the *attributable amount*) of the total of the non-assessable parts referred to in subsection 104-70(4) is attributable to proceeds from the trust gain.
- (2) The \*capital gain is reduced (but not below 0) by the lesser of:
- (a) your notional gain; and
  - (b) the attributable amount.

**104-75 Beneficiary becoming entitled to a trust asset: CGT event E5**

- (1) *CGT event E5* happens if a beneficiary becomes absolutely entitled to a \*CGT asset of a trust (except a unit trust or a trust to which Division 128 applies) as against the trustee (disregarding any legal disability the beneficiary is under).

Note: Division 128 deals with the effect of death.

- (2) The time of the event is when the beneficiary becomes absolutely entitled to the asset.

*Trustee makes a capital gain or loss*

- (3) The trustee makes a *capital gain* if the \*market value of the asset (at the time of the event) is *more* than its \*cost base. The trustee makes a *capital loss* if that market value is *less* than the asset's \*reduced cost base.

*Exception for trustee*

- (4) A \*capital gain or \*capital loss the trustee makes is disregarded if it \*acquired the asset before 20 September 1985.

Note: There is also an exception for employee share trusts: see section 130-90.

*Beneficiary makes a capital gain or loss*

- (5) The beneficiary makes a *capital gain* if the \*market value of the asset (at the time of the event) is *more* than the \*cost base of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

beneficiary's interest in the trust capital to the extent it relates to the asset.

The beneficiary makes a *capital loss* if that market value is *less* than the \*reduced cost base of that beneficiary's interest in the trust capital to the extent it relates to the asset.

*Exceptions for beneficiary*

- (6) A \*capital gain or \*capital loss the beneficiary makes is disregarded if the beneficiary:
- (a) \*acquired the \*CGT asset that is the interest (except by way of an assignment from another entity) for no expenditure; or
  - (b) acquired it before 20 September 1985.

Expenditure can include giving property: see section 103-5.

Note: There is also an exception for employee share trusts: see section 130-90.

**104-80 Disposal to beneficiary to end income right: CGT event E6**

- (1) **CGT event E6** happens if the trustee of a trust (except a unit trust or a trust to which Division 128 applies) \*disposes of a \*CGT asset of the trust to a beneficiary in satisfaction of the beneficiary's right, or part of it, to receive \*ordinary income or \*statutory income from the trust.

Note: Division 128 deals with the effect of death.

- (2) The time of the event is when the disposal occurs.

*Trustee makes a capital gain or loss*

- (3) The trustee makes a *capital gain* if the \*market value of the asset (at the time of the disposal) is *more* than its \*cost base. It makes a *capital loss* if that market value is *less* than the asset's \*reduced cost base.

*Exception for trustee*

- (4) A \*capital gain or \*capital loss the trustee makes is disregarded if it \*acquired the asset before 20 September 1985.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-85

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*Beneficiary makes a capital gain or loss*

- (5) The beneficiary makes a **capital gain** if the \*market value of the asset (at the time of the disposal) is *more* than the \*cost base of the right, or the part of it. The beneficiary makes a **capital loss** if that market value is *less* than the \*reduced cost base of the right or part.

Note: If the beneficiary did not pay anything for the right, the market value substitution rule does not apply: see section 112-20.

*Exception for beneficiary*

- (6) A \*capital gain or \*capital loss the beneficiary makes is disregarded if it \*acquired the \*CGT asset that is the right before 20 September 1985.

**104-85 Disposal to beneficiary to end capital interest: CGT event E7**

- (1) **CGT event E7** happens if the trustee of a trust (except a unit trust or a trust to which Division 128 applies) \*disposes of a \*CGT asset of the trust to a beneficiary in satisfaction of the beneficiary's interest, or part of it, in the trust capital.

Note: Division 128 deals with the effect of death.

- (2) The time of the event is when the disposal occurs.

*Trustee makes a capital gain or loss*

- (3) The trustee makes a **capital gain** if the \*market value of the asset (at the time of the disposal) is *more* than its \*cost base. It makes a **capital loss** if that market value is *less* than the asset's \*reduced cost base.

*Exception for trustee*

- (4) A \*capital gain or \*capital loss the trustee makes is disregarded if it \*acquired the asset before 20 September 1985.

*Beneficiary makes a capital gain or loss*

- (5) The beneficiary makes a **capital gain** if the \*market value of the asset (at the time of the disposal) is *more* than the \*cost base of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

interest, or the part of it, being satisfied. The beneficiary makes a **capital loss** if that market value is *less* than the \*reduced cost base of that interest or part.

*Exceptions for beneficiary*

- (6) A \*capital gain or \*capital loss the beneficiary makes is disregarded if the beneficiary:
- (a) \*acquired the \*CGT asset that is the interest (except by way of an assignment from another entity) for no expenditure; or
  - (b) acquired it before 20 September 1985.

Expenditure can include giving property: see section 103-5.

**104-90 Disposal by beneficiary of capital interest: CGT event E8**

- (1) **CGT event E8** happens if:
- (a) you are the beneficiary under a trust (except a unit trust or a trust to which Division 128 applies); and
  - (b) you did not give any money or property to \*acquire the \*CGT asset that is your interest in the trust capital and you did not acquire it by assignment; and
  - (c) you \*dispose of the interest, or part of it (but not to the trustee).

Note: Division 128 deals with the effect of death.

- (2) The time of the event is:
- (a) when you enter into the contract for the \*disposal; or
  - (b) if there is no contract—when you stop owning the interest or part.

Note 1: You work out if you have made a capital gain or capital loss under sections 104-95 and 104-100.

Note 2: There is a special indexation rule for this event: see section 114-10.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 104-95 Making a capital gain

*You are the only beneficiary*

- (1) If you are the only beneficiary with an interest in the trust capital and you \*dispose of that interest, you work out if you have made a \*capital gain in this way:

*Working out your capital gain*

- Step 1. Work out the \*capital proceeds from the \*disposal.  
Step 2. Work out the \*net asset amount.  
Step 3. If the Step 1 amount is *greater*, you make a **capital gain** equal to the difference.

- (2) The **net asset amount** is worked out in this way:

*Working out the net asset amount*

- Step 1. Work out the total of the \*cost bases (at the time of the disposal) of the \*CGT assets that the trustee \*acquired on or after 20 September 1985 and that formed part of the trust capital at that time.  
Step 2. Work out the total of the \*market values (at the time of the disposal) of the \*CGT assets that the trustee \*acquired before 20 September 1985 and that formed part of the trust capital at that time.  
Step 3. Work out the amount of money that formed part of the trust capital at the time of the disposal.  
Step 4. Add up the Step 1, 2 and 3 amounts.  
Step 5. Subtract from the Step 4 amount any liabilities of the trust at the time of the disposal.  
Step 6. The result is the **net asset amount**.

Example: You dispose of your interest in the trust capital for \$10,000 (the capital proceeds).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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The total of the cost bases of the CGT assets that the trustee acquired on or after 20 September 1985 is \$6,000.

The total of the market values of the CGT assets that the trustee acquired before 20 September 1985 is \$2,500.

There is \$1,000 in the trust. The trust liabilities are \$500.

The net asset amount is:

$$\$6,000 + \$2,500 + \$1,000 - \$500 = \$9,000$$

You make a capital gain of:

$$\$10,000 - \$9,000 = \$1,000$$

- (3) If you \*dispose of only *part* of that interest, any \*capital gain is worked out using the method statement in subsection (1), except that the Step 2 amount is replaced by:

The net asset amount  $\times$   $\frac{\text{The part of the interest you are disposing of}}{\text{(expressed as a fraction)}}$

Example: To vary the example in subsection (2), suppose you dispose of 50% of your interest for \$5,000 (the capital proceeds).

The Step 2 amount becomes:

$$\$9,000 \times 50\% = \$4,500$$

You make a capital gain of:

$$\$5,000 - \$4,500 = \$500$$

*There is more than one beneficiary*

- (4) If you are *not* the only beneficiary with an interest in the trust capital and you \*dispose of your interest, any \*capital gain is worked out using the method statement in subsection (1), except that the Step 2 amount is replaced by:

The net asset amount  $\times$   $\frac{\text{Your interest in the trust capital}}{\text{(expressed as a fraction)}}$

Example: To vary the example in subsection (2), suppose you have a 20% interest in the trust capital and you dispose of it for \$4,000 (the capital proceeds).

The Step 2 amount becomes:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-100

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$$\$9,000 \times 20\% = \$1,800$$

You make a capital gain of:

$$\$4,000 - \$1,800 = \$2,200$$

- (5) If you are *not* the only beneficiary with an interest in the trust capital and you \*dispose of *part* of your interest, any \*capital gain is worked out using the method statement in subsection (1), except that the Step 2 amount is replaced by:

$$\begin{array}{l} \text{The net asset} \\ \text{amount} \end{array} \times \begin{array}{l} \text{Your interest in} \\ \text{the trust capital} \\ \text{(expressed as a fraction)} \end{array} \times \begin{array}{l} \text{The part of the interest} \\ \text{you are disposing of} \\ \text{(expressed as a fraction)} \end{array}$$

Example: To vary the example in subsection (2), suppose you have a 50% interest in the trust capital. You dispose of 20% of it for \$1,000 (the capital proceeds).

The Step 2 amount becomes:

$$\$9,000 \times 50\% \times 20\% = \$900$$

You make a capital gain of:

$$\$1,000 - \$900 = \$100$$

*Exception*

- (6) A \*capital gain you make is disregarded if you \*acquired the \*CGT asset that is the interest in the trust capital before 20 September 1985.

Note: You can make a gain if you dispose of an interest in a trust that you acquired before that day: see CGT event K6.

**104-100 Making a capital loss**

*You are the only beneficiary*

- (1) If you are the only beneficiary with an interest in the trust capital and you \*dispose of that interest, you work out if you have made a \*capital loss in this way:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Working out your capital loss*

- Step 1. Work out the \*capital proceeds from the \*disposal.
- Step 2. Work out the \*reduced net asset amount.
- Step 3. If the Step 1 amount is *less*, you make a **capital loss** equal to the difference.

- (2) The **reduced net asset amount** is worked out in this way:

*Working out the reduced net asset amount*

- Step 1. Work out the total of the \*reduced cost bases (at the time of the disposal) of the \*CGT assets that the trustee \*acquired on or after 20 September 1985 and that formed part of the trust capital at that time.
- Step 2. Work out the total of the \*market values (at the time of the disposal) of the \*CGT assets that the trustee \*acquired before 20 September 1985 and that formed part of the trust capital at that time.
- Step 3. Work out the amount of money that formed part of the trust capital at the time of the disposal.
- Step 4. Add up the Step 1, 2 and 3 amounts.
- Step 5. Subtract from the Step 4 amount any liabilities of the trust at the time of the disposal.
- Step 6. The result is the **reduced net asset amount**.

- (3) If you \*dispose of only *part* of that interest, any \*capital loss is worked out using the method statement in subsection (1), except that the Step 2 amount is replaced by:

$$\text{The reduced net asset amount} \times \frac{\text{The part of the interest you are disposing of (expressed as a fraction)}}{1}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 104-105

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*There is more than one beneficiary*

- (4) If you are *not* the only beneficiary with an interest in the trust capital and you \*dispose of your interest, any \*capital loss is worked out using the method statement in subsection (1), except that the Step 2 amount is replaced by:

$$\text{The reduced net asset amount} \times \frac{\text{Your interest in the trust capital}}{\text{(expressed as a fraction)}}$$

- (5) If you are *not* the only beneficiary with an interest in the trust capital and you \*dispose of *part* of your interest, any \*capital loss is worked out using the method statement in subsection (1), except that the Step 2 amount is replaced by:

$$\text{The reduced net asset amount} \times \frac{\text{Your interest in the trust capital}}{\text{(expressed as a fraction)}} \times \frac{\text{The part of the interest you are disposing of}}{\text{(expressed as a fraction)}}$$

*Exception*

- (6) A \*capital loss you make is disregarded if you \*acquired the \*CGT asset that is the interest in the trust capital before 20 September 1985.

### 104-105 Creating a trust over future property: CGT event E9

- (1) **CGT event E9** happens if:
- (a) you agree for consideration that when property comes into existence you will hold it on trust; and
  - (b) at the time of the agreement, no potential beneficiary under the trust has a beneficial interest in the rights created by the agreement.
- (2) The time of the event is when you made the agreement.
- (3) You make a **capital gain** if the \*market value the property would have had if it had existed when you made the agreement is *more* than any \*incidental costs you incurred that relate to the event. You make a **capital loss** if that market value is *less*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) The costs can include giving property: see section 103-5. However, they do not include an amount you have received as \*recoupment of them and that is not included in your assessable income, or an amount to the extent that you have deducted or can deduct it.

### **Subdivision 104-F—Leases**

#### **Table of sections**

104-110	Granting a lease: CGT event F1
104-115	Granting a long-term lease: CGT event F2
104-120	Lessor pays lessee to get lease changed: CGT event F3
104-125	Lessee receives payment for changing lease: CGT event F4
104-130	Lessor receives payment for changing lease: CGT event F5

#### **104-110 Granting a lease: CGT event F1**

- (1) **CGT event F1** happens if a lessor grants, renews or extends a lease.
- Note 1: Other CGT events can apply to leases. An assignment of a lease is an example of CGT event A1.
- Note 2: There are special rules that apply to some lease transactions: see Division 132.
- (2) The time of the event is:
- (a) for the grant of a lease:
    - (i) when the contract for the lease is entered into; or
    - (ii) if there is no contract—at the start of the lease; or
  - (b) for a renewal or extension—at the start of the renewal or extension.
- (3) The lessor makes a **capital gain** if the \*capital proceeds from the grant, renewal or extension are *more* than the expenditure it incurred on the grant, renewal or extension. It makes a **capital loss** if those capital proceeds are *less*.
- (4) The expenditure can include giving property: see section 103-5. However, it does not include an amount you have received as \*recoupment of it and that is not included in your assessable income, or an amount to the extent that you have deducted or can deduct it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Exception*

- (5) The lessor can choose to apply section 104-115 to certain long term leases. If it does so, this section does not apply.

**104-115 Granting a long-term lease: CGT event F2**

- (1) **CGT event F2** happens if:
- (a) a lessor grants a lease over land (whether or not the lessor owns an estate in fee simple in the land), or renews or extends a lease over land; and
  - (b) the lease, renewal or extension is for at least 50 years and:
    - (i) at the time of the grant, renewal or extension, it was reasonable to expect that it would continue for at least 50 years; and
    - (ii) the terms of the lease, renewal or extension as they apply to the lessee are substantially the same as those under which the lessor owned the land or held a lease of the land; and
  - (c) the lessor chooses to apply this section instead of section 104-110.

Note: Section 103-25 tells you when the choice must be made.

- (2) The time of the event is when the lessor grants the lease, or at the start of the renewal or extension, as appropriate.
- (3) The lessor makes a **capital gain** if the \*capital proceeds from the event are *more* than the \*cost base of the lessor's interest in the land. The lessor makes a **capital loss** if those capital proceeds are *less* than the \*reduced cost base of that interest.

*Exceptions*

- (4) A \*capital gain or \*capital loss the lessor makes is disregarded if:
- (a) it \*acquired the \*CGT asset that is the land, or the lease to the lessor was granted, before 20 September 1985; or
  - (b) the lease to the lessor has been renewed or extended and the last renewal or extension started before that day.

Note: For any later CGT event that happens to the land or the lessor's lease of it: see section 132-10.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **104-120 Lessor pays lessee to get lease changed: CGT event F3**

- (1) **CGT event F3** happens if a lessor incurs expenditure in getting the lessee's agreement to vary or waive a term of the lease. The lessor makes a **capital loss** equal to the amount of expenditure it incurred. (The expenditure can include giving property: see section 103-5.)
- (2) The time of the event is when the term is varied or waived.

#### *Exception*

- (3) However, this event does not apply to expenditure for a lease to which the lessor has chosen to apply section 104-115.

### **104-125 Lessee receives payment for changing lease: CGT event F4**

- (1) **CGT event F4** happens if a lessee receives a payment from the lessor for agreeing to vary or waive a term of the lease.  
The payment can include giving property: see section 103-5.
- (2) The time of the event is when the term is varied or waived.
- (3) The lessee makes a **capital gain** if the \*capital proceeds from the event are *more* than the lease's \*cost base (at the time of the event). If the lessee makes a \*capital gain, the lease's cost base is also reduced to nil.

Note: The lessee cannot make a capital loss.

- (4) On the other hand, if those \*capital proceeds are *less*, the lease's \*cost base is reduced by that amount at the time of the event.

Example: On 1 January 1999 a lessee enters a lease. On 1 May 1999 the lessee agrees to waive a term. The lessor pays the lessee \$1,000 for this.

If the lease's cost base at the time of the waiver is \$2,500, it is reduced from \$2,500 to \$1,500.

On 1 September 1999 the lessee agrees to waive another term. The lessor pays the lessee \$2,000 for this.

If the lease's cost base at the time of the waiver is \$1,500, the lessee makes a capital gain of \$500, and the cost base is reduced to nil.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-130

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*Exceptions*

- (5) A \*capital gain the lessee makes is disregarded if:
- (a) the lease was granted before 20 September 1985; or
  - (b) for a lease that has been renewed or extended—the start of the last renewal or extension occurred before that day.

**104-130 Lessor receives payment for changing lease: CGT event F5**

- (1) **CGT event F5** happens if a lessor receives a payment from the lessee for agreeing to vary or waive a term of the lease.

The payment can include giving property: see section 103-5.

- (2) The time of the event is when the term is varied or waived.
- (3) The lessor makes a **capital gain** if the \*capital proceeds from the event are *more* than the expenditure the lessor incurs in relation to the variation or waiver. The lessor makes a **capital loss** if those capital proceeds are *less*.

Example: You own a shopping centre. The lessee of a shop in the centre pays you \$10,000 for agreeing to change the terms of its lease. You incur expenses of \$1,000 for a solicitor and \$500 for a valuer. You make a capital gain of \$8,500.

- (4) The expenditure can include giving property: see section 103-5. However, it does not include an amount you have received as \*recoupment of it and that is not included in your assessable income.

*Exceptions*

- (5) A \*capital gain or \*capital loss the lessor makes is disregarded if:
- (a) the lease was granted before 20 September 1985; or
  - (b) for a lease that has been renewed or extended—the start of the last renewal or extension occurred before that day.

**Subdivision 104-G—Shares**

**Table of sections**

104-135 Capital payment for shares: CGT event G1

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

104-145 Liquidator or administrator declares shares or financial instruments worthless: CGT event G3

### **104-135 Capital payment for shares: CGT event G1**

(1) *CGT event G1* happens if:

- (a) a company makes a payment to you in respect of a \*share you own in the company (except for \*CGT event A1 or C2 happening in relation to the share); and
- (b) some or all of the payment (the *non-assessable part*) is not a \*dividend, or an amount that is taken to be a dividend under section 47 of the *Income Tax Assessment Act 1936*; and
- (c) the payment is not included in your assessable income.

The payment can include giving property: see section 103-5.

(1A) In working out the non-assessable part, disregard any part of the payment that is:

- (aa) \*non-assessable non-exempt income; or
- (a) repaid by you; or
- (b) compensation you paid that can reasonably be regarded as a repayment of all or part of the payment; or
- (c) an amount referred to in section 152-125 (which exempts a payment of a small business 15-year exemption amount) as an exempt amount.

The payment can include giving property: see section 103-5.

(1B) However, the non-assessable part is not reduced by any part of the payment that you can deduct.

(2) The time of the event is when the company makes the payment.

(3) You make a *capital gain* if the amount of the non-assessable part is *more* than the \*share's \*cost base. If you make a \*capital gain, the share's \*cost base and \*reduced cost base are reduced to nil.

Note 1: You cannot make a capital loss.

Note 2: A capital gain under former section 160ZL of the *Income Tax Assessment Act 1936* is also taken into account for the purposes of this subsection: see section 104-135 of the *Income Tax (Transitional Provisions) Act 1997*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-145

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- (4) However, if the amount of the non-assessable part is not more than the \*share's \*cost base, that cost base and its \*reduced cost base are reduced by the amount of the non-assessable part.

Note: Cost base adjustments are made only under Subdivision 125-B if there is a roll-over under that Subdivision for CGT event G1 happening as a result of a demerger.

*Exceptions*

- (5) A \*capital gain you make is disregarded if you \*acquired the \*CGT asset that is the \*share before 20 September 1985.
- (6) You disregard a payment by a liquidator for the purposes of this section if the company ceases to exist within 18 months of the payment.
- Note: The payment will be part of your capital proceeds for CGT event C2 happening when the share ends.
- (7) You also disregard a payment that is \*personal services income included in your assessable income, or another entity's assessable income, under section 86-15.

**104-145 Liquidator or administrator declares shares or financial instruments worthless: CGT event G3**

- (1) **CGT event G3** happens if you own \*shares in a company, or financial instruments issued by or created by or in relation to a company, and a liquidator or administrator of the company declares in writing that the liquidator or administrator has reasonable grounds to believe (as at the time of the declaration) that:
- (a) for shares—there is no likelihood that shareholders in the company, or shareholders of the relevant class of shares, will receive any further distribution for their shares; or
  - (b) for financial instruments—the instruments, or a class of instruments that includes instruments of that kind, have no value or have only negligible value.
- (2) The time of the event is when the declaration was made.
- (3) Examples of financial instruments referred to in subsection (1) are:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) \*debentures, bonds or promissory notes issued by the company; and
  - (b) loans to the company; and
  - (c) futures contracts, forward contracts or currency swap contracts relating to the company; and
  - (d) rights or options to acquire an asset referred to in a preceding paragraph of this subsection; and
  - (e) rights or options to acquire \*shares in the company.
- (4) You can choose to make a **capital loss** equal to the \*reduced cost base of your \*shares or financial instruments (as at the time of the declaration).
- (5) If you make the choice, the \*cost base and \*reduced cost base of the \*shares or financial instruments are reduced to nil just after the declaration was made.

Note: This is for the purpose of working out if you make a capital gain or loss from any later CGT event in relation to the shares or financial instruments.

#### *Exceptions*

- (6) You cannot choose to make a \*capital loss if:
- (a) you \*acquired the shares or financial instruments before 20 September 1985; or
  - (b) the shares or financial instruments were \*revenue assets at the time when the declaration was made.
- (7) You cannot choose to make a \*capital loss for a \*qualifying share if:
- (a) you did not make an election for the \*share under section 139E of the *Income Tax Assessment Act 1936* for the income year in which you acquired (within the meaning of Subdivision C of Division 13A of Part III of that Act) the share; and
  - (b) the declaration was made no later than 30 days after the \*cessation time for the share.
- (8) You cannot choose to make a \*capital loss for a financial instrument that is a right you acquired (within the meaning of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Subdivision C of Division 13A of Part III of the *Income Tax Assessment Act 1936*), or would have so acquired apart from section 139DD of that Act, under an \*employee share scheme.

## **Subdivision 104-H—Special capital receipts**

### **Table of sections**

104-150	Forfeiture of deposit: CGT event H1
104-155	Receipt for event relating to a CGT asset: CGT event H2

### **104-150 Forfeiture of deposit: CGT event H1**

- (1) **CGT event H1** happens if a deposit paid to you is forfeited because a prospective sale or other transaction does not proceed.

The payment can include giving property: see section 103-5.

Example: You decide to sell land. Before entering into a contract of sale, the prospective purchaser pays you a 2 month holding deposit of \$1,000.

The negotiations fail and the deposit is forfeited.

- (1A) The amount of the deposit is reduced by any part of the deposit that is:

- (a) repaid by you; or
- (b) compensation you paid that can reasonably be regarded as a repayment of all or part of the deposit.

The payment can include giving property: see section 103-5.

- (1B) However, the deposit is not reduced by any part of the payment that you can deduct.

- (2) The time of the event is when the deposit is forfeited.

- (3) You make a **capital gain** if the deposit is *more* than the expenditure you incur in connection with the prospective sale or other transaction. You make a **capital loss** if the deposit is *less*.

- (4) The expenditure can include giving property: see section 103-5. However, it does not include an amount you have received as \*recoupment of it and that is not included in your assessable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Example: To continue the example: if you gave a lawyer wine worth \$400 in connection with the prospective sale, you make a capital gain of:

$$\$1,000 - \$400 = \$600$$

### 104-155 Receipt for event relating to a CGT asset: CGT event H2

- (1) **CGT event H2** happens if:
- (a) an act, transaction or event occurs in relation to a \*CGT asset that you own; and
  - (b) the act, transaction or event does not result in an adjustment being made to the asset's \*cost base or \*reduced cost base.

Example: You own land on which you intend to construct a manufacturing facility. A business promotion organisation pays you \$50,000 as an inducement to start construction early.

No contractual rights or obligations are created by the arrangement.

The payment is made because of an event (the inducement to start construction early) in relation to your land.

Note: This event does not apply if any other CGT event applies: see section 102-25.

- (2) The time of the event is when the act, transaction or event occurs.
- (3) You make a **capital gain** if the \*capital proceeds because of the \*CGT event are *more* than the \*incidental costs you incurred that relate to the event. You make a **capital loss** if those capital proceeds are *less*.
- (4) The costs can include giving property: see section 103-5. However, they do not include an amount you have received as \*recoupment of them and that is not included in your assessable income.

#### *Exceptions*

- (5) **CGT event H2** does not happen if:
- (a) the act, transaction or event is the borrowing of money or the obtaining of credit from another entity; or
  - (b) the act, transaction or event requires you to do something that is another \*CGT event that happens to you; or
  - (c) a company issues or allots \*equity interests or \*non-equity shares in the company; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-160

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- (d) the trustee of a unit trust issues units in the trust; or
- (e) a company grants an option to acquire equity interests, non-equity shares or \*debentures in the company; or
- (ea) a company grants an option to dispose of \*shares in the company to the company; or
- (f) the trustee of a unit trust grants an option to acquire units or debentures in the trust; or
- (g) a company or a trust that is a member of a \*demerger group issues new \*ownership interests under a \*demerger.

Note: For demergers, see Division 125.

### Subdivision 104-I—Australian residency ends

#### Table of sections

104-160	Individual or company stops being an Australian resident: CGT event I1
104-165	Exception for individuals
104-170	Trust stops being a resident trust: CGT event I2

#### 104-160 Individual or company stops being an Australian resident: CGT event I1

- (1) **CGT event I1** happens if you stop being an Australian resident.
- (2) The time of the event is when you stop being one.
- (3) You need to work out if you have made a \*capital gain or a \*capital loss for each \*CGT asset that you owned just before the time of the event, except one that is \*taxable Australian property:
  - (a) covered by item 1 or 3 of the table in section 855-15; or
  - (b) covered by item 4 of that table because it is an option or right to \*acquire a \*CGT asset covered by item 1 or 3 of that table.
- (4) You make a **capital gain** if the \*market value of the asset (at the time of the event) is *more* than its \*cost base. You make a **capital loss** if that market value is *less* than the asset's \*reduced cost base.
- (4A) If the asset is an \*indirect Australian real property interest, or an option or right to acquire such an interest, this Part and Part 3-3 apply to the asset as if the first element of the \*cost base and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

\*reduced cost base of the asset (just after the time of the event)  
were its \*market value at the time of the event.

- (4B) Subsection (4A) does not apply if the \*capital gain or \*capital loss you make is disregarded under subsection (5) or (6), or subsection 104-165(2).

*Exceptions*

- (5) A \*capital gain or \*capital loss you make is disregarded if you \*acquired the asset before 20 September 1985.
- (6) A \*capital gain or \*capital loss you make is disregarded if:
- (a) the asset is a \*qualifying share or \*qualifying right; and
  - (b) the asset is not covered by an election under section 139E of the *Income Tax Assessment Act 1936*; and
  - (c) the \*cessation time for the share or right has not occurred.

Note 1: An individual may be able disregard the gain or loss if he or she was a short term Australian resident: see section 104-166.

Note 1A: An individual may disregard the gain or loss if he or she was a temporary resident immediately before he or she stopped being an Australian resident: see section 768-915.

Note 2: An individual can choose to disregard a capital gain or loss he or she makes until another CGT event happens in relation to the asset where he or she ceases to own the asset or he or she becomes an Australian resident again: see section 104-165.

### **104-165 Exception for individuals**

*Choosing to disregard making a gain or loss*

- (2) If you are an individual, you can choose to disregard making a \*capital gain or a \*capital loss from all \*CGT assets covered by \*CGT event I1.
- (3) If you do so choose, each of those assets is taken to be \*taxable Australian property until the earlier of:
- (a) a \*CGT event happening in relation to the asset, if the CGT event involves you ceasing to own the asset;
  - (b) you again becoming an Australian resident.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-170

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Note: If you are an individual who was in Australia on 6 April 2006, and you remain an Australian resident from that day until you stop being one, and you were an Australian resident for less than 5 years during the 10 years before you stopped being one, see section 104-166 of the *Income Tax (Transitional Provisions) Act 1997*.

**104-170 Trust stops being a resident trust: CGT event I2**

- (1) **CGT event I2** happens if a trust stops being a \*resident trust for CGT purposes.
- (2) The time of the event is when the trust stops being one.
- (3) The trustee needs to work out if it has made a \*capital gain or a \*capital loss for *each* \*CGT asset that it owned (in the capacity as trustee of the trust) just before the time of the event except one that is \*taxable Australian property:
  - (a) covered by item 1 or 3 of the table in section 855-15; or
  - (b) covered by item 4 of that table because it is an option or right to \*acquire a \*CGT asset covered by item 1 or 3 of that table.
- (4) The trustee makes a **capital gain** if the \*market value of the asset (at the time of the event) is *more* than the asset's \*cost base. The trustee makes a **capital loss** if that market value is *less* than the asset's \*reduced cost base.
  - (4A) If the asset is an \*indirect Australian real property interest, or an option or right to acquire such an interest, this Part and Part 3-3 apply to the asset as if the first element of the \*cost base and \*reduced cost base of the asset (just after the time of the event) were its \*market value at the time of the event.
  - (4B) Subsection (4A) does not apply if the \*capital gain or \*capital loss the trustee makes is disregarded under subsection (5).

*Exception*

- (5) A \*capital gain or \*capital loss the trustee makes is disregarded if it \*acquired the asset before 20 September 1985.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 104-J—CGT events relating to roll-overs

### Table of sections

104-175	Company ceasing to be member of wholly-owned group after roll-over: CGT event J1
104-180	Sub-group break-up
104-182	Consolidated group break-up
104-185	Change in relation to replacement asset or improved asset after a roll-over under Subdivision 152-E: CGT event J2
104-190	Modifying or extending the replacement asset period
104-195	Trust failing to cease to exist after roll-over under Subdivision 124-N: CGT event J4
104-197	Failure to acquire replacement asset and to incur fourth element expenditure after a roll-over under Subdivision 152-E: CGT event J5
104-198	Cost of acquisition of replacement asset or amount of fourth element expenditure, or both, not sufficient to cover disregarded capital gain: CGT event J6

### 104-175 Company ceasing to be member of wholly-owned group after roll-over: CGT event J1

- (1) *CGT event J1* happens if:
- (a) there is a roll-over under Subdivision 126-B for a \*CGT event (the *roll-over event*) that happens in relation to a \*CGT asset (the *roll-over asset*) involving 2 companies that are members of the same \*wholly-owned group; and
  - (b) the company (the *recipient company*) that owns the roll-over asset just after the roll-over stops being a 100% subsidiary of a company in the group in the circumstances set out in subsection (2) or (3); and
  - (c) at the time of the roll-over, the recipient company was a \*100% subsidiary of:
    - (i) the other company involved in the roll-over event (the *originating company*); or
    - (ii) another member of the same \*wholly-owned group.

Note: If the roll-over was under former section 160ZZO of the *Income Tax Assessment Act 1936*, CGT event J1 does not happen if there would not have been a deemed disposal and re-acquisition under that Act: see section 104-175 of the *Income Tax (Transitional Provisions) Act 1997*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-175

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- (2) This condition applies if there has been only one roll-over within the \*wholly-owned group under Subdivision 126-B involving the roll-over asset.

The recipient company must stop, at a time (the *break-up time*) when it still owns the roll-over asset, being a \*100% subsidiary of a member of the group (the *ultimate holding company*) that is not a 100% subsidiary of any other member of the group at the time of the roll-over event.

- (3) This condition applies if the roll-over event was the last in a series of \*CGT events involving the roll-over asset and there was a roll-over within the \*wholly-owned group under Subdivision 126-B for all the events.

The recipient company must stop, at a time (also the *break-up time*) when it still owns the roll-over asset, being a \*100% subsidiary of another member of the group (also the *ultimate holding company*) that was not a 100% subsidiary of any other member of the group at the time of the first of the events.

- (4) The time of the event is the break-up time.
- (5) The recipient company makes a *capital gain* if the roll-over asset's \*market value (at the break-up time) is *more* than its \*cost base. It makes a *capital loss* if that market value is *less* than its \*reduced cost base.

*Exceptions*

- (6) *CGT event J1* does not happen if the conditions in section 104-180 or 104-182 are satisfied.
- (7) A \*capital gain or \*capital loss the recipient company makes is disregarded if the roll-over asset is taken to have been \*acquired by it before 20 September 1985 under Subdivision 126-B (except where the roll-over asset has stopped being a \*pre-CGT asset, for example, because of Division 149).

Note: CGT event J1 does not happen to a demerged entity or a member of a demerger group if CGT event A1 or C2 happens to a demerging entity under a demerger: see section 125-160.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Acquisition rule*

- (8) The recipient company is taken to have \*acquired the roll-over asset at the break-up time.

*Cost base adjustment*

- (9) The first element of the recipient company's \*cost base and \*reduced cost base of the roll-over asset (just after the break-up time) is its \*market value (at the break-up time).

**104-180 Sub-group break-up**

- (1) The condition in subsection (2) must have been satisfied at each time when there is a roll-over within the \*wholly-owned group under Subdivision 126-B for a \*CGT event happening in relation to the roll-over asset.
- (2) The originating company and the recipient company must have been members of a group of 2 or more companies (the **sub-group**) within the \*wholly-owned group (excluding the ultimate holding company) for which one of these is satisfied:
- (a) if the sub-group consists of 2 companies, either the recipient company is a 100% subsidiary of the other company (the **holding company**), or the other company is a 100% subsidiary of the recipient company (also the **holding company**);
  - (b) if the sub-group consists of 3 or more companies:
    - (i) the recipient company is a 100% subsidiary of one of those other companies (also the **holding company**) and so are the other companies (except the holding company) in the sub-group; or
    - (ii) each of the companies in the sub-group (except the recipient company) is a 100% subsidiary of the recipient company (also the **holding company**).
- (3) If the roll-over event was the last in a series of \*CGT events involving the roll-over asset and there was a roll-over within the \*wholly-owned group under Subdivision 126-B for all the events, each company that was the originating company or the recipient

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-182

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company for the purposes of that Subdivision for one of those roll-overs must have been members of the sub-group at the time of each of the roll-overs.

- (4) The conditions in subsection (5) or (6) must be satisfied just after the break-up time.
- (5) If the recipient company was the holding company of the sub-group, none of its \*shares can be owned by:
  - (a) the ultimate holding company; or
  - (b) a company that is a \*100% subsidiary of the ultimate holding company just after the break-up time.
- (6) If the recipient company was not the holding company of the sub-group, no \*shares in it or in the holding company can be owned by:
  - (a) the ultimate holding company; or
  - (b) a company that is a \*100% subsidiary of the ultimate holding company just after the break-up time.

**104-182 Consolidated group break-up**

\*CGT event J1 does not happen if the recipient company ceases to be a \*subsidiary member of a \*consolidated group at the break-up time (whether or not it becomes a subsidiary member of another consolidated group at that time).

**104-185 Change in relation to replacement asset or improved asset after a roll-over under Subdivision 152-E: CGT event J2**

- (1) **CGT event J2** happens if you choose a small business roll-over under Subdivision 152-E for a \*CGT event that happens in relation to a \*CGT asset in an income year and:
  - (a) you \*acquire a replacement asset (the **replacement asset**), or you incur \*fourth element expenditure in relation to a CGT asset (also the **replacement asset**), or you do both, by the end of the period (the **replacement asset period**) starting one year before, and ending 2 years after, the last CGT event in the income year for which you obtain the roll-over; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the replacement asset is your \*active asset at the end of the replacement asset period; and
- (c) if the replacement asset is a \*share in a company or an interest in a trust, at the end of the replacement asset period:
  - (i) either you, or an entity \*connected with you, is a \*CGT concession stakeholder in the company or trust; or
  - (ii) CGT concession stakeholders in the company or trust have a \*small business participation percentage in you of at least 90%; and
- (d) a change of a kind specified in subsection (2) or (3) happens after the end of the replacement asset period.

Note 1: The replacement asset period may be modified or extended, see section 104-190.

Note 2: There is an exception: see subsection (8).

Note 3: There may be 2 or more replacement assets.

Note 4: CGT event J2 can also happen in relation to a capital gain you rolled-over under Division 17A of former Part IIIA of the *Income Tax Assessment Act 1936* or Division 123 of the *Income Tax Assessment Act 1997* if the status of the replacement asset changes: see section 104-185 of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) For any replacement asset that satisfied paragraph (1)(b) and, if applicable, paragraph (1)(c), the change is:
  - (a) the asset stops being your \*active asset; or
  - (b) the asset becomes your \*trading stock; or
  - (c) you make a testamentary gift of the asset under the Cultural Bequests Program; or
  - (d) you start to use the asset solely to produce your \*exempt income or \*non-assessable non-exempt income.
- (3) In addition, for a \*share in a company or an interest in a trust, the change is:
  - (a) \*CGT event G3 or I1 happens in relation to it; or
  - (b) paragraph (1)(c) stops being satisfied.

Note: The full list of CGT events is in section 104-5.

- (4) The time of the event is when the change happens.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (5) You make a *capital gain* equal to:
- (a) if there is only one replacement asset that satisfied paragraph (1)(b) and, if applicable, paragraph (1)(c)—the amount of the capital gain that you disregarded under Subdivision 152-E (the *152-E amount*); or
  - (b) if there are 2 or more replacement assets that satisfied paragraph (1)(b) and, if applicable, paragraph (1)(c) and a change of a kind specified in subsection (2) or (3) occurs for all of them—the 152-E amount; or
  - (c) if there are 2 or more replacement assets that satisfied paragraph (1)(b) and, if applicable, paragraph (1)(c) and such a change occurs for one or more but not all of them—so much (if any) of the 152-E amount as exceeds the sum of the following:
    - (i) the first element of the \*cost base of each of those replacement assets \*acquired;
    - (ii) the \*incidental costs you incurred to acquire each of those replacement assets (which can include giving property, see section 103-5);
    - (iii) the amount of \*fourth element expenditure incurred in relation to each of those replacement assets;  
in relation to which such a change did not occur.
- (6) If \*CGT event J6 has happened in relation to the small business roll-over under Subdivision 152-E, subsection (5) applies to the 152-E amount reduced by the amount of the capital gain under that event.
- (7) If \*CGT event J2 happens again in a later income year in relation to the small business roll-over under Subdivision 152-E, subsection (5) applies to any remaining part of the 152-E amount reduced by the amount of the capital gain under the earlier event.
- (8) *CGT event J2* does not happen because of paragraph (2)(a) for a \*share in a company or an interest in a trust if the share or interest ceased to be an \*active asset only because of changes in the \*market values of assets that were owned by the company or trust when you \*acquired the share or interest or incurred the \*fourth element expenditure.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (9) You incur *fourth element expenditure* in relation to a \*CGT asset if you incur capital expenditure that is included, under subsection 110-25(5), in the fourth element of the \*cost base of the asset.

### **104-190 Modifying or extending the replacement asset period**

- (1) The replacement asset period is modified if your \*capital proceeds for the \*CGT event are increased under subsection 116-45(2) or 116-60(3) after the end of that period. Instead, you have until 12 months after you receive those additional proceeds to \*acquire a replacement asset, or incur \*fourth element expenditure in relation to a \*CGT asset, or do both.

Note: Section 116-45 applies if you do not receive your capital proceeds despite having taken all reasonable steps to get them, and section 116-60 applies if your capital proceeds are misappropriated by your employee or agent.

- (2) The Commissioner may extend the replacement asset period, or that period as modified by subsection (1).

### **104-195 Trust failing to cease to exist after roll-over under Subdivision 124-N: CGT event J4**

- (1) *CGT event J4* happens if:
- (a) there is a roll-over under Subdivision 124-N for a trust \*disposing of a \*CGT asset to a company under a trust restructure; and
  - (b) the trust fails to cease to exist:
    - (i) within 6 months after the start of the \*trust restructuring period; or
    - (ii) if that is not possible because of circumstances outside the control of the trustee—as soon as practicable after the end of that 6 month period; and
  - (c) the company owns the asset when the failure happens.

Example: Circumstances would be outside the control of the trustee if the trustee is involved in litigation concerning the trust and cannot wind up the trust until the litigation is finished.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) **CGT event J4** also happens if:
- (a) there is a roll-over under Subdivision 124-N for an entity (the **shareholding entity**) receiving a \*share in a company in exchange for a unit or interest in a trust under a trust restructure; and
  - (b) the trust fails to cease to exist:
    - (i) within 6 months after the start of the \*trust restructuring period; or
    - (ii) if that is not possible because of circumstances outside the control of the trustee—as soon as practicable after the end of that 6 month period; and
  - (c) the shareholding entity owns the share when the failure happens.
- (3) The time of the event is when the failure to cease to exist happens.
- (4) The company makes a **capital gain** if the \*CGT asset's \*market value at the time the company \*acquired the asset is more than its \*cost base at that time. The company makes a **capital loss** if that market value is less than the asset's \*reduced cost base at that time.
- (5) This Part and Part 3-3 apply to the company from just after the time of the event as if the first element of the \*cost base and \*reduced cost base of the asset were its \*market value at the time the company \*acquired the asset.
- (6) The shareholding entity makes a **capital gain** if the \*share's \*market value at the time the entity \*acquired the share is more than its \*cost base at that time. The shareholding entity makes a **capital loss** if that market value is less than the share's \*reduced cost base at that time.
- (7) This Part and Part 3-3 apply to the shareholding entity from just after the time of the event as if the first element of the \*cost base and \*reduced cost base of the \*share were its \*market value at the time the entity \*acquired the share.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Exception*

- (8) This section does not apply to a \*CGT asset acquired under a trust restructure that happened before the day on which the *Taxation Laws Amendment Act (No. 4) 2002* received the Royal Assent.

**104-197 Failure to acquire replacement asset and to incur fourth element expenditure after a roll-over under Subdivision 152-E: CGT event J5**

- (1) **CGT event J5** happens if you choose a small business roll-over under Subdivision 152-E for a \*CGT event that happens in relation to a \*CGT asset in an income year and, by the end of the replacement asset period:
- (a) you have not \*acquired a replacement asset (the **replacement asset**), and have not incurred \*fourth element expenditure in relation to a CGT asset (also the **replacement asset**); or
  - (b) the replacement asset does not satisfy the conditions set out in subsection (2).

Note: You do not have to satisfy the basic conditions in Subdivision 152-A for the gain in relation to CGT event J5 (see subsection 152-305(4)).

- (2) The conditions are:
- (a) the replacement asset must be your \*active asset; and
  - (b) if the replacement asset is a \*share in a company or an interest in a trust:
    - (i) you, or an entity \*connected with you, must be a \*CGT concession stakeholder in the company or trust; or
    - (ii) CGT concession stakeholders in the company or trust must have a \*small business participation percentage in you of at least 90%.

Example: Joseph owns 50% of the shares in Company A and Company B. He is therefore a CGT concession stakeholder in the companies: see section 152-60. The companies are connected with Joseph (see section 328-125) because he controls both of them.

Company A owns land which it leases to Joseph for use in a business. It sells the land at a profit and buys shares in Company B.

Subsection (2) is satisfied for the shares because Joseph is connected with Company A and is a CGT concession stakeholder in Company B.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-198

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- (3) The time of the event is at the end of the replacement asset period.
- (4) You make a *capital gain* equal to the amount of the \*capital gain that you disregarded under Subdivision 152-E.
- (5) The replacement asset period may be modified or extended as mentioned in section 104-190.

**104-198 Cost of acquisition of replacement asset or amount of fourth element expenditure, or both, not sufficient to cover disregarded capital gain: CGT event J6**

- (1) *CGT event J6* happens if you choose a small business roll-over under Subdivision 152-E for a \*CGT event that happens in relation to a \*CGT asset in an income year and:
  - (a) by the end of the replacement asset period, you have done either or both of the following:
    - (i) \*acquired a replacement asset (the *replacement asset*);
    - (ii) incurred \*fourth element expenditure in relation to a CGT asset (also the *replacement asset*); and
  - (b) at the end of the replacement asset period, the replacement asset is your \*active asset; and
  - (c) if the replacement asset is a \*share in a company or an interest in a trust, at the end of the replacement asset period:
    - (i) you, or an entity \*connected with you, are a \*CGT concession stakeholder in the company or trust; or
    - (ii) CGT concession stakeholders in the company or trust have a \*small business participation percentage in you of at least 90%; and
  - (d) the total (the *amount incurred*) of the following, in relation to each replacement asset that satisfied paragraph (b) and, if applicable, paragraph (c), is less than the amount of the capital gain that you disregarded:
    - (i) the first element of the \*cost base;
    - (ii) the \*incidental costs you incurred (which can include giving property, see section 103-5);
    - (iii) the amount of fourth element expenditure incurred.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: You do not have to satisfy the basic conditions in Subdivision 152-A for the gain in relation to CGT event J6 (see subsection 152-305(4)).

- (2) The time of the event is at the end of the replacement asset period.
- (3) You make a *capital gain* equal to the difference between:
  - (a) the amount of the \*capital gain that you disregarded under Subdivision 152-E; and
  - (b) the amount incurred.
- (4) The replacement asset period may be modified or extended as mentioned in section 104-190.

### **Subdivision 104-K—Other CGT events**

#### **Table of sections**

104-210	Bankrupt pays amount in relation to debt: CGT event K2
104-215	Asset passing to tax-advantaged entity: CGT event K3
104-220	CGT asset starts being trading stock: CGT event K4
104-225	Special collectable losses: CGT event K5
104-230	Pre-CGT shares or trust interest: CGT event K6
104-235	Balancing adjustment events for depreciating assets and section 73BA depreciating assets: CGT event K7
104-240	Working out capital gain or loss for CGT event K7: general case
104-245	Working out capital gain or loss for CGT event K7: pooled assets
104-250	Direct value shifts: CGT event K8
104-255	Carried interests: CGT event K9
104-260	Certain short-term forex realisation gains: CGT event K10
104-265	Certain short-term forex realisation losses: CGT event K11
104-270	Foreign hybrids: CGT event K12

### **104-210 Bankrupt pays amount in relation to debt: CGT event K2**

- (1) *CGT event K2* happens if:
  - (a) you made a \*net capital loss for an income year that, because of subsection 102-5(2), cannot be applied in working out whether you made a \*net capital gain for the income year or a later one; and
  - (b) you make a payment in an income year (the *payment year*) in respect of a debt that was taken into account in working out the amount of that net capital loss; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 104-215

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- (c) ignoring subsection 102-5(2), some part of the net capital loss (the *denied part*) would have been applied (if you had made sufficient \*capital gains) in working out whether you had made a \*net capital gain for the payment year.  
The payment can include giving property: see section 103-5.
- (2) The time of the event is when you make the payment.
- (3) You make a *capital loss* equal to the smallest of:
  - (a) the amount you paid; or
  - (b) that part of it that was taken into account in working out the denied part; or
  - (c) the denied part less the sum of \*capital losses you made as a result of previous payments you made in respect of the debt that was taken into account in working out the denied part.
- (4) In calculating that *capital loss*, disregard any amount you have received as \*recoupment of the payment and that is not included in your assessable income.

**104-215 Asset passing to tax-advantaged entity: CGT event K3**

- (1) **CGT event K3** happens if you die and a \*CGT asset you owned just before dying \*passes to a beneficiary in your estate who (when the asset passes):
  - (a) is an \*exempt entity; or
  - (b) is the trustee of a \*complying superannuation entity; or
  - (c) is a foreign resident.
- (2) If the asset passes to a beneficiary who is a foreign resident, **CGT event K3** happens only if:
  - (a) you were an Australian resident just before dying; and
  - (b) the asset (in the hands of the beneficiary) is not \*taxable Australian property.
- (3) The time of the event is just before you die.
- (4) A *capital gain* is made if the \*market value of the asset on the day you died is *more* than the asset's \*cost base. A *capital loss* is made if that market value is *less* than the asset's \*reduced cost base.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: The trustee of the estate must include in the date of death return any net capital gain for the income year when you died.

*Exception*

- (5) A \*capital gain or \*capital loss is disregarded if you \*acquired the asset before 20 September 1985.

Note: There is also an exception for certain philanthropic testamentary gifts: see section 118-60.

**104-220 CGT asset starts being trading stock: CGT event K4**

- (1) **CGT event K4** happens if:
- (a) you start holding as \*trading stock a \*CGT asset you already own but do not hold as trading stock; and
  - (b) you elect under paragraph 70-30(1)(a) to be treated as having sold the asset for its \*market value.

Note 1: Paragraph 70-30(1)(a) allows you to elect the cost of the asset, or its market value, just before it became trading stock.

Note 2: There is an exemption if you elect its cost: see section 118-25.

- (2) The time of the event is when you start.
- (3) You make a **capital gain** if the asset's \*market value (just before it became \*trading stock) is *more* than its \*cost base. You make a **capital loss** if that market value is *less* than its \*reduced cost base.

*Exception*

- (4) A \*capital gain or \*capital loss you make is disregarded if you \*acquired the asset before 20 September 1985.

**104-225 Special collectable losses: CGT event K5**

- (1) **CGT event K5** happens if the requirements in subsections (2), (3) and (4) are satisfied.
- (2) There is a fall in the \*market value of a \*collectable of a company or trust.
- (3) \*CGT event A1, C2 or E8 happens to:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-225

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- (a) \*shares you own in the company (or in a company that is a member of the same \*wholly-owned group); or
- (b) an interest you have in the trust;
- and there is no roll-over for that CGT event.
- (4) As a result of the \*capital proceeds from that event being replaced under section 116-80:
- (a) you make a \*capital gain that you would not otherwise have made; or
- (b) you do not make the \*capital loss you would otherwise have made; or
- (c) you make a capital loss that is less than you would otherwise have made.
- Note: The capital proceeds from that event are replaced with the market value of the shares or the interest in the trust as if the fall in the market value of collectables and personal use assets had not occurred: see section 116-80.
- (5) The time of CGT event K5 is the time of \*CGT event A1, C2 or E8.
- (6) You make a **capital loss** from a \*collectable equal to:

- the \*market value of the \*shares or the interest in the trust (worked out as at the time of \*CGT event A1, C2 or E8 as if the fall in market value of the collectable had not occurred);

less:

- the actual \*capital proceeds from CGT event A1, C2 or E8.

Example: You own 50% of the shares in a company. You bought them in 1999 for \$60,000. The company owns a painting worth \$100,000 and another asset worth \$20,000. The painting falls in value to \$50,000.

In 1999 you sell your shares for \$35,000 (the actual capital proceeds). You would otherwise make a capital loss of \$25,000.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

However, the actual capital proceeds are replaced with \$60,000 (the market value of the shares if the painting had not fallen in value). You do not make a capital loss from selling the shares.

You do make a collectable loss equal to:

$$\$60,000 - \$35,000 = \$25,000$$

Note: You can subtract capital losses from collectables only from your capital gains from collectables: see section 108-10.

### **104-230 Pre-CGT shares or trust interest: CGT event K6**

- (1) **CGT event K6** happens if:
  - (a) you own \*shares in a company or an interest in a trust you \*acquired *before* 20 September 1985; and
  - (b) \*CGT event A1, C2, E1, E2, E3, E5, E6, E7, E8, J1 or K3 happens in relation to the shares or interest; and
  - (c) there is no roll-over for the other CGT event; and
  - (d) the applicable requirement in subsection (2) is satisfied.
- (2) Just before the other event happened:
  - (a) the \*market value of property of the company or trust (that is not its \*trading stock) that was \*acquired on or after 20 September 1985; or
  - (b) the market value of interests the company or trust owned through interposed companies or trusts in property (except trading stock) that was \*acquired on or after 20 September 1985;must be at least 75% of the \*net value of the company or trust.
- (5) The time of CGT event K6 is when the other event happens.
- (6) You make a \*capital gain equal to that part of the \*capital proceeds from the \*share or interest that is reasonably attributable to the amount by which the \*market value of the property referred to in subsection (2) is *more* than the sum of the \*cost bases of that property.

Note: You cannot make a capital loss.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-230

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- (7) This section applies to property that a company that is a foreign resident \*acquired after 15 August 1989 from another company as if it were acquired before 20 September 1985 if:
- (a) the other company acquired it before 20 September 1985; and
  - (b) the companies are members of the same \*wholly-owned group; and
  - (c) the property is not \*taxable Australian property.
- (8) In working out the \*net value of a company or trust for the purposes of subsection (2), disregard:
- (a) the discharge or release of any liabilities; or
  - (b) the \*market value of any \*CGT assets acquired;
- if the discharge or release, or the \*acquisition, was done for a purpose that included ensuring that the requirement in subsection (2) would not be satisfied in a particular situation.

*Exceptions*

- (9) **CGT event K6** does not happen if:
- (a) for a company referred to in subsection (2)—some of its \*shares were listed for quotation in the official list of a stock exchange in Australia or a foreign country at the time of the other event and at all times in the period of 5 years before the time of the other event; or
  - (b) for a trust referred to in subsection (2) that is a unit trust—some of its units were so listed, or were ordinarily available to the public for subscription or purchase, at the time of the other event and at all times in that period.
- (9A) Paragraph (9)(a) applies to a case where:
- (a) the company referred to in subsection (2) is a \*demerged entity; and
  - (b) \*shares in the demerged entity do not satisfy the test referred to in that paragraph; and
  - (c) the demerger happened not more than 5 years before the other CGT event happened;
- as if shares in the demerged entity were listed for quotation in the official list of a stock exchange in Australia or a foreign country at

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

all times when some of the shares in the \*head entity of the \*demerger group were so listed.

**Example:** Louise owns shares in a company which has been listed for 3 years. The company is the head entity of a demerger group. As part of a demerger, she receives new interests in a demerged entity. The demerged entity then lists in its own right.

Since the head entity was listed for only 3 years, the demerged entity must remain listed for 2 years before Louise's new interests become eligible for the exception from CGT event K6.

- (9B) Paragraph (9)(b) applies to a case where:
- (a) the trust referred to in subsection (2) is a \*demerged entity and a unit trust; and
  - (b) units in the demerged entity do not satisfy the test referred to in that paragraph; and
  - (c) the demerger happened not more than 5 years before the other CGT event happened;

as if units in the demerged entity were listed for quotation in the official list of a stock exchange in Australia or a foreign country, or were ordinarily available to the public for subscription or purchase, at all times when some of the units in the \*head entity of the \*demerger group were so listed or available.

- (10) A \*capital gain is disregarded for a \*share in a company or an interest in a trust to the extent that, had you \*acquired it on or after 20 September 1985, you could have chosen a roll-over for the other \*CGT event under Subdivision 124-M (scrip for scrip roll-over).

**Example:** Bill owns a unit in a trust that he acquired before 20 September 1985. He exchanges the unit for a unit in another trust worth \$60 and \$40 cash. He makes a capital gain of \$50 because of CGT event K6.

Had the unit been acquired after 20 September 1985, Bill would have been entitled to a partial roll-over of the capital gain under Subdivision 124-M to the extent that his capital proceeds constituted a replacement unit.

Bill can therefore disregard  $\frac{60}{100}$  of the \$50 gain (\$30). The cost base of Bill's replacement unit is reduced by this amount. Bill must include the remaining \$20 of the CGT event K6 gain in the calculation of his net capital gain or loss for the year.

**Note:** A capital gain or loss made by a demerging entity from CGT event K6 happening as a result of a demerger is also disregarded: see section 125-155.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**104-235 Balancing adjustment events for depreciating assets and section 73BA depreciating assets: CGT event K7**

- (1) *CGT event K7* happens if:
- (a) a \*balancing adjustment event occurs for a \*depreciating asset you \*held; and
  - (b) at some time when you held the asset, you used it, or had it \*installed ready for use, for a purpose other than a \*taxable purpose.
- (1A) However, subsection (1) does not apply if:
- (a) you are an eligible company (within the meaning of section 73B of the *Income Tax Assessment Act 1936*) and the \*depreciating asset is a section 73BA depreciating asset (within the meaning of section 73BB of that Act); or
  - (b) there is roll-over relief for the \*balancing adjustment event under section 40-340 of this Act; or
  - (c) the asset is one for which you or another entity has deducted or can deduct amounts under Subdivision 40-F or 40-G.
- (1B) *CGT event K7* also happens if:
- (a) you are an eligible company; and
  - (b) a \*balancing adjustment event occurs for a section 73BA depreciating asset you \*held; and
  - (c) at some time when you held the asset:
    - (i) you used it other than for a taxable purpose or the purpose of the carrying on by or on behalf of you of research and development activities (within the meaning of section 73B of the *Income Tax Assessment Act 1936*); or
    - (ii) you had it installed ready for use other than for a taxable purpose.
- (2) The time of \*CGT event K7 is when the \*balancing adjustment event occurs.
- (3) Any \*capital gain or \*capital loss is worked out:
- (a) under section 104-240; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) under section 104-245 if the \*depreciating asset was allocated to a low-value pool.
- (4) A \*capital gain or \*capital loss you make is disregarded if:
  - (a) the \*depreciating asset or the section 73BA depreciating asset is a \*pre-CGT asset; or
  - (b) you can deduct an amount for the asset under Division 328 (about small business entities) for the income year in which the \*balancing adjustment event occurred.

### **104-240 Working out capital gain or loss for CGT event K7: general case**

- (1) You make a *capital gain* if the \*termination value of the \*depreciating asset or the section 73BA depreciating asset is more than its \*cost. The amount of the \*capital gain is:

$$\left[ \text{* Termination value} - \text{*Cost} \right] \times \frac{\text{Sum of reductions}}{\text{Total decline}}$$

where:

*sum of reductions* is the sum of:

- (a) in the case of the \*depreciating asset—the reductions in your deductions for the asset under section 40-25; or
- (b) in the case of the section 73BA depreciating asset—the reductions that would have been required under section 40-25 (including as applied for the purposes of section 73BC of the *Income Tax Assessment Act 1936*) on the assumption that when you used the asset either for a taxable purpose or for the purpose of the carrying on by or on behalf of you of research and development activities you used it for a taxable purpose.

*total decline* is the decline in value of the \*depreciating asset or the section 73BA depreciating asset since you started to \*hold it.

Note: The CGT concepts of cost base and capital proceeds are not relevant for this event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 104-245

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- (2) You make a **capital loss** if the \*cost of the \*depreciating asset or the section 73BA depreciating asset is more than its \*termination value. The amount of the \*capital loss is:

$$\left[ \text{*Cost} - \text{* Termination value} \right] \times \frac{\text{Sum of reductions}}{\text{Total decline}}$$

where:

**sum of reductions** and **total decline** have the same meanings as in subsection (1).

- (3) In applying subsection (1) or (2), reduce the \*termination value of the \*depreciating asset by so much of an amount misappropriated by your employee or \*agent (whether by theft, embezzlement, larceny or otherwise) as represents an amount applicable to you under:
- (a) item 8 of the table in subsection 40-300(2); or
  - (b) item 1, 3, 4 or 6 of the table in subsection 40-305(1);
- in relation to the \*balancing adjustment event.
- (4) If you later receive an amount as \*recoupment of all or part of the amount misappropriated, the amount applicable under subsection (3) is increased by the amount received.
- (5) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this section for an income year if:
- (a) you discover the misappropriation, or you receive an amount as \*recoupment of all or part of the amount misappropriated, after you lodged your \*income tax return for the income year; and
  - (b) the amendment is made at any time during the period of 4 years starting immediately after you discover the misappropriation or receive the amount.

**104-245 Working out capital gain or loss for CGT event K7: pooled assets**

- (1) You make a **capital gain** if the \*depreciating asset's \*termination value is more than its \*cost. The amount of the \*capital gain is:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

$$\left[ \text{*Termination value} - \text{*Cost} \right] \times \left[ 1 - \text{Taxable use fraction} \right]$$

where:

**taxable use fraction** is the taxable use percentage (expressed as a fraction) that you estimated for the asset when you allocated it to the pool.

Note: The CGT concepts of cost base and capital proceeds are not relevant for this event.

- (2) You make a **capital loss** if the \*depreciating asset's \*cost is more than its \*termination value. The amount of the \*capital loss is:

$$\left[ \text{*Cost} - \text{*Termination value} \right] \times \left[ 1 - \text{Taxable use fraction} \right]$$

where:

**taxable use fraction** has the same meaning as in subsection (1).

- (3) In applying subsection (1) or (2), reduce the \*termination value of the \*depreciating asset by so much of an amount misappropriated by your employee or \*agent (whether by theft, embezzlement, larceny or otherwise) as represents an amount applicable to you under:
- (a) item 8 of the table in subsection 40-300(2); or
  - (b) item 1, 3, 4 or 6 of the table in subsection 40-305(1);
- in relation to the \*balancing adjustment event.
- (4) If you later receive an amount as \*recoupment of all or part of the amount misappropriated, the amount applicable under subsection (3) is increased by the amount received.
- (5) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this section for an income year if:
- (a) you discover the misappropriation, or you receive an amount as \*recoupment of all or part of the amount misappropriated, after you lodged your \*income tax return for the income year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the amendment is made at any time during the period of 4 years starting immediately after you discover the misappropriation or receive the amount.

**104-250 Direct value shifts: CGT event K8**

- (1) **CGT event K8** happens if there is a \*taxing event generating a gain for a \*down interest under section 725-245.

Note: That section sets out some of the CGT consequences of a direct value shift for affected owners of down interests. See also the rest of Division 725.

- (2) The time of the event is the \*decrease time for the \*down interest.
- (3) You make a **capital gain** equal to the gain generated for the taxing event.
- Note: You cannot make a capital loss.
- (4) If, because of the same \*direct value shift, there are 2 or more \*taxing events generating a gain that are covered by subsection (1), **CGT event K8** happens for each of those taxing events, and you make a separate **capital gain** for each.

*Exceptions*

- (5) A \*capital gain is disregarded if the \*down interest is a \*pre-CGT asset.

**104-255 Carried interests: CGT event K9**

- (1) **CGT event K9** happens if you become entitled to receive a payment of a \*carried interest of a \*general partner in a \*VCLP, an \*ESVCLP or an \*AFOF or a \*limited partner in a \*VCMP.
- (2) The time of the event is the time you become entitled to receive the payment.
- (3) You make a **capital gain** equal to the \*capital proceeds from the \*CGT event.

Note: You cannot make a capital loss.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Meaning of carried interest*

- (4) The **carried interest** of a \*general partner in a \*VCLP, an \*ESVCLP or an \*AFOF is the partner's entitlement to a distribution from the VCLP, ESVCLP or AFOF, to the extent that the distribution is contingent upon the attainment of profits for the \*limited partners in the VCLP, ESVCLP or AFOF.
- (5) The **carried interest** of a \*limited partner in a \*VCMP is the partner's entitlement to a distribution from the VCMP, to the extent that the distribution is contingent upon the attainment of profits for the \*limited partners in the VCLP, ESVCLP or AFOF in which the VCMP is a \*general partner.
- (6) The \*carried interest does not include:
  - (a) any part of the partner's entitlement to that distribution that is attributable to a fee (by whatever name called) for the management of the \*VCLP, \*ESVCLP, \*AFOF or \*VCMP; or
  - (b) any part of the partner's entitlement to that distribution that is attributable to the partner's \*equity interest in the VCLP, ESVCLP, AFOF or VCMP.

*Meaning of payment of carried interest*

- (7) **Payment**, of a \*carried interest, includes:
  - (a) a payment that is attributable to the carried interest; or
  - (b) the giving of property in satisfaction of the carried interest: see section 103-5; or
  - (c) the giving of property in satisfaction of an entitlement that is attributable to the carried interest: see section 103-5.

**104-260 Certain short-term forex realisation gains: CGT event K10**

- (1) **CGT event K10** happens if:
  - (a) you make a \*forex realisation gain as a result of forex realisation event 2; and
  - (b) item 1 of the table in subsection 775-70(1) applies.
- (2) The time of the event is when the forex realisation event happens.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-265

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- (3) You make a *capital gain* equal to the \*forex realisation gain.

Note: You cannot make a capital loss under CGT event K10. However, if you make a forex realisation loss covered by item 1 of the table in subsection 775-75(1), you will make a capital loss under CGT event K11 (see section 104-265).

**104-265 Certain short-term forex realisation losses: CGT event K11**

- (1) *CGT event K11* happens if:
- (a) you make a \*forex realisation loss as a result of forex realisation event 2; and
  - (b) item 1 of the table in subsection 775-75(1) applies.
- (2) The time of the event is when the forex realisation event happens.
- (3) You make a *capital loss* equal to the \*forex realisation loss.

Note: You cannot make a capital gain under CGT event K11. However, if you make a forex realisation gain covered by item 1 of the table in subsection 775-70(1), you will make a capital gain under CGT event K10 (see section 104-260).

**104-270 Foreign hybrids: CGT event K12**

- (1) *CGT event K12* happens if, in accordance with paragraph 830-50(2)(b) or (3)(b), you make a \*capital loss under this section for an income year.
- (2) The time of the event is just before the end of the income year.
- (3) You make a *capital loss* equal to the amount applicable under paragraph 830-50(2)(b) or (3)(b).

**Subdivision 104-L—Consolidated groups and MEC groups**

**Table of sections**

104-500	Loss of pre-CGT status of membership interests in entity becoming subsidiary member: CGT event L1
104-505	Where pre-formation intra-group roll-over reduction results in negative allocable cost amount: CGT event L2
104-510	Where tax cost setting amounts for retained cost base assets exceeds joining allocable cost amount: CGT event L3

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- 104-515 Where no reset cost base assets and excess of net allocable cost amount on joining: CGT event L4
- 104-520 Where amount remaining after step 4 of leaving allocable cost amount is negative: CGT event L5
- 104-525 Error in calculation of tax cost setting amount for joining entity's assets: CGT event L6
- 104-530 Discharged amount of liability differs from amount for allocable cost amount purposes: CGT event L7
- 104-535 Where reduction in tax cost setting amounts for reset cost base assets cannot be allocated: CGT event L8

**104-500 Loss of pre-CGT status of membership interests in entity becoming subsidiary member: CGT event L1**

- (1) *CGT event L1* happens if, under section 705-57 (including in its application in accordance with Subdivisions 705-B to 705-E), there is a reduction in the \*tax cost setting amount of assets of an entity that becomes a \*subsidiary member of a \*consolidated group or a \*MEC group.
- (2) The time of the event is just after the entity becomes a \*subsidiary member of the group.
- (3) For the head company core purposes mentioned in subsection 701-1(2), the \*head company makes a *capital loss* equal to the reduction.
- (4) The amount of the capital loss that can be applied to reduce the head company's \*capital gains for the first income year ending after the entity becomes a \*subsidiary member of the group (the *first income year*) cannot exceed  $\frac{1}{5}$  of the \*capital loss.
- (5) The amount of the \*net capital loss from the first income year, to the extent the amount is attributable to the \*capital loss (the extent being the *event L1 attributable loss*), that can be applied to reduce the head company's \*capital gains for a later income year cannot exceed the amount worked out for the year using the following table:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-505

**Limit on applying event L1 attributable loss**

Item	For this income year:	The amount of the event L1 attributable loss that can be applied cannot exceed:
1	For the second income year ending after the entity became a *subsidiary member	The difference between: (a) 2/5 of the *capital loss; and (b) the amount of the capital loss that was applied in accordance with subsection (4) for the first income year.
2	For the third income year ending after the entity became a *subsidiary member	The difference between: (a) 3/5 of the *capital loss; and (b) the sum of the amount mentioned in paragraph (b) of item 1 and the amount of the event L1 attributable loss that was applied to reduce the entity's *capital gains for the next income year after the first income year.
3	For the fourth income year ending after the entity became a *subsidiary member	The difference between: (a) 4/5 of the *capital loss; and (b) the sum of the amount mentioned in paragraph (b) of item 1 and the amounts of the event L1 attributable loss that were applied to reduce the entity's *capital gains for earlier income years ending after the first income year.
4	For the fifth income year ending after the entity became a *subsidiary member, or for any later income year	The difference between: (a) the *capital loss; and (b) the sum of the amount mentioned in paragraph (b) of item 1 and the amounts of the event L1 attributable loss that were applied to reduce the entity's *capital gains for earlier income years ending after the first income year.

**104-505 Where pre-formation intra-group roll-over reduction results in negative allocable cost amount: CGT event L2**

- (1) *CGT event L2* happens if:
- (a) an entity becomes a \*subsidiary member of a \*consolidated group or a \*MEC group; and

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) in working out the group's \*allocable cost amount for the entity, the amount remaining after applying step 3A of the table in section 705-60 (after any application of section 705-150) is negative.
- (2) The time of the event is just after the entity becomes a \*subsidiary member of the group.
- (3) For the head company core purposes mentioned in subsection 701-1(2), the \*head company makes a *capital gain* equal to the amount remaining.

**104-510 Where tax cost setting amounts for retained cost base assets exceeds joining allocable cost amount: CGT event L3**

- (1) *CGT event L3* happens if:
  - (a) an entity becomes a \*subsidiary member of a \*consolidated group or a \*MEC group; and
  - (b) the sum of the \*tax cost setting amounts for all \*retained cost base assets that are taken into account under paragraph 705-35(1)(b) in working out the tax cost setting amount of each reset cost base asset of the entity exceeds the group's \*allocable cost amount for the entity.
- (2) The time of the event is just after the entity becomes a \*subsidiary member of the group.
- (3) For the head company core purposes mentioned in subsection 701-1(2), the \*head company makes a *capital gain* equal to the excess.

**104-515 Where no reset cost base assets and excess of net allocable cost amount on joining: CGT event L4**

- (1) *CGT event L4* happens if:
  - (a) an entity becomes a \*subsidiary member of a \*consolidated group or a \*MEC group; and
  - (b) in working out the \*tax cost setting amount for assets of the entity in accordance with section 705-35 (including in its application in accordance with Subdivisions 705-B to

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 104-520

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705-D), there is an amount that results after applying paragraphs 705-35(1)(b) and (c) (including in their application in accordance with those Subdivisions); and

Note: Section 705-35 is about the tax cost setting amount for reset cost base assets.

- (c) it is not possible to allocate, in accordance with the latter paragraph, the amount that results because there are no reset cost base assets of the kind mentioned in that paragraph.
- (2) The time of the event is just after the entity becomes a \*subsidiary member of the group.
- (3) For the head company core purposes mentioned in subsection 701-1(2), the \*head company makes a *capital loss* equal to the amount that results.

**104-520 Where amount remaining after step 4 of leaving allocable cost amount is negative: CGT event L5**

- (1) *CGT event L5* happens if:
  - (a) an entity ceases to be a \*subsidiary member of a \*consolidated group or a \*MEC group; and
  - (b) in working out the group's \*allocable cost amount for the entity, the amount remaining after applying step 4 of the table in section 711-20 is negative.
- (2) The time of the event is when the entity ceases to be a \*subsidiary member of the group.
- (3) For the head company core purposes mentioned in subsection 701-1(2), the \*head company makes a *capital gain* equal to the amount remaining.

**104-525 Error in calculation of tax cost setting amount for joining entity's assets: CGT event L6**

- (1) *CGT event L6* happens if:
  - (a) you are the \*head company of a \*consolidated group or a \*MEC group; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the conditions in section 705-315 (about errors in tax cost setting amounts) are satisfied for a \*subsidiary member of the group; and
  - (c) you have a \*net overstated amount or a \*net understated amount for the subsidiary member.
- (2) The time of the event is the start of the income year in which the Commissioner becomes aware of the errors.
- (3) You work out whether you have a *net overstated amount* or *net understated amount* using this table:

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**Meaning of *net overstated amount* and *net understated amount***

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Item	In this situation:	There is this result:
1	There are one or more overstated amounts under section 705-315 for the *subsidiary member but no understated amount under that section for the subsidiary member	There is a <i>net overstated amount</i> . It is the overstated amount, or the sum of the overstated amounts.
2	There are one or more understated amounts under section 705-315 for the *subsidiary member but no overstated amount under that section for the subsidiary member	There is a <i>net understated amount</i> . It is the understated amount, or the sum of the understated amounts.
3	There are both one or more overstated amounts and one or more understated amounts under section 705-315 for the *subsidiary member and the sum of the overstated amounts exceeds the sum of the understated amounts	There is a <i>net overstated amount</i> . It is the difference between those sums
4	There are both one or more overstated amounts and one or more understated amounts under section 705-315 for the *subsidiary member and the sum of the overstated amounts is less than the sum of the understated amounts	There is a <i>net understated amount</i> . It is the difference between those sums

- (4) If the time when the Commissioner becomes aware of the errors is within the period within which the Commissioner may amend all

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

of the assessments necessary to correct the errors, then, for the head company core purposes mentioned in subsection 701-1(2):

- (a) if you have a \*net overstated amount—you make a *capital gain* equal to that amount; or
  - (b) if you have a \*net understated amount—you make a *capital loss* equal to that amount.
- (5) If the time when the Commissioner becomes aware of the errors is not within that period, then, for the head company core purposes mentioned in subsection 701-1(2):
- (a) if you have a \*net overstated amount—you make a *capital gain* of the amount worked out under subsection (6); or
  - (b) if you have a \*net understated amount—you make a *capital loss* of the amount worked out under subsection (6).

- (6) The amount of the \*capital gain or \*capital loss is worked out as follows:

$$\text{Stated amount} \times \frac{\text{Current asset setting amount}}{\text{Original asset setting amount}}$$

where:

**current asset setting amount** means the \*tax cost setting amount for all assets referred to in subsection 705-315(2) as reset cost base assets that the \*head company of the \*consolidated group or the \*MEC group held continuously from the time when the \*subsidiary member joined the group until the start of the head company's income year that is the earliest income year for which the Commissioner could amend the head company's assessment to correct any of the errors.

**original asset setting amount** means the \*tax cost setting amount for all assets referred to in subsection 705-315(2) as reset cost base assets that the \*subsidiary member held at the time it joined the group.

**stated amount** means the \*net overstated amount or the \*net understated amount, as the case requires.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**104-530 Discharged amount of liability differs from amount for allocable cost amount purposes: CGT event L7**

- (1) **CGT event L7** happens if you are the \*head company of a \*consolidated group or a \*MEC group and the conditions relating to a liability in subsection (3) are satisfied.
- (2) The time of the event is the start of your income year in which the liability is discharged.
- (3) The conditions are that:
  - (a) a liability of an entity that became a \*subsidiary member of the group was taken into account in working out your \*allocable cost amount for the subsidiary member in accordance with Division 705 (your *ACA*); and
  - (b) the liability was later discharged (whether by the making of a payment or by the release, waiver or other extinguishment of the liability) and the sum (the **realised amount**) of:
    - (i) the amount of any payment made to discharge the liability; and
    - (ii) the \*market value of any other consideration given to discharge the liability;differs from the amount for the liability that was taken into account in working out your *ACA*; and
  - (c) that *ACA* is different to what it would have been (your **true ACA**) if you had taken the realised amount into account in working out your *ACA*.
- (4) You make a **capital gain** for the head company core purposes mentioned in subsection 701-1(2) if your *ACA* would have been smaller had you used the realised amount in working out your *ACA*. The amount of the gain is the difference between the amount you worked out and your true *ACA*.
- (5) You make a **capital loss** for the head company core purposes mentioned in subsection 701-1(2) if your *ACA* would have been greater had you used the realised amount in working out your *ACA*. The amount of the loss is the difference between the amount you worked out and your true *ACA*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**104-535 Where reduction in tax cost setting amounts for reset cost base assets cannot be allocated: CGT event L8**

- (1) *CGT event L8* happens if:
  - (a) an entity becomes a \*subsidiary member of a \*consolidated group or a \*MEC group; and
  - (b) the \*tax cost setting amount for a reset cost base asset of the entity is reduced under subsection 705-40(1) (including in its application in accordance with Subdivisions 705-B to 705-D); and
  - (c) some or all (the *unallocated amount*) of the reduction cannot be allocated as mentioned in subsection 705-40(2).
- (2) The time of the event is just after the entity becomes a \*subsidiary member of the group.
- (3) For the head company core purposes mentioned in subsection 701-1(2), the \*head company makes a *capital loss* equal to the unallocated amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 106—Entity making the gain or loss**

### **Table of Subdivisions**

	Guide to Division 106
106-A	Partnerships
106-B	Bankruptcy and liquidation
106-C	Absolutely entitled beneficiaries
106-D	Security holders

### **Guide to Division 106**

#### **106-1 What this Division is about**

This Division sets out the cases where a capital gain or loss is made by someone other than the entity to which a CGT event happens.

The entities affected are:

- partnerships (Subdivision 106-A);
- bankruptcy trustees and company liquidators (Subdivision 106-B);
- trustees where there is an absolutely entitled beneficiary (Subdivision 106-C);
- security holders (Subdivision 106-D).

### **Subdivision 106-A—Partnerships**

#### **106-5 Partnerships**

- (1) Any \*capital gain or \*capital loss from a \*CGT event happening in relation to a partnership or one of its \*CGT assets is made by the partners individually.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 106-5

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Each partner's gain or loss is calculated by reference to the partnership agreement, or partnership law if there is no agreement.

Example 1: A partnership creates contractual rights in another entity (CGT event D1). Each partner's capital gain or loss is calculated by allocating an appropriate share of the capital proceeds from the event and the incidental costs that relate to the event (according to the partnership agreement, or partnership law if there is no agreement).

Example 2: Helen and Clare set up a business in partnership. Helen contributes a block of land to the partnership capital. Their partnership agreement recognises that Helen has a 75% interest in the land and Clare 25%. The agreement is silent as to their interests in other assets and profit sharing.

When the land is sold, Helen's capital gain or loss will be determined on the basis of her 75% interest. For other partnership assets, Helen's gain or loss will be determined on the basis of her 50% interest (under the relevant Partnership Act).

- (2) Each partner has a separate \*cost base and \*reduced cost base for the partner's interest in each \*CGT asset of the partnership.
- (3) If a partner leaves a partnership, a remaining partner \*acquires a separate \*CGT asset to the extent that the remaining partner acquires a share of the departing partner's interest in a partnership asset.

Note: The remaining partners would not be affected if the departing partner sells its interests to an entity that was not a partner.

Example: (Indexation is ignored for the purpose of this example).

John, Wil and Patricia form a partnership (in equal shares).

John contributes a building (which is a pre-20 September 1985 asset) having a market value of \$200,000. Wil and Patricia contribute \$200,000 each in cash.

The partnership buys another asset for \$400,000.

John is taken to have disposed of  $\frac{2}{3}$  of his interest in the building ( $\frac{1}{3}$  to Wil and  $\frac{1}{3}$  to Patricia). His remaining  $\frac{1}{3}$  share in the building remains a pre-CGT asset. The  $\frac{1}{3}$  shares that Wil and Patricia acquire are post-CGT assets.

Wil retires from the partnership when the partnership assets have a market value of \$1,200,000 (\$500,000 for the building and \$700,000 for the other asset). John and Patricia pay Wil \$400,000 for his interest in the partnership.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Wil has a capital gain of \$100,000 on the building and \$100,000 on the other asset. John and Patricia each acquire an additional  $\frac{1}{6}$  interest in the partnership assets. These additional interests are separate assets and post-CGT assets.

- (4) If a new partner is admitted to a partnership:
- (a) the new partner \*acquires a share (according to the partnership agreement, or partnership law if there is no agreement) of each partnership asset; and
  - (b) the existing partners are treated as having \*disposed of part of their interest in each partnership asset to the extent that the new partner has acquired it.

Example: (Indexation is ignored for the purpose of this example).

Lyn and Barry form a partnership, each contributing \$15,000 to its capital. The partnership buys land for \$30,000.

The land increases in value to \$300,000.

Andrew is admitted as an equal partner, paying Lyn and Barry \$50,000 each to acquire a  $\frac{1}{3}$  share in the land. His cost base is \$100,000.

Lyn and Barry have each disposed of  $\frac{1}{3}$  of their interest in the land. Each has a cost base for that interest of \$5,000, and capital proceeds of \$50,000, leaving them with a capital gain of \$45,000 each on Andrew's admission to the partnership.

The land is sold for its market value.

Andrew has no capital gain on the land.

Lyn and Barry have disposed of their remaining  $\frac{2}{3}$  original interest in the land for capital proceeds of \$100,000, leaving each of them with a capital gain of:

$$\$100,000 - \left( \$15,000 - \$5,000 \right) = \$90,000$$

## Subdivision 106-B—Bankruptcy and liquidation

### Table of sections

106-30	Effect of bankruptcy
106-35	Effect of liquidation

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 106-30

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**106-30 Effect of bankruptcy**

- (1) For the purposes of this Part and Part 3-3, the vesting of the individual's \*CGT assets in the trustee under the *Bankruptcy Act 1966* or under a similar foreign law is ignored.
- (2) This Part and Part 3-3 apply to an act done in relation to a \*CGT asset of an individual in these circumstances as if it had been done by the individual:
  - (a) as a result of the bankruptcy of the individual by the Official Trustee in Bankruptcy or a registered trustee, or the holder of a similar office under a \*foreign law;
  - (b) by a trustee under a personal insolvency agreement made under Part X of the *Bankruptcy Act 1966*, or under a similar instrument under a foreign law;
  - (c) by a trustee as a result of an arrangement with creditors under that Act or a foreign law.

**106-35 Effect of liquidation**

This Part and Part 3-3 apply to an act done by a liquidator of a company, or the holder of a similar office under a \*foreign law, as if the act had been done instead by the company.

Example: Ben, a liquidator of a company, sells a CGT asset of the company. Any capital gain or loss is made by the company, not by Ben.

**Subdivision 106-C—Absolutely entitled beneficiaries**

**106-50 Absolutely entitled beneficiaries**

If you are absolutely entitled to a \*CGT asset as against the trustee of a trust (disregarding any legal disability), this Part and Part 3-3 apply to an act done by the trustee in relation to the asset as if you had done it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 106-D—Security holders**

### **106-60 Acts by security holders**

This Part and Part 3-3 apply to an act done by an entity (or an \*agent of the entity) in relation to a \*CGT asset for the purpose of enforcing or giving effect to a security, charge or encumbrance the entity holds over the asset as if the act had been done instead by the person who provided the security.

Example: A lender sells property under a power of sale after the failure of the owner of the property to make payments on the loan. Any capital gain or loss is made by the owner of the property, not the lender.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 108—CGT assets**

### **Table of Subdivisions**

	Guide to Division 108
108-A	What a CGT asset is
108-B	Collectables
108-C	Personal use assets
108-D	Separate CGT assets

### **Guide to Division 108**

#### **108-1 What this Division is about**

This Division defines the various categories of assets that are relevant to working out your capital gains and losses. They are CGT assets, collectables and personal use assets.

It also tells you how capital losses from collectables and personal use assets are relevant to working out your net capital gain or loss.

It also sets out when land, buildings and capital improvements are taken to be separate CGT assets.

#### **Subdivision 108-A—What a CGT asset is**

##### **Table of sections**

108-5	CGT assets
108-7	Interest in CGT assets as joint tenants

#### **108-5 CGT assets**

- (1) A *CGT asset* is:
- (a) any kind of property; or
  - (b) a legal or equitable right that is not property.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(2) To avoid doubt, these are *CGT assets*:

- (a) part of, or an interest in, an asset referred to in subsection (1);
- (b) goodwill or an interest in it;
- (c) an interest in an asset of a partnership;
- (d) an interest in a partnership that is not covered by paragraph (c).

Note 1: Examples of CGT assets are:

- land and buildings;
- shares in a company and units in a unit trust;
- options;
- debts owed to you;
- a right to enforce a contractual obligation;
- foreign currency.

Note 2: An asset is not a CGT asset if the asset was last acquired before 26 June 1992 and was not an asset for the purposes of former Part IIIA of the *Income Tax Assessment Act 1936*: see section 108-5 of the *Income Tax (Transitional Provisions) Act 1997*.

### **108-7 Interest in CGT assets as joint tenants**

Individuals who own a \*CGT asset as joint tenants are treated as if they each owned a separate CGT asset constituted by an equal interest in the asset and as if each of them held that interest as a tenant in common.

Note: Section 128-50 contains rules that apply when a joint tenant dies.

### **Subdivision 108-B—Collectables**

#### **Table of sections**

108-10	Losses from collectables to be offset only against gains from collectables
108-15	Sets of collectables
108-17	Cost base of a collectable

### **108-10 Losses from collectables to be offset only against gains from collectables**

- (1) In working out your \*net capital gain or \*net capital loss for the income year, \*capital losses from \*collectables can be used only to reduce \*capital gains from collectables.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 108-15**

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Note: You choose the order in which you reduce your capital gains from collectables by your capital losses from collectables.

Example: Your capital gains from collectables total \$200 and your capital losses from collectables total \$400. You have other capital gains of \$500. You have a net capital gain of \$500 and a net capital loss from collectables of \$200.

The losses from collectables cannot be used to reduce the \$500 capital gain.

(2) A *collectable* is:

- (a) \*artwork, jewellery, an antique, or a coin or medallion; or
- (b) a rare folio, manuscript or book; or
- (c) a postage stamp or first day cover;

that is used or kept mainly for your (or your \*associate's) personal use or enjoyment.

(3) These are also *collectables*:

- (a) an interest in any of the things covered by subsection (2); or
- (b) a debt that arises from any of those things; or
- (c) an option or right to \*acquire any of those things.

Note: Collectables acquired for \$500 or less are exempt. However, you get an exemption for an interest in one only if the market value of all the interests combined is \$500 or less: see Subdivision 118-A.

(4) If some or all of a \*capital loss from a \*collectable cannot be applied in an income year, the unapplied amount can be applied in the next income year for which your \*capital gains from \*collectables exceed your \*capital losses (if any) from collectables.

Example: You have a capital gain from a collectable for the income year of \$200 and a capital loss from another collectable of \$600.

Your capital loss from one collectable reduces your capital gain from the other to zero. You cannot apply the remaining \$400 of the capital loss in this income year, but you can apply it in a later income year.

(5) If you have 2 or more unapplied \*net capital losses from \*collectables, you must apply them in the order you made them.

**108-15 Sets of collectables**

(1) This section sets out what happens if:

- (a) you own \*collectables that are a set; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) they would ordinarily be \*disposed of as a set; and
- (c) you dispose of them in one or more transactions for the purpose of trying to obtain the exemption in section 118-10.

Example: You buy a set of 3 books for \$900. You apportion the \$900 among each book: see section 112-30. If the books are of equal value, you have acquired each one for \$300.

If you dispose of each book individually, you would ordinarily obtain the exemption in section 118-10, because you acquired each one for less than \$500.

- (2) The set of \*collectables is taken to be a single \*collectable and each of your \*disposals is a disposal of part of that collectable.

Example: To continue the example, the 3 books are taken to be a single collectable. You will not obtain the exemption in section 118-10, because you acquired the set for more than \$500.

You work out if you make a capital gain or loss from a disposal of part of an asset by comparing the capital proceeds from it with the cost base or reduced cost base (as appropriate) of the disposed part.

Note 1: Section 112-30 tells you how to apportion the cost base and reduced cost base of a CGT asset on a disposal of part of an asset.

Note 2: This section does not apply to a collectable you last acquired before 16 December 1995: see section 108-15 of the *Income Tax (Transitional Provisions) Act 1997*.

### **108-17 Cost base of a collectable**

In working out the \*cost base of a \*collectable, disregard the third element (about costs of ownership).

### **Subdivision 108-C—Personal use assets**

#### **Table of sections**

108-20	Losses from personal use assets must be disregarded
108-25	Sets of personal use assets
108-30	Cost base of a personal use asset

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 108-20 Losses from personal use assets must be disregarded

- (1) In working out your \*net capital gain or \*net capital loss for the income year, any \*capital loss you make from a \*personal use asset is disregarded.
- (2) A *personal use asset* is:
  - (a) a \*CGT asset (except a \*collectable) that is used or kept mainly for your (or your \*associate's) personal use or enjoyment; or
  - (b) an option or right to \*acquire a \*CGT asset of that kind; or
  - (c) a debt arising from a \*CGT event in which the \*CGT asset the subject of the event was one covered by paragraph (a); or
  - (d) a debt arising other than:
    - (i) in the course of gaining or producing your assessable income; or
    - (ii) from your carrying on a \*business.

Note 1: There is an exemption for a personal use asset you acquire for \$10,000 or less: see section 118-10.

Note 2: A debt arising from a CGT event involving a CGT asset kept mainly for your personal use and enjoyment is a personal use asset to prevent any loss arising from the debt being a normal capital loss.

- (3) A *personal use asset* does *not* include land, a \*stratum unit or a building or structure that is taken to be a separate \*CGT asset because of Subdivision 108-D.

### 108-25 Sets of personal use assets

- (1) This section sets out what happens if:
  - (a) you own \*personal use assets that are a set; and
  - (b) they would ordinarily be \*disposed of as a set; and
  - (c) you dispose of them in one or more transactions for the purpose of trying to obtain the exemption in section 118-10.
- (2) The set of \*personal use assets is taken to be a single \*personal use asset and each of your \*disposals is a disposal of part of that asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **108-30 Cost base of a personal use asset**

In working out the \*cost base of a \*personal use asset, disregard the third element (about the costs of ownership).

## **Subdivision 108-D—Separate CGT assets**

### **Guide to Subdivision 108-D**

#### **108-50 What this Subdivision is about**

For CGT purposes, there are:

- exceptions to the common law principle that what is attached to the land is part of the land; and
- special rules about buildings and adjacent land; and
- rules about when a capital improvement to a CGT asset is treated as a separate CGT asset.

Note: In addition to the circumstances set out in this Subdivision, separate asset treatment can apply under section 124-595 (about a roll-over for a Crown lease), section 124-725 (about a roll-over for a prospecting or mining entitlement) and sections 124-895, 124-915 and 124-920 (about roll-overs for FSR transitions).

### **Table of sections**

#### **Operative provisions**

108-55	When is a building a separate asset from land?
108-60	Depreciating asset that is part of a building is a separate asset
108-65	Land adjacent to land acquired before 20 September 1985
108-70	When is a capital improvement a separate asset?
108-75	Capital improvements to CGT assets for which a roll-over may be available
108-80	Deciding if capital improvements are related to each other
108-85	Meaning of improvement threshold

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### 108-55 When is a building a separate asset from land?

- (1) A building or structure on land that you \*acquired *on or after* 20 September 1985 is taken to be a separate \*CGT asset from the land if one of these balancing adjustment provisions applies to the building or structure (whether or not there is a balancing adjustment):
- (a) for \*depreciating assets—Subdivision 40-D; or
  - (b) for research and development—section 73B, 73BF or 73BM of the *Income Tax Assessment Act 1936*.

Example: You construct a timber mill building on land you own. The building is subject to a balancing adjustment on its disposal, loss or destruction. It is taken to be a separate CGT asset from the land.

- (2) A building or structure that is constructed on land that you \*acquired *before* 20 September 1985 is taken to be a separate \*CGT asset from the land if:
- (a) you entered into a contract for the construction on or after that day; or
  - (b) if there is no contract—the construction started on or after that day.

Example: You bought a block of land with a building on it on 10 August 1984. On 1 December 1999 you construct another building on the land. The other building is taken to be a separate CGT asset from the land.

### 108-60 Depreciating asset that is part of a building is a separate asset

A \*depreciating asset that is part of a building or structure is taken to be a separate \*CGT asset from the building or structure.

Example: You own a factory from which you carry on a business. You install rest rooms for your employees. The plumbing fixtures and fittings are depreciating assets. These are taken to be a separate CGT asset from the factory.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 108-65 Land adjacent to land acquired before 20 September 1985

Land that you \*acquire on or after 20 September 1985 that is adjacent to land (the *original land*) you acquired before that day is taken to be a separate \*CGT asset from the original land if it and the original land are amalgamated into one title.

Example: On 1 April 1984 you bought a block of land. On 1 June 1999 you bought another block of land adjacent to the first block. You amalgamate the titles to the 2 blocks into 1 title.

The second block is treated as a separate CGT asset. You can make a capital gain or loss from it if you sell the whole area of land.

### 108-70 When is a capital improvement a separate asset?

#### *Improvements to land*

- (1) A capital improvement to land is taken to be a separate \*CGT asset from the land if one of the balancing adjustment provisions set out in subsection 108-55(1) applies to the improvement (whether or not there is a balancing adjustment).

Example: You own land that you use for pastoral operations. You build some fences that are destroyed by fire. The fences are depreciating assets and are subject to a balancing adjustment on their destruction under Division 40. The fences are taken to be a separate CGT asset from the land.

#### *Unrelated improvements to pre-CGT assets*

- (2) A capital improvement to a \*CGT asset (the *original asset*) that you \*acquired *before* 20 September 1985 (that is not related to any other capital improvement to the asset) is taken to be a separate \*CGT asset if its \*cost base (assuming it were a separate CGT asset) when a CGT event happens (except one that happens because of your death) in relation to the original asset is:
  - (a) more than the \*improvement threshold for the income year in which the event happened; and
  - (b) more than 5% of the \*capital proceeds from the event.

Example: In 1983 you bought a boat. In 1999 you install a new mast (a capital improvement) for \$30,000. Later, you sell the boat for \$150,000.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 108-70

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If the cost base of the improvement in the sale year is \$41,000 and the improvement threshold for that year is \$96,000, the improvement will not be treated as a separate asset.

Note 1: Section 108-80 sets out the factors for deciding whether capital improvements are related to each other.

Note 2: If the improvement is a separate asset, the capital proceeds from the event must be apportioned between the original asset and the improvement: see section 116-40.

*Related improvements to pre-CGT assets*

- (3) Capital improvements to a \*CGT asset (the *original asset*) that you \*acquired *before* 20 September 1985 that are related to each other are taken to be a separate \*CGT asset if the total of their \*cost bases (assuming each one were a separate CGT asset) when a \*CGT event happens in relation to the original asset is:
- (a) more than the \*improvement threshold for the income year in which the event happened; and
  - (b) more than 5% of the \*capital proceeds from the event.

Note: If the improvements are a separate asset, the capital proceeds from the event must be apportioned between the original asset and the improvements: see section 116-40.

*Some improvements not relevant*

- (4) This section does not apply to a capital improvement:
- (a) that took place under a contract that you entered into before 20 September 1985; or
  - (b) if there is no contract—that started or occurred before that day.
- (5) Subsections (2) and (3) do not apply if the capital improvement is made to:
- (a) a \*Crown lease; or
  - (b) a \*prospecting entitlement or \*mining entitlement; or
  - (c) a \*statutory licence; or
  - (d) a \*depreciating asset to which Subdivision 124-K applies.

Note: Section 108-75 deals with this situation.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (6) This section does not apply to a capital improvement consisting of repairs to or restoration of a \*CGT asset \*acquired before 20 September 1985 in circumstances where there is a roll-over under Subdivision 124-B.

**108-75 Capital improvements to CGT assets for which a roll-over may be available**

- (1) This section is relevant only if a \*CGT event happens in relation to a \*CGT asset that is:
- (a) a \*Crown lease; or
  - (b) a \*prospecting entitlement or \*mining entitlement; or
  - (c) a \*statutory licence; or
  - (d) a \*depreciating asset to which Subdivision 124-K applies.

You must have \*acquired it before 20 September 1985.

Note: Division 124 treats you as having acquired a CGT asset before that day in some situations.

- (2) There are possible consequences if there has been one or more capital improvements to:
- (a) the \*CGT asset the subject of the \*CGT event; or
  - (b) any \*CGT assets of the same kind that were in existence before the CGT asset and came to an end where a roll-over was obtained under a provision set out in this table:

<b>Roll-over provisions</b>		
<b>Item</b>	<b>For this CGT asset:</b>	<b>Roll-over is obtained under this provision:</b>
1	A *Crown lease	Subdivision 124-J
2	A prospecting or mining entitlement	Subdivision 124-L
3	A *statutory licence	Subdivision 124-C or 124-O
4	A *depreciating asset	Subdivision 124-K

Note: Roll-overs under former sections 160ZWA, 160ZZF, 160ZZPE and 160ZWC of the *Income Tax Assessment Act 1936* are also relevant: see section 108-75 of the *Income Tax (Transitional Provisions) Act 1997*.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 108-75

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Example: In 1984 you acquired a commercial fishing licence. In 1986 you paid \$62,000 to get an extra right (a capital improvement) attached to the licence.

In June 1999 the licence expired and you got a new licence. You obtained a roll-over for the old licence expiring. In April 2000 you sold the new fishing licence for \$200,000.

- (3) Any capital improvement that is not related to another capital improvement is taken to be a separate \*CGT asset if its \*cost base (assuming it were a separate CGT asset) when the \*CGT event happens is:
- (a) more than the \*improvement threshold for the income year in which the event happened; and
  - (b) more than 5% of the \*capital proceeds from the event.

Example: To continue the example, suppose the cost base of the right is \$101,000 and the improvement threshold for the 1999-2000 income year is \$96,000.

Since the cost base of the right is more than the improvement threshold and more than 5% of the capital proceeds, the right is taken to be a separate CGT asset.

Note 1: Section 108-80 sets out the factors for deciding whether capital improvements are related to each other.

Note 2: If the improvement is a separate asset, the capital proceeds from the event must be apportioned between the asset and the improvement: see section 116-40.

- (4) Any capital improvements that are related to each other are taken to be a separate \*CGT asset if the total of their \*cost bases (assuming each one were a separate CGT asset) when the \*CGT event happens is:
- (a) more than the \*improvement threshold for the income year in which the event happened; and
  - (b) more than 5% of the \*capital proceeds from the event.

Note: If the improvements are a separate asset, the capital proceeds from the event must be apportioned between the asset and the improvements: see section 116-40.

- (5) This section does not apply to any capital improvement:
- (a) that took place under a contract that you entered into before 20 September 1985; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) if there is no contract—that started or occurred before that day.

### **108-80 Deciding if capital improvements are related to each other**

In deciding whether capital improvements are related to each other, the factors to be considered include:

- (a) the nature of the \*CGT asset to which the improvements are made; and
- (b) the nature, location, size, value, quality, composition and utility of each improvement; and
- (c) whether an improvement depends in a physical, economic, commercial or practical sense on another improvement; and
- (d) whether the improvements are part of an overall project; and
- (e) whether the improvements are of the same kind; and
- (f) whether the improvements are made within a reasonable period of time of each other.

### **108-85 Meaning of improvement threshold**

- (1) The *improvement threshold* for the 1997-98 income year is \$89,992.
- (2) The \*improvement threshold is indexed annually.  
Note: Subdivision 960-M shows you how to index amounts.
- (3) The Commissioner must publish before the beginning of each \*financial year the \*improvement threshold for that year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 109—Acquisition of CGT assets**

### **Table of Subdivisions**

	Guide to Division 109
109-A	Operative rules
109-B	Signposts to other acquisition rules

### **Guide to Division 109**

#### **109-1 What this Division is about**

This Division sets out the ways in which you can *acquire* a CGT asset and the time of acquisition.

The time of acquisition is important for indexation, and for the exemption of assets acquired *before* 20 September 1985.

Generally, you *acquire* a CGT asset when you become its owner. You can also *acquire* a CGT asset:

- as a result of a CGT event happening: see section 109-5; or
- in other circumstances: see section 109-10.

This Division also directs you to special acquisition rules in other Divisions.

### **Subdivision 109-A—Operative rules**

#### **Table of sections**

109-5	General acquisition rules
109-10	When you <i>acquire</i> a CGT asset without a CGT event
109-15	Exceptions

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 109-5 General acquisition rules

- (1) In general, you **acquire** a \*CGT asset when you become its owner. In this case, the time when you \*acquire the asset is when you become its owner.
- (2) This table sets out specific rules for the circumstances in which, and the time at which, you **acquire** a \*CGT asset as a result of a \*CGT event happening.

Note: The full list of CGT events is in section 104-5.

<b>Acquisition rules (CGT events)</b>		
<b>Event Number</b>	<b>In these circumstances:</b>	<b>You acquire the asset at this time:</b>
A1 (case 1)	An entity *disposes of a CGT asset to you (except where you compulsorily acquire it)	when the disposal contract is entered into or, if none, when the entity stops being the asset's owner
A1 (case 2)	You compulsorily acquire a *CGT asset from another entity	the earliest of: (a) when you paid compensation to the entity; or (b) when you became the asset's owner; or (c) when you entered the asset under the power of compulsory acquisition; or (d) when you took possession of it under that power
B1	You enter into an agreement to obtain the use and enjoyment of a *CGT asset	when you first obtain the use and enjoyment of the asset (unless title does not pass to you at or before the end of the agreement)
D1	An entity creates contractual or other rights in you	when the contract is entered into or the right created
D2	An entity grants an option to you	when the option is granted
D3	An entity grants you a right to receive *ordinary income from mining	when the contract is entered into or, if none, when the right is granted

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 109-5

<b>Acquisition rules (CGT events)</b>		
<b>Event Number</b>	<b>In these circumstances:</b>	<b>You acquire the asset at this time:</b>
D4	You enter into a * conservation covenant as a covenantee	when the covenant is entered into
E1	An entity creates a trust over a *CGT asset and you are the trustee	when the trust is created
E2	An entity transfers a *CGT asset to a trust and you are the trustee	when the asset is transferred
E3	A trust over a *CGT asset is converted to a unit trust and you are the trustee	when the trust is converted
E5	You as beneficiary under a trust become absolutely entitled to a *CGT asset of the trust as against the trustee (disregarding any legal disability)	when you become absolutely entitled
E6	Trustee *disposes of a *CGT asset of the trust to you to satisfy a right you had to receive *ordinary income from the trust	when the *disposal occurs
E7	Trustee *disposes of a *CGT asset of the trust to you to satisfy your interest, or part of it, in trust capital	when the *disposal occurs
E8	Beneficiary under a trust *disposes of its interest, or part of it, in trust capital to you	when disposal contract is entered into or, if none, when beneficiary stops being interest's owner
E9	An entity creates a trust over future property and you are the trustee	when the entity makes the agreement to create the trust
F1	A lessor grants a lease to you, or renews or extends a lease	for grant of lease—when the contract is entered into or, if none, at the start of lease; for lease renewal or extension—at the start of renewal or extension

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Acquisition rules (CGT events)**

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Event Number	In these circumstances:	You acquire the asset at this time:
F2	A lessor grants a lease to you, or renews or extends a lease, and term is at least 50 years	for grant of lease—when lessor grants the lease; for lease renewal or extension—at the start of renewal or extension
K3	An individual dies and a *CGT asset of the individual *passes to you (as a tax advantaged entity)	when the individual dies
K6	A *CGT event happens to *shares or an interest in a trust you own	when the other CGT event happens

Note 1: For CGT events E1, E2 and E3, if the circumstances specified in the second column of the table happened to an asset before 12 January 1994, there may be no acquisition: see section 109-5 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 2: The acquisition rule for CGT event E9 in the table does not apply to you as trustee if the agreement to create the trust was made before 12 noon on 12 January 1994: see section 109-5 of the *Income Tax (Transitional Provisions) Act 1997*.

**109-10 When you *acquire* a CGT asset without a CGT event**

This table sets out some specific rules for the circumstances in which, and the time at which, you *acquire* a \*CGT asset otherwise than as a result of a \*CGT event happening.

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**Acquisition rules (no CGT event)**

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Item	In these circumstances	You acquire the asset at this time:
1	You (or your *agent) construct or create a *CGT asset, and you own it when the construction is finished or the asset is created	when the construction, or work that resulted in the creation, started
2	A company issues or allots *equity interests or *non-equity shares in the company to you	when contract is entered into or, if none, when equity interests or non-equity shares issued or allotted
3	A trustee of a unit trust issues units in the trust to you	when contract is entered into or, if none, when units issued

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 109-15

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**109-15 Exceptions**

You do not *acquire* a \*CGT asset if the asset was \*disposed of:

- (a) to provide or redeem a security; or
- (b) because of the vesting of the asset in a trustee under the *Bankruptcy Act 1966* or under a similar \*foreign law; or
- (c) because of the vesting of the asset in a liquidator of a company, or the holder of a similar office under a foreign law.

**Subdivision 109-B—Signposts to other acquisition rules**

**Table of sections**

109-50	Effect of this Subdivision
109-55	Other acquisition rules
109-60	Acquisition rules outside this Part and Part 3-3

**109-50 Effect of this Subdivision**

This Subdivision is a \*Guide.

**109-55 Other acquisition rules**

This table sets out other acquisition rules in this Part and Part 3-3. Some of the rules have effect only for limited purposes.

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<b>Other acquisition rules</b>			
<b>Item</b>	<b>In these circumstances</b>	<b>You acquire the asset at this time:</b>	<b>See:</b>
1	A CGT asset devolves to you as legal personal representative of a deceased individual	when the individual died	section 128-15
2	A CGT asset passes to you as beneficiary in the estate of a deceased individual	when the individual died	sections 128-15 and 128-25

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Other acquisition rules**

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Item	In these circumstances	You acquire the asset at this time:	See:
3	A surviving joint tenant acquires deceased joint tenant's interest in a CGT asset	when the deceased died	section 128-50
4	You get only a partial exemption under Subdivision 118-B for a CGT event happening to a CGT asset that is a dwelling, but you would have got a full exemption if the CGT event had happened just before the first time the dwelling was used for that purpose	at that time	section 118-192
5	The trustee of a deceased estate acquires a dwelling under the deceased's will for you to occupy, and you obtain an interest in it	when the trustee acquired it	section 118-210
6	You obtain a replacement-asset roll-over for replacing an asset you acquired <i>before</i> 20 September 1985	<i>before</i> 20 September 1985	Divisions 122 and 124
6A	A new owner obtains a replacement-asset roll-over for replacing an asset that the original owner acquired <i>before</i> 20 September 1985	<i>before</i> 20 September 1985	sections 124-915 and 124-920

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 109** Acquisition of CGT assets

Section 109-55

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**Other acquisition rules**

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<b>Item</b>	<b>In these circumstances</b>	<b>You acquire the asset at this time:</b>	<b>See:</b>
7	You obtain a replacement-asset roll-over for a Crown lease, or a prospecting or mining entitlement that is renewed or replaced and part of the new entitlement relates to a part of the old one that you acquired <i>before 20 September 1985</i>	<i>before 20 September 1985</i> (for that part of the new entitlement that relates to the pre-CGT part of the old one)	sections 124-595 and 124-725
7A	You obtain a replacement-asset roll-over in relation to an FSR transition and a replacement asset or part of a replacement asset relates to an original asset that you acquired <i>before 20 September 1985</i>	<i>before 20 September 1985</i> (for that replacement asset or that part of a replacement asset that relates to a pre-CGT original asset)	section 124-895
7B	A new owner obtains a replacement-asset roll-over in relation to an FSR transition and a replacement asset or part of a replacement asset relates to an original asset that the original owner acquired <i>before 20 September 1985</i>	<i>before 20 September 1985</i> (for that replacement asset or that part of a replacement asset that relates to a pre-CGT original asset)	sections 124-915 and 124-920
8	You obtain a same-asset roll-over for a CGT asset the transferor acquired <i>before 20 September 1985</i>	<i>before 20 September 1985</i>	Subdivision 124-N and Divisions 122 and 126

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Other acquisition rules**

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<b>Item</b>	<b>In these circumstances</b>	<b>You acquire the asset at this time:</b>	<b>See:</b>
8A	There is a same-asset roll-over for a CGT event that happens to a CGT asset (acquired <i>on or after</i> 20 September 1985) because the trust deed of a fund is changed and you are the fund that owns the asset after the CGT event	at the time of the CGT event	Subdivision 126-C
8B	There is a same-asset roll-over for a CGT event that happens to a CGT asset	when the entity that owned the asset before the roll-over acquired it	section 115-30
8C	You obtain a replacement-asset roll-over for replacing a CGT asset	when you acquired the original asset involved in the roll-over	section 115-30
8D	A CGT asset devolves to you as legal personal representative of a deceased individual	when the deceased acquired the asset (unless it was a pre-CGT asset just before his or her death)	section 115-30
8E	A CGT asset passes to you as beneficiary in the estate of a deceased individual	when the deceased acquired the asset (unless it was a pre-CGT asset just before his or her death)	section 115-30
8F	A surviving joint tenant acquires a deceased joint tenant's interest in a CGT asset	when the deceased acquired the interest	section 115-30

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 109** Acquisition of CGT assets

Section 109-55

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**Other acquisition rules**

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<b>Item</b>	<b>In these circumstances</b>	<b>You acquire the asset at this time:</b>	<b>See:</b>
9	A company or trustee of a unit trust issues you with bonus equities and no amount is included in your assessable income	if the original equities are post-CGT assets, or are pre-CGT assets and fully paid—when you acquired the original equities; or if the original equities are pre-CGT assets and you had to pay an amount for the bonus equities—when the liability to pay arose	section 130-20
10	You own shares in a company or units in a unit trust and you exercise rights to acquire new equities in the company or trust	for the rights if you acquired them from the company or trustee—when you acquired the original equities; or for the new equities—when you exercise the rights	section 130-40
11	You acquire shares in a company or units in a unit trust by converting a convertible interest	when the conversion of the convertible interest happened	section 130-60
11A	You acquire shares in a company in exchange for the disposal of an exchangeable interest, and the disposal of the exchangeable interest was to: (a) the issuer of the exchangeable interest; or (b) a connected entity of the issuer of the exchangeable interest	when the disposal of the exchangeable interest happened	section 130-105

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Other acquisition rules**

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<b>Item</b>	<b>In these circumstances</b>	<b>You acquire the asset at this time:</b>	<b>See:</b>
11B	You acquire shares in a company in exchange for the redemption of an exchangeable interest	when the redemption of the exchangeable interest happened	section 130-105
12	You acquire a share or right under an employee share scheme from an employee share trust	at the time you first acquired a beneficial interest in the share or right	section 115-30
13	You (as a lessee of land) acquire the reversionary interest of the lessor and there is no roll-over for the acquisition	if term of lease was for 99 years or more—when the lease was granted or assigned to you; or if term of lease less than 99 years—when the reversionary interest acquired	section 132-15
14	You acquired a CGT asset before 20 September 1985, and there has since been a change in the majority underlying interests in the asset	at the time of the change	Division 149
15	You become an Australian resident (but not a temporary resident) and you owned a CGT asset that you acquired on or after 20 September 1985 and that was not *taxable Australian property	when you become an Australian resident (but not a temporary resident)	section 855-45

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 109-60

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**Other acquisition rules**

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<b>Item</b>	<b>In these circumstances</b>	<b>You acquire the asset at this time:</b>	<b>See:</b>
15A	You are a temporary resident, you then cease to be a temporary resident (but remain, at that time, an Australian resident) and you owned a CGT asset that you acquired on or after 20 September 1985 and that was not *taxable Australian property	when you cease to be a temporary resident	section 768-955
16	A trust of which you are trustee becomes a resident trust for CGT purposes and you owned a CGT asset that you acquired on or after 20 September 1985 and that was not *taxable Australian property	when the trust becomes a resident trust for CGT purposes	section 855-50
17	There is a roll-over under Subdivision 126-B for a CGT event and you are the company owning the roll-over asset just after the roll-over and you stop being a 100% subsidiary of another company in the wholly-owned group	when you stop	section 104-175

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**109-60 Acquisition rules outside this Part and Part 3-3**

This table sets out other acquisition rules outside this Part and Part 3-3.

Provisions of the *Income Tax Assessment Act 1936* are **in bold**.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Other acquisition rules</b>			
<b>Item</b>	<b>In these circumstances:</b>	<b>The asset is acquired at this time:</b>	<b>See:</b>
1	CGT event happens to Cocos (Keeling) Islands asset	30 June 1991	<b>section 24P</b>
2	Lender acquires a replacement security	before 20 September 1985	<b>subsection 26BC(6A)</b>
3	Trust ceases to be a resident trust for CGT purposes and there is an attributable taxpayer	when it ceases	<b>section 102AAZBA</b>
4	CGT event happens to CGT asset in connection with the demutualisation of an insurance company	on the demutualisation resolution day	<b>section 121AS</b>
5	CGT event happens to assets of NSW State Bank	at the first taxing time	<b>section 121EN</b>
6	You own shares in a company that stops being a PDF	just after it stops	<b>section 124ZR</b>
7	You acquire a number of shares that results in you obtaining a 10% (threshold) interest in a SME	when you obtained the threshold interest	<b>section 128TI</b>
8	A CGT asset of a CFC (that it owned on its commencing day)	on the CFC's commencing day	<b>section 411</b>
9	A CGT asset is owned by a tax exempt entity and it becomes taxable	at the transition time	<b>section 57-25 of Schedule 2D</b>
10	CGT event happens to CGT asset in connection with the demutualisation of a mutual entity other than an insurance company or health insurer	on the demutualisation resolution day	<b>Division 326 of Schedule 2H</b>
11	You stop holding an item as trading stock	when you stop	paragraph 70-110(b)

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules  
**Part 3-1** Capital gains and losses: general topics  
**Division 109** Acquisition of CGT assets

Section 109-60

<b>Other acquisition rules</b>			
<b>Item</b>	<b>In these circumstances:</b>	<b>The asset is acquired at this time:</b>	<b>See:</b>
12	CGT event happens to 30 June 1988 asset of complying superannuation fund, complying approved deposit fund or pooled superannuation trust	30 June 1988	section 295-90
13	You are issued with a share or right under a demutualisation of a health insurer	the time the share or right is issued	sections 315-80, 315-210 and 315-260
14	You are transferred a share or right by a lost policy holders trust under a demutualisation of a health insurer	the time the share or right is issued	sections 315-145, 315-210 and 315-260
15	A CGT asset is transferred to or from a life insurance company's complying superannuation/FHSA asset pool	at the time of the transfer	Division 320
16	A CGT asset is transferred to or from the segregated exempt assets of a life insurance company	at the time of the transfer	Division 320
17	Entity becomes a subsidiary member of a consolidated group	at the time it becomes a subsidiary member	701-5
18	Entity ceases to be a subsidiary member of a consolidated group	at the time it ceases	701-40

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Division 110—Cost base and reduced cost base**

### **Table of Subdivisions**

	Guide to Division 110
110-A	Cost base
110-B	Reduced cost base

### **Guide to Division 110**

#### **110-1 What this Division is about**

This Division tells you how to work out the cost base and reduced cost base of a CGT asset. You need to know these to work out if you make a capital gain or loss from most CGT events.

#### **Table of sections**

110-5	Modifications to general rules
110-10	Rules about cost base not relevant for some CGT events

#### **110-5 Modifications to general rules**

After you have read the general rules, you need to know if there are any modifications to them. Division 112 lists each situation that may result in a modification and tells you where you can find the detailed provisions for each situation.

#### **110-10 Rules about cost base not relevant for some CGT events**

This table sets out each CGT event for which you do not need to know what the cost base or reduced cost base of a CGT asset is to work out if you make a capital gain or loss. The section describing the event tells you what amount is relevant instead.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 110** Cost base and reduced cost base

Section 110-10

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**Rules about cost base not relevant for some CGT events**

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<b>Event number</b>	<b>Description of event:</b>	<b>See section:</b>
C3	End of option to acquire shares etc.	104-30
D1	Creating contractual or other rights	104-35
D2	Granting an option	104-40
D3	Granting a right to income from mining	104-45
E9	Creating a trust over future property	104-105
F1	Granting a lease	104-110
F3	Lessor pays lessee to get lease changed	104-120
F5	Lessor receives payment for changing lease	104-130
H1	Forfeiture of deposit	104-150
H2	Receipt for event relating to a CGT asset	104-155
J5	Failure to acquire replacement asset and to incur fourth element expenditure after a roll-over	104-197
J6	Cost of acquisition of replacement asset or amount of fourth element expenditure, or both, not sufficient to cover disregarded capital gain	104-198
K2	Bankrupt pays amount in relation to debt	104-210
K7	Balancing adjustment event happens to depreciating asset	104-235
K9	Carried interests	104-255
K10	You make a forex realisation gain covered by item 1 of the table in subsection 775-70(1)	104-260
K11	You make a forex realisation loss covered by item 1 of the table in subsection 775-75(1)	104-265
K12	Foreign hybrid loss exposure adjustment	104-270
L1	Reduction under section 705-57 in tax cost setting amount of assets of entity becoming subsidiary member of consolidated group or MEC group	104-500
L2	Amount remaining after step 3A etc. of joining allocable cost amount is negative	104-505

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Rules about cost base not relevant for some CGT events**

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Event number	Description of event:	See section:
L3	Tax cost setting amounts for retained cost base assets exceed joining allocable cost amount	104-510
L4	No reset cost base assets against which to apply excess of net allocable cost amount on joining	104-515
L5	Amount remaining after step 4 of leaving allocable cost amount is negative	104-520
L6	Errors in tax cost setting amounts for entity joining consolidated group or MEC group	104-525
L7	Discharged amount of liability differs from amount for allocable cost amount purposes	104-530
L8	Reduction in tax cost setting amount for reset cost base assets on joining cannot be allocated	104-535

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**Subdivision 110-A—Cost base**

**Table of sections**

110-25	General rules about <i>cost base</i>
110-35	Incidental costs
110-36	Indexation

**What does *not* form part of the cost base**

110-37	Expenditure forming part of cost base or element
110-38	Exclusions
110-40	Assets acquired <i>before</i> 7.30 pm on 13 May 1997
110-43	Partnership interests acquired <i>before</i> 7.30 pm on 13 May 1997
110-45	Assets acquired <i>after</i> 7.30 pm on 13 May 1997
110-50	Partnership interests acquired <i>after</i> 7.30 pm on 13 May 1997
110-53	Exceptions to application of sections 110-45 and 110-50
110-54	Debt deductions disallowed by thin capitalisation rules

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**110-25 General rules about *cost base***

- (1) The *cost base* of a \*CGT asset consists of 5 elements.

Note 1: You need to keep records of each element: see Division 121.

Note 2: The cost base is reduced by net input tax credits: see section 103-30.

Note 3: An amount that makes up all or part of an element of the cost base of an asset may be determined under section 230-505, if the amount is provided for acquiring a thing, and you start or cease to have a Division 230 financial arrangement as consideration for the acquisition of the thing.

*5 elements of the cost base*

- (2) The first element is the total of:

- (a) the money you paid, or are required to pay, in respect of \*acquiring it; and
- (b) the \*market value of any other property you gave, or are required to give, in respect of acquiring it (worked out as at the time of the acquisition).

Note 1: There are special rules for working out when you are required to pay money or give other property: see section 103-15.

Note 2: This element is replaced with another amount in many situations: see Division 112.

- (3) The second element is the \*incidental costs you incurred. These costs can include giving property: see section 103-5.

Note: There is one situation to do with options in which the incidental costs relating to the CGT event are modified: see section 112-85.

- (4) The third element is the costs of owning the \*CGT asset you incurred (but only if you \*acquired the asset after 20 August 1991). These costs include:

- (a) interest on money you borrowed to acquire the asset; and
- (b) costs of maintaining, repairing or insuring it; and
- (c) rates or land tax, if the asset is land; and
- (d) interest on money you borrowed to refinance the money you borrowed to acquire the asset; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (e) interest on money you borrowed to finance the capital expenditure you incurred to increase the asset's value.

These costs can include giving property: see section 103-5.

Note: This element does not apply to personal use assets or collectables: see sections 108-17 and 108-30.

- (5) The fourth element is capital expenditure you incurred:
  - (a) the purpose or the expected effect of which is to increase or preserve the asset's value; or
  - (b) that relates to installing or moving the asset.

The expenditure can include giving property: see section 103-5.

Note: There are 3 situations involving leases in which this element is modified: see section 112-80.

- (5A) Subsection (5) does not apply to capital expenditure incurred in relation to goodwill.
- (6) The fifth element is capital expenditure that you incurred to establish, preserve or defend your title to the asset, or a right over the asset. (The expenditure can include giving property: see section 103-5.)

*Assume a CGT event for purposes of working out cost base at a particular time*

- (12) If:
  - (a) it is necessary to work out the \* cost base at a particular time; and
  - (b) a \*CGT event does not happen in relation to the asset at or just after that time;

assume, for the purpose only of working out the cost base at the particular time, that such an event does happen in relation to the asset at or just after that time.

Note 1: For example, in order to apply subsection 110-37(1), it is necessary for there to be a CGT event.

Note 2: The assumption that a CGT event happens does not have any consequence beyond that stated. For example, it does *not* mean that the asset is afterwards to be treated as having been acquired at the particular time with a first element of cost base equal to all of its former cost base elements.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



### 110-35 Incidental costs

- (1) There are a number of *incidental costs* you may have incurred. Except for the *ninth*, they are costs you may have incurred:
  - (a) to \*acquire a \*CGT asset; or
  - (b) that relate to a \*CGT event.
- (2) The *first* is remuneration for the services of a surveyor, valuer, auctioneer, accountant, broker, \*agent, consultant or legal adviser. However, remuneration for professional advice about the operation of this Act is not included unless it is provided by a \*recognised tax adviser.

Note: Expenditure for professional advice about taxation incurred before 1 July 1989 does *not* form part of the cost base of a CGT asset: see section 110-35 of the *Income Tax (Transitional Provisions) Act 1997*.
- (3) The *second* is costs of transfer.
- (4) The *third* is stamp duty or other similar duty.
- (5) The *fourth* is:
  - (a) if you \*acquired a \*CGT asset—costs of advertising or marketing to find a seller; or
  - (b) if a \*CGT event happened—costs of advertising or marketing to find a buyer.
- (6) The *fifth* is costs relating to the making of any valuation or apportionment for the purposes of this Part or Part 3-3.
- (7) The *sixth* is search fees relating to a \*CGT asset.
- (8) The *seventh* is the cost of a conveyancing kit (or a similar cost).
- (9) The *eighth* is borrowing expenses (such as loan application fees and mortgage discharge fees).
- (10) The *ninth* is expenditure that:
  - (a) is incurred by the \*head company of a \*consolidated group to an entity that is not a \*member of the group; and
  - (b) reasonably relates to a \*CGT asset \*held by the head company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(c) is incurred because of a transaction that is between members of the group.

**Example:** Land is transferred by one company to another company. The companies are members of a consolidated group. Stamp duty is payable as a result of the transaction.

The transaction has no taxation consequences because of its intra-group nature.

The stamp duty is included in the cost base and reduced cost base of the land.

**Note:** Intra-group assets are not held by the head company because of the operation of subsection 701-1(1) (the single entity rule). An example of an intra-group asset is a debt owed by a member of the consolidated group to another member of the group.

### 110-36 Indexation

- (1) The *cost base* of a \*CGT asset \*acquired at or before 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999 also includes indexation of the elements of the cost base (except the third element) if the requirements of Division 114 are met.
- (2) However, for the purposes of working out the \*capital gain of an entity mentioned in an item of the table from a \*CGT event happening after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999, the *cost base* includes indexation only if the entity mentioned in the item chooses that the cost base includes indexation.

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#### Choice of indexation

Item	For the purposes of working out the capital gain of this entity:	The cost base includes indexation only if this entity chooses so:
1	An individual	The individual
2	A *complying superannuation entity	The trustee of the complying superannuation entity
3	A trust	The trustee of the trust
4	A listed investment company	The company

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Chapter 3 Specialist liability rules

### Part 3-1 Capital gains and losses: general topics

#### Division 110 Cost base and reduced cost base

##### Section 110-37

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Note 1: Section 103-25 specifies when you must make the choice and provides that the way you prepare your income tax return is evidence of your choice.

Note 2: For each CGT asset whose cost base you need to work out, you may either choose to index the expenditure included in the asset's cost base or not make that choice. If you do not choose to index the expenditure, your net capital gain includes only part of your capital gain on the CGT asset as worked out on the basis of the cost base not including indexation and reduced by your capital losses.

- (3) Also, for the purpose of working out the \*capital gain of a \*life insurance company from a \*CGT event happening after 30 June 2000 in respect of a \*CGT asset that is a \*complying superannuation/FHSA asset, the **cost base** includes indexation only if the life insurance company chooses that the cost base includes indexation.

Note: Section 110-25 of the *Income Tax (Transitional Provisions) Act 1997* provides that, in working out the capital gain from a CGT event after 11.45 am on 21 September 1999 and before 1 July 2000 in respect of an asset of a life insurance company or registered organisation, the cost base includes indexation only if the company or organisation chooses it.

### What does *not* form part of the cost base

#### 110-37 Expenditure forming part of cost base or element

- (1) If a later provision of this Subdivision says that:
- (a) certain expenditure does not form part of the \*cost base of a \*CGT asset; or
  - (b) the cost base is reduced by certain expenditure;
- the expenditure is initially included in the cost base, which is then reduced by the amount of the expenditure just before a \*CGT event happens in relation to the asset.

Note: This has the effect of recognising in the cost base any indexed component relating to the expenditure.

- (2) On the other hand, if such a provision says that:
- (a) certain expenditure does not form part of one or more *elements* of the \*cost base of a \*CGT asset; or
  - (b) one or more *elements* of the cost base are reduced by certain expenditure;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the expenditure is never included in the relevant elements of the cost base.

Note: This has the effect of *not* recognising to any extent this expenditure in the cost base.

### **110-38 Exclusions**

- (1) Expenditure does *not* form part of any element of the **cost base** to the extent that section 26-54 prevents it being deducted (even if some other provision also prevents it being deducted).

Note: Section 26-54 prevents deductions for expenditure related to certain offences.

- (2) Expenditure does *not* form part of any element of the **cost base** to the extent that it is a \*bribe to a foreign public official or a \*bribe to a public official.

- (3) Expenditure does *not* form part of any element of the **cost base** to the extent that it is in respect of providing \*entertainment.

- (4) Expenditure does *not* form part of any element of the **cost base** to the extent that section 26-5 prevents it being deducted (even if some other provision also prevents it being deducted).

Note: Section 26-5 denies deductions for penalties.

- (5) Expenditure does *not* form part of any element of the **cost base** to the extent that section 26-47 prevents it being deducted.

Note: Section 26-47 denies deductions for the excess of boat expenditure over boat income.

### **110-40 Assets acquired before 7.30 pm on 13 May 1997**

- (1) This section prevents some expenditure from forming part of one or more elements of the \*cost base of a \*CGT asset \*acquired at or before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997. (The expenditure mentioned in this section can include giving property: see section 103-5.)

Note: For the cost base of a partnership interest you acquire at or before that time, see section 110-43.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 110-43

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- (2) Expenditure does *not* form part of the second or third element of the *cost base* to the extent that you have deducted or can deduct it.
- (3) Expenditure does *not* form part of any element of the *cost base* to the extent of any amount you have received as \*recoupment of it, except so far as the amount is included in your assessable income.
- (4) Subsection (2) does not apply in relation to amounts that you have deducted or can deduct under Division 243.

**110-43 Partnership interests acquired *before* 7.30 pm on 13 May 1997**

- (1) This section prevents some expenditure from forming part of one or more elements of the \*cost base of your interest in a \*CGT asset of a partnership if you \*acquired the interest at or before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997. (The expenditure mentioned in this section can include giving property: see section 103-5.)
- (2) Expenditure does *not* form part of the second or third element of the *cost base* to the extent that you, or a partnership in which you are or were a partner, have deducted or can deduct it.
- (3) Expenditure does *not* form part of any element of the *cost base* to the extent of any amount that you, or a partnership in which you are or were a partner, have received as \*recoupment of the expenditure, except so far as the amount is included in your assessable income or the partnership's assessable income.
- (4) Subsection (2) does not apply in relation to amounts that you have deducted or can deduct under Division 243.

**110-45 Assets acquired *after* 7.30 pm on 13 May 1997**

- (1) This section prevents some expenditure from forming part of the \*cost base, or of an element of the cost base, of a \*CGT asset \*acquired after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997. (The expenditure mentioned in this section can include giving property: see section 103-5.)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

For the cost base of interests in partnership assets acquired after that time, see section 110-50.

For exceptions to the application of this section, see section 110-53.

- (1A) This section also applies to expenditure incurred after 30 June 1999 on land or a building if:
- (a) the land or building was \*acquired at or before the time mentioned in subsection (1); and
  - (b) the expenditure forms part of the fourth element of the \*cost base of the land or building.

*Deductible expenditure excluded from second and third elements*

- (1B) Expenditure does *not* form part of the second or third element of the **cost base** to the extent that you have deducted or can deduct it.

*Other deductible expenditure*

- (2) Expenditure (except expenditure excluded by subsection (1B)) does *not* form part of the **cost base** to the extent that you have deducted or can deduct it for an income year, except so far as:
- (a) the deduction has been reversed by an amount being included in your assessable income for an income year by a provision of this Act (outside this Part and Part 3-3 and Division 243); or
  - (b) the deduction is under Division 243; or
  - (b) the deduction would have been so reversed apart from a provision listed in the table (relief from including a balancing charge in your assessable income).

Note: In the table, provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

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**Provisions for relief from including a balancing charge in your assessable income**

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<b>Item</b>	<b>Provision</b>	<b>Subject matter</b>
1	section 40-340	Roll-over relief for *depreciating asset

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Provisions for relief from including a balancing charge in your assessable income**

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Item	Provision	Subject matter
2	section 40-365	Involuntary disposal of *depreciating asset
3	<b>Section 73E</b>	Research and development activity expenditure

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*Recouped expenditure*

- (3) Expenditure does *not* form part of any element of the **cost base** to the extent of any amount you have received as \*recoupment of it, except so far as the amount is included in your assessable income.

*Capital expenditure by previous owner that you can deduct after acquisition*

- (4) The **cost base** is reduced to the extent that you have deducted or can deduct for an income year capital expenditure incurred by another entity in respect of the \*CGT asset. (This rule does not apply so far as the deduction is covered by paragraph (2)(a) or (b).)

Example: Under Division 43 you can deduct expenditure incurred by a previous owner of capital works you own.

*Landcare and water facility expenditure giving rise to a tax offset*

- (5) Expenditure does *not* form part of the **cost base** to the extent that you choose a \*tax offset for it under the former section 388-55 (about the landcare and water facility tax offset) instead of deducting it.

*Heritage conservation expenditure giving rise to a tax offset*

- (6) Expenditure does *not* form part of the **cost base** to the extent that:
- (a) it is eligible heritage conservation expenditure (as determined under former section 159UO of the *Income Tax Assessment Act 1936*); and
  - (b) you could have deducted it for an income year under any of these Divisions (about capital works):
    - (i) Division 43 of this Act;
    - (ii) former Division 10C or 10D of Part III of that Act;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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but for the exclusions in paragraph 43-70(2)(h) of this Act and former subsections 124ZB(4) and 124ZG(5) of that Act.

Note: Because eligible heritage conservation expenditure is the subject of a tax offset, it is also not deductible.

### **110-50 Partnership interests acquired *after 7.30 pm on 13 May 1997***

- (1) This section prevents some expenditure from forming part of the \*cost base, or of an element of the cost base, of your interest in a \*CGT asset of a partnership if you \*acquired the interest after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997. (The expenditure mentioned in this section can include giving property: see section 103-5.)

For exceptions to the application of this section, see section 110-53.

- (1A) This section also applies to expenditure incurred after 30 June 1999 on land or a building if:
- (a) the land or building was \*acquired at or before the time mentioned in subsection (1); and
  - (b) the expenditure forms part of the fourth element of the \*cost base of the land or building.

#### *Deductible expenditure excluded from second and third elements*

- (1B) Expenditure does *not* form part of the second or third element of the **cost base** to the extent that you, or a partnership in which you are or were a partner, have deducted or can deduct it.

#### *Other deductible expenditure*

- (2) Expenditure (except expenditure excluded by subsection (1B)) does *not* form part of the **cost base** to the extent that you, or a partnership in which you are or were a partner, have deducted or can deduct it for an income year, except so far as:
- (a) the deduction has been reversed by an amount being included in your assessable income for an income year, or in the assessable income of a partnership in which you are or were a partner, by a provision of this Act (outside this Part and Part 3-3 and Division 243); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 110** Cost base and reduced cost base

Section 110-50

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Note: Division 20 contains some of the provisions that reverse deductions. Section 20-5 lists some others.

- (ab) the deduction is under Division 243; or
- (b) the deduction would have been so reversed apart from a provision listed in the table in subsection 110-45(2) (relief from including a balancing charge in your assessable income).

*Recouped expenditure*

- (3) Expenditure does *not* form part of any element of the **cost base** to the extent of any amount that you, or a partnership in which you are or were a partner, have received as \*recoupment of it, except so far as the amount is included in your assessable income or the partnership's assessable income.

*Capital expenditure by previous owner of the asset*

- (4) The **cost base** is reduced to the extent that you, or a partnership in which you are or were a partner, have deducted or can deduct for an income year capital expenditure incurred by another entity in respect of the \*CGT asset. (This rule does not apply so far as the deduction is covered by paragraph (2)(a) or (b).)

Example: Under Division 43 an entity can deduct expenditure incurred by a previous owner of capital works that the entity owns.

*Landcare and water facility expenditure giving rise to a tax offset*

- (5) Expenditure does *not* form part of the **cost base** to the extent that you choose a \*tax offset for it under the former section 388-55 (about the landcare and water facility tax offset) instead of deducting it.

*Heritage conservation expenditure giving rise to a tax offset*

- (6) Expenditure does *not* form part of the **cost base** to the extent that:
  - (a) it is eligible heritage conservation expenditure (as determined under former section 159UO of the *Income Tax Assessment Act 1936*); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) you, or a partnership in which you are or were a partner, could have deducted it for an income year under any of these Divisions (about capital works):
- (i) Division 43 of this Act;
  - (ii) former Division 10C or 10D of Part III of that Act;
- but for the exclusions in paragraph 43-70(2)(h) of this Act and former subsections 124ZB(4) and 124ZG(5) of that Act.

Note: Because eligible heritage conservation expenditure is the subject of a tax offset, it is also not deductible.

### **110-53 Exceptions to application of sections 110-45 and 110-50**

- (1) Subsection 110-45(2), (4), (5) or (6) or 110-50(2), (4), (5) or (6) does not prevent expenditure from forming part of the *cost base* to the extent that the deduction mentioned in that subsection could reasonably be regarded as arising before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997, or as relating to a period before that time.
- (2) Subsections 110-45(5) and (6) and 110-50(5) and (6) do not apply to expenditure incurred before the day on which the Bill that became the *Taxation Laws Amendment Act (No. 1) 1999* was introduced into the House of Representatives.

### **110-54 Debt deductions disallowed by thin capitalisation rules**

Expenditure does *not* form part of the third element of the *cost base* to the extent that Division 820 (Thin capitalisation rules) prevented or prevents you, or a partnership in which you are or were a partner, from deducting it.

### **Subdivision 110-B—Reduced cost base**

#### **Table of sections**

110-55	General rules about <i>reduced cost base</i>
110-60	Reduced cost base for partnership assets

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 110-55 General rules about *reduced cost base*

- (1) The *reduced cost base* of a \*CGT asset consists of 5 elements. It does *not* include indexation of those elements.

Note: The reduced cost base is reduced by net input tax credits: see section 103-30.

#### *5 elements of the reduced cost base*

- (2) All of the elements (except the third one) of the *reduced cost base* of a \*CGT asset are the same as those for the \*cost base.
- (3) The third element is:
- (a) any amounts worked out under whichever of the following subparagraphs applies:
    - (i) if Division 58 does not apply to the asset—any amount included in your assessable income for any income year because of a balancing adjustment for the asset;
    - (ii) if Division 58 applies to the asset and an amount has been included in your assessable income for an income year because of a balancing adjustment for the asset—any part of that amount that was attributable to amounts you have deducted or can deduct for the decline in value of the asset; and
  - (b) any amount that would have been so included apart from any of these (which provide relief from including a balancing charge in your assessable income):
    - (i) section 40-365; or
    - (ii) any of these former sections—section 42-285, 42-290 or 42-293; or
    - (iii) former subsection 59(2A) or (2D) of the *Income Tax Assessment Act 1936*.

#### *What does not form part of the reduced cost base*

- (4) The *reduced cost base* does not include an amount to the extent that you have deducted or can deduct it (including because of a balancing adjustment) or could have deducted apart from paragraph 43-70(2)(h).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: That paragraph excludes from deductibility under Division 43 expenditure that qualifies for the heritage conservation rebate.

- (5) The **reduced cost base** does not include an amount that you could have deducted for a \*CGT asset had you used it wholly for the \*purpose of producing assessable income.
- (6) Expenditure does *not* form part of the **reduced cost base** to the extent of any amounts you have received as \*recoupment of it. However, this rule does not apply to the extent that the amounts are included in your assessable income.
- (6A) Expenditure does *not* form part of the **reduced cost base** to the extent that you chose a \*tax offset for it under the former section 388-55 (about the landcare and water facility tax offset) instead of deducting it.
- (7) If your \*CGT asset is a \*share in a company, its **reduced cost base** is reduced by the amount calculated under subsection (8) if:
- (aa) you are a \*corporate tax entity; and
  - (a) the company makes a distribution to you under an \*arrangement; and
  - (b) an amount (the **attributable amount**) representing the distribution or part of it is reasonably attributable to profits \*derived by the company before you <sup>c</sup>acquired the share; and
  - (c) you are entitled to a \*tax offset under Division 207 on the part of the distribution that is a \*dividend (the **dividend amount**); and
  - (d) you were a \*controller (for CGT purposes) of the company, or an \*associate of such a controller, when the arrangement was made or carried out.
- (8) The amount of the reduction is:
- $$\text{Attributable amount} \times \frac{\text{Amount of *tax offset}}{\text{Dividend amount} \times \text{*Corporate tax rate}}$$
- (9) The **reduced cost base** is to be reduced by any amount that you have deducted or can deduct, or could have deducted except for Subdivision 170-D, as a result of a \*CGT event that happens in relation to a \*CGT asset. However, do not make a reduction for an

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 110-55

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amount that relates to a cost that could never have formed part of the reduced cost base or is excluded from the reduced cost base as a result of another provision of this section.

- (9A) Expenditure does *not* form part of the **reduced cost base** to the extent that section 26-54 prevents it being deducted (even if some other provision also prevents it being deducted).

Note: Section 26-54 prevents deductions for expenditure related to certain offences.

- (9B) Expenditure does *not* form part of the **reduced cost base** to the extent that it is a \*bribe to a foreign public official or a \*bribe to a public official.

- (9C) Expenditure does *not* form part of the **reduced cost base** to the extent that it is in respect of providing \*entertainment.

- (9D) Expenditure does *not* form part of the **reduced cost base** to the extent that section 26-5 prevents it being deducted (even if some other provision also prevents it being deducted).

Note: Section 26-5 denies deductions for penalties.

- (9E) Expenditure does *not* form part of the **reduced cost base** to the extent that section 26-47 prevents it being deducted.

Note: Section 26-47 denies deductions for the excess of boat expenditure over boat income.

*Assume a CGT event for purposes of working out reduced cost base at a particular time*

- (10) If:

- (a) it is necessary to work out the \*reduced cost base at a particular time; and
- (b) a \*CGT event does not happen in relation to the asset at or just after that time;

assume, for the purpose only of working out the reduced cost base at the particular time, that such an event does happen in relation to the asset at or just after that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **110-60 Reduced cost base for partnership assets**

- (1) The third element of an entity's **reduced cost base** for its interest in a \*CGT asset of a partnership is the entity's share of:
  - (a) any amounts worked out under whichever of the following subparagraphs applies:
    - (i) if Division 58 does not apply to the asset—any amount included in the assessable income of the partnership for any income year because of a balancing adjustment for the asset;
    - (ii) if Division 58 applies to the asset and an amount has been included in the assessable income of the partnership for an income year because of a balancing adjustment for the asset—any part of that amount that was attributable to amounts that the partnership has deducted or can deduct for depreciation of the asset; and
  - (b) any amount that would have been so included apart from any of these (which provide relief from including a balancing charge in your assessable income):
    - (i) section 40-365; or
    - (ii) any of these former sections—section 42-285, 42-290 or 42-293; or
    - (iii) former subsection 59(2A) or (2D) of the *Income Tax Assessment Act 1936*;calculated according to the entity's share in the partnership net income or net loss.
- (2) Expenditure does *not* form part of an entity's **reduced cost base** for its interest in a \*CGT asset of a partnership to the extent that a partnership in which the entity is or was a partner has deducted or can deduct it (including because of a balancing adjustment), or could have deducted it apart from paragraph 43-70(2)(h).
- (3) Expenditure does *not* form part of an entity's **reduced cost base** for its interest in a \*CGT asset of a partnership to the extent that a partnership in which the entity is or was a partner could have deducted an amount for the asset if it had used it wholly for the \*purpose of producing assessable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 110** Cost base and reduced cost base

Section 110-60

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- (4) Expenditure does not form part of an entity's *reduced cost base* for its interest in a \*CGT asset of a partnership to the extent of any amounts that a partnership in which the entity is or was a partner has received as \*recoupment of it and that are not included in the assessable income of the partnership.
- (4A) Expenditure does *not* form part of an entity's *reduced cost base* for its interest in a \*CGT asset of a partnership to the extent that the entity chose a \*tax offset for the expenditure under the former section 388-55 (about the landcare and water facility tax offset) instead of deducting it.
- (7) The *reduced cost base* of an entity's interest in a \*CGT asset of a partnership is to be reduced by the entity's share of any amount that the partnership has deducted or can deduct, or could have deducted except for Subdivision 170-D, as a result of a \*CGT event that happens in relation to the asset. However, a reduction is not to be made for an amount that relates to a cost that could never have formed part of the reduced cost base or is excluded from the reduced cost base as a result of another provision of this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 112—Modifications to cost base and reduced cost base**

### **Table of Subdivisions**

	Guide to Division 112
112-A	General modifications
112-B	Finding tables for special rules
112-C	Replacement-asset roll-overs
112-D	Same-asset roll-overs

### **Guide to Division 112**

#### **112-1 What this Division is about**

This Division tells you the situations that may modify the general rules about the cost base and reduced cost base of a CGT asset.

#### **112-5 Discussion of modifications**

- (1) Modifications can occur from the time you acquired the CGT asset to when a CGT event happens in relation to it.  
Note: You should keep records of the modifications: see Division 121.
- (2) Most modifications replace the first element (what you paid for a CGT asset) of the cost base and reduced cost base of the asset.
- (3) Subdivision 112-A contains operative provisions setting out the general situations that may result in a modification to the general rules.
- (4) Subdivision 112-B (which is a guide) has a number of tables (each one covering a specialist topic) that tell you each situation that *may* result in a modification to the general rules.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 112** Modifications to cost base and reduced cost base

Section 112-15

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- (5) Subdivision 112-C (which is a guide) explains what a *replacement-asset* roll-over is and how it can modify the cost base or reduced cost base.
- (6) Subdivision 112-D (which is a guide) explains what a *same-asset* roll-over is and how it can modify the cost base or reduced cost base.
- (7) Section 230-505 provides special rules for working out the amount of consideration for an asset if the asset is a \*Division 230 financial arrangement or a Division 230 financial arrangement is involved in that consideration.

**Subdivision 112-A—General modifications**

**Table of sections**

112-15	General rule for replacement modifications
112-20	Market value substitution rule
112-25	Split, changed or merged assets
112-30	Apportionment rules
112-35	Assumption of liability rule
112-37	Put options

**112-15 General rule for replacement modifications**

If a cost base modification replaces an element of the \*cost base of a \*CGT asset with an amount, this Part and Part 3-3 apply to you as if you had paid that amount.

Example: An individual pays \$10,000 to acquire an option. The individual dies and the option devolves to his legal personal representative, who exercises the option.

Section 134-1 applies to the legal personal representative as if the representative had paid \$10,000 for the option.

**112-20 Market value substitution rule**

- (1) The first element of your \*cost base and \*reduced cost base of a \*CGT asset you \*acquire from another entity is its \*market value (at the time of acquisition) if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) you did not incur expenditure to acquire it, except where your acquisition of the asset resulted from:
  - (i) \*CGT event D1 happening; or
  - (ii) another entity doing something that did not constitute a CGT event happening; or
- (b) some or all of the expenditure you incurred to acquire it cannot be valued; or
- (c) you did not deal at arm's length with the other entity in connection with the acquisition.

The expenditure can include giving property: see section 103-5.

- (2) Despite paragraph (1)(c), if:
  - (a) you did not deal at arm's length with the other entity; and
  - (b) your \*acquisition of the \*CGT asset resulted from another entity doing something that did not constitute a CGT event happening;

the \*market value is substituted only if what you paid to acquire the CGT asset was more than its market value (at the time of acquisition).

The payment can include giving property: see section 103-5.

- (3) There are some situations in which the rule in subsection (1) does not apply. They include the situations set out in this table:

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**Exceptions to the market value substitution rule**

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Item	You *acquired this CGT asset:	...in this situation:
1	A right to receive *ordinary income or *statutory income from a trust (except a unit trust or a trust that arises because of someone's death)	(a) you did not pay or give anything for the right; and (b) you did not acquire the right by way of an assignment from another entity
2	A decoration awarded for valour or brave conduct	you did not pay or give anything for it
3	A contractual or other legal or equitable right resulting from *CGT event D1 happening	you did not pay or give anything for it

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 112-25

**Exceptions to the market value substitution rule**

Item	You *acquired this CGT asset:	...in this situation:
4	Rights to *acquire: (a) *shares, or options to acquire *shares, in a company; or (b) units, or options to acquire units, in a unit trust; in a situation covered by Subdivision 130-B	you did not pay or give anything for the rights
5	A *share in a company or a right to *acquire a share or *debenture in a company	it was issued or allotted to you by the company and you did not pay or give anything for it
6	A unit in a unit trust or a right to *acquire a unit or debenture in a unit trust	it was issued to you by the trustee of the unit trust and you did not pay or give anything for it
7	A right to *dispose of a *share in a company	it was issued to you by the company and was exercised by you or by another entity who became the owner of the right

Note: Disregard subsections (2) and (3) for shares or units that you acquired before 16 August 1989: see section 112-20 of the *Income Tax (Transitional Provisions) Act 1997*.

**112-25 Split, changed or merged assets**

*Split or changed assets*

- (1) This section sets out what happens if:
- (a) a \*CGT asset (the **original asset**) is split into 2 or more assets (the **new assets**); or
  - (b) a \*CGT asset (also the **original asset**) changes in whole or in part into an asset (also the **new asset**) of a different nature;
- and you are the beneficial owner of the original asset and each new asset.

Example: You subdivide a block of land into 3 separate blocks. Each of those blocks is a *new asset*.

- (2) The splitting or change is not a \*CGT event.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) You work out the \*cost base and \*reduced cost base of each new asset as follows:

*Method statement*

- Step 1. Work out each element of the \*cost base and \*reduced cost base of the original asset at the time of the event referred to in subsection (1).
- Step 2. Apportion in a reasonable way each element to each new asset. The result is each corresponding element of the new asset's \*cost base and \*reduced cost base.

*Merged assets*

- (4) If 2 or more \*CGT assets (the *original assets*) are merged into a single asset (the *new asset*) and you are the beneficial owner of the original assets and the new asset:
- (a) the merger is not a \*CGT event; and
  - (b) each element of the \*cost base and \*reduced cost base of the new asset (at the time of the merging) is the sum of the corresponding elements of each original asset.

### **112-30 Apportionment rules**

*Apportionment on acquisition of an asset*

- (1) If you \*acquire a \*CGT asset because of a transaction and only part of the expenditure you incurred under the transaction relates to the acquisition of the asset, the first element of your \*cost base and \*reduced cost base of the asset is that part of the expenditure that is reasonably attributable to the acquisition of the asset.

The expenditure can include giving property: see section 103-5.

*Apportionment of expenditure in other elements*

- (1A) If you incur expenditure and only part of it relates to another element of the \*cost base or \*reduced cost base of a \*CGT asset, that element includes that part of the expenditure that is reasonably attributable to that element.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 112-35

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*Apportionment for CGT asset that was part of another asset*

- (2) The \*cost base and \*reduced cost base of a \*CGT asset is apportioned if a \*CGT event happens to some part of the asset, but not to the remainder of it.

Note: The full list of CGT events is in section 104-5.

- (3) The \*cost base for the \*CGT asset representing the part to which the \*CGT event happened is worked out using the formula:

$$\text{Cost base of the asset} \times \frac{\text{Capital proceeds for the CGT event happening to the part}}{\text{Those capital proceeds plus the market value of the remainder of the asset}}$$

The \*reduced cost base is worked out similarly.

- (4) The remainder of the \*cost base and \*reduced cost base of the asset is attributed to the part that remains.

Example: You acquire a truck for \$24,000 and sell its motor for \$9,000. Suppose the market value of the remainder of the truck is \$16,000.

Under subsection (3), the cost base of the motor is:

$$\$24,000 \times \frac{\$9,000}{\$9,000 + \$16,000} = \$8,640$$

Under subsection (4), the cost base of the remainder of the truck is:

$$\$24,000 - \$8,640 = \$15,360$$

- (5) However, an amount forming part of the \*cost base or \*reduced cost base of the asset is not apportioned if, on the facts, that amount is wholly attributable to the part to which the \*CGT event happened or to the remaining part.

**112-35 Assumption of liability rule**

If you \*acquire a \*CGT asset from another entity that is subject to a liability, the first element of your \*cost base and \*reduced cost base of the asset includes the amount of the liability you assume.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Example: You acquire a block of land for \$150,000. You pay \$50,000 and assume a liability for an outstanding mortgage of \$100,000. The first element of your cost base and reduced cost base is \$150,000.

Note: The first element of cost base is dealt with in subsection 110-25(2). The first element of reduced cost base is the same: see subsection 110-55(2).

### **112-37 Put options**

The first element of the \*cost base and \*reduced cost base of a right to \*dispose of a \*share in a company that you \*acquire as a result of \*CGT event D2 happening to the company is the sum of:

- (a) the amount that is included in your assessable income as ordinary income as a result of your acquisition of the right; and
- (b) the amount (if any) that you paid to acquire the right.

### **Subdivision 112-B—Finding tables for special rules**

#### **Table of sections**

112-40	Effect of this Subdivision
112-45	CGT events
112-48	Gifts acquired by associates
112-50	Main residence
112-53	Scrip for scrip roll-over
112-53AA	Statutory licences
112-53A	MDO roll-over
112-53B	Exchange of stapled ownership interests for units in a unit trust
112-54	Demerges
112-55	Effect of you dying
112-60	Bonus shares or units
112-65	Rights
112-70	Convertible interests
112-75	Employee share schemes
112-77	Exchangeable interests
112-80	Leases
112-85	Options
112-87	Residency
112-90	An asset stops being a pre-CGT asset
112-92	Demutualisation of certain entities

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Chapter 3 Specialist liability rules

### Part 3-1 Capital gains and losses: general topics

#### Division 112 Modifications to cost base and reduced cost base

##### Section 112-40

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- 112-95 Transfer of tax losses and net capital losses within wholly-owned groups of companies
- 112-97 Modifications outside this Part and Part 3-3

#### 112-40 Effect of this Subdivision

- (1) This Subdivision is a \*Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

- (2) It sets out which element of the cost base or reduced cost base of a CGT asset is affected by various situations.

#### 112-45 CGT events

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CGT events			
Event number	In this situation:	Element affected:	See section:
D4	A conservation covenant is entered into over land	The total cost base and reduced cost base	104-47
E1	A trust is created over a CGT asset	First element of cost base and reduced cost base	104-55
E2	A CGT asset is transferred to a trust	First element of cost base and reduced cost base	104-60
E4	A trustee makes a capital payment to you in relation to units or an interest in the trust	The total cost base and reduced cost base	104-70
F4	A lessee receives payment for changing lease	The total cost base	104-125
G1	A company makes a capital payment to you in relation to your shares	The total cost base and reduced cost base	104-135
G3	A liquidator or administrator declares shares or financial instruments to be worthless	The total cost base and reduced cost base	104-145

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**CGT events**

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<b>Event number</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
K8	Direct value shifts affecting your equity or loan interests in a company or trust	The total cost base and reduced cost base	Subdivision 725-D
J4	Trust fails to cease to exist after a roll-over under Subdivision 124-N	First element of cost base and reduced cost base	104-195

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**112-48 Gifts acquired by associates**

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**Gifts acquired by associates**

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	A gift of property is covered by subsection 118-60(1) or (2) and the property is later *acquired by an associate for less than market value	First element of cost base and reduced cost base	118-60

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**112-50 Main residence**

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**Main residence**

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	A dwelling that is your main residence begins to be used for the first time for the purpose of producing assessable income	The total cost base and reduced cost base	118-192

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 112** Modifications to cost base and reduced cost base

Section 112-53

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**112-53 Scrip for scrip roll-over**

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**Scrip for scrip roll-over**

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	Interest is acquired by an entity where there is a roll-over under Subdivision 124-M and there is a significant or common stakeholder under an arrangement	First element of cost base and reduced cost base	124-782
2	Equity or debt is acquired by an ultimate holding company under that arrangement from a member of its wholly-owned group	First element of cost base and reduced cost base	124-784
2A	Interest is acquired by an entity where there is a roll-over under Subdivision 124-M and the arrangement is taken to be a restructure	First element of cost base and reduced cost base	124-784B
3	You exchange an interest you acquired before 20 September 1985 for an interest in another entity	The total cost base and reduced cost base	124-800

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**112-53AA Statutory licences**

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**New statutory licence**

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	New statutory licences	First element of cost base and reduced cost base	124-150, 124-155 and 124-160

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 112-53A MDO roll-over

<b>MDO roll-over</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	Exchange of an interest in an MDO for an interest in another MDO	First element of cost base and reduced cost base	124-985

### 112-53B Exchange of stapled ownership interests for units in a unit trust

<b>Exchange of stapled ownership interests for units in a unit trust</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	Exchange of stapled ownership interests	First element of cost base and reduced cost base	124-1055 and 124-1060

### 112-54 Demergers

<b>Demergers</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	There is a roll-over under Subdivision 125-B after a demerger	First element of cost base and reduced cost base of new interests and remaining original interests	125-80
2	There is a CGT event under a demerger but no roll-over under Subdivision 125-B	First element of cost base and reduced cost base of new interests and remaining original interests	125-85
3	There is a cost base adjustment under Subdivision 125-B but no CGT event under a demerger	First element of cost base and reduced cost base of new interests and remaining original interests	125-90

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 112** Modifications to cost base and reduced cost base

Section 112-55

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**112-55 Effect of you dying**

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**Effect of an individual dying**

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	CGT asset devolves to the legal personal representative	First element of cost base and reduced cost base	128-15
2	CGT asset passes to a beneficiary	First element of cost base and reduced cost base	128-15
3	CGT asset passes to a trustee of a complying superannuation entity	First element of cost base and reduced cost base	128-25
4	Surviving joint tenant acquires deceased joint tenant's interest in CGT asset	First element of cost base and reduced cost base	128-50

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**112-60 Bonus shares or units**

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**Bonus shares or units**

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	A company issues you with bonus shares	First element of cost base and reduced cost base	130-20
2	A unit trust issues you with bonus units	First element of cost base and reduced cost base	130-20

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**112-65 Rights**

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**Exercise of rights**

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	You exercise rights to acquire shares, or options to acquire shares, in a company	First element of cost base and reduced cost base	130-40
2	You exercise rights to acquire units, or options to acquire units, in a unit trust	First element of cost base and reduced cost base	130-40

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 112-70 Convertible interests

<b>Convertible interests</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	You acquire shares, or units in a unit trust, by converting a convertible interest	First element of cost base and reduced cost base	130-60

### 112-75 Employee share schemes

<b>Employee share schemes</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	You acquire a share or right at a discount under an employee share scheme	First element of cost base and reduced cost base	130-80 130-83 130-85

### 112-77 Exchangeable interests

<b>Exchangeable interests</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	You acquire shares in a company in exchange for the disposal of an exchangeable interest, and the disposal of the exchangeable interest was to:  (a) the issuer of the exchangeable interest; or  (b) a connected entity of the issuer of the exchangeable interest	First element of cost base and reduced cost base	130-105

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 112** Modifications to cost base and reduced cost base

Section 112-80

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**Exchangeable interests**

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
2	You acquire shares in a company in exchange for the redemption of an exchangeable interest	First element of cost base and reduced cost base	130-105

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**112-80 Leases**

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**Leases**

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	A lessee incurs expenditure in obtaining the lessor's agreement to vary or waive a term of the lease	Fourth element of cost base and reduced cost base	132-1
2	A lessor pays an amount to the lessee for improvements made by the lessee to the property	Fourth element of cost base and reduced cost base	132-5
3	A lessor of a long-term lease incurs expenditure in obtaining the lessee's agreement to vary or waive a term of the lease or to forfeit or surrender the lease	Fourth element of cost base and reduced cost base	132-10
4	A lessee of land acquires the reversionary interest of the lessor	First element of cost base and reduced cost base	132-15

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## 112-85 Options

<b>Exercise of options</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	Grantee of option acquires the CGT asset the subject of the option	First element of cost base and reduced cost base	134-1
2	Grantor of option acquires the CGT asset the subject of the option	For the grantor—the first element of cost base and reduced cost base; For the grantee—the second element of cost base and reduced cost base	134-1

## 112-87 Residency

<b>Residency</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	An individual or company becomes an Australian resident (but not a temporary resident)	First element of cost base and reduced cost base	855-45
1A	A temporary resident ceases to be a temporary resident (but remains, at that time, an Australian resident)	First element of cost base and reduced cost base	768-955
2	A trust becomes a resident trust for CGT purposes	First element of cost base and reduced cost base	855-50

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 112** Modifications to cost base and reduced cost base

Section 112-90

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**112-90 An asset stops being a pre-CGT asset**

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<b>An asset stops being a pre-CGT asset</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	An asset of a non-public entity stops being a pre-CGT asset	The total cost base and reduced cost base	149-35
2	An asset of a public entity stops being a pre-CGT asset	The total cost base and reduced cost base	149-75

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**112-92 Demutualisation of certain entities**

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<b>Demutualisation of certain entities</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	Just before the mutual entity known in New Zealand as Tower Corporation ceased to be a mutual entity, you had membership rights in that entity	The total cost base and reduced cost base	118-550

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**112-95 Transfer of tax losses and net capital losses within wholly-owned groups of companies**

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<b>Transfer of tax losses and net capital losses within wholly-owned groups of companies</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	An amount of a tax loss is transferred and a company has a direct or indirect equity interest in the loss company	The total cost base and reduced cost base	170-210
2	An amount of a tax loss is transferred and a company has a direct or indirect debt interest in the loss company	The reduced cost base	170-210

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Transfer of tax losses and net capital losses within wholly-owned groups of companies**

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
3	An amount of a tax loss is transferred and a company has a direct or indirect equity or debt interest in the income company	The total cost base and reduced cost base	170-215
4	An amount of a net capital loss is transferred and a company has a direct or indirect equity interest in the loss company	The total cost base and reduced cost base	170-220
5	An amount of a net capital loss is transferred and a company has a direct or indirect debt interest in the loss company	The reduced cost base	170-220
6	An amount of a net capital loss is transferred and a company has a direct or indirect equity or debt interest in the gain company	The total cost base and reduced cost base	170-225

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**112-97 Modifications outside this Part and Part 3-3**

This table sets out other cost base modifications outside this Part and Part 3-3.

Provisions of the *Income Tax Assessment Act 1936* are **in bold**.

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**Modifications outside this Part and Part 3-3**

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<b>Item</b>	<b>In this situation</b>	<b>Element affected:</b>	<b>See:</b>
1	You stop holding an item as trading stock	First element of cost base and reduced cost base	Paragraph 70-110(b)
2	CGT event happens to Cocos (Keeling) Islands asset	First element of cost base and reduced cost base	<b>section 24P</b>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 112** Modifications to cost base and reduced cost base

Section 112-97

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<b>Item</b>	<b>In this situation</b>	<b>Element affected:</b>	<b>See:</b>
2A	Lender acquires a replacement security	First element of cost base and reduced cost base	<b>subsection 26BC(6B)</b>
3	CGT event happens by the borrower disposing of the borrowed security to a third party	First element of cost base and reduced cost base	<b>paragraph 26BC(9)(a)</b>
4	CGT event happens to replacement security and compensatory payment was incurred by the borrower	Second element of cost base and reduced cost base	<b>subsection 26BC(9A)</b>
5	CGT event happens to CGT asset in connection with the demutualisation of an insurance company	First element of cost base and reduced cost base	<b>section 121AS</b>
5A	CGT event happens to CGT asset in connection with the demutualisation of a mutual entity other than an insurance company or health insurer	First element of cost base and reduced cost base	<b>Division 326 of Schedule 2H</b>
6	CGT event happens to assets of NSW State Bank	First element of cost base and reduced cost base	<b>section 121EN</b>
7	Trust ceases to be a resident trust for CGT purposes and there is an attributable taxpayer	The total cost base and reduced cost base	<b>section 102AAZBA</b>
8	You own shares in a company that stops being a PDF	First element of cost base and reduced cost base	<b>section 124ZR</b>
9	You acquire a number of shares that results in you obtaining a 10% (threshold) interest in a SME	First element of cost base and reduced cost base	<b>section 128TI</b>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Modifications outside this Part and Part 3-3</b>			
<b>Item</b>	<b>In this situation</b>	<b>Element affected:</b>	<b>See:</b>
10	CGT event happens to CGT asset used in gold mining	First element of cost base and reduced cost base	section 112-100 of the <i>Income Tax (Transitional Provisions) Act 1997</i>
12	Shares in a holding company are cancelled	The total cost base and reduced cost base	<b>section 159GZZZH</b>
12A	You own an interest in infrastructure borrowing just before and just after the end of an exemption period	First element of cost base and reduced cost base	<b>section 159GZZZZE</b>
12B	Entity has interest in loss company immediately before alteration time	The total reduced cost base	sections 165-115ZA and 165-115ZB
13	CGT event happens to 30 June 1988 asset of a complying superannuation entity	First element of cost base and reduced cost base	section 295-85 of the <i>Income Tax (Transitional Provisions) Act 1997</i>
14	CGT event happens to CGT asset of complying superannuation fund, complying approved deposit fund or pooled superannuation trust	First element of cost base and reduced cost base	section 295-100 of the <i>Income Tax (Transitional Provisions) Act 1997</i>
15	A CGT asset of a CFC is taken into account in calculating its attributable income	First element of cost base and reduced cost base	<b>section 412</b>
16	A CGT asset of a CFC is taken into account in calculating its attributable income	First element of cost base and reduced cost base	<b>subsection 413(2)</b>
17	A CGT asset of a CFC is taken into account in calculating its attributable income	First element of cost base and reduced cost base	<b>subsection 413(3)</b>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 112** Modifications to cost base and reduced cost base

Section 112-97

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**Modifications outside this Part and Part 3-3**

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<b>Item</b>	<b>In this situation</b>	<b>Element affected:</b>	<b>See:</b>
18	A CGT asset of a CFC is taken into account in calculating its attributable income	First element of cost base and reduced cost base	<b>section 414</b>
19	A commercial debt is forgiven	The total cost base and reduced cost base of CGT assets of the debtor (except assets that are excluded assets under Schedule 2C)	<b>sections 245-175 to 245-190 of Schedule 2C</b>
20	A tax exempt entity becomes taxable	First element of cost base and reduced cost base	<b>section 57-25 of Schedule 2D</b>
20A	An entity becomes or ceases to be a foreign hybrid	The total cost base and reduced cost base	Sections 830-80 and 830-85
21	A CGT asset is transferred to or from a life insurance company's complying superannuation/FHSA asset pool	First element of cost base and reduced cost base	Division 320
22	A CGT asset is transferred to or from the segregated exempt assets of a life insurance company	First element of cost base and reduced cost base	Division 320
22A	A CGT event happens in relation to forestry interest in a forestry managed investment scheme for a subsequent participant	The total cost base and reduced cost base	Subsection 394-30(9)
22B	You start or cease to have a *Division 230 financial arrangement as consideration for the acquisition of a thing	All elements of cost base and reduced cost base	section 230-505
23	The arrangement period for the tax preferred use of an asset ends	The total cost base and reduced cost base	subsection 250-285(3)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Modifications outside this Part and Part 3-3</b>			
<b>Item</b>	<b>In this situation</b>	<b>Element affected:</b>	<b>See:</b>
24	An entity becomes a subsidiary member of a consolidated group	The total cost base and reduced cost base for the head company of the subsidiary's assets	Section 701-10
24A	An entity ceases to be a subsidiary member of a consolidated group	The total cost base and reduced cost base for the head company of membership interests in the subsidiary	Section 701-15
24B	An entity ceases to be a subsidiary member of a consolidated group	The total cost base and reduced cost base for the head company of liabilities owed by the subsidiary	Section 701-20
24C	An entity ceases to be a subsidiary member of a consolidated group and an asset becomes an asset of the entity because the single entity rule ceases to apply	The total cost base and reduced cost base for the entity of a liability owed to the entity	Section 701-45
24D	2 or more entities cease to be subsidiary members of a consolidated group	The total cost base and reduced cost base of the membership interests that one subsidiary member holds in another	Section 701-50
24E	Determining an asset's tax cost setting amount	The total cost base and reduced cost base of the asset	Section 701-55
24F	Eligible tier-1 company ceases to be a subsidiary member of a MEC group or a CGT event happens to a pooled interest in the company	The total cost base and reduced cost base	Section 719-565

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 112** Modifications to cost base and reduced cost base

Section 112-97

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**Modifications outside this Part and Part 3-3**

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<b>Item</b>	<b>In this situation</b>	<b>Element affected:</b>	<b>See:</b>
25	You make a forex realisation gain as a result of forex realisation event 4, and: (a) you incurred the obligation to pay foreign currency: (i) in return for the acquisition of a CGT asset; or (ii) as the second, third, fourth or fifth element of the cost base of a CGT asset; and (b) the foreign currency became due for payment within 12 months after the time when: (i) in the case of the acquisition of a CGT asset—you acquired the CGT asset; or (ii) in the case of the second, third, fourth or fifth element of the cost base of a CGT asset—you incurred the relevant expenditure	total cost base and reduced cost base	section 775-70

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Modifications outside this Part and Part 3-3**

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Item	In this situation	Element affected:	See:
26	You make a forex realisation loss as a result of forex realisation event 4, and: <ul style="list-style-type: none"> <li>(a) you incurred the obligation to pay foreign currency:                             <ul style="list-style-type: none"> <li>(i) in return for the acquisition of a CGT asset; or</li> <li>(ii) as the second, third, fourth or fifth element of the cost base of a CGT asset; and</li> </ul> </li> <li>(b) the foreign currency became due for payment within 12 months after the time when:                             <ul style="list-style-type: none"> <li>(i) in the case of the acquisition of a CGT asset—you acquired the CGT asset; or</li> <li>(ii) in the case of the second, third, fourth or fifth element of the cost base of a CGT asset—you incurred the relevant expenditure</li> </ul> </li> </ul>	total cost base and reduced cost base	section 775-75
27	You acquire foreign currency as a result of forex realisation event 2	first element of cost base and reduced cost base	section 775-125
28	On 10 May 2005, a foreign resident holds certain membership interests	first element of *cost base and *reduced cost base	subsection 855-25(3)
29	You are issued with an asset under a demutualisation of a health insurer	First element of cost base and reduced cost base	sections 315-80, 315-210 and 315-260

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Chapter 3 Specialist liability rules

### Part 3-1 Capital gains and losses: general topics

#### Division 112 Modifications to cost base and reduced cost base

##### Section 112-100

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#### Modifications outside this Part and Part 3-3

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Item	In this situation	Element affected:	See:
30	You are transferred an asset by a lost policy holders trust under a demutualisation of a health insurer	First element of cost base and reduced cost base	sections 315-145, 315-210 and 315-260
31	An entitlement arises under Division 2AA of Part II of the <i>Banking Act 1959</i> in connection with an account-holder's account with an ADI	The total cost base, and reduced cost base, of the entitlement and of the remainder (if any) of the right to be paid by the ADI in connection with the account	Section 253-15

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### Subdivision 112-C—Replacement-asset roll-overs

#### Table of sections

112-100	Effect of this Subdivision
112-105	What is a replacement-asset roll-over?
112-110	How is the cost base of the replacement asset modified?
112-115	Table of replacement-asset roll-overs

#### 112-100 Effect of this Subdivision

This Subdivision is a \*Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

#### 112-105 What is a replacement-asset roll-over?

- (1) A **replacement-asset roll-over** allows you to defer the making of a capital gain or a capital loss from one CGT event until a later CGT event happens.
- (2) It involves your ownership of one CGT asset (the **original asset**) ending and you acquiring another one (the **replacement asset**).
- (3) All replacement-asset roll-overs are set out in the table in section 112-115.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 112-110 How is the cost base of the replacement asset modified?

If you acquired the original asset on or after 20 September 1985:

- (a) the first element of the replacement asset's cost base is replaced by the original asset's cost base at the time you acquired the replacement asset; and
- (b) the first element of the replacement asset's reduced cost base is replaced by the original asset's reduced cost base at the time you acquired the replacement asset.

Note 1: Some replacement-asset roll-overs involve other rules that affect the cost base or reduced cost base of the replacement asset.

Note 2: If you acquired the original asset before 20 September 1985, you are taken to have acquired the replacement asset before that day: see Subdivision 124-A.

Note 3: The reduced cost base may be further modified if the replacement asset roll-over happens after a demerger: see section 125-170.

### 112-115 Table of replacement-asset roll-overs

This table sets out all the replacement-asset roll-overs and tells you where you can find more detail about each one.

Provisions of this Act are in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

<b>Replacement-asset roll-overs</b>		
<b>Item</b>	<b>For the rules about this roll-over:</b>	<b>See:</b>
1	Disposal or creation of assets by individual or trustee to a wholly-owned company	sections 122-40 to 122-65
2	Disposal or creation of assets by partners to a wholly-owned company	sections 122-150 to 122-195
4	Asset compulsorily acquired, lost or destroyed	Subdivision 124-B
5	New statutory licences	Subdivision 124-C
6	Strata title conversion	Subdivision 124-D
7	Exchange of shares in the same company or units in the same unit trust	Subdivision 124-E
8	Exchange of rights or options to acquire shares in a company or units in a unit trust	Subdivision 124-F

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 112** Modifications to cost base and reduced cost base

Section 112-135

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<b>Replacement-asset roll-overs</b>		
<b>Item</b>	<b>For the rules about this roll-over:</b>	<b>See:</b>
9	Exchange of shares in one company for shares in an interposed company	Subdivision 124-G
10	Exchange of units in a unit trust for shares in a company	Subdivision 124-H
11	Body is converted to an incorporated company	Subdivision 124-I
12	Crown leases	Subdivision 124-J
13	Depreciating assets	Subdivision 124-K
14	Prospecting and mining entitlements	Subdivision 124-L
14A	Scrip for scrip	Subdivision 124-M
14B	Exchange of interests in a trust as a result of a trust restructure	Subdivision 124-N
14BA	Replacement assets acquired during an FSR transition	Subdivision 124-O
14BB	Exchange of an interest in an MDO for an interest in another MDO	Subdivision 124-P
14BC	Exchange of stapled ownership interests	Subdivision 124-Q
14C	Demergers	Division 125
15	Disposal of a security under a securities lending arrangement	<b>section 26BC</b>

**Subdivision 112-D—Same-asset roll-overs**

**Table of sections**

112-135	Effect of this Subdivision
112-140	What is a same-asset roll-over?
112-145	How is the cost base of the asset modified?
112-150	Table of same-asset roll-overs

**112-135 Effect of this Subdivision**

This Subdivision is a \*Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 112-140 What is a same-asset roll-over?

A *same-asset roll-over* allows one entity (the *transferor*) to disregard a capital gain or loss it makes from disposing of a CGT asset to, or creating a CGT asset in, another entity (the *transferee*). Any gain or loss is deferred until another CGT event happens in relation to the asset (in the hands of the transferee).

All same-asset roll-overs are set out in the table in section 112-150.

### 112-145 How is the cost base of the asset modified?

If the transferor acquired the asset on or after 20 September 1985:

- (a) the first element of the asset's cost base (in the hands of the transferee) is replaced by the asset's cost base at the time the transferee acquired it; and
- (b) the first element of the asset's reduced cost base (in the hands of the transferee) is replaced by the asset's reduced cost base at the time the transferee acquired it.

Note 1: If the transferor acquired the asset before 20 September 1985, the transferee is taken to have acquired it before that day: see Subdivision 126-A.

Note 2: The reduced cost base may be further modified if the same asset roll-over happens after a demerger: see section 125-170.

### 112-150 Table of same-asset roll-overs

This table sets out all the same-asset roll-overs and tells you where you can find more detail about each one.

Same-asset roll-overs		
Item	For the rules about this roll-over:	See:
1	Transfer of a CGT asset from one spouse to the other because of a marriage or relationship breakdown	Subdivision 126-A
2	Transfer of a CGT asset from a company or trust to a spouse because of a marriage or relationship breakdown	Subdivision 126-A

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 112** Modifications to cost base and reduced cost base

Section 112-150

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<b>Same-asset roll-overs</b>		
<b>Item</b>	<b>For the rules about this roll-over:</b>	<b>See:</b>
3	Transfer of a CGT asset to a wholly-owned company	sections 122-70 and 122-75
4	Transfer of a CGT asset of a partnership to a wholly-owned company	Sections 122-200 and 122-205
4A	Transfer of a CGT asset of a trust to a company under a trust restructure	Subdivision 124-N
5	Transfer of a CGT asset between certain related companies	Subdivision 126-B
6	CGT event happens because a trust deed of a complying approved deposit fund, a complying superannuation fund or a fund that accepts worker entitlement contributions is changed	Subdivision 126-C
7	Transfer of a CGT asset from a small superannuation fund to another complying superannuation fund because of a marriage or relationship breakdown	Subdivision 126-D
8	Beneficiary becomes absolutely entitled to a share following a roll-over under Subdivision 124-M	Subdivision 126-E
9	Transfer of CGT assets between 30 June 2004 and 1 July 2006 from a superannuation fund whose trustee is not licensed to one or more superannuation funds whose trustees are or will be licensed	Subdivision 126-F

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Division 114—Indexation of cost base

### Table of sections

114-1	Indexing elements of cost base
114-5	When indexation relevant
114-10	Requirement for 12 months ownership
114-15	Cost base modifications
114-20	When expenditure is incurred for roll-overs

### 114-1 Indexing elements of cost base

In working out the \*cost base of a \*CGT asset \*acquired at or before 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999, index expenditure incurred at or before that time in each element. (The expenditure can include giving property: see section 103-5).

Note 1: Subdivision 960-M shows you how to index amounts. The indexation does not take account of inflation after 30 September 1999.

Note 2: You have to work out the cost base of a CGT asset if a CGT event happens in relation to it or if there is a cost base modification.

Note 3: You cannot index expenditure in the third element (costs of ownership): see subsection 960-275(4).

Note 4: Indexation is not relevant to expenditure incurred after 11.45 am on 21 September 1999 or any expenditure relating to a CGT asset acquired after that time.

Example: Peter purchases a building as an investment on 1 January 1994 for \$250,000. This amount forms the first element of his cost base.

He sold the building on 1 February 1996.

The index number for the quarter in which he sold the building (the March quarter 1996) is 119.0. The index number for the quarter in which he purchased the building (the March quarter 1994) is 110.4.

Applying section 960-275, work out the indexation factor as follows:

$$\frac{119.0}{110.4} = 1.078$$

The indexed first element of Peter's cost base is:

$$\$250,000 \times 1.078 = \$269,500$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 114-5

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**114-5 When indexation relevant**

- (1) Indexation is only relevant if the \*cost base of a \*CGT asset is relevant to a \*CGT event.

Note 1: The table in section 110-10 sets out the CGT events for which cost base is not relevant.

Note 2: Indexation is not relevant to the reduced cost base of a CGT asset.

*Indexation for some entities only if indexation chosen*

- (2) Indexation is *not* relevant to the \*capital gain of an entity mentioned in an item of the table from a \*CGT event happening after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999, unless the relevant entity mentioned in that item has chosen that the \*cost base include indexation:

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**Entities for which indexation is not relevant unless chosen**

<b>Item</b>	<b>Indexation is not relevant to the capital gain of this entity:</b>	<b>Unless this entity has chosen that the cost base include indexation:</b>
1	An individual	The individual
2	A *complying superannuation entity	The trustee of the complying superannuation entity
3	A trust	The trustee of the trust
4	A listed investment company	The company

- (3) Indexation is *not* relevant to the \*capital gain of a \*life insurance company from a \*CGT event happening after 30 June 2000 in respect of a \*CGT asset that is a \*complying superannuation/FHSA asset unless the company has chosen that the \*cost base include indexation.

Note: Section 114-5 of the *Income Tax (Transitional Provisions) Act 1997* provides that indexation is not relevant to the capital gain of a life insurance company or registered organisation from a CGT event after 11.45 am on 21 September 1999 and before 1 July 2000 unless the company or organisation chooses it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **114-10 Requirement for 12 months ownership**

- (1) You only index expenditure in the \*cost base of a \*CGT asset for a \*CGT event happening in relation to the asset if you, or the entity whose cost base is being worked out, had \*acquired the asset at or before 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999 and at least 12 months before the time of that \*CGT event.

Note: Generally, expenditure is indexed from when it is incurred: see subsection 960-275(2). The exception is when there is an acquisition that did not result from a CGT event. The first element in this case is indexed from when the expenditure was paid: see subsection 960-275(3).

- (2) There are 5 exceptions:
- one for \*CGT event E8: see subsection (3); and
  - one for roll-overs: see subsections (4) and (5); and
  - one for deceased estates: see subsection (6); and
  - one for a surviving joint tenant: see subsection (7); and
  - one for \*CGT event J1: see subsection (8).

#### *CGT event E8*

- (3) For \*CGT event E8, the beneficiary indexes the \*cost bases of the \*CGT assets of the trust only if the beneficiary \*acquired the \*CGT asset that is the interest in the trust capital at least 12 months before \*disposing of it.

It does not matter (for indexation from the beneficiary's point of view) how long the trustee owned any of the assets of the trust.

#### *Same asset roll-overs*

- (4) The 12 month rule is satisfied for both the entity that owned a \*CGT asset before a \*same-asset roll-over and the entity that owned it after the roll-over if the sum of their periods of ownership of the asset (and the sum of the periods of ownership of the asset of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 114-10

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other entities involved in an unbroken series of roll-overs) is at least 12 months.

*Replacement asset roll-overs*

- (5) The 12 month rule is satisfied for an entity obtaining a \*replacement-asset roll-over for a \*CGT event happening in relation to a \*CGT asset if the period of the entity's ownership of the original asset (and of other assets for an unbroken series of replacement-asset roll-overs) and of the replacement asset are together at least 12 months.

Example: Company A transfers a CGT asset to Company B (which is a member of the same wholly-owned group and a foreign resident) 5 months after acquiring it. There is a roll-over for the transfer under Subdivision 126-B.

Company B sells the asset 8 months after the transfer.

Company A indexes expenditure in its cost base up to the transfer. That cost base becomes the first element of Company B's cost base. Company B indexes its cost base from the transfer to the sale.

*Deceased estates*

- (6) If a \*CGT asset you owned just before dying devolves to your \*legal personal representative or \*passes to a beneficiary in your estate, the 12 month rule applies to the legal personal representative or the beneficiary as if that entity had \*acquired the asset when you acquired it.

*Surviving joint tenant*

- (7) If individuals own a \*CGT asset as joint tenants and one of them dies, the 12 month rule applies to the surviving joint tenant as if the surviving joint tenant had \*acquired the deceased's interest in the asset when the deceased acquired it.

Note: The surviving joint tenant is taken to have acquired the deceased's interest in the asset: see section 128-50.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*CGT event J1*

- (8) If \*CGT event J1 happens, the company that owns the roll-over asset ignores (for indexation purposes) the acquisition rule in subsection 104-175(8).

**114-15 Cost base modifications**

- (1) There are a number of modifications to the \*cost base of \*CGT assets (see sections 112-20 and 112-35 and Subdivisions 112-B, 112-C and 112-D). These affect the way indexation works.
- (2) If a cost base modification replaces an element of the \*cost base of a \*CGT asset with an amount, or includes an amount in such an element, you index the element or the amount as if expenditure equal to the amount had been incurred in the quarter in which the modification occurred.

Example: A trust is declared over a CGT asset (an example of CGT event E1). The first element of the cost base in the hands of the trustee is its market value. The trustee indexes that market value from the quarter in which the trust was declared.

- (3) A different rule applies if a cost base modification reduces the *total* \*cost base of a \*CGT asset.

*Method statement*

- Step 1. Work out the \*cost base (all elements) of the asset as at the quarter in which the modification occurred.
- Step 2. Subtract the amount of the reduction.
- Step 3. The Step 2 amount forms a new first element of your \*cost base, and is later indexed as if you had incurred expenditure equal to that amount in the quarter in which the modification occurred.

Example: Margaret receives a capital payment of \$1,000 for shares (an example of CGT event G1). The first element of her cost base is \$10,250 (indexed to the quarter in which the payment was made) and the second element (similarly indexed) is \$210. Add those amounts (\$10,460) and subtract the \$1,000. Her new first element of the cost base is \$9,460. There are no other elements at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 114-20

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- (4) Despite subsection (2), there are different rules for the exercise of an option or the conversion of a \*convertible interest.

*Exercise of options*

- (5) The amount you paid for the option, and the amount you paid to exercise it, are indexed from the quarter in which the liabilities to pay the amounts were incurred.

Example: On 1 April 1997, Robyn grants Andrew an option to buy land she owns. The option fee is \$10,000, and the option is to buy the land on 30 June 1998 for \$100,000.

Andrew exercises the option and acquires the land on 30 June 1998. To work out whether there is a capital gain when Andrew disposes of the land, indexation is available if the land is disposed of 12 months or more after its acquisition.

The \$10,000 option fee can be indexed from 1 April 1997 (when the liability to pay it was incurred). The \$100,000 exercise price can be indexed from 30 June 1998 (when the liability to pay the price was incurred).

*Convertible interests*

- (6) If you \*acquire \*shares in a company or units in a unit trust by converting a \*convertible interest, the amount paid for the convertible interest, and the amount paid to convert it, are indexed from the quarter in which the liabilities to pay the amounts were incurred.

Note: If shares or units are acquired as a result of the exercise of the option or the conversion of the convertible interest, and an amount is paid to the company or trust on the shares or units after the day of acquisition, that amount is indexed from the time it is paid: see subsection 960-275(3).

**114-20 When expenditure is incurred for roll-overs**

If there is a roll-over for a \*CGT event happening in relation to a \*CGT asset and the first element of the \*cost base of the asset is the whole of the cost base of:

- (a) for a \*replacement-asset roll-over, the original asset; or  
(b) for a \*same-asset roll-over, the CGT asset;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

you index that element as if expenditure equal to the amount in that element had been incurred in the quarter in which the CGT event happened.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 115—Discount capital gains and trusts' net capital gains**

### **Table of Subdivisions**

Guide to Division 115

115-A Discount capital gains

115-B Discount percentage

115-C Rules about trusts with net capital gains

115-D Tax relief for shareholders in listed investment companies

### **Guide to Division 115**

#### **115-1 What this Division is about**

A discount capital gain remaining after the application of any capital losses and net capital losses from previous income years is reduced by the discount percentage when working out your net capital gain.

A capital gain from a CGT asset is a discount capital gain only if the entity making the gain acquired the asset at least a year before the CGT event causing the gain and no choice has been made to include indexation in the cost base of the asset.

Special rules apply to the net income of trusts with net capital gains, to ensure that the appropriate discount percentage is applied and to let beneficiaries apply their capital losses against their share of the trust's capital gains.

Special rules apply to certain capital gains made by listed investment companies to enable shareholders receiving dividends that include these gains to obtain benefits similar to those conferred by the CGT discount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 115-A—Discount capital gains

### Table of sections

#### What is a discount capital gain?

- 115-5 What is a *discount capital gain*?
- 115-10 Who can make a discount capital gain?
- 115-15 Discount capital gain must be made after 21 September 1999
- 115-20 Discount capital gain must not have indexed cost base
- 115-25 Discount capital gain must be on asset acquired at least 12 months before
- 115-30 Special rules about time of acquisition

#### What are not discount capital gains?

- 115-40 Capital gain resulting from agreement made within a year of acquisition
- 115-45 Capital gain from equity in an entity with newly acquired assets
- 115-50 Discount capital gain from equity in certain entities

## What is a discount capital gain?

### 115-5 What is a *discount capital gain*?

A *discount capital gain* is a \*capital gain that meets the requirements of sections 115-10, 115-15, 115-20 and 115-25.

Note: Sections 115-40, 115-45 and 775-70 identify capital gains that are *not* discount capital gains, despite this section.

### 115-10 Who can make a discount capital gain?

To be a \*discount capital gain, the \*capital gain must be made by:

- (a) an individual; or
- (b) a \*complying superannuation entity; or
- (c) a trust; or
- (d) a \*life insurance company in relation to a \*discount capital gain from a \*CGT event in respect of a \*CGT asset that is a \*complying superannuation/FHSA asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 115-15 Discount capital gain must be made after 21 September 1999

To be a \*discount capital gain, the \*capital gain must result from a \*CGT event happening after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999.

### 115-20 Discount capital gain must not have indexed cost base

- (1) To be a \*discount capital gain, the \*capital gain must have been worked out:
- (a) using a \*cost base that has been calculated without reference to indexation at any time; or
  - (b) for a capital gain that arose under \*CGT event K7—using the \*cost of the \*depreciating asset concerned.

Note: A listed investment company must also calculate capital gains without reference to indexation in order to allow its shareholders to access the concessions in Subdivision 115-D.

- (2) For the purposes of working out whether the \*capital gain is a \*discount capital gain and the amount of that gain, the \*cost base taken into account in working out the capital gain may be recalculated without reference to indexation if the cost base had an element including indexation because of another provision of this Act. This subsection has effect despite that other provision.

Note: This lets a capital gain of an entity (the *gain entity*) on a CGT asset be a discount capital gain even if:

- (a) another provision of this Act (such as a provision for a same-asset roll-over or Division 128) set the gain entity's cost base for the asset by reference to the cost base for the asset when it was owned by another entity (the *earlier owner*), and the earlier owner's cost base for the asset included indexation; or
- (b) another provision of this Act (such as a provision for a replacement-asset roll-over) set the cost base of the asset by reference to the cost base of the original asset involved in the roll-over, and the original asset's cost base included indexation.

Example: In 1995 Elizabeth acquired land from her ex-husband under an order made by a court under the *Family Law Act 1975*. Former section 160ZZM of the *Income Tax Assessment Act 1936* treated her as having paid \$56,000 for the land, equal to her ex-husband's *indexed* cost base for it. His cost base for the land then was \$40,000.

In 2000, she sold the land for capital proceeds of \$150,000.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Her discount capital gain on the land is \$110,000 (equal to the capital proceeds less the cost base for the land without indexation).

- (3) This section does not apply to a \*capital gain worked out under subsection 104-255(3) (about carried interests).

**115-25 Discount capital gain must be on asset acquired at least 12 months before**

- (1) To be a \*discount capital gain, the \*capital gain must result from a \*CGT event happening to a \*CGT asset that was \*acquired by the entity making the capital gain at least 12 months before the CGT event.

Note: Even if the capital gain results from a CGT event happening at least a year after the CGT asset was acquired, the gain may not be a discount capital gain, depending on the cause of the CGT event (see section 115-40) and the nature of the asset (see sections 115-45 and 115-50).

- (2) To avoid doubt, subsection (1) applies to the \*CGT asset shown in the table for a \*CGT event listed in the table.

<b>CGT assets to which subsection (1) applies</b>		
<b>Item</b>	<b>CGT event</b>	<b>CGT asset to which subsection (1) applies</b>
1A	D4	the land over which the *conservation covenant is entered into
1	E8	the interest or part interest in the trust capital
2	K6	the *share or interest *acquired before 20 September 1985

- (2A) If the \*capital gain results from a \*CGT event K9 happening:
- (a) subsection (1) does not apply; and
  - (b) to be a \*discount capital gain, the \*carried interest to which the CGT event relates must arise under a partnership agreement entered into at least 12 months before the CGT event.
- (3) A \*capital gain from one of these \*CGT events is *not a discount capital gain* (despite section 115-5):
- (a) \*CGT event D1;
  - (b) \*CGT event D2;

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 115-30

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- (c) \*CGT event D3;
- (d) \*CGT event E9;
- (e) \*CGT event F1;
- (f) \*CGT event F2;
- (g) \*CGT event F5;
- (h) \*CGT event H2;
- (ha) \*CGT event J2;
- (hb) \*CGT event J5;
- (hc) \*CGT event J6;
- (i) \*CGT event K10.

Note: Capital gains from the CGT events mentioned in paragraphs (3)(a) to (f) are not discount capital gains because the CGT asset involved in the CGT event comes into existence at the time of the event, so it is impossible to meet the requirement in this section that the asset have been acquired at least 12 months before the event.

**115-30 Special rules about time of acquisition**

*Entity is treated as acquiring some CGT assets early*

- (1) Sections 115-25, 115-40 and 115-45 (the *affected sections*) apply as if an entity (the *acquirer*) had acquired a \*CGT asset described in an item of the table at the time mentioned in the item:

<b>When the acquirer is treated as having acquired a CGT asset</b>		
<b>Item</b>	<b>The affected sections apply as if the acquirer had acquired this CGT asset:</b>	<b>At this time:</b>
1	A *CGT asset the acquirer *acquired in circumstances giving rise to a *same-asset roll-over	(a) when the entity that owned the CGT asset before the roll-over *acquired it; or (b) if the asset has been involved in an unbroken series of roll-overs—when the entity that owned it before the first roll-over in the series *acquired it

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**When the acquirer is treated as having acquired a CGT asset**

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Item	The affected sections apply as if the acquirer had acquired this CGT asset:	At this time:
2	A *CGT asset that the acquirer *acquired as a replacement asset for a *replacement-asset roll-over	(a) when the acquirer acquired the original asset involved in the roll-over; or (b) if the acquirer acquired the replacement asset for a roll-over that was the last in an unbroken series of replacement-asset roll-overs—when the acquirer acquired the original asset involved in the first roll-over in the series
3	A *CGT asset the acquirer *acquired as the *legal personal representative of a deceased individual, except one that was a *pre-CGT asset of the deceased immediately before his or her death	When the deceased *acquired the asset
4	A *CGT asset that *passed to the acquirer as the beneficiary of a deceased individual's estate, except one that was a *pre-CGT asset of the deceased immediately before his or her death	When the deceased *acquired the asset
5	A *CGT asset that: (a) the acquirer *acquired as the *legal personal representative of a deceased individual; and (b) was a *pre-CGT asset of the deceased immediately before his or her death	When the deceased died
6	A *CGT asset that: (a) *passed to the acquirer as the beneficiary of a deceased individual's estate; and (b) was a *pre-CGT asset of the deceased immediately before his or her death	When the deceased died

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



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**When the acquirer is treated as having acquired a CGT asset**

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Item	The affected sections apply as if the acquirer had acquired this CGT asset:	At this time:
7	The interest (or share of an interest) the acquirer is taken under section 128-50 to have *acquired in another *CGT asset that the acquirer and another individual held as joint tenants immediately before he or she died	When the deceased *acquired his or her interest in the other CGT asset
8	A *CGT asset that is a *share or right where: (a) the share or right was *acquired under an *employee share scheme; and (b) the share or right was acquired from an *employee share trust; and (c) if the share is a *qualifying share or the right is a *qualifying right—the acquirer made an election under section 139E of the <i>Income Tax Assessment Act 1936</i>	When the acquirer first acquired a beneficial interest in the share or right

Note: Under section 128-50, the acquirer is taken to acquire the interest of a deceased individual in a CGT asset the acquirer and the deceased held as joint tenants immediately before the deceased's death (or an equal share of that interest if there are other surviving joint tenants).

- (1A) A \*share or right that, under section 139DQ of the *Income Tax Assessment Act 1936*, is treated as if it were a continuation of another share, right or stapled security (as defined in Division 13A of Part III of that Act) for the purposes of that Division is treated in the same way for the purposes of item 8 of the table in subsection (1) of this section.
- (1B) A \*CGT asset that forms part of a stapled security (as defined in Division 13A of Part III of the *Income Tax Assessment Act 1936*) that is treated under section 139DQ of that Act as if it were a continuation of another \*share or stapled security for the purposes of that Division, is treated for the purposes of item 8 of the table in subsection (1) of this section as if it were a continuation of each CGT asset that was, or was a part of, the other share or stapled security.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: This Part applies in relation to a CGT asset that forms part of a stapled security acquired under an employee share scheme in the same way as it applies in relation to a share acquired under an employee share scheme: see section 130-97.

*CGT event E8*

- (2) For the purposes of applying sections 115-25 and 115-40 in relation to \*CGT event E8 and the \*CGT asset consisting of a beneficiary's interest in trust capital, it does not matter how long the trustee owned any of the assets of the trust.

Note: Section 115-45 limits the effect of this subsection in some cases.

*Relationship with Subdivision 109-A and Division 128*

- (3) This section has effect despite Subdivision 109-A and Division 128 (which contain rules about the time when you \*acquire a \*CGT asset).

## What are not discount capital gains?

### 115-40 Capital gain resulting from agreement made within a year of acquisition

Your \*capital gain on a \*CGT asset from a \*CGT event is *not a discount capital gain* (despite section 115-5) if the CGT event occurred under an agreement you made within 12 months of \*acquiring the CGT asset.

Note: Section 115-30 may affect the time when you are treated as having acquired the CGT asset.

### 115-45 Capital gain from equity in an entity with newly acquired assets

*Purpose of this section*

- (1) The purpose of this section is to deny you a \*discount capital gain on your \*share in a company or interest in a trust if you would *not* have had \*discount capital gains on the majority of \*CGT assets (by cost and by value) underlying the share or interest if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 115-45

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- (a) you had owned them for the time the company or trust did; and
- (b) \*CGT events had happened to them when the CGT event happened to your share or interest.

*When a capital gain is not a discount capital gain*

- (2) Your \*capital gain from a \*CGT event happening to:
  - (a) your \*share in a company; or
  - (b) your \*trust voting interest, unit or other fixed interest in a trust;

is *not* a **discount capital gain** if the 3 conditions in subsections (3), (4) and (5) are met. This section has effect despite section 115-5 and subsection 115-30(2).

Note: This section does not prevent a capital gain from being a discount capital gain if there are at least 300 members or beneficiaries of the company or trust and control of the company or trust is not and cannot be concentrated (see section 115-50).

*You had at least 10% of the equity in the entity before the event*

- (3) The first condition is that, just before the \*CGT event, you and your \*associates beneficially owned:
  - (a) at least 10% by value of the \*shares in the company (except shares that carried a right only to participate in a distribution of profits or capital to a limited extent); or
  - (b) at least 10% of the \*trust voting interests, issued units or other fixed interests (as appropriate) in the trust.

*Cost bases of new assets are more than 50% of all cost bases of entity's assets*

- (4) The second condition is that the total of the \*cost bases of \*CGT assets that the company or trust owned at the time of the \*CGT event and had \*acquired *less* than 12 months before then is *more* than half of the total of the \*cost bases of the \*CGT assets the company or trust owned at the time of the event.

Note: Section 115-30 may affect the time when the company or trust is treated as having acquired a CGT asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Net capital gain on entity's new assets would be more than 50% of net capital gain on all the entity's assets*

- (5) The third condition is that the amount worked out under subsection (6) is *more* than half of the amount worked out under subsection (7).
- (6) Work out the amount that would be the \*net capital gain of the company or trust for the income year if:
- (a) just before the \*CGT event, the company or trust had \*disposed of all of the \*CGT assets that it owned then and had \*acquired less than 12 months before the \*CGT event; and
  - (b) it had received the \*market value of those assets for the disposal; and
  - (c) the company or trust did not have any \*capital gains or \*capital losses from \*CGT events other than the disposal; and
  - (d) the company or trust did not have a \*net capital loss for an earlier income year.

Note: Section 115-30 may affect the time when the company or trust is treated as having acquired a CGT asset.

- (7) Work out the amount that would be the \*net capital gain of the company or trust for the income year if:
- (a) just before the \*CGT event, the company or trust had \*disposed of all of the \*CGT assets that it owned then; and
  - (b) it had received the \*market value of those assets for the disposal; and
  - (c) all of the \*capital gains and \*capital losses from those assets were taken into account in working out the net capital gain, despite any rules providing that one or more of those capital gains or losses are not to be taken into account in working out the net capital gain; and
  - (d) the company or trust did not have any \*capital gains or \*capital losses from \*CGT events other than the disposal; and
  - (e) the company or trust did not have a \*net capital loss for an earlier income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 115-50 Discount capital gain from equity in certain entities

#### *Capital gain from share in company with 300 members*

- (1) Section 115-45 does not prevent a \*capital gain from a \*CGT event happening to a \*share in a company with at least 300 \*members from being a \*discount capital gain, unless subsection (3) or (6) applies in relation to the company.

#### *Capital gain from interest in fixed trust with 300 beneficiaries*

- (2) Section 115-45 does not prevent a \*capital gain from a \*CGT event happening to an interest in a trust from being a \*discount capital gain if:
- (a) entities have fixed entitlements to all of the income and capital of the trust; and
  - (b) the trust has at least 300 beneficiaries; and
  - (c) neither subsection (4) nor subsection (6) applies in relation to the trust.

#### *No discount capital gain if ownership is concentrated*

- (3) Section 115-45 may prevent a \*capital gain from a \*share in a company from being a \*discount capital gain if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, \*shares in the company:
- (a) carrying fixed entitlements to:
    - (i) at least 75% of the company's income; or
    - (ii) at least 75% of the company's capital; or
  - (b) carrying at least 75% of the voting rights in the company.
- (4) Section 115-45 may prevent a \*capital gain from an interest in a trust from being a \*discount capital gain if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, interests in the trust:
- (a) carrying fixed entitlements to:
    - (i) at least 75% of the trust's income; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) at least 75% of the trust's capital; or
  - (b) if beneficiaries of the trust have a right to vote in respect of activities of the trust—carrying at least 75% of those voting rights.
- (5) Subsections (3) and (4) operate as if all of these were a single individual:
- (a) an individual, whether or not the individual holds \*shares in the company or interests in the trust (as appropriate);
  - (b) the individual's \*associates;
  - (c) for any \*shares or interests in respect of which other individuals are nominees of the individual or of the individual's associates—those other individuals.

*No discount capital gain if rights can be varied to concentrate ownership*

- (6) Section 115-45 may prevent a \*capital gain from a \*share in a company, or from an interest in a trust, from being a \*discount capital gain if, because of anything listed in subsection (7), it is reasonable to conclude that the rights attaching to any of the \*shares in the company or interests in the trust (as appropriate) *can be varied* or abrogated in such a way that subsection (3) or (4) would be satisfied.
- (7) These are the things:
- (a) any provision in the constituent document of the company or trust, or in any contract, agreement or instrument:
    - (i) authorising the variation or abrogation of rights attaching to any of the \*shares in the company or interests in the trust (as appropriate); or
    - (ii) relating to the conversion, cancellation, extinguishment or redemption of any of those shares or interests;
  - (b) any contract, \*arrangement, option or instrument under which a person has power to acquire any of those shares or interests;
  - (c) any power, authority or discretion in a person in relation to the rights attaching to any of those shares or interests.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 115** Discount capital gains and trusts' net capital gains

Section 115-100

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- (8) It does not matter for the purposes of subsection (6) whether or not the rights attaching to any of the \*shares or interests *are* varied or abrogated in the way described in that subsection.

**Subdivision 115-B—Discount percentage**

**Table of sections**

115-100 What is the *discount percentage* for a discount capital gain

**115-100 What is the *discount percentage* for a discount capital gain**

The *discount percentage* for an amount of a \*discount capital gain is:

- (a) 50% if the gain is made:
  - (i) by an individual; or
  - (ii) by a trust (other than a trust that is a \*complying superannuation entity or \*FHSA trust); or
- (b) 33<sup>1</sup>/<sub>3</sub>% if the gain is made:
  - (i) by a complying superannuation entity; or
  - (ii) by an FHSA trust; or
  - (iii) by a \*life insurance company from a \*CGT asset that is a \*complying superannuation/FHSA asset.

**Subdivision 115-C—Rules about trusts with net capital gains**

**Guide to Subdivision 115-C**

**115-200 What this Division is about**

This Subdivision sets out rules for dealing with the net income of a trust that has a net capital gain. The rules treat parts of the net income attributable to the trust's net capital gain as capital gains made by the beneficiary entitled to those parts. This lets the beneficiary reduce those parts by any capital losses and unapplied net capital losses it has.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

If the trust's capital gain was reduced by either the general 50% discount in step 3 of the method statement in subsection 102-5(1) or by the small business 50% reduction in Subdivision 152-C (but not both), then the gain is doubled. The beneficiary can then apply its capital losses to the gain before applying the appropriate discount percentage (if any) or the small business 50% reduction.

If the trust's capital gain was reduced by both the general 50% discount and the small business 50% reduction, then the gain is multiplied by 4. The beneficiary can then apply its capital losses to the gain before applying the appropriate discount percentage (if any) and the small business 50% reduction.

The rules also give the beneficiary a deduction if necessary to prevent it from being taxed twice on the same parts of the trust's net income.

## Table of sections

### Operative provisions

- 115-210 When this Subdivision applies
- 115-215 Assessing presently entitled beneficiaries
- 115-220 Special rule for assessing trustee under paragraph 98(3)(b) of the *Income Tax Assessment Act 1936*
- 115-222 Special rule for assessing trustee under subsection 98(4) of the *Income Tax Assessment Act 1936*
- 115-225 Special rule for assessing trustee under section 99A of the *Income Tax Assessment Act 1936*
- 115-230 Assessing capital gains of resident testamentary trusts

## Operative provisions

### 115-210 When this Subdivision applies

- (1) This Subdivision applies if a trust estate has a \*net capital gain for an income year that is taken into account in working out the trust estate's net income (as defined in section 95 of the *Income Tax Assessment Act 1936*) for the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 115-215

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- (2) If the trust estate has a beneficiary that is a \*complying superannuation entity that is a trust, this Subdivision applies in relation to the complying superannuation entity as a beneficiary but not as a trust estate. This Subdivision does not apply otherwise to a \*complying superannuation entity that is a trust.

**115-215 Assessing presently entitled beneficiaries**

*Purpose*

- (1) The purpose of this section is to ensure that appropriate amounts of the trust estate's net income attributable to the trust estate's \*capital gains are treated as a beneficiary's capital gains when assessing the beneficiary, so:
- (a) the beneficiary can apply \*capital losses against gains; and
  - (b) the beneficiary can apply the appropriate \*discount percentage (if any) to gains.

*Application*

- (2) This section treats you as having certain extra \*capital gains, and gives you a deduction, if:
- (a) you are the beneficiary of the trust estate; and
  - (b) your assessable income for the income year includes an amount (the **trust amount**):
    - (i) under paragraph 97(1)(a) of the *Income Tax Assessment Act 1936*; or
    - (ii) under subsection 98A(1) or (3) of that Act; or
    - (iii) under section 100 of that Act.

*Extra capital gains*

- (3) For each \*capital gain (the **trust gain**) of the trust estate, Division 102 applies to you as if you had:
- (a) if the trust gain was not reduced under *either* step 3 of the method statement in subsection 102-5(1) (\*discount capital gains) *or* Subdivision 152-C (small business 50% reduction)—a capital gain equal to the part (if any) of the trust amount that is attributable to the trust gain; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) if the trust gain was reduced under *either* step 3 of the method statement *or* Subdivision 152-C but not both (even if it was further reduced by the other small business concessions)—a capital gain equal to twice the part (if any) of the trust amount that is attributable to the trust gain; and
  - (c) if the trust gain was reduced under *both* step 3 of the method statement *and* Subdivision 152-C (even if it was further reduced by the other small business concessions)—a capital gain equal to 4 times the part (if any) of the trust amount that is attributable to the trust gain.
- (4) For each \*capital gain of yours mentioned in paragraph (3)(b) or (c):
- (a) if the relevant trust gain was reduced under step 3 of the method statement in subsection 102-5(1)—Division 102 also applies to you as if your capital gain were a \*discount capital gain, if you are the kind of entity that can have a discount capital gain; and
  - (b) if the relevant trust gain was reduced under Subdivision 152-C—the capital gain remaining after you apply step 3 of the method statement is reduced by 50%.

Note: This ensures that your share of the trust estate's net capital gain is taxed as if it were a capital gain you made (assuming you made the same choices about cost bases including indexation as the trustee).

- (4A) To avoid doubt, subsection (3) treats you as having a \*capital gain for the purposes of Division 102, despite section 102-20.

*Section 118-20 does not reduce extra capital gains*

- (5) To avoid doubt, section 118-20 does not reduce a \*capital gain that subsection (3) treats you as having for the purpose of applying Division 102.

*Deduction*

- (6) You can deduct for the income year the part (if any) of the trust amount that is attributable to the trust estate's \*net capital gain mentioned in subsection 102-5(1).

Note: This deduction ensures you are not taxed twice on the part of the trust amount that is attributable to the trust estate's net capital gain.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**115-220 Special rule for assessing trustee under paragraph 98(3)(b) of the *Income Tax Assessment Act 1936***

*Purpose*

- (1) The purpose of this section is to ensure a trustee assessed under paragraph 98(3)(b) of the *Income Tax Assessment Act 1936* (in respect of the share of the net income to which a beneficiary that is a company is entitled) does not get the benefit in that assessment of the \*discount percentage that the company would not have got if it had been assessed in respect of the share.

*Modification of paragraph 98(3)(b)*

- (2) The trustee is to be assessed (and pay tax) under paragraph 98(3)(b) of the *Income Tax Assessment Act 1936* as if the part of the share that is attributable to a \*capital gain of the trust estate that was reduced under step 3 of the method statement in subsection 102-5(1) were double the amount that it actually is.

**115-222 Special rule for assessing trustee under subsection 98(4) of the *Income Tax Assessment Act 1936***

*Purpose*

- (1) The purpose of this section is to ensure a trustee assessed under subsection 98(4) of the *Income Tax Assessment Act 1936* (in respect of the share of the net income to which a beneficiary that is a foreign resident in the capacity of a trustee is entitled) does not get the benefit in that assessment of the \*discount percentage.

*Modification of subsection 98(4)*

- (2) The trustee is to be assessed (and pay tax) under subsection 98(4) of the *Income Tax Assessment Act 1936* as if the part of the share that is attributable to a \*capital gain of the trust that was reduced under step 3 of the method statement in subsection 102-5(1) were double the amount that it actually is.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **115-225 Special rule for assessing trustee under section 99A of the *Income Tax Assessment Act 1936***

#### *Purpose*

- (1) The purpose of this section is to reverse the benefit of applying the \*discount percentage or the small business 50% reduction under Subdivision 152-C in working out the trust estate's net income when the trustee is assessed under section 99A of the *Income Tax Assessment Act 1936* on an amount of the net income.

#### *Modification of section 99A*

- (2) The trustee is to be assessed (and pay tax) under section 99A of the *Income Tax Assessment Act 1936* as if:
  - (a) if a \*capital gain of the trust was reduced under *either* step 3 of the method statement in subsection 102-5(1) (discount capital gains) *or* Subdivision 152-C (small business 50% reduction) but not both (even if it was further reduced by the other small business concessions in Subdivisions 152-D and 152-E)—the part of the amount that is attributable to the trust estate's capital gain were double the amount that it actually is; and
  - (b) if a capital gain was reduced under *both* step 3 of the method statement *and* Subdivision 152-C (even if it was further reduced by the other small business concessions)—the part of the amount that is attributable to the trust estate's gain were 4 times the amount that it actually is.

### **115-230 Assessing capital gains of resident testamentary trusts**

#### *Purpose*

- (1) The purpose of this section is to allow a trustee of a resident testamentary trust to make a choice that has the effect that the trustee will be assessed on \*capital gains of the trust in situations where:
  - (a) the gains would otherwise form part of a share of the net income of the trust estate that would be included in the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 115-230

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assessable income of a beneficiary who could not benefit from them; or

- (b) the trustee would otherwise be liable to tax on the gains on behalf of such a beneficiary under section 98 of the *Income Tax Assessment Act 1936*.

*Trusts for which choice can be made*

- (2) A trustee can only make a choice under this section in relation to a trust estate:
  - (a) that results from:
    - (i) a will, a codicil or an order of a court that varied or modified the provisions of a will or a codicil; or
    - (ii) an intestacy or an order of a court that varied or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate; and
  - (b) that is, in the income year in respect of which the choice is made, a resident trust estate within the meaning of Division 6 of Part III of the *Income Tax Assessment Act 1936*.

*Circumstances in which choice can be made*

- (3) If:
  - (a) apart from this section:
    - (i) a share of the net income of a trust estate that is attributable to \*capital gains would be included in the assessable income of a beneficiary for an income year under section 97 of the *Income Tax Assessment Act 1936*; or
    - (ii) a trustee would, on behalf of a beneficiary, be assessed and liable to pay tax for an income year under section 98 of the *Income Tax Assessment Act 1936* in respect of a share of the net income of a trust estate that is attributable to capital gains; and
  - (b) the beneficiary does not have a vested and indefeasible interest in trust property representing that share; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(c) trust property representing that share has not been paid to or applied for the benefit of the beneficiary;  
the trustee may, no later than the deadline in subsection (5), make a choice that subsection (4) applies in respect of the beneficiary's share.

*Consequences if trustee makes choice*

- (4) These are the consequences if the trustee makes a choice that this subsection applies in respect of a beneficiary's share:
- (a) for the purposes of sections 97, 98A and 100 of the *Income Tax Assessment Act 1936*, the share is taken not to be included in the assessable income of the beneficiary;
  - (b) the trustee is not assessed, and is not liable to pay tax, in respect of the share under section 98 of the *Income Tax Assessment Act 1936*.

Note 1: Because of these consequences in relation to sections 97 and 98 of the *Income Tax Assessment Act 1936*, the trustee will be assessed on the beneficiary's share under section 99A or (at the Commissioner's discretion) 99 of that Act.

Note 2: Section 115-215 does not apply in relation to an amount to which this subsection applies.

*Deadline for making choice*

- (5) The deadline for the purposes of subsection (3) is:
- (a) the day 2 months after the last day of the income year; or
  - (b) a later day allowed by the Commissioner.

Note: This deadline is an exception to the general rule about choices in section 103-25.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 115-D—Tax relief for shareholders in listed investment companies

### Guide to Subdivision 115-D

#### 115-275 What this Subdivision is about

This Subdivision allows shareholders of certain listed companies to obtain benefits similar to those conferred by discount capital gains.

The benefits accrue where dividends paid by those companies represent capital gains that would be discount capital gains had they been made by an individual, a trust or a complying superannuation entity.

#### Table of sections

##### Operative provisions

115-280	Deduction for certain dividends
115-285	Meaning of <i>LIC capital gain</i>
115-290	Meaning of <i>listed investment company</i>
115-295	Maintaining records

#### Operative provisions

##### 115-280 Deduction for certain dividends

- (1) You can deduct an amount for a \*dividend paid to you by a company (the *payment company*) if:
  - (a) you are:
    - (i) an individual, a \*complying superannuation entity, a trust or a partnership; or
    - (ia) an \*FHSA trust; or
    - (ii) a \*life insurance company where the dividend is in respect of \*shares that are \*complying superannuation/FHSA assets; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) when the dividend is paid, either you are an Australian resident or you are an individual who is a foreign resident and carries on business in Australia at or through your permanent establishment in Australia, being a permanent establishment within the meaning of:
  - (i) a double tax agreement (as defined in Part X of the *Income Tax Assessment Act 1936*) that relates to a foreign country and affects the individual; or
  - (ii) subsection 6(1) of that Act, if there is no such agreement; and
- (ba) if, when the dividend is paid, you are an individual who is a foreign resident and has in Australia such a permanent establishment—the dividend is attributable to the permanent establishment; and
- (c) all or some part of the dividend is reasonably attributable to a \*LIC capital gain made by a \*listed investment company; and
- (d) in a case where the LIC capital gain was made by a company other than the payment company—the payment company was a listed investment company when it received a dividend part of which is attributable to the LIC capital gain.

Note: The concession is available for LIC capital gains made directly by a listed investment company, and for LIC capital gains that company receives as a dividend through one or more other listed investment companies.

- (2) The amount you can deduct is:
  - (a) 50% of your share of the amount (the *attributable part*) worked out under subsection (3) if you are an individual, a trust (except a trust that is a \*complying superannuation entity or an \*FHSA trust) or a partnership; or
  - (b) 33<sup>1</sup>/<sub>3</sub>% of your share of the attributable part if you are a complying superannuation entity, an FHSA trust or a \*life insurance company.

Note 1: The listed investment company will advise you of your share of the attributable part.

Note 2: If a shareholder in a listed investment company is a trust or partnership, a beneficiary of the trust or a partner in the partnership has no share of the attributable part.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



(3) The attributable part is worked out using this formula:

$$\text{After tax gain} + \left[ \frac{\text{After tax gain} \times \begin{matrix} * \text{Corporate tax rate} \\ \text{(at the time of the *CGT event)} \end{matrix}}{1 - * \text{Corporate tax rate (at that time)}} \right]$$

where:

**after tax gain** is the after tax \*LIC capital gain.

Example: A listed investment company disposes of a CGT asset for \$30,000. The asset had a cost base of \$10,000. The capital gain is therefore \$20,000. The company applies a capital loss of \$10,000 against the gain. Its net capital gain is \$10,000.

The net capital gain is subject to tax at 30%. The after tax gain is therefore \$7,000.

The company pays a fully franked dividend to Daryl, one of its shareholders. It advises Daryl that his share of the attributable part of the dividend is:

$$\$7 + \left[ \left( \$7 \times 0.3 \right) \div \left( 1 - 0.3 \right) \right] = \$10$$

Daryl, being an individual, can deduct 50% of \$10, which is \$5.

(4) An amount is included in your assessable income if:

- (a) a deduction is allowed under subsection (1) to a trust or a partnership; and
- (b) you are a beneficiary of the trust or a partner in the partnership and you are not an individual; and
- (c) the income of the trust or partnership is reduced by an amount because of that deduction; and
- (d) a part of the deduction (the **reduction amount**) is reflected in your share of the net income of the trust or partnership.

(5) The amount included is:

- (a) the reduction amount if you are a company, a trust (except a trust that is a \*complying superannuation entity or an \*FHSA trust) or a partnership; or
- (b) one-third of the reduction amount if you are a complying superannuation entity, an FHSA trust or a \*life insurance company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Example: The Burnett Partnership received a dividend from a listed investment company. The dividend statement advised that the dividend included a \$100 attributable part. The partnership deducted \$50 under this section in calculating its net income.

The partnership has 2 equal partners, Amy Burnett and Burnett Consulting Pty Ltd.

Burnett Consulting's assessable income includes its share of the net income of the partnership plus \$25 (being that part of the \$50 deduction allowed to the partnership that is reflected in the company's share of the partnership net income).

Subsections (4) and (5) do not apply to Amy because she is an individual.

### **115-285 Meaning of *LIC capital gain***

- (1) A *LIC capital gain* is a \*capital gain:
- (a) from a \*CGT event that happens on or after 1 July 2001; and
  - (b) that is made by a company that is a \*listed investment company from a \*CGT asset that is an investment to which paragraph 115-290(1)(c) applies; and
  - (c) that meets the requirements of sections 115-20 and 115-25; and
  - (d) that is not a capital gain that could not be a \*discount capital gain had it been made by an individual because of section 115-40 or 115-45; and
  - (e) that is included in the \*net capital gain of the company; and
  - (f) that is reflected in the taxable income of the company for the income year in which the company had the net capital gain.

Note 1: The listed investment company must be able to demonstrate that at least some part of the LIC capital gain, whether made by the company itself or by another listed investment company, remains after claiming deductions and losses against that income for the income year.

Note 2: Section 115-30 may affect the date of acquisition of a CGT asset for the purposes of sections 115-25, 115-40 and 115-45.

- (2) However, a \*capital gain made by a company is not a *LIC capital gain* if the company:
- (a) became a \*listed investment company after 1 July 2001; and
  - (b) \*acquired the \*CGT asset concerned before the day on which it became a listed investment company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 115-290

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- (3) In applying subsection (2), a \*CGT asset is treated as if it had been \*acquired by the company *before* it became a \*listed investment company if the asset would otherwise be treated as being acquired *after* that time because of one of these provisions:
- (a) section 70-110 (about trading stock);
  - (b) Subdivision 124-E or 124-F (replacement asset roll-overs for exchange of \*shares, units, rights or options);
  - (ba) Subdivision 124-Q (exchange of stapled ownership interests);
  - (c) Subdivision 126-B (same-asset roll-over for transfers within certain wholly-owned groups).

**115-290 Meaning of *listed investment company***

- (1) A *listed investment company* is a company:
- (a) that is an Australian resident; and
  - (b) \*shares in which are listed for quotation on the official list of ASX Limited or of a body corporate that is approved as a stock exchange under section 769 of the *Corporations Act 2001*; and
  - (c) at least 90% of the \*market value of whose \*CGT assets consists of investments permitted by subsection (4).
- (2) A company is also a *listed investment company* if:
- (a) it is a 100% subsidiary of a company that is a \*listed investment company because of subsection (1); and
  - (b) the subsidiary would be a listed investment company because of subsection (1) if it were able to comply with paragraph (1)(b).
- (3) This Subdivision applies to a company that does not comply with paragraph (1)(c) as if it did comply if the failure:
- (a) was of a temporary nature only; and
  - (b) was caused by circumstances outside its control.
- (4) The permitted investments are:
- (a) \*shares, units, options, rights or similar interests to the extent permitted by subsections (5), (6), (7) and (8); or
  - (b) financial instruments (such as loans, debts, debentures, bonds, promissory notes, futures contracts, forward contracts,

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- currency swap contracts and a right or option in respect of a share, security, loan or contract); or
- (c) an asset whose main use by the company in the course of carrying on its \*business is to \*derive interest, an annuity, rent, royalties or foreign exchange gains unless:
    - (i) the asset is an intangible asset and has been substantially developed, altered or improved by the company so that its \*market value has been substantially enhanced; or
    - (ii) its main use for deriving rent was only temporary; or
  - (d) goodwill.
- (5) The company can own a \*100% subsidiary if the subsidiary is a listed investment company because of subsection (2).
  - (6) The company can own (directly or indirectly) any percentage of another \*listed investment company that is not the company's \*100% subsidiary.
  - (7) Otherwise, the company cannot own (directly or indirectly) more than 10% of another company or trust.
  - (8) In working out whether a company indirectly owns any part of another company or trust:
    - (a) disregard any ownership it has indirectly through a \*listed public company or a \*publicly traded unit trust; and
    - (b) if the company owns not more than 50% of another \*listed investment company—disregard any ownership it has indirectly through the other company.

### **115-295 Maintaining records**

A \*listed investment company must maintain records showing the balance of its \*LIC capital gains available for distribution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 116—Capital proceeds**

### **Guide to Division 116**

#### **116-1 What this Division is about**

This Division tells you how to work out what the capital proceeds from a CGT event are. You need to know this to work out if you made a capital gain or loss from the event.

#### **Table of sections**

- 116-5 General rules
- 116-10 Modifications to general rules

##### **General rules**

- 116-20 General rules about *capital proceeds*

##### **Modifications to general rules**

- 116-25 Table of modifications to the general rules
- 116-30 Market value substitution rule: modification 1
- 116-35 Companies and trusts that are not widely held
- 116-40 Apportionment rule: modification 2
- 116-45 Non-receipt rule: modification 3
- 116-50 Repaid rule: modification 4
- 116-55 Assumption of liability rule: modification 5
- 116-60 Misappropriation rule: modification 6

##### **Special rules**

- 116-65 Disposal etc. of a CGT asset the subject of an option
- 116-70 Option requiring both acquisition and disposal etc.
- 116-75 Special rule for CGT event happening to a lease
- 116-80 Special rule if CGT asset is shares or an interest in a trust
- 116-85 Section 47A of 1936 Act applying to rolled-over asset
- 116-95 Company changes residence from an unlisted country
- 116-100 Gifts of property
- 116-105 Conservation covenants

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## 116-5 General rules

Section 116-20 sets out the general rules about capital proceeds. They are relevant to each CGT event that is listed in the table in section 116-25.

## 116-10 Modifications to general rules

- (1) There are 6 modifications to the general rules that may be relevant. The table in section 116-25 lists which ones *may* be relevant to each CGT event listed in the table.

### *Explanation of modifications*

- (2) The first is a market value substitution rule. It is relevant if:
  - you receive no capital proceeds from a CGT event; or
  - some or all of the capital proceeds cannot be valued; or
  - you did not deal at arm's length with another entity in connection with the event.
- (3) The second is an apportionment rule. It is relevant if a payment you receive in connection with a transaction relates in part only to a CGT event.

Example: You sell 3 CGT assets for a total of \$100,000. The \$100,000 needs to be apportioned between the 3 assets.
- (4) The third is a non-receipt rule. It is relevant if you do not receive, or are not likely to receive, some or all of the capital proceeds from a CGT event.
- (5) The fourth is a repaid rule. It is relevant if you are required to repay some or all of the capital proceeds from a CGT event.
- (6) The fifth is relevant only if another entity assumes a liability in connection with a CGT event.
- (7) The sixth relates to misappropriation by an employee or agent. It is relevant if your employee or agent misappropriates all or part of the capital proceeds from a CGT event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 116-20

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- Note 1: Also, these provisions of the *Income Tax Assessment Act 1936* modify capital proceeds:
- sections 159GZZZF and 159GZZZG (cancellation of shares in a holding company);
  - sections 159GZZZQ and 159GZZZS (buy-backs of shares);
  - sections 401, 422, 423 and 461 (CFC's);
  - section 613 (foreign investment funds).
- Note 2: Section 230-505 of this Act (Division 230 financial arrangement as consideration for provision or acquisition of a thing) also modifies capital proceeds.

**General rules**

**116-20 General rules about *capital proceeds***

- (1) The *capital proceeds* from a \*CGT event are the total of:
- (a) the money you have received, or are entitled to receive, in respect of the event happening; and
  - (b) the \*market value of any other property you have received, or are entitled to receive, in respect of the event happening (worked out as at the time of the event).

- Note 1: The timing rules for each event are in Division 104.
- Note 2: In some situations you are treated as having received money or other property, or being entitled to receive it: see section 103-10.
- Note 3: If you dispose of shares in a buy-back, the capital proceeds are worked out under Division 16K of the *Income Tax Assessment Act 1936*.

- (2) This table sets out what the *capital proceeds* from \*CGT events F1, F2, H2 and K9 are:

<b>General rules about capital proceeds</b>		
<b>Event number</b>	<b>Description of event:</b>	<b>The <i>capital proceeds</i> are:</b>
F1	Granting, renewing or extending a lease	Any premium paid or payable to you for the grant, renewal or extension

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**General rules about capital proceeds**

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Event number	Description of event:	<i>The capital proceeds are:</i>
F2	Granting, renewing or extending a long-term lease	The greatest of: (a) the *market value of the estate in fee simple or head lease (worked out when you grant, renew or extend the lease); and (b) what would have been that market value if you had not granted, renewed or extended the lease; and (c) any premium paid or payable to you for the grant, renewal or extension
H2	Receipt for event relating to a CGT asset	The money or other consideration you received, or are entitled to receive, because of the act, transaction or event
K9	Entitlement to receive payment of a *carried interest	The amount of the payment, to the extent that it is a payment of the *carried interest

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- (3) In working out the \*market value of the property the subject of the grant, renewal or extension of a long-term lease:
- (a) include the market value of any building, part of a building, structure or improvement that is treated as a separate \*CGT asset from the property; and
  - (b) disregard any \*depreciating assets for whose decline in value the lessor has deducted or can deduct an amount under this Act.

Note: Subdivision 108-D sets out when a building, structure or improvement is treated as a separate CGT asset.

- (4) In working out the amount of any premium paid or payable to the lessor for the grant, renewal or extension of a long-term lease, disregard any part of it that is attributable to a \*depreciating asset of that kind.

The payment of any premium can include giving property: see section 103-5.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 116-25

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- (5) In working out the proceeds of a \*CGT event that is a \*supply, disregard the amount of your \*net GST (if any) on the supply.

**Modifications to general rules**

**116-25 Table of modifications to the general rules**

There are 6 modifications to the general rules that *may* be relevant to a \*CGT event. This table tells you:

- each \*CGT event for which the general rules about \*capital proceeds are relevant; and
- the modifications that can apply to that event; and
- any special rules that apply to that event.

<b>Capital proceeds modifications</b>			
<b>Event number</b>	<b>Description of event:</b>	<b>Only these modifications can apply:</b>	<b>Special rules:</b>
A1	Disposal of a CGT asset	1, 2, 3, 4, 5, 6	If the disposal is because another entity exercises an option: see section 116-65 If the disposal is of *shares or an interest in a trust: see section 116-80 If the disposal is a gift for which a section 30-212 valuation is obtained: see section 116-100
B1	Use and enjoyment before title passes	1, 2, 3, 4, 5, 6	None
C1	Loss or destruction of a CGT asset	2, 3, 4, 6	None
C2	Cancellation, surrender and similar endings	1, 2, 3, 4, 6	See sections 116-75 and 116-80

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Capital proceeds modifications</b>			
<b>Event number</b>	<b>Description of event:</b>	<b>Only these modifications can apply:</b>	<b>Special rules:</b>
C3	End of option to acquire shares etc.	2, 3, 4, 6	None
D1	Creating contractual or other rights	1, 2, 3, 4, 6	None
D2	Granting an option	1, 2, 3, 4, 6	See section 116-70
D3	Granting a right to income from mining	1, 2, 3, 4, 6	None
D4	Entering into a conservation covenant	2, 3, 4, 5, 6	116-105
E1	Creating a trust over a CGT asset	1, 2, 3, 4, 5, 6	None
E2	Transferring a CGT asset to a trust	1, 2, 3, 4, 5, 6	None
E8	Disposal by beneficiary of capital interest	1, 2, 3, 4, 5, 6	See section 116-80
F1	Granting a lease	2, 3, 4, 6	None
F2	Granting a long-term lease	2, 3, 4, 6	None
F4	Lessee receives payment for changing lease	2, 3, 4, 6	None
F5	Lessor receives payment for changing lease	2, 3, 4, 6	None
H2	Receipt for event relating to a CGT asset	2, 3, 4, 6	None
K6	Pre-CGT shares or trust interest	1, 2, 3, 4, 5, 6	None
K9	Entitlement to receive payment of a *carried interest	2, 3, 4, 6	None

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**116-30 Market value substitution rule: modification 1**

*No capital proceeds*

- (1) If you received no \*capital proceeds from a \*CGT event, you are taken to have received the \*market value of the \*CGT asset that is the subject of the event. (The market value is worked out as at the time of the event.)

Example: You give a CGT asset to another entity. You are taken to have received the market value of the CGT asset.

Note: The market value substitution rule is disregarded in working out capital proceeds in some cases: see sections 138-30 and 139-20.

*There are capital proceeds*

- (2) The \*capital proceeds from a \*CGT event are replaced with the \*market value of the \*CGT asset that is the subject of the event if:
- (a) some or all of those proceeds cannot be valued; or
  - (b) those capital proceeds are more or less than the market value of the asset and:
    - (i) you and the entity that \*acquired the asset from you did *not* deal with each other at arm's length in connection with the event; or
    - (ii) the CGT event is CGT event C2 (about cancellation, surrender and similar endings).

(The market value is worked out as at the time of the event.)

- (2A) Subsection (2) does not apply if there is a partial roll-over for the \*CGT event because of section 124-150.
- (2B) Subsection (2) does not apply to a situation that would otherwise be covered by paragraph (2)(b) if the \*CGT event is \*CGT event C2 (about cancellation, surrender and similar endings) and the \*CGT asset that is the subject of the event is:
- (a) a \*share in a company that has at least 300 \*members and is not a company that is covered by section 116-35; or
  - (b) a unit in a unit trust that has at least 300 unit holders and is not a trust that is covered by section 116-35.

Note: So, for one of these assets, the capital proceeds for the cancellation will be what you actually received.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Market value for CGT events C2 and D1*

- (3) Subsection (1) does not apply to:
- (a) these examples of \*CGT event C2:
    - (i) the expiry of a \*CGT asset you own;
    - (ii) the cancellation of your \*statutory licence; or
  - (b) \*CGT event D1 (about creating contractual or other rights).
- (3A) If you need to work out the \*market value of a \*CGT asset that is the subject of \*CGT event C2, work it out as if the event had not occurred and was never proposed to occur.

Example: A company cancels shares you own in it. You work out the market value of the shares by disregarding the cancellation.

*CGT assets the subject of certain events*

- (4) To avoid doubt, the \*CGT asset that is the subject of a \*CGT event specified in this table is the asset so specified.

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**\*CGT assets the subject of certain events**

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**For this**

**\*CGT event:      This asset is the subject of the event:**

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D1                      the right you created

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D2                      the option you granted

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D3                      the right you granted

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E8                      your interest or part interest in the trust capital

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K6                      the \*share or interest you \*acquired before 20 September 1985

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*Carried interests*

- (5) This section does not apply to \*CGT event A1 or C2 to the extent that the CGT event is constituted by ceasing to own:
- (a) the \*carried interest of a \*general partner in a \*VCLP, an \*ESVCLP or an \*AFOF or a \*limited partner in a \*VCMP; or
  - (b) an entitlement to receive a payment of such a carried interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **116-35 Companies and trusts that are not widely held**

#### *Coverage*

- (1) A company is covered by this section if subsection (3) or (5) applies to the company.
- (2) A unit trust is covered by this section if subsection (4) or (5) applies to the trust.

#### *Concentrated ownership*

- (3) This subsection applies to a company if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, \*shares in the company:
  - (a) carrying \*fixed entitlements to at least 75% of the company's income or at least 75% of the company's capital; or
  - (b) carrying at least 75% of the voting power in the company.
- (4) This subsection applies to a trust if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, units in the trust:
  - (a) carrying \*fixed entitlements to at least 75% of the trust's income or at least 75% of the trust's capital; or
  - (b) if unit holders of the trust have a right to vote in respect of activities of the trust—carrying at least 75% of the voting power in the trust.

#### *Possible variation of rights*

- (5) This subsection applies to a company or trust if, because of:
  - (a) any provision in the entity's constituent document, or in any contract, agreement or instrument:
    - (i) authorising the variation or abrogation of rights attaching to any of the \*shares or units in the entity; or
    - (ii) relating to the conversion, cancellation, extinguishment or redemption of any of those shares or units; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) any contract, \*arrangement, option or instrument under which a person has power to acquire any of those shares or units; or
- (c) any power, authority or discretion in a person in relation to the rights attaching to any of those shares or units;

it is reasonable to conclude that the rights attaching to any of those shares or units are capable of being varied or abrogated in such a way (even if they are not in fact varied or abrogated in that way) that, directly or indirectly, subsection (3) or (4) would apply to the entity.

*Single individual*

- (6) For the purposes of subsections (3) and (4), all of the following are taken to be a single individual:
  - (a) an individual, whether or not the individual holds \*shares or units in the entity concerned;
  - (b) the individual's \*associates;
  - (c) for any shares or units in respect of which other individuals are nominees of the individual or of the individual's associates—those other individuals.

**116-40 Apportionment rule: modification 2**

- (1) If you receive a payment in connection with a transaction that relates to more than one \*CGT event, the *capital proceeds* from each event are so much of the payment as is reasonably attributable to that event.

Example: You sell a block of land and a boat for a total of \$100,000. This transaction involves 2 CGT events.

The \$100,000 must be divided among the 2 events. The capital proceeds from the disposal of the land are so much of the \$100,000 as is reasonably attributable to it. The rest relates to the boat.

- (2) If you receive a payment in connection with a transaction that relates to one \*CGT event and something else, the *capital proceeds* from the event are so much of the payment as is reasonably attributable to the event.

Example: You are an architect. You receive \$70,000 for selling a block of land and giving advice to the new owner. This transaction involves one CGT event: the disposal of the land.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 116-45

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The capital proceeds from the disposal of the land is so much of the \$70,000 as is reasonably attributable to that disposal.

- (3) The payment can include giving property: see section 103-5.

**116-45 Non-receipt rule: modification 3**

- (1) The \*capital proceeds from a \*CGT event are reduced if:
- (a) you are not likely to receive some or all (the *unpaid amount*) of those proceeds; and
  - (b) this is not because of anything you (or your \*associate) have done or omitted to do; and
  - (c) you took all reasonable steps to get the unpaid amount paid.

The capital proceeds are reduced by the unpaid amount.

Note: This rule exists because the general rules treat you as having received an amount when you are entitled to receive it.

Example You sell a painting to another entity for \$5,000 (the capital proceeds). You agree to accept monthly instalments of \$100.

You receive \$2,000, but then the other entity stops making payments. It becomes clear that you are not likely to receive the remaining \$3,000. The capital proceeds are reduced to \$2,000.

- (2) There is a further consequence if:
- (a) those proceeds are reduced by the unpaid amount; but
  - (b) you later receive a part of that amount.

Those proceeds are increased by that part.

- (3) This Part and Part 3-3 apply to the debt owed to you (the unpaid amount) as if it were not a \*CGT asset.

**116-50 Repaid rule: modification 4**

- (1) The \*capital proceeds from a \*CGT event are reduced by:
- (a) any part of them that you repay; or
  - (b) any compensation you pay that can reasonably be regarded as a repayment of part of them.

However, the capital proceeds are not reduced by any part of the payment that you can deduct.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Example: You sell a block of land for \$50,000 (the capital proceeds). The purchaser later finds out that you misrepresented a term in the contract. The purchaser sues you and the court orders you to pay \$10,000 in damages to the purchaser.

The capital proceeds are reduced by \$10,000.

- (2) The payment can include giving property: see section 103-5.

### **116-55 Assumption of liability rule: modification 5**

The \*capital proceeds from a \*CGT event are increased if another entity \*acquires the \*CGT asset (the subject of the event) subject to a liability by way of security over the asset.

They are increased by the amount of the liability the other entity assumes.

Example: You sell land for \$150,000. You receive \$50,000 (the capital proceeds) and the buyer becomes responsible for a \$100,000 liability under an outstanding mortgage. The capital proceeds are increased by \$100,000 to \$150,000.

### **116-60 Misappropriation rule: modification 6**

- (1) The \*capital proceeds from a \*CGT event are reduced if your employee or \*agent misappropriates (whether by theft, embezzlement, larceny or otherwise) all or part of those proceeds.

Note: This rule exists because the general rules treat you as having received an amount when you are entitled to receive it.

- (2) The \*capital proceeds are reduced by the amount misappropriated.
- (3) There is a further consequence if:
- (a) those proceeds are reduced by the amount misappropriated; and
  - (b) you later receive an amount as \*recoupment of all or part of the amount misappropriated.

Those proceeds are increased by the amount received.

- (4) This Part and Part 3-3 apply to the debt owed to you (the amount misappropriated) as if it were not a \*CGT asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 116-65

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- (5) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this section for an income year if:
- (a) you discover the misappropriation, or you receive an amount as \*recoupment of all or part of the amount misappropriated, after you lodged your \*income tax return for the income year; and
  - (b) the amendment is made at any time during the period of 4 years starting immediately after you discover the misappropriation or receive the amount.

**Special rules**

**116-65 Disposal etc. of a CGT asset the subject of an option**

- (1) This section applies if:
- (a) you granted, renewed or extended an option to create (including grant or issue) or \*dispose of a \*CGT asset; and
  - (b) another entity exercises the option; and
  - (c) because of the exercise of the option, you create (including grant or issue) or dispose of the CGT asset.
- (2) The \*capital proceeds from the creation (including grant or issue) or disposal include any payment you received for granting, renewing or extending the option.
- (3) The payment can include giving property: see section 103-5.

**116-70 Option requiring both acquisition and disposal etc.**

- (1) This section applies if:
- (a) you granted, renewed or extended an option; and
  - (b) the option requires you both to \*acquire, and to create (including grant or issue) or \*dispose of, a \*CGT asset.
- (2) The option is treated as 2 separate options and half of the \*capital proceeds from the grant, renewal or extension is attributed to each option.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **116-75 Special rule for CGT event happening to a lease**

The \*capital proceeds from the expiry, surrender or forfeiture of a lease include any payment (because of the lease ending) by the lessor to the lessee for expenditure of a capital nature incurred by the lessee in making improvements to the leased property.

The payment or expenditure can include giving property: see section 103-5.

### **116-80 Special rule if CGT asset is shares or an interest in a trust**

- (1) This section sets out what happens if:
  - (a) there is a fall in the \*market value of a \*personal use asset (other than a car, motor cycle or similar vehicle) or a \*collectable of a company or trust; and
  - (b) \*CGT event A1, C2 or E8 happens to:
    - (i) \*shares you own in the company (or in a company that is a member of the same \*wholly-owned group); or
    - (ii) an interest you have in the trust.

Note: The full list of CGT events is in section 104-5.

- (2) The \*capital proceeds from the event are replaced with the \*market value of the \*shares, or the interest in the trust.

The market value is worked out as at the time of the event as if the fall in market value of the \*personal use asset or \*collectable had *not* occurred.

Note: You may also make a collectable loss: see CGT event K5.

### **116-85 Section 47A of 1936 Act applying to rolled-over asset**

- (1) You reduce the \*capital proceeds from a \*CGT event that happens in relation to a \*CGT asset you have if the conditions in this table are satisfied.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 116-95

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**Conditions for reduction**

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**Item Condition**

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|---|---|
| 1 | You must have *acquired the asset from a company or *CFC  |
| 2 | Either:<br>(a) the company obtained a roll-over for the *CGT event that resulted in your *acquisition of the asset; or<br>(b) the *CFC obtained a roll-over for that event in applying Division 7 of Part X of the <i>Income Tax Assessment Act 1936</i> for the purpose of working out the *attributable income of a company in relation to any entity except a roll-over under Subdivision 124-J (about Crown leases), 124-K (about depreciating assets) or 124-L (about prospecting and mining entitlements) |
| 3 | The company or *CFC is taken, under section 47A of the <i>Income Tax Assessment Act 1936</i> , to have paid you a dividend in relation to that event and some or all of the dividend is included in your assessable income under section 44 of that Act   |
- 

Note: For roll-overs: see Divisions 122, 124 and 126.

- (2) The reduction is the lesser of:
- (a) the amount of the dividend; and
  - (b) the amount of any \*capital gain that, apart from the roll-over, the company or \*CFC would have made from the \*CGT event if its \*capital proceeds from the event had been the asset's \*market value (at the time of the event).

Note: This section is disregarded in calculating the attributable income of a CFC: see section 410 of the *Income Tax Assessment Act 1936*.

### 116-95 Company changes residence from an unlisted country

- (1) This section sets out what happens if:
- (a) a \*CFC ceases at a time (the **residency change time**) to be a resident of an \*unlisted country and becomes a resident of a \*listed country; and
  - (aa) subsection 457(3) of the *Income Tax Assessment Act 1936* does not apply to the change of residence; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) because of the change in its residency status, an amount is included in an entity's assessable income under section 457 of the *Income Tax Assessment Act 1936* (including because of paragraph 58(1)(d) of the *Taxation Laws Amendment (Foreign Income) Act 1990*); and
  - (c) a \*CGT event happens in relation to a \*CGT asset (the **CFC asset**) that is \*taxable Australian property and that the CFC owned since the residency change time.
- (2) If the conditions in subsection (3) are satisfied, the \*capital proceeds from the \*CGT event are reduced by the amount worked out under subsection (4). If the conditions in subsection (5) are satisfied, those capital proceeds are increased by the amount worked out under subsection (6).

*Reduction of capital proceeds*

- (3) If all the \*CFC's assets were \*disposed of at the residency change time for their \*market values in the circumstances mentioned in subparagraph 457(2)(a)(ii) of the *Income Tax Assessment Act 1936*:
- (a) \*distributable profits of the CFC of a particular amount (the **distributable profit amount**) would be created, or its distributable profits would be increased by an amount (also the **distributable profit amount**); and
  - (b) the CFC would have made a profit (the **CFC asset profit**) on the disposal of the CFC asset.
- (4) The \*capital proceeds are reduced by:

$$\text{Distributable profit amount} \times \frac{\text{CFC asset profit}}{\text{Total asset profits}}$$

where:

**total asset profits** is the sum of the profits that the CFC would have made if all its assets were \*disposed of at the residency change time for their \*market values (ignoring disposals that would not result in a profit).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 116-100

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*Increase in capital proceeds*

- (5) If all the \*CFC's assets were \*disposed of at the residency change time for their \*market values in the circumstances mentioned in subparagraph 457(2)(a)(ii) of the *Income Tax Assessment Act 1936*:
- (a) the \*distributable profits of the CFC would be reduced by an amount (the ***distributable profit reduction amount***); and
  - (b) the CFC would have made a loss (the ***CFC asset loss***) on the disposal of the CFC asset.
- (6) The \*capital proceeds are increased by:

$$\text{Distributable profit reduction amount} \times \frac{\text{CFC asset loss}}{\text{Total asset losses}}$$

where:

***total asset losses*** is the sum of the losses that the CFC would have made if all its assets were \*disposed of at the residency change time for their \*market values (ignoring disposals that would not result in a loss).

Note: This section is disregarded in calculating the attributable income of a CFC: see section 410 of the *Income Tax Assessment Act 1936*.

**116-100 Gifts of property**

- (1) If CGT event A1 is the giving of a gift of property by you for which a valuation under section 30-212 is obtained, you may choose that the \*capital proceeds from the event are replaced with the value of the property as determined under the valuation.
- (2) You can only make this choice if the valuation was made no more than 90 days before or after the CGT event.

**116-105 Conservation covenants**

If \*CGT event D4 happens because you enter into a \*conservation covenant over land you own and you can deduct an amount under Division 31 because you enter into the covenant, the \*capital proceeds from the event are the amount you can deduct.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: To get a deduction under Division 31, you must not receive money, property or other material benefit for entering into the covenant.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 118—Exemptions**

### **Table of Subdivisions**

	Guide to Division 118
118-A	General exemptions
118-B	Main residence
118-D	Insurance and superannuation
118-E	Units in pooled superannuation trusts
118-F	Venture capital investment
118-G	Venture capital: investment by superannuation funds for foreign residents
118-H	Demutualisation of Tower Corporation

### **Guide to Division 118**

#### **118-1 What this Division is about**

This Division sets out various exemptions for many capital gains and losses.

There are other provisions that provide exemptions from CGT liability, for example, Division 104 (exceptions from CGT events), Division 152 (small business relief) and Division 50 (exempt entities).

Note 1: There are also these exemptions in the *Income Tax Assessment Act 1936*:

- section 23AH (about foreign branch gains and losses of companies);
- section 24B (about External Territories);
- section 26BC (about securities lending arrangements);
- section 121AS (about demutualisation of insurance companies);
- sections 121EL, 121ELA and 121ELB (about offshore banking units);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- section 159GZZZN (about buy-back and cancellation of shares);
- section 315 (about superannuation and related businesses);
- section 408 (about calculating the attributable income of a CFC).

Note 2: There are also exemptions in Division 54.

Note 3: There are also exemptions in Division 315 (about demutualisation of private health insurers).

## **Subdivision 118-A—General exemptions**

### **Table of sections**

#### **Exempt assets**

118-5	Cars, motor cycles and valour decorations
118-10	Collectables and personal use assets
118-12	Assets used to produce exempt income etc.
118-13	Shares in a PDF

#### **Anti-overlap provisions**

118-20	Reducing capital gains if amount otherwise assessable
118-21	Carried interests
118-22	Superannuation lump sums and employment termination payments
118-24	Depreciating assets and section 73BA depreciating assets
118-25	Trading stock
118-27	Division 230 financial arrangements
118-30	Film copyright
118-35	Research and development

#### **Exempt or loss-denying transactions**

118-37	Compensation, damages etc.
118-40	Expiry of a lease
118-42	Transfer of stratum units
118-45	Sale of rights to mine
118-55	Foreign currency hedging gains and losses
118-60	Certain gifts
118-65	Later distributions of personal services income
118-70	Transactions by exempt entities
118-75	Marriage or relationship breakdown settlements

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 118-5

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**Boat capital gains**

118-80 Reduction of boat capital gain

**Exempt assets**

**118-5 Cars, motor cycles and valour decorations**

A \*capital gain or \*capital loss you make from any of these \*CGT assets is disregarded:

- (a) a \*car, motor cycle or similar vehicle;
- (b) a decoration awarded for valour or brave conduct (unless you paid money or gave any other property for it).

**118-10 Collectables and personal use assets**

- (1) A \*capital gain or \*capital loss you make from a \*collectable is disregarded if the first element of its \*cost base, or the first element of its \*cost if it is a \*depreciating asset, is \$500 or less.

Example: On 10 July 2001, Gayle buys a print for \$450 and hangs it in her home. On 30 November 2001 she takes the print to her office and hangs it in the lobby. Gayle self assesses the effective life of the print to be 7 years.

Gayle sells the print to Anna for \$700 on 2 January 2002.

How much can Gayle deduct for the 2001-02 income year?

The cost of the print is \$450. Gayle chooses to use the prime cost method to calculate its decline in value.

The print's decline in value is:

$$\$450 \times \frac{177}{365} \times \frac{100\%}{7 \text{ years}}$$

= \$31

Gayle can deduct \$6 as the taxable use portion of the decline in value under Division 40:

$$\frac{34}{177} \times 31$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Due to the balancing adjustment event that occurred on 2 January 2002, \$54 is included in Gayle's assessable income for the 2001-02 income year under section 40-285. The amount is reduced for non-taxable use by section 40-290.

A capital gain of \$202 is disregarded under this section because the asset is a collectable acquired for less than \$500.

- (2) However, there is a special rule if the \*collectable is an interest in one of these \*CGT assets:
- (a) \*artwork, jewellery, an antique, or a coin or medallion;
  - (b) a rare folio, manuscript or book;
  - (c) a postage stamp or first day cover.

A \*capital gain or \*capital loss you make from the interest is disregarded only if the \*market value of the asset (when you \*acquired the interest) is \$500 or less.

Note: If you last acquired the interest before 16 December 1995, a capital gain or loss is disregarded if you acquired the *interest* for \$500 or less: see section 118-10 of the *Income Tax (Transitional Provisions) Act 1997*.

- (3) A \*capital gain you make from a \*personal use asset, or part of the asset, is disregarded if the first element of the asset's \*cost base, or the first element of its \*cost if it is a \*depreciating asset, is \$10,000 or less.

Note: A capital loss you make from a personal use asset is disregarded: see subsection 108-20(1).

### **118-12 Assets used to produce exempt income etc.**

- (1) A \*capital gain or \*capital loss you make from a \*CGT asset that you used solely to produce your \*exempt income or \*non-assessable non-exempt income is disregarded.
- (2) However, the exemption does not apply if the asset was used to gain or produce an amount that is \*non-assessable non-exempt income because of:
- (a) any of these provisions of this Act:
    - (i) section 59-15 (mining payments);
    - (ia) section 59-35 (amounts that would be mutual receipts but for prohibition on distributions to members);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 118-13

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- (ii) subsection 70-90(2) (disposing of trading stock outside the ordinary course of business);
- (iii) section 86-30 (income of a personal services entity);
- (iv) subsection 86-35(1) (payment by a personal services entity);
- (v) subsection 86-35(2) (share of personal services entity's net income);
- (vi) section 240-40 (treatment of arrangement payments);
- (vii) section 802-15 (foreign residents—exempting CFI from Australian tax);
- (viii) section 840-815 (foreign residents—final withholding tax on managed investment trust income); or
- (b) any of these provisions of the *Income Tax Assessment Act 1936*:
  - (i) section 23AH (foreign branch profits of Australian companies);
  - (ii) section 23AI (amounts paid out of attributed income);
  - (iii) section 23AJ (foreign non-portfolio dividends);
  - (iv) section 23AK (attributed foreign investment fund income);
  - (v) subsection 23L(1) (fringe benefits);
  - (vi) subsection 99B(2A) (attributed trust income);
  - (vii) section 128D (dividends, royalties and interest subject to withholding tax);
  - (viii) section 42A-40 in Schedule 2E (luxury car lease payments);
  - (ix) subsection 271-105(3) in Schedule 2F (amounts subject to family trust distribution tax).

Note: These provisions make amounts non-assessable non-exempt income to prevent them being double taxed rather than to remove them entirely from the taxation system. Therefore, the policy reason for disregarding gains and losses does not apply to assets used to produce those amounts.

**118-13 Shares in a PDF**

A \*capital gain or \*capital loss you make from a \*CGT event happening in relation to \*shares in a \*PDF is disregarded.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Anti-overlap provisions

### 118-20 Reducing capital gains if amount otherwise assessable

(1) A \*capital gain you make from a \*CGT event is reduced if, because of the event, a provision of this Act (outside of this Part) includes an amount (for any income year) in:

- (a) your assessable income or \*exempt income; or
- (b) if you are a partner in a partnership, the assessable income or exempt income of the partnership.

(1A) Subsection (1) applies to an amount that, under a provision of this Act (outside of this Part), is included in:

- (a) your assessable income or \*exempt income; or
- (b) if you are a partner in a partnership, the assessable income or exempt income of the partnership;

in relation to a \*CGT asset as if it were so included because of the \*CGT event referred to in that subsection if the amount would also be taken into account in working out the amount of a \*capital gain you make.

Note: An example is an amount assessable under Division 16E of Part III of the *Income Tax Assessment Act 1936*, which deals with accruals taxation of certain securities.

(1B) The rule in subsection (1) does not apply to:

- (a) an amount that is taken to be a dividend under section 159GZZZZP of the *Income Tax Assessment Act 1936* (which relates to buy-backs of \*shares); or
- (b) an amount included in assessable income under subsection 207-20(1), 207-35(1) or 207-35(3) of this Act (which relate to franked distributions).

(2) The gain is reduced to zero if it does *not* exceed:

- (a) the amount included; or
- (b) if you are a partner, your share (the *partner's share*) of the amount included in the assessable income or \*exempt income of the partnership (calculated according to your entitlement to share in the partnership net income or loss).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 118-20

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Example: Liz bought some land in 1990, as part of a profit-making scheme. In December 1998 she sells it.

Her profit from the sale is \$40,000 and is included in her assessable income under section 6-5 (about ordinary income).

Suppose she made a capital gain from the sale of \$30,000. It is reduced to zero because it does not exceed the amount included.

- (3) The gain is reduced by the amount included, or the amount of the partner's share, if the gain exceeds that amount.

Note: These rules are modified for complying superannuation funds that become non-complying and for foreign superannuation funds that become Australian superannuation funds: see Division 295.

- (4) A \*capital gain you make from a \*CGT event is reduced by the extent that a provision of this Act (except section 59-40) treats:
- (a) an amount of your \*ordinary income or \*statutory income from the event as being \*non-assessable non-exempt income; or
  - (b) if you are a partner, your share of the ordinary income or \*statutory income of the partnership from the event (calculated according to your entitlement to share in the partnership net income or loss) as being non-assessable non-exempt income of the partnership.

Note: An example of a provision of this kind is section 121EG (about offshore banking units) of the *Income Tax Assessment Act 1936*.

- (4A) A \*capital gain the trustee of a \*superannuation fund makes from a \*CGT event happening in relation to a \*CGT asset in an income year is reduced if the asset's \*market value was taken into account in working out the fund's income from previous years under section 295-325 or 295-330.
- (4B) The gain is reduced to zero if it does not exceed the amount that would have been the \*capital gain from the \*CGT event if the \*capital proceeds from the event were the asset's \*market value that was taken into account in working out that net previous income. If the gain exceeds that amount, it is reduced by that amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Exceptions*

- (5) The gain is not reduced if an amount is included in your assessable income, or the assessable income of the partnership, for any income year because of a balancing adjustment.
- (6) The gain is not reduced if an amount is included in your \*non-assessable non-exempt income under section 23AJ (about exempting certain non-portfolio dividends paid by non-resident companies) of the *Income Tax Assessment Act 1936* because a company pays a \*dividend to you that is:
  - (a) debited against a \*share capital account of the company; or
  - (c) debited against an asset revaluation reserve of the company; or
  - (d) directly or indirectly attributable to amounts transferred from such an account or reserve of the company.

### **118-21 Carried interests**

*CGT events relating to carried interests not to be treated as income*

- (1) The modifications in subsections (2) and (3) apply if \*CGT event K9 happens in relation to your entitlement to receive a payment of the \*carried interest of a \*general partner in a \*VCLP, an \*ESVCLP or an \*AFOF or a \*limited partner in a \*VCMP.
- (2) These provisions do not apply to the CGT event:
  - (a) sections 6-5 (about \*ordinary income), 8-1 (about amounts you can deduct), 15-15 and 25-40 (about profit-making undertakings or plans) and 118-20 (reducing capital gains if amount otherwise assessable);
  - (b) sections 25A and 52 of the *Income Tax Assessment Act 1936* (about profit-making undertakings or schemes).
- (3) Section 6-10 (about \*statutory income) does not apply to the \*CGT event except so far as that section applies in relation to section 102-5 (about net capital gains).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 118-22 Superannuation lump sums and employment termination payments

In applying section 118-20, treat a \*superannuation lump sum or an \*employment termination payment that you receive as being included in your assessable income.

### 118-24 Depreciating assets and section 73BA depreciating assets

- (1) A \*capital gain or \*capital loss you make from a \*CGT event (that is also a \*balancing adjustment event) that happens to a \*depreciating asset or a section 73BA depreciating asset (within the meaning of section 73BB of the *Income Tax Assessment Act 1936*) is disregarded if the asset was:

- (a) an asset you \*held; or
- (b) if you are a partner, an asset of the partnership; or
- (c) if you are absolutely entitled to the asset as against the trustee of a trust (disregarding any legal disability), an asset of the trustee;

where the decline in value of the asset was worked out under Division 40, or the deduction for the asset was calculated under Division 328, or would have been if the asset had been used.

- (2) However, subsection (1) does not apply to:
- (a) a \*capital gain or \*capital loss you make from \*CGT event J2 or \*CGT event K7 happening; or
  - (b) a \*depreciating asset for which you or another entity has deducted or can deduct amounts under Subdivision 40-F or 40-G.

### 118-25 Trading stock

- (1) A \*capital gain or \*capital loss you make from a \*CGT asset is disregarded if, at the time of the \*CGT event, the asset is:
- (a) your \*trading stock; or
  - (b) if you are a partner, trading stock of the partnership; or
  - (c) if you are absolutely entitled to the asset as against the trustee of a trust (disregarding any legal disability), trading stock of the trustee.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) A \*capital gain or \*capital loss you make in these circumstances is disregarded:
- (a) you start holding as \*trading stock a \*CGT asset you already own but do not hold as trading stock; and
  - (b) you elect under paragraph 70-30(1)(a) to be treated as having sold the asset for its cost (worked out under that section).

Note 1: Paragraph 70-30(1)(a) allows you to elect the cost of the asset, or its market value, just before it became trading stock.

Note 2: You may make a capital gain or loss if you elect its market value: see CGT event K4.

### **118-27 Division 230 financial arrangements**

- (1) A \*capital gain or \*capital loss you make:
- (a) from a \*CGT asset; or
  - (b) in creating a CGT asset; or
  - (c) from the discharge of a liability;
- is disregarded if, at the time of the \*CGT event, the asset or liability is, or is part of, a \*Division 230 financial arrangement.
- Note 1: Paragraph (b) is relevant for CGT event D1.
- Note 2: Paragraph (c) is relevant for CGT event L7.
- (2) Subsection (1) does not apply to the following:
- (a) a gain or loss that subsection 230-310(4) (which deals with hedging financial arrangements) provides is to be treated as a \*capital gain or \*capital loss;
  - (b) a loss that is reduced under subsection 230-465(2), to the extent of that reduction (this is the extent to which the loss is of a capital nature).
- (3) Subsection (1) does not apply if the situation that gives rise to the \*CGT event does *not* result in a gain from the arrangement being included in your assessable income under Division 230, or in a loss from the arrangement entitling you to a deduction under Division 230.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **118-30 Film copyright**

- (1) A \*capital gain or \*capital loss you make from a \*CGT event relating to your interest in the copyright in a film is disregarded if an amount is included in your assessable income under section 26AG (about film proceeds) of the *Income Tax Assessment Act 1936* because of the event.
- (2) If you are a partner in a partnership, a \*capital gain or \*capital loss you make from a \*CGT event relating to the partnership's interest in the copyright in a film is disregarded if an amount is included in the assessable income of a partner (including you) under section 26AG of that Act because of the event.
- (3) If you are absolutely entitled to an interest in the copyright in a film as against the trustee of a trust (disregarding any legal disability), a \*capital gain or \*capital loss you make from a \*CGT event relating to the interest is disregarded if an amount is included in your assessable income or the net income of the trust under section 26AG of that Act because of the event.

### **118-35 Research and development**

- (1) Disregard a \*capital gain or \*capital loss from a \*CGT event if an amount is included in your assessable income in any income year under subsection 73B(27A), 73BF(4) or 73BM(4) of the *Income Tax Assessment Act 1936* because of that CGT event.
- (2) Disregard a \*capital gain or \*capital loss from a \*CGT event if an amount is included in the assessable income of a partner (including you) in any income year under subsection 73B(27A), 73BF(4) or 73BM(4) of that Act because of that CGT event.
- (3) If you are absolutely entitled to a \*CGT asset as against the trustee of a trust (disregarding any legal disability), disregard a \*capital gain or \*capital loss the trustee makes from a \*CGT event if an amount is included in your assessable income or the net income of the trust under subsection 73B(27A), 73BF(4) or 73BM(4) of that Act because of that CGT event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Exempt or loss-denying transactions

### 118-37 Compensation, damages etc.

- (1) A \*capital gain or \*capital loss you make from a \*CGT event relating directly to any of these is disregarded:
- (a) compensation or damages you receive for any wrong or injury you suffer in your occupation;
  - (b) compensation or damages you receive for any wrong, injury or illness you or your \*relative suffers personally;
  - (c) gambling, a game or a competition with prizes;
  - (d) a re-establishment grant under section 52A of the *Farm Household Support Act 1992*;
  - (f) a sugar industry exit grant that you receive under the program known as the Sugar Industry Reform Program;
  - (g) a tobacco industry exit grant that you receive under the program known as the Tobacco Growers Adjustment Assistance Programme 2006 if, as a condition of receiving the grant, you entered into an undertaking not to become the owner or operator of any agricultural \*enterprise within 5 years after receiving the grant;
  - (h) a right or entitlement to a \*tax offset, a \*deduction, or a similar benefit under an \*Australian law, a \*foreign law or a law of part of a foreign country;
  - (i) a variation, transfer or revocation of an allocation (within the meaning of the *National Rental Affordability Scheme Act 2008*);
  - (j) anything of economic value provided to you by:
    - (i) a Department of a State or Territory; or
    - (ii) a body (whether incorporated or not) established for a public purpose by or under a law of a State or Territory;in relation to your participation in the National Rental Affordability Scheme.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 118-37

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- (2) A \*capital gain or \*capital loss is disregarded if you make it as a result of receiving a payment or property as reimbursement or payment of your expenses, or receiving or using a voucher or certificate, under:
- (a) a scheme established by an \*Australian government agency, a \*local governing body or a \*foreign government agency under an enactment or an instrument of a legislative character; or
  - (b) the General Practice Rural Incentives Program or the Rural and Remote General Practice Program; or
  - (c) the Sydney Aircraft Noise Insulation Project; or
  - (d) the M4/M5 Cashback Scheme; or
  - (e) the Unlawful Termination Assistance Scheme or the Alternative Dispute Resolution Assistance Scheme.
- (3) A \*capital gain you make from compensation you receive under the \*firearms surrender arrangements is disregarded.
- (4) A \*capital gain or \*capital loss you make from a payment you receive is disregarded if:
- (a) you are an Australian resident; and
  - (b) you receive the payment:
    - (i) under the program known as the “German Forced Labour Compensation Programme”; and
    - (ii) from the Foundation known as “Remembrance, Responsibility and Future” or any of the Foundation’s partner organisations; and
  - (c) the payment is in the nature of compensation for:
    - (i) any wrong or injury; or
    - (ii) any loss of, or damage to, property;that you, or another person, suffered as a result of injustices committed during the National Socialist period.
- (5) A \*capital gain or \*capital loss you make as a result of receiving a payment or property is disregarded if:
- (a) you are an individual who is an Australian resident; and
  - (b) you receive the payment or property from a source in a foreign country; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) you do not receive the payment or property directly or indirectly from an \*associate of yours; and
- (d) the payment or property you receive is in connection with:
  - (i) any wrong or injury; or
  - (ii) any loss of, or damage to, property; or
  - (iii) any other detriment;that you, or another individual, suffered as a result of:
  - (iv) persecution by the National Socialist regime of Germany during the National Socialist period; or
  - (v) persecution by any other enemy of the Commonwealth during the Second World War; or
  - (vi) persecution by an enemy-associated regime during the Second World War; or
  - (vii) flight from persecution mentioned in subparagraph (iv), (v) or (vi); or
  - (viii) participation in a resistance movement during the Second World War against forces of the National Socialist regime of Germany; or
  - (ix) participation in a resistance movement during the Second World War against forces of any other enemy of the Commonwealth.
- (6) For the purposes of subsection (5), the duration of the Second World War includes:
  - (a) the period immediately before the Second World War; and
  - (b) the period immediately after the Second World War.
- (7) For the purposes of subsection (5), a regime is an ***enemy-associated regime*** if, and only if, it was:
  - (a) in alliance with; or
  - (b) occupied by; or
  - (c) effectively controlled by; or
  - (d) under duress from; or
  - (e) surrounded by;either or both of the following:
  - (f) the National Socialist regime of Germany;
  - (g) any other enemy of the Commonwealth.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 118-40

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- (8) Subsection (5) applies to a payment or property received by the \*legal personal representative of an individual in a corresponding way to the way in which that subsection would have applied if the payment or property had been received by the individual.
- (9) Subsection (5) applies to a payment or property received by:
- (a) the \*legal personal representative of a deceased individual; or
  - (b) the trustee of a trust established by the will of a deceased individual;
- in a corresponding way to the way in which that subsection would have applied if:
- (c) the individual had not died; and
  - (d) the payment or property had been received by the individual.

**118-40 Expiry of a lease**

A \*capital loss a lessee makes from the expiry, surrender, forfeiture or assignment of a lease (except one granted for 99 years or more) is disregarded if the lessee did not use the lease solely or mainly for the \*purpose of producing assessable income.

**118-42 Transfer of stratum units**

If:

- (a) you own land on which there is a building; and
- (b) you subdivide the building into \*stratum units; and
- (c) you transfer each unit to the entity who had the right to occupy it just before the subdivision;

a \*capital gain or \*capital loss you make from transferring the unit is disregarded.

**118-45 Sale of rights to mine**

A \*capital gain or \*capital loss you make from the sale, transfer or assignment of your rights to mine in a particular area in Australia is disregarded if you have \*exempt income for the income year (because of the former section 330-60) from the sale, transfer or assignment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **118-55 Foreign currency hedging gains and losses**

A \*capital gain or \*capital loss you make from a contract you entered into solely to reduce the risk of financial loss you may suffer from currency exchange rate fluctuations is disregarded if the contract relates to:

- (a) a liability you have to make a payment under another contract; or
- (b) a \*CGT asset that is a right you \*acquired *before* 20 September 1985 to receive money under another contract.

### **118-60 Certain gifts**

- (1) A \*capital gain or \*capital loss made from a testamentary gift of property under the Cultural Bequests Program or that would have been deductible under section 30-15 if it had not been a testamentary gift is disregarded.
- (1A) If the only reason the gain or loss is not disregarded under subsection (1) is because the property has not been valued by the Commissioner at more than \$5,000, then, for the purposes of that subsection, it is taken to have been so valued.
- (2) A \*capital gain or \*capital loss made from a gift of property that is deductible under section 30-15 because of item 4 or 5 in the table in that section is disregarded.
- (3) However, subsection (2) does not apply if the gift was not a testamentary gift and the property is later \*acquired for less than \*market value by the person who made the gift or an \*associate of that person.
- (4) If the gift was a testamentary gift and the property is later \*acquired for less than \*market value by the deceased person's estate or a person (the *deceased's associate*) who:
  - (a) is an \*associate of the deceased person's estate; or
  - (b) was an associate of the deceased person immediately before the deceased person's death;the \*cost base and the \*reduced cost base of the property in the hands of the estate or the deceased's associate is worked out under

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 118-65

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section 128-15 as if the property had passed in the estate to the estate or the deceased's associate.

**118-65 Later distributions of personal services income**

A \*capital loss you make from a payment is disregarded if it is a payment to any entity of:

- (a) \*personal services income included in an individual's assessable income under section 86-15; or
- (b) any other amount that is attributable to that income.

**118-70 Transactions by exempt entities**

A \*capital loss made by an entity is disregarded if it was an \*exempt entity at the time it made the loss.

**118-75 Marriage or relationship breakdown settlements**

- (1) A \*capital gain or \*capital loss you make as a result of \*CGT event C2 happening is disregarded if:
  - (a) you make the gain or loss in relation to a right that directly relates to the breakdown of a relationship between \*spouses; and
  - (b) at the time of the CGT event:
    - (i) you and your spouse or former spouse are separated; and
    - (ii) there is no reasonable likelihood of cohabitation being resumed.

Example: Maude receives an amount from Claude by way of a settlement directly related to the breakdown of their marriage. CGT event C2 would happen to Maude on satisfaction of her legally enforceable right to the amount. Any capital gain or loss that Maude makes in these circumstances is disregarded.

- (2) For the purposes of this section, the question whether \*spouses or former spouses have separated is to be determined in the same way as it is for the purposes of section 48 of the *Family Law Act 1975* (as affected by sections 49 and 50 of that Act).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Boat capital gains

### 118-80 Reduction of boat capital gain

A \*capital gain you make from a \*CGT event happening in relation to a boat for an income year is reduced by an amount that is a quarantined amount for you for the income year under subsection 26-47(2).

Note: Section 26-47 denies deductions for the excess of boat expenditure over boat income.

### Subdivision 118-B—Main residence

#### Guide to Subdivision 118-B

##### 118-100 What this Subdivision is about

You can ignore a capital gain or capital loss you make from a CGT event that happens to a dwelling that is your main residence.

However, this exemption may not apply in full if:

- it was your main residence during part only of your ownership period; or
- it was used for the purpose of producing assessable income.

There are special rules for dwellings passed from, or owned by a trustee of, a deceased estate.

#### Table of sections

118-105 Map of this Subdivision

##### Basic case and concepts

118-110 Basic case

118-115 Meaning of *dwelling*

118-120 Extension to adjacent land

118-125 Meaning of *ownership period*

118-130 Meaning of *ownership interest* in land or a dwelling

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 118-100

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**Rules that may extend the exemption**

- 118-135 Moving into a dwelling
- 118-140 Changing main residences
- 118-145 Absences
- 118-150 If you build, repair or renovate a dwelling
- 118-155 Where individual referred to in section 118-150 dies
- 118-160 Destruction of dwelling and sale of land

**Rules that may limit the exemption**

- 118-165 Separate CGT event for adjacent land or other structures
- 118-170 Spouse having different main residence
- 118-175 Dependent child having different main residence

**Roll-overs under Subdivision 126-A**

- 118-178 Previous roll-over under Subdivision 126-A
- 118-180 Acquisition of dwelling from company or trust on marriage or relationship breakdown—roll-over provision applying

**Partial exemption rules**

- 118-185 Partial exemption where dwelling was your main residence during part only of ownership period
- 118-190 Use of dwelling for producing assessable income
- 118-192 Special rule for first use to produce income

**Dwellings acquired from deceased estates**

- 118-195 Dwelling acquired from a deceased estate
- 118-197 Special rule for surviving joint tenant
- 118-200 Partial exemption for deceased estate dwellings
- 118-205 Adjustment if dwelling inherited from deceased individual
- 118-210 Trustee acquiring dwelling under will

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

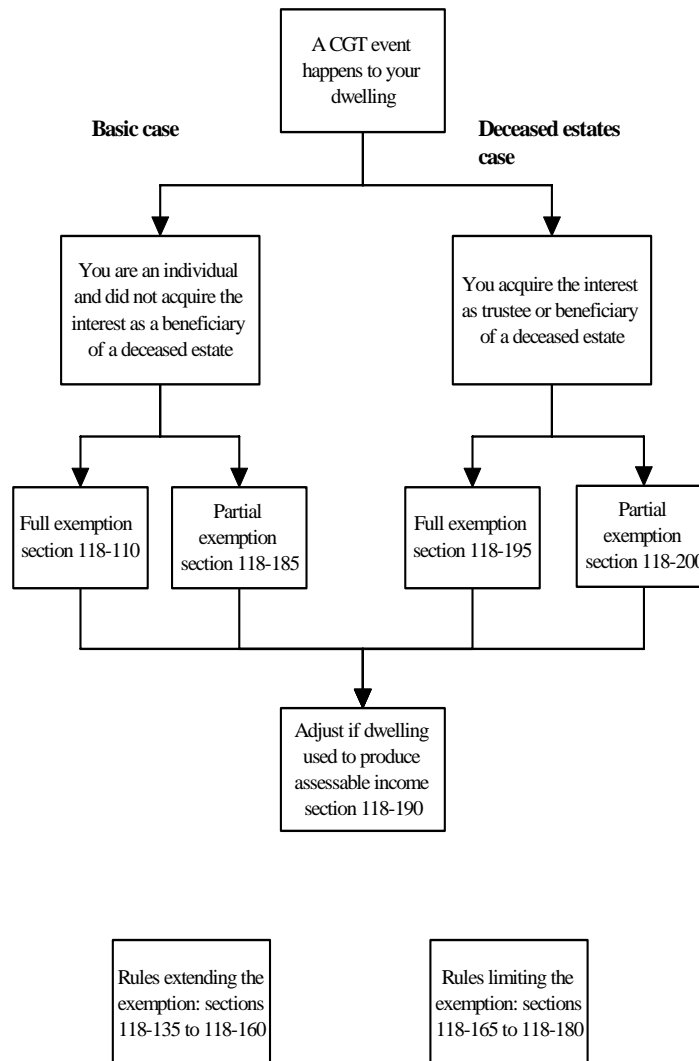
### 118-105 Map of this Subdivision

*Event that may attract exemption*

*The 2 different cases*

*Extent of exemption depends on whether dwelling is your main residence throughout ownership period (and on other factors for deceased estates)*

*Other rules that apply to both cases*



\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Basic case and concepts**

### **118-110 Basic case**

- (1) A \*capital gain or \*capital loss you make from a \*CGT event that happens in relation to a \*CGT asset that is a \*dwelling or your \*ownership interest in it is disregarded if:
- (a) you are an individual; and
  - (b) the dwelling was your main residence throughout your \*ownership period; and
  - (c) the interest did not \*pass to you as a beneficiary in, and you did not \*acquire it as a trustee of, the estate of a deceased person.

Note 1: You may make a capital gain or capital loss even though you comply with this section if the dwelling was used for the purpose of producing assessable income: see section 118-190.

Note 2: There is a separate rule for beneficiaries and trustees of deceased estates: see section 118-195.

- (2) Only these \*CGT events are relevant:
- (a) CGT events A1, B1, C1, C2, E1, E2, F2, I1, I2, K3, K4 and K6 (except one involving the forfeiting of a deposit); and
  - (b) a CGT event that involves the forfeiting of a deposit as part of an uninterrupted sequence of transactions ending in one of the events specified in paragraph (a) subsequently happening.

Note: The full list of CGT events is in section 104-5.

### **118-115 Meaning of *dwelling***

- (1) A *dwelling* includes:
- (a) a unit of accommodation that:
    - (i) is a building or is contained in a building; and
    - (ii) consists wholly or mainly of residential accommodation; and
  - (b) a unit of accommodation that is a caravan, houseboat or other mobile home; and
  - (c) any land immediately under the unit of accommodation.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) However, except as provided in section 118-120, a *dwelling* does not include any land adjacent to a building.

### **118-120 Extension to adjacent land**

- (1) This Subdivision applies to land that is adjacent to a \*dwelling (if the same \*CGT event happens to the land or your \*ownership interest in it) to the extent that you used the land primarily for private or domestic purposes in association with the dwelling as if it were a dwelling.
- (2) The maximum area of land covered by the exemption (including the area of the land on which the \*dwelling is built) is 2 hectares.
- (3) For a flat or home unit, this Subdivision also applies to a garage, storeroom or other structure that is associated with it (if the same \*CGT event happens to the structure or your \*ownership interest in it) as if it were a dwelling. However, it so applies only to the extent that you used the structure primarily for private or domestic purposes in association with the flat or home unit.

### **118-125 Meaning of *ownership period***

Your *ownership period* of a \*dwelling is the period *on or after* 20 September 1985 when you had an \*ownership interest in:

- (a) the dwelling; or  
(b) land (\*acquired *on or after* 20 September 1985) on which the dwelling is later built.

### **118-130 Meaning of *ownership interest in land or a dwelling***

- (1) You have an *ownership interest* in land or a \*dwelling if:
- (a) for land—you have a legal or equitable interest in it or a right to occupy it; or  
(b) for a dwelling that is not a flat or home unit—you have a legal or equitable interest in the land on which it is erected, or a licence or right to occupy it; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 118-135

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- (c) for a flat or home unit—you have:
  - (i) a legal or equitable interest in a \*stratum unit in it; or
  - (ii) a licence or right to occupy it; or
  - (iii) a \*share in a company that owns a legal or equitable interest in the land on which the flat or home unit is erected and that gives you to a right to occupy it.
- (2) For land or a \*dwelling that you \*acquire under a contract, you have an *ownership interest* in it from:
  - (a) the time when you obtain legal ownership of it; or
  - (b) if the contract or a related contract gives you a right to occupy it at an earlier time—the earlier time.
- (3) For land or a \*dwelling where you have a contract for the happening of the \*CGT event, you have an *ownership interest* in it until your legal ownership of it ends.

### Rules that may extend the exemption

#### 118-135 Moving into a dwelling

If a \*dwelling becomes your main residence by the time it was first practicable for you to move into it after you \*acquired your \*ownership interest in it, the dwelling is treated as your main residence from when you acquired the interest until it actually became your main residence.

#### 118-140 Changing main residences

- (1) If you \*acquire an \*ownership interest in a \*dwelling that is to become your main residence and you still have your ownership interest in your existing main residence, both dwellings are treated as your main residence for the shorter of:
  - (a) 6 months ending when your ownership interest in your existing main residence ends; or
  - (b) the period between the acquisition of the new ownership interest and the time when the ownership interest referred to in paragraph (a) ends.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) Subsection (1) only applies if:
- (a) your existing main residence was your main residence for a continuous period of at least 3 months in the 12 months ending when your ownership interest in it ends; and
  - (b) your existing main residence was not used for the \*purpose of producing assessable income in any part of that 12 month period when it was not your main residence.

### **118-145 Absences**

- (1) If a \*dwelling that was your main residence ceases to be your main residence, you may choose to continue to treat it as your main residence.
- (2) If you use the part of the \*dwelling that was your main residence for the \*purpose of producing assessable income, the maximum period that you can treat it as your main residence under this section while you use it for that purpose is 6 years. You are entitled to another maximum period of 6 years each time the dwelling again becomes and ceases to be your main residence.
- (3) If you do not use the \*dwelling for that purpose, you can treat it as your main residence under this section indefinitely.
- (4) If you make the choice, you cannot treat any other \*dwelling as your main residence while you apply this section, except if section 118-140 (about changing main residences) applies.

**Example:** You live in a house for 3 years. You are posted overseas for 5 years and you rent it out during your absence. On your return you move back into it for 2 years. You are then posted overseas again for 4 years (again renting it out), at the end of which you sell the house.

You have not treated any other dwelling as your main residence during your absences.

You may choose to continue to treat the house as your main residence during both absences because each absence is less than 6 years.

You can make this choice when preparing your income tax return for the income year in which you sold the house.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**118-150 If you build, repair or renovate a dwelling**

- (1) This section applies to land in which you have an \*ownership interest (except a life interest) if you build a \*dwelling on the land, or repair, renovate or finish building a dwelling on the land.
- (2) You can choose to apply this Subdivision as if the \*dwelling that you are building, repairing or renovating on the land were your main residence from the time you \*acquired the \*ownership interest.
- (3) You can make the choice only if:
  - (a) a \*dwelling on the land that you construct, repair or renovate becomes your main residence as soon as practicable after the work is finished; and
  - (b) it continues to be your main residence for at least 3 months.
- (4) There is a time limit during which the choice can operate. This is the shorter of:
  - (a) 4 years before the \*dwelling becomes your main residence; or
  - (b) the period starting when you \*acquired your \*ownership interest in the land and ending when the dwelling becomes your main residence.
- (5) If there was already a \*dwelling on the land when you \*acquired your \*ownership interest and you or someone else occupied it after that time, the period in subsection (2) and paragraph (4)(b) starts when the dwelling ceased to be occupied.
- (6) Once you make the choice, no other \*dwelling can be treated as your main residence during the period referred to in subsection (4), except if section 118-140 (about changing main residences) applies.

**118-155 Where individual referred to in section 118-150 dies**

- (1) This section applies if the individual referred to in subsection 118-150(1) dies:
  - (a) after the work began, or the individual entered into a contract for it to be done, but before it was finished; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) after the work was finished but before it was practicable for the \*dwelling to become the individual's main residence; or
  - (c) during the period of 3 months referred to in paragraph 118-150(3)(b).
- (2) If the individual owned the interest in the land as a joint tenant, the surviving joint tenant or, if none, the trustee of the individual's estate, can choose to apply this Subdivision as if the \*dwelling were the main residence of the individual:
- (a) when the individual died; and
  - (b) for the shorter of:
    - (i) 4 years before the individual's death; or
    - (ii) the period starting when the individual \*acquired the interest in the land and ending when the individual died.
- (3) If there was already a \*dwelling on the land when the individual \*acquired the interest in the land and someone occupied it after that time, the period in subparagraph (2)(b)(ii) starts when the dwelling ceased to be occupied so that it could be repaired or renovated.
- (4) If the \*dwelling is treated as the deceased's main residence under this section, no other dwelling can be treated as the deceased's main residence at the same time.

### **118-160 Destruction of dwelling and sale of land**

- (1) This section applies if a \*dwelling that is your main residence is accidentally destroyed and a \*CGT event happens in relation to the land on which it was built without you erecting another dwelling on the land.
- (2) You can choose to apply this Subdivision to the land as if, from the time of the destruction until your \*ownership interest in the land ends, the \*dwelling had not been destroyed and were your main residence.
- (3) If you do so, you cannot treat any other \*dwelling as your main residence during that period, except under section 118-140 (about changing main residences).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Rules that may limit the exemption**

### **118-165 Separate CGT event for adjacent land or other structures**

The exemption does not apply to a \*CGT event that happens in relation to land, or a garage, storeroom or other structure, to which the exemption can extend under section 118-120 (about adjacent land) if that event does not also happen in relation to the \*dwelling or your \*ownership interest in it.

### **118-170 Spouse having different main residence**

- (1) If, during a period, a \*dwelling is your main residence and another \*dwelling is the main residence of your \*spouse (except a spouse living permanently separately and apart from you), you and your spouse must either:
  - (a) choose one of the dwellings as the main residence of both of you for the period; or
  - (b) nominate the different dwellings as your main residences for the period.
- (2) If you nominate the different \*dwellings as your main residences for the period, you split the exemption in accordance with subsections (3) and (4).
- (3) If your interest in the \*dwelling you chose was not, during the period, more than half of the total interests in the dwelling, the dwelling is taken to have been your main residence during the period. Otherwise, the dwelling is taken to have been your main residence for half of the period.
- (4) If your \*spouse's interest in the \*dwelling your spouse chose was not, during the period, more than half of the total interests in the dwelling, the dwelling is taken to have been your spouse's main residence during the period. Otherwise, the dwelling is taken to have been your spouse's main residence for half of the period.

Example: You and your spouse own a town house as tenants in common in equal shares. You and your spouse also own a beach house as tenants in common, with your interest being 30% and your spouse's 70%. From 1 July 1999, you live mainly in the town house and your spouse

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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lives mainly in the beach house. On 1 July 2000 you and your spouse dispose of both dwellings.

For the period 1 July 1999-30 June 2000 you nominate the town house as your main residence and your spouse nominates the beach house. The town house is taken to be your main residence during the period. The beach house is taken to be your spouse's main residence during half the period.

### **118-175 Dependent child having different main residence**

If, at a particular time, a \*dwelling is your main residence and another \*dwelling is the main residence of a \*child of yours who is under 18 and is dependent on you for economic support, you must choose one of them as the main residence of both of you.

### **Roll-overs under Subdivision 126-A**

#### **118-178 Previous roll-over under Subdivision 126-A**

- (1) This section applies to you if:
  - (a) you \*acquired an \*ownership interest in a \*dwelling from another person (your *former partner*) as a result of a \*CGT event (the *earlier event*); and
  - (b) your former partner acquired the ownership interest on or after 20 September 1985; and
  - (c) there was a roll-over under Subdivision 126-A (marriage or relationship breakdown roll-over) for the earlier event; and
  - (d) a CGT event (the *later event*) happens in relation to the ownership interest.
- (2) This Subdivision applies to the later event in the way that it would if:
  - (a) your \*ownership interest had commenced when your former partner's ownership interest commenced (the *acquisition time*); and
  - (b) from the acquisition time until the time your former partner's ownership interest ended:
    - (i) you had used the \*dwelling in the same way that your former partner used it; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 118-180

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- (ii) the dwelling had been your main residence for the same number of days as it was your former partner's main residence.

Example 1: Peter (the transferor spouse) is the 100% owner of a dwelling that he uses only as a main residence before transferring it to Susan (the transferee spouse). Susan uses the dwelling only as a rental property.

Susan will be eligible for a partial main residence exemption having regard to how both Peter and Susan used the dwelling.

Example 2: Caroline (the transferor spouse) is the 100% owner of a dwelling that she uses only as a rental property before transferring it to David (the transferee spouse). David uses the dwelling only as a main residence.

David will be eligible for only a partial main residence exemption having regard to how both Caroline and David used the dwelling.

**118-180 Acquisition of dwelling from company or trust on marriage or relationship breakdown—roll-over provision applying**

- (1) This Subdivision applies to you as if you owned an \*ownership interest in land or a dwelling during a period when it was actually owned by a company or trustee if:
  - (a) you \*acquired the interest from the company or trustee; and
  - (b) it was acquired by the company or trustee *on or after* 20 September 1985; and
  - (c) a roll-over was available to the company or trustee under Subdivision 126-A.
- (2) If subsection (1) applies to a \*dwelling, it cannot be treated as your main residence during the period, despite other provisions of this Subdivision that would allow you to treat it as your main residence during the period.

**Partial exemption rules**

**118-185 Partial exemption where dwelling was your main residence during part only of ownership period**

- (1) You get only a partial exemption for a \*CGT event that happens in relation to a \*dwelling or your \*ownership interest in it if:
  - (a) you are an individual; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the dwelling was your main residence for part only of your \*ownership period; and
  - (c) the interest did not \*pass to you as a beneficiary in, and you did not \*acquire it as a trustee of, the estate of a deceased person.
- (2) You calculate your \*capital gain or \*capital loss using the formula:

$$\text{CG or CL amount} \times \frac{\text{Non-main residence days}}{\text{Days in your *ownership period}}$$

where:

**CG or CL amount** is the \*capital gain or \*capital loss you would have made from the \*CGT event apart from this Subdivision.

**non-main residence days** is the number of days in your \*ownership period when the \*dwelling was not your main residence.

Note: The capital gain or loss may be further adjusted if the dwelling was used to produce assessable income: see section 118-190.

Example: You bought a house in July 1990 and moved in immediately. In July 1993, you moved out and began to rent it. You sold it in July 2000, making (apart from this Subdivision) a capital gain of \$10,000.

You choose to continue to treat the dwelling as your main residence under section 118-145 (about absences) for the first 6 of the 7 years during which you rented the house out.

Under this section, you will be taken to have made a capital gain of:

$$\$10,000 \times \frac{365}{3,650} = \$1,000$$

### 118-190 Use of dwelling for producing assessable income

- (1) You get only a partial exemption for a \*CGT event that happens in relation to a \*dwelling or your \*ownership interest in it if:
  - (a) apart from this section, because the dwelling was your main residence or someone else's during a period:
    - (i) you would not make a \*capital gain or \*capital loss from the event; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 118-190

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- (ii) you would make a lesser capital gain or loss than if this Subdivision had not applied; and
- (b) the dwelling was used for the \*purpose of producing assessable income during all or a part of that period; and
- (c) if you had incurred interest on money borrowed to \*acquire the dwelling, or your ownership interest in it, you could have deducted some or all of that interest.

Example: You acquire a house as a beneficiary in a deceased estate, rent it out for 12 months and sell it within 2 years of the deceased's death. You can ignore the rental because the exemption does not require the house to be your main residence during the 2 years after the death.

- (2) The \*capital gain or \*capital loss that you would have made apart from this section from the \*CGT event is increased by an amount that is reasonable having regard to the extent to which you would have been able to deduct that interest.
- (3) However, you ignore any use of the \*dwelling for the \*purpose of producing assessable income during any period that you continue to treat it as your main residence under section 118-145 (about absences) to the extent that any part of it was not used for that purpose just before it last ceased to be your main residence.

Example: To continue the example from section 118-185, assume that, when you moved in, you used 1/4 of the house as a doctor's surgery.

Under section 118-185, your capital gain was \$1,000.

Under this section, it would be reasonable to add an amount of:

$$\$10,000 \times \frac{9}{10} \times \frac{1}{4} = \$2,250$$

You have a total capital gain of \$3,250 on the sale of the house.

- (4) If a \*dwelling or your \*ownership interest in a dwelling \*passed to you as a beneficiary in a deceased estate, or you owned it as the trustee of a deceased estate, you ignore any use of the \*dwelling for the \*purpose of producing assessable income before the deceased's death if:
  - (a) the dwelling was the deceased's main residence just before the death; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) it was not being used for that purpose just before the death, or any use for that purpose just before the death was ignored because of subsection (3).

### **118-192 Special rule for first use to produce income**

- (1) There is a special rule if:
  - (a) you would get only a partial exemption under this Subdivision for a \*CGT event happening in relation to a \*dwelling or your \*ownership interest in it because the dwelling was used for the \*purpose of producing assessable income during your \*ownership period; and
  - (aa) that use occurred for the first time after 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996; and
  - (b) you would have got a full exemption under this Subdivision if the CGT event had happened just before the first time (the *income time*) it was used for that purpose during your ownership period.
- (2) You are taken to have \*acquired the \*dwelling or your \*ownership interest at the income time for its \*market value at that time.
- (3) If your \*ownership interest in the \*dwelling \*passed to you as a beneficiary in a deceased estate, or you owned it as the trustee of a deceased estate and the \*CGT event did not happen within 2 years of the deceased's death, you apply this Subdivision as if:
  - (a) you had \*acquired the interest as an individual and not as a beneficiary or trustee of a deceased estate; and
  - (b) for applying the formula in section 118-185, your *non-main residence days* were the number of days in your \*ownership period when the dwelling was not the main residence of an individual referred to in item 2, column 3 of the table in section 118-195.

Note: There are special rules for dwellings acquired before 7.30 pm on 20 August 1996: see section 118-195 of the *Income Tax (Transitional Provisions) Act 1997*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Dwellings acquired from deceased estates

### 118-195 Dwelling acquired from a deceased estate

- (1) A \*capital gain or \*capital loss you make from a \*CGT event that happens in relation to a \*dwelling or your \*ownership interest in it is disregarded if:
- (a) you are an individual and the interest \*passed to you as a beneficiary in a deceased estate, or you owned it as the trustee of a deceased estate; and
  - (b) at least one of the items in column 2 and at least one of the items in column 3 of the table are satisfied.

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#### Beneficiary or trustee of deceased estate acquiring interest

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Item	One of these items is satisfied	And also one of these items
1	the deceased *acquired the *ownership interest <i>on or after</i> 20 September 1985 and the *dwelling was the deceased's main residence just before the deceased's death and was not then being used for the *purpose of producing assessable income	your *ownership interest ends within 2 years of the deceased's death

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Beneficiary or trustee of deceased estate acquiring interest**

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Item	One of these items is satisfied	And also one of these items
2	the deceased *acquired the *ownership interest before 20 September 1985	the *dwelling was, from the deceased's death until your *ownership interest ends, the main residence of one or more of: <ul style="list-style-type: none"> <li>(a) the spouse of the deceased immediately before the death (except a spouse who was living permanently separately and apart from the deceased); or</li> <li>(b) an individual who had a right to occupy the dwelling under the deceased's will; or</li> <li>(c) if the *CGT event was brought about by the individual to whom the *ownership interest *passed as a beneficiary—that individual</li> </ul>

Note 1: You may make a capital gain or capital loss if the dwelling was used for the purpose of producing assessable income: see section 118-190.

Note 2: In some cases the use of a dwelling to produce assessable income can be disregarded: see sections 118-145 and 118-190.

Note 3: There are special rules for dwellings acquired before 7.30 pm on 20 August 1996. These rules also affect the operation of section 118-192 and subsections 118-190(4) and 118-200(4): see section 118-195 of the *Income Tax (Transitional Provisions) Act 1997*.

(2) Only these \*CGT events are relevant:

- (a) CGT events A1, B1, C1, C2, E1, E2, F2, I1, I2, K3, K4 and K6 (except one involving the forfeiting of a deposit); and
- (b) a CGT event that involves the forfeiting of a deposit as part of an uninterrupted sequence of transactions ending in one of the events specified in paragraph (a) subsequently happening.

Note: The full list of CGT events is in section 104-5.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



### 118-197 Special rule for surviving joint tenant

This Subdivision applies to you as if the \*ownership interest of another individual in a \*dwelling had \*passed to you as a beneficiary in a deceased estate if:

- (a) you and the other individual owned ownership interests in the dwelling as joint tenants; and
- (b) the other individual dies.

### 118-200 Partial exemption for deceased estate dwellings

- (1) You get only a partial exemption (or no exemption) if:
  - (a) you are an individual and your \*ownership interest in a \*dwelling \*passed to you as a beneficiary in a deceased estate, or you owned it as the trustee of a deceased estate; and
  - (b) section 118-195 does not apply.
- (2) You calculate your \*capital gain or \*capital loss using the formula:

$$\text{CG or CL amount} \times \frac{\text{Non-main residence days}}{\text{Total days}}$$

where:

**CG or CL amount** is the \*capital gain or \*capital loss you would have made from the \*CGT event apart from this Subdivision.

**non-main residence days** is the sum of:

- (a) if the deceased \*acquired the \*ownership interest *on or after* 20 September 1985—the number of days in the deceased's \*ownership period when the \*dwelling was not the deceased's main residence; and
- (b) the number of days in the period from the death until your ownership interest ends when the dwelling was not the main residence of an individual referred to in item 2, column 3 of the table in section 118-195.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*total days* is:

- (a) if the deceased \*acquired the \*ownership interest *before* 20 September 1985—the number of days in the period from the death until your ownership interest ends; or
  - (b) if the deceased acquired the ownership interest *on or after* that day—the number of days in the period from the acquisition of the dwelling by the deceased until your ownership interest ends.
- (3) However, if the deceased \*acquired the \*ownership interest *on or after* 20 September 1985 and your ownership interest ends within 2 years of the deceased's death and you get a more favourable result by doing so, you can adjust the formula by ignoring any *non-main residence days* and *total days* in the period from the deceased's death until your ownership interest ended.
- Note 1: The formula in this section will be adjusted (or further adjusted) under section 118-205 if the deceased acquired the dwelling through a deceased estate.
- Note 2: There may be a further adjustment if the dwelling was used for the purpose of producing assessable income: see section 118-190.
- (4) You ignore any *non-main residence days* before the deceased's death if:
- (a) the \*dwelling was the deceased's main residence just before the death; and
  - (b) the dwelling was not being used for the \*purpose of producing assessable income just before the death, or any use for that purpose just before the death was ignored because of subsection 118-190(3).

### **118-205 Adjustment if dwelling inherited from deceased individual**

- (1) You must adjust the formula in subsection 118-200(2) if the \*ownership interest of the deceased individual referred to in section 118-200 (the *most recently deceased*) \*passed to the individual *on or after* 20 September 1985 as a beneficiary in, or the individual owned it as trustee of, a deceased estate.

Note: Any gains or losses of individuals earlier in the inheritance chain are included in the gain or loss you would have made apart from this

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 118-210

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Subdivision. This section adjusts the formula to take account of times when the dwelling was the main residence of the individuals.

- (2) Add to the component *total days* in the formula the fewer of:
  - (a) the number of days between 20 September 1985 and the day when the interest \*passed to or was \*acquired as trustee by the most recently deceased; and
  - (b) the number of days between the time when an \*ownership interest in the \*dwelling was last acquired *on or after* 20 September 1985 by an individual except as a beneficiary in a deceased estate or as trustee of a deceased estate and the day when the interest passed to or was acquired as trustee by the most recently deceased.
- (3) Add to the component *non-main residence days* in the formula the number of days in the period applicable under subsection (2) that the \*dwelling was not the main residence of one or more of:
  - (a) an individual who owned the dwelling at the time of the individual's death; or
  - (b) an individual who, immediately before the death of an individual referred to in paragraph (a), was the spouse of that individual (except a spouse who was living permanently separately and apart from the individual); or
  - (c) an individual who had a right to occupy the dwelling under a will; or
  - (d) an individual to whom an \*ownership interest in the dwelling \*passed as a beneficiary in, or who \*acquired an ownership interest in the dwelling as trustee of, a deceased estate.

**118-210 Trustee acquiring dwelling under will**

- (1) This section applies if you are the trustee of a deceased estate and, under the deceased's will, you \*acquire an \*ownership interest in a \*dwelling for occupation by an individual.
- (2) If a \*CGT event happens to the interest in relation to the individual and you receive no money or property for it:
  - (a) a \*capital gain or \*capital loss you make from the event is disregarded; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the first element of the \*dwelling's \*cost base and \*reduced cost base in the hands of the individual is its cost base and reduced cost base in your hands at the time of the event; and
  - (c) the individual is taken to have \*acquired it when you did.
- (3) If:
- (a) you receive money or property for the \*CGT event happening or the event happens in relation to another entity; and
  - (b) the dwelling was the main residence of the individual from the time you \*acquired the interest until the time of the event; you do not make a \*capital gain or \*capital loss from the CGT event.
- (4) However, if the \*dwelling was the main residence of the individual during part only of that period, you make a \*capital gain or \*capital loss worked out using the formula:

$$\text{CG or CL amount} \times \frac{\text{Non-main residence days}}{\text{Days in that period}}$$

where:

**CG or CL amount** is the \*capital gain or \*capital loss you would have made from the \*CGT event apart from this Subdivision.

**non-main residence days** is the number of days in that period when the \*dwelling was not the individual's main residence.

- (5) Only these \*CGT events are relevant:
- (a) CGT events A1, B1, C1, C2, E1, E2, E5, F2, I1, I2, K3, K4 and K6 (except one involving the forfeiting of a deposit); and
  - (b) a CGT event that involves the forfeiting of a deposit as part of an uninterrupted sequence of transactions ending in one of the events specified in paragraph (a) subsequently happening.

Note: The full list of CGT events is in section 104-5.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 118-D—Insurance and superannuation

### Table of sections

118-300	Insurance policies
118-305	Superannuation
118-310	RSA's
118-313	Superannuation agreements under the Family Law Act
118-315	Segregated exempt assets of life insurance companies
118-320	Segregated current pension assets of a complying superannuation entity

### 118-300 Insurance policies

- (1) A \*capital gain or \*capital loss you make from a \*CGT event happening in relation to a \*CGT asset that is your interest in rights under a \*general insurance policy, a \*life insurance policy or an \*annuity instrument is disregarded in the situations set out in this table.

Insurance policies		
Item	The *CGT event happens to this type of policy:	... and you are
1	Any insurance policy or *annuity instrument	the insurer or the entity that issued the instrument
2	A *general insurance policy for property where, if a *CGT event happened in relation to the property, any *capital gain or *capital loss would be disregarded	the insured
3	A policy of insurance on the life of an individual or an *annuity instrument	the original beneficial owner of the policy or instrument
4	A policy of insurance on the life of an individual or an *annuity instrument	an entity that *acquired the interest in the policy or instrument for no consideration
5	A policy of insurance on the life of an individual or an *annuity instrument	the trustee of a *complying superannuation entity for the income year in which the *CGT event happened

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Insurance policies**

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Item	The *CGT event happens to this type of policy:	... and you are
6	A policy of insurance on the life of an individual or an *annuity instrument, where the *life insurance company's liabilities under the policy or instrument are to be discharged out of *complying superannuation/FHSA assets or *segregated exempt assets	the life insurance company

Example 1: Brian (as the insured) receives an insurance payment from his insurer for the destruction of a building he owned as an investment. The payment constitutes capital proceeds on the destruction (CGT event C1). The discharge of the insurance policy (CGT event C2) has no CGT consequences.

Example 2: Peter is the original beneficial owner of the rights under a policy of insurance on the life of an individual. He transfers the rights to his spouse for nothing. There are no CGT consequences for him, and none for his spouse if he dies.

- (2) Only these \*CGT events are relevant: CGT events A1, B1, C2, E1, E2, E3, E5, E6, E7, E8, I1, I2, K3 and K4.

Note: The full list of CGT events is in section 104-5.

**118-305 Superannuation**

- (1) A \*capital gain or \*capital loss is disregarded if you make it from a \*CGT event happening in relation to any of the following:
- (a) a right to an allowance, annuity or capital amount payable out of a \*superannuation fund or \*approved deposit fund;
  - (b) a right to an asset of such a fund;
  - (c) a right to any part of such an allowance, annuity, capital amount or asset.

Example: Angela retires from her employment and receives a lump sum payment from her superannuation fund. This is an example of CGT event C2 (her rights to receive the payment ending). There are no CGT consequences for Angela.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 118-310

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- (2) However, this exemption is not available if:
- (a) you are the trustee of the fund and a \*CGT event happens in relation to a \*CGT asset of the fund; or
  - (b) an entity receives a payment or property where:
    - (i) the entity was not a member of the fund; and
    - (ii) the entity \*acquired the right to the payment or property for consideration.
- (3) Subsection (2) does not apply if:
- (a) a \*payment split applies to a \*splittable payment; and
  - (b) as a result, a payment is made to the \*non-member spouse (or to his or her \*legal personal representative if the non-member spouse has died).

**118-310 RSA's**

A \*capital gain or \*capital loss you make from a \*CGT event happening in relation to a right to, or any part of, an \*RSA is disregarded.

**118-313 Superannuation agreements under the Family Law Act**

A \*capital gain or \*capital loss you make from \*CGT event C2 or D1 relating directly to any of the following is disregarded:

- (a) the making of a superannuation agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*);
- (b) the termination, or setting aside, of such an agreement;
- (c) such an agreement otherwise coming to an end.

**118-315 Segregated exempt assets of life insurance companies**

A \*capital gain or \*capital loss that a \*life insurance company makes from a \*CGT event happening in relation to a \*segregated exempt asset is disregarded.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **118-320 Segregated current pension assets of a complying superannuation entity**

A \*capital gain or \*capital loss that a \*complying superannuation entity makes from a \*CGT event happening in relation to a \*segregated current pension asset is disregarded.

### **Subdivision 118-E—Units in pooled superannuation trusts**

#### **118-350 Units in pooled superannuation trusts**

- (1) A \*capital gain or \*capital loss an entity makes from a \*CGT event happening in relation to a unit in a unit trust is disregarded if:
  - (a) the trust is a \*pooled superannuation trust for the income year in which the event happened; and
  - (b) one of the conditions in subsection (2) is satisfied.
- (2) The entity must be:
  - (a) the trustee of a \*complying superannuation entity for the income year in which the \*CGT event happened; or
  - (b) a \*life insurance company and, just before the event happened, the unit must have been a \*complying superannuation/FHSA asset or a \*segregated exempt asset of the company.

### **Subdivision 118-F—Venture capital investment**

#### **Guide to Subdivision 118-F**

#### **118-400 What this Subdivision is about**

You can ignore capital gains and capital losses from CGT events that relate to investments, in Australian companies and unit trusts (and in some cases foreign holding companies), that meet the requirements of this Subdivision.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



These investments are made:

- (a) through limited partnerships, known as venture capital limited partnerships or early stage venture capital limited partnerships, that are unconditionally registered under Part 2 of the *Venture Capital Act 2002*; or
- (b) through limited partnerships, known as Australian venture capital funds of funds, that are unconditionally registered under that Part; or
- (c) directly by foreign residents who are registered under Part 3 of that Act.

However, unless investments are made through early stage venture capital limited partnerships, you must be a foreign resident for this Subdivision to apply.

Note: Registration of a limited partnership under Part 2 of that Act also leads to its income and losses being assessed under Division 5 of Part III of the *Income Tax Assessment Act 1936* on the basis that it is a partnership.

This is an exception to the general rule, under Division 5A of that Part, that limited partnerships are assessed as companies.

## Table of sections

### Operative provisions

118-405	Exemption for certain foreign venture capital investments through venture capital limited partnerships
118-407	Exemption for certain venture capital investments through early stage venture capital limited partnerships
118-410	Exemption for certain foreign venture capital investments through Australian venture capital funds of funds
118-415	Exemption for certain venture capital investments by foreign residents
118-420	Meaning of <i>eligible venture capital partner</i> etc.
118-425	Meaning of <i>eligible venture capital investment</i> —investments in companies
118-427	Meaning of <i>eligible venture capital investment</i> —investments in unit trusts
118-428	Additional investment requirements for ESVCLPs

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- 118-430 Meaning of *at risk*
- 118-435 Special rule relating to investment in foreign resident holding companies
- 118-440 Meaning of *permitted entity value*
- 118-445 Meaning of *committed capital*

## Operative provisions

### 118-405 Exemption for certain foreign venture capital investments through venture capital limited partnerships

#### *General*

- (1) All of your share in a \*capital gain or a \*capital loss from a \*CGT event is disregarded if:
- (a) you are an \*eligible venture capital partner in a \*limited partnership; and
  - (b) the CGT event relates to an investment that the partnership made that is an \*eligible venture capital investment; and
  - (c) when the partnership made the investment, the partnership was a \*venture capital limited partnership that was \*unconditionally registered; and
  - (d) at the time of the CGT event, the partnership:
    - (i) owned the investment; and
    - (ii) had owned the investment for at least 12 months; and
    - (iii) was a venture capital limited partnership that was unconditionally registered; and
    - (iv) in the case of a capital gain—met all of the \*registration requirements of a VCLP that are not \*investment registration requirements.

Note: The registration requirements of a VCLP are set out in section 9-1 of the *Venture Capital Act 2002*. It is important to understand that this is a separate requirement from registration under Part 2 of that Act (which effectively determines whether an entity is a VCLP).

It is technically possible to be registered under Part 2 of that Act without meeting the registration requirements of a VCLP, but you might still not be entitled to exemption under this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Meaning of venture capital limited partnership*

- (2) A \*limited partnership is a **venture capital limited partnership** at a particular time if, at that time, the partnership's registration as a venture capital limited partnership under Part 2 of the *Venture Capital Act 2002* is, or is taken to have been, in force.

For when the registration is, or is taken to have been, in force, see section 13-10 of the *Venture Capital Act 2002*.

Note: In this Act and the *Venture Capital Act 2002*, the term "venture capital limited partnership" is usually abbreviated to "VCLP".

*Effect of converting convertible notes etc.*

- (3) A partnership that acquired a \*share in a company by converting a \*convertible note, or a convertible preference share, issued by the company is treated, for the purposes of subparagraph (1)(d)(ii), as having owned the share from the time when it last acquired the convertible note or convertible preference share.
- (4) A partnership that acquired a unit in a unit trust by converting a \*convertible note issued by or on behalf of the trustee of the unit trust is treated, for the purposes of subparagraph (1)(d)(ii), as having owned the unit from the time when it last acquired the convertible note.
- (5) Subsection (3) or (4) applies whether or not the acquisition of the \*convertible note, or convertible preference share, was an \*eligible venture capital investment.
- (6) A partnership that converts a \*convertible note into a share or a unit is treated, for the purposes of subparagraph (1)(d)(ii), as continuing to own the convertible note until the partnership no longer owns the share or unit.

**118-407 Exemption for certain venture capital investments through early stage venture capital limited partnerships**

*General*

- (1) All of your share in a \*capital gain or a \*capital loss from a \*CGT event is disregarded if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) you are a partner in a \*limited partnership; and
- (b) the CGT event relates to an investment that the partnership made that:
  - (i) is an \*eligible venture capital investment; and
  - (ii) meets all of the \*additional investment requirements for ESVCLPs for the investment; and
- (c) when the partnership made the investment, the partnership was an \*early stage venture capital limited partnership that was \*unconditionally registered; and
- (d) at the time of the CGT event, the partnership:
  - (i) owned the investment; and
  - (ii) had owned the investment for at least 12 months; and
  - (iii) was an early stage venture capital limited partnership that was unconditionally registered; and
  - (iv) in the case of a capital gain—met all of the \*registration requirements of an ESVCLP that are not \*investment registration requirements, and met the \*divestiture registration requirement.

Note: The registration requirements of an ESVCLP are set out in section 9-3 of the *Venture Capital Act 2002*. It is important to understand that this is a separate requirement from registration under Part 2 of that Act (which effectively determines whether an entity is an ESVCLP).

It is technically possible to be registered under Part 2 of that Act without meeting the registration requirements of an ESVCLP, but you might still not be entitled to exemption under this section.

*Residency requirements for general partners*

- (2) However, if you are a \*general partner in the partnership, subsection (1) does not apply to you unless you are:
  - (a) an Australian resident; or
  - (b) a resident of a foreign country in respect of which a double tax agreement (as defined in Part X of the *Income Tax Assessment Act 1936*) is in force that is an agreement of a kind referred to in subparagraph (b)(i), (ia), (ii), (iii), (iv) or (v) of that definition.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) For the purposes of this section, the place of residence of a \*general partner in a \*limited partnership:
- (a) that is a company or limited partnership; and
  - (b) that is not an Australian resident;
- is the place in which the general partner has its central management and control.

*Meaning of early stage venture capital limited partnership*

- (4) A \*limited partnership is an **early stage venture capital limited partnership** at a particular time if, at that time, the partnership's registration as an early stage venture capital limited partnership under Part 2 of the *Venture Capital Act 2002* is, or is taken to have been, in force.

Note 1: For when the registration is, or is taken to have been, in force, see section 13-10 of the *Venture Capital Act 2002*.

Note 2: In this Act and the *Venture Capital Act 2002*, the term "early stage venture capital limited partnership" is usually abbreviated to "ESVCLP".

*Temporary exemption from meeting the divestiture registration requirement*

- (5) A partnership is treated, for the purposes of subsection (1), as never having failed, during a particular income year of the partnership, to meet the \*divestiture registration requirement in relation to a particular investment that the partnership holds, if:
- (a) at the start of the income year, the partnership fails to meet the divestiture registration requirement in relation to that investment; and
  - (b) the partnership meets the divestiture registration requirement in relation to that investment:
    - (i) within the period of 6 months after the start of that income year; or
    - (ii) if that period is extended under subsection 17-3(3) of the *Venture Capital Act 2002*—within that period as so extended.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Effect of converting convertible notes etc.*

- (6) A partnership that acquired a \*share in a company by converting a \*convertible note, or a convertible preference share, issued by the company is treated, for the purposes of subparagraph (1)(d)(ii), as having owned the share from the time when it last acquired the convertible note or convertible preference share.
- (7) A partnership that acquired a unit in a unit trust by converting a \*convertible note issued by the trustee of the unit trust is treated, for the purposes of subparagraph (1)(d)(ii), as having owned the unit from the time when it last acquired the convertible note.
- (8) Subsection (6) or (7) applies whether or not the acquisition of the \*convertible note, or convertible preference share, was an \*eligible venture capital investment.
- (9) A partnership that converts a \*convertible note into a share or a unit is treated, for the purposes of subparagraph (1)(d)(ii), as continuing to own the convertible note until the partnership no longer owns the share or unit.

**118-410 Exemption for certain foreign venture capital investments through Australian venture capital funds of funds**

*Gains or losses as a partner in a VCLP or an ESVCLP*

- (1) All of your share in a \*capital gain or a \*capital loss from a \*CGT event is disregarded if:
  - (a) you are an \*eligible venture capital partner in a \*limited partnership; and
  - (b) the CGT event relates to an \*eligible venture capital investment made by a \*VCLP, or an \*ESVCLP, in which the partnership is a partner; and
  - (c) when the investment was made, the partnership was an \*Australian venture capital fund of funds that was \*unconditionally registered; and
  - (d) when the investment was made, the VCLP or ESVCLP was unconditionally registered; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (e) at the time of the CGT event, the partnership:
  - (i) was an Australian venture capital fund of funds that was unconditionally registered; and
  - (ii) in the case of a capital gain—met all of the \*registration requirements of an AFOF that are not \*investment registration requirements; and
- (f) at the time of the CGT event, the VCLP or ESVCLP:
  - (i) owned the investment; and
  - (ii) had owned the investment for at least 12 months; and
  - (iii) was unconditionally registered; and
  - (iv) in the case of a capital gain—met all of the \*registration requirements of a VCLP, or all of the \*registration requirements of an ESVCLP, (as the case requires) that are not investment registration requirements.

Note: The registration requirements of an AFOF are set out in section 9-5 of the *Venture Capital Act 2002*. It is important to understand that this is a separate requirement from registration under Part 2 of that Act (which effectively determines whether an entity is an AFOF).

It is technically possible to be registered under Part 2 of that Act without meeting the registration requirements of an AFOF, but you might still not be entitled to exemption under this section.

*Gains or losses from direct investments*

- (2) All of your share in a \*capital gain or a \*capital loss from a \*CGT event is disregarded if:
  - (a) you are an \*eligible venture capital partner in a \*limited partnership; and
  - (b) in the case of a capital gain—the CGT event relates to an \*eligible venture capital investment that the partnership made in a company, or a unit trust, in which a \*VCLP, or an \*ESVCLP, of which the partnership is a partner, owns one or more eligible venture capital investments; and
  - (c) when the investment was made, the partnership was an \*Australian venture capital fund of funds that was \*unconditionally registered; and
  - (d) when the investment was made, the VCLP or ESVCLP owned one or more eligible venture capital investments in the company referred to in paragraph (b); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (e) at the time of the CGT event, the partnership:
- (i) owned the investment; and
  - (ii) had owned the investment for at least 12 months; and
  - (iii) was an Australian venture capital fund of funds that was unconditionally registered; and
  - (iv) in the case of a capital gain—met all of the \*registration requirements of an AFOF that are not \*investment registration requirements.

Note: The registration requirements of an AFOF are set out in section 9-5 of the *Venture Capital Act 2002*. It is important to understand that this is a separate requirement from registration under Part 2 of that Act (which effectively determines whether an entity is an AFOF).

It is technically possible to be registered under Part 2 of that Act without meeting the registration requirements of an AFOF, but you might still not be entitled to exemption under this section.

*Meaning of Australian venture capital fund of funds*

- (3) A \*limited partnership is an **Australian venture capital fund of funds** at a particular time if, at that time, the partnership's registration as an Australian venture capital fund of funds under Part 2 of the *Venture Capital Act 2002* is, or is taken to have been, in force.

For when the registration is, or is taken to have been, in force, see section 13-10 of the *Venture Capital Act 2002*.

Note: In this Act and the *Venture Capital Act 2002*, the term "Australian venture capital fund of funds" is usually abbreviated to "AFOF".

*Effect of converting convertible notes etc.*

- (4) A partnership that acquired a \*share in a company by converting a \*convertible note, or a convertible preference share, issued by the company is treated, for the purposes of subparagraphs (1)(f)(ii) and (2)(e)(ii), as having owned the share from the time when it last acquired the convertible note or convertible preference share.
- (5) A partnership that acquired a unit in a unit trust by converting a \*convertible note issued by or on behalf of the trustee of the unit trust is treated, for the purposes of subparagraphs (1)(f)(ii) and (2)(e)(ii), as having owned the unit from the time when it last acquired the convertible note.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 118-415

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- (6) Subsection (4) or (5) applies whether or not the acquisition of the \*convertible note, or convertible preference share, was an \*eligible venture capital investment.
- (7) A partnership that converts a \*convertible note into a share or a unit is treated, for the purposes of subparagraphs (1)(f)(ii) and (2)(e)(ii), as continuing to own the convertible note until the partnership no longer owns the share or unit.

**118-415 Exemption for certain venture capital investments by foreign residents**

*General*

- (1) A \*capital gain or a \*capital loss from a \*CGT event is disregarded if:
  - (a) the CGT event relates to an investment that you made that is an \*eligible venture capital investment; and
  - (b) you were an \*eligible venture capital investor when you made the investment; and
  - (c) at the time of the CGT event:
    - (i) you owned the investment; and
    - (ii) you had owned the investment for at least 12 months; and
    - (iii) you were an eligible venture capital investor.

*Meaning of eligible venture capital investor*

- (2) An entity is an *eligible venture capital investor* at a particular time if, at that time, the entity:
  - (a) is a \*tax-exempt foreign resident; and
  - (b) is registered under Part 3 of the *Venture Capital Act 2002*.

*Effect of converting convertible notes etc.*

- (3) An entity that acquired a \*share in a company by converting a \*convertible note, or a convertible preference share, issued by the company is treated, for the purposes of subparagraph (1)(c)(ii), as having owned the share from the time when it last acquired the convertible note or convertible preference share.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) An entity that acquired a unit in a unit trust by converting a \*convertible note issued by or on behalf of the trustee of the unit trust is treated, for the purposes of subparagraph (1)(c)(ii), as having owned the unit from the time when it last acquired the convertible note.
- (5) Subsection (3) or (4) applies whether or not the acquisition of the \*convertible note, or convertible preference share, was an \*eligible venture capital investment.
- (6) An entity that converts a \*convertible note into a share or a unit is treated, for the purposes of subparagraph (1)(c)(ii), as continuing to own the convertible note until the entity no longer owns the share or unit.

**118-420 Meaning of *eligible venture capital partner* etc.**

- (1) A partner in a \*limited partnership is an *eligible venture capital partner* if:
  - (a) the partner is a \*tax-exempt foreign resident; or
  - (b) the partner is a \*foreign venture capital fund of funds, and the sum of:
    - (i) the partner's \*committed capital in the partnership; and
    - (ii) the sum of the amounts of committed capital in the partnership of any entities that are \*connected entities of the partner;does not exceed 30% of the partnership's committed capital; or
  - (c) the partner is a foreign resident who is not a \*general partner of a \*VCLP or an \*ESVCLP and is neither a \*tax-exempt foreign resident nor a \*foreign venture capital fund of funds, and the sum of:
    - (i) the partner's committed capital in the partnership; and
    - (ii) the sum of the amounts of committed capital in the partnership of any entities that are connected entities of the partner;is less than 10% of the partnership's committed capital.

Note: Subsection (7) prevents some trusts from being eligible venture capital partners.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) An entity that is an \*associate of the partner only because the entity is a partner in the partnership in question is taken not to be a \*connected entity of the partner for the purposes of subparagraphs (1)(b)(ii) and (c)(ii).
- (3) An entity is a ***tax-exempt foreign resident*** if:
  - (a) the entity is a foreign resident; and
  - (b) the entity is not a \*general partner of a \*VCLP or an \*ESVCLP; and
  - (c) the entity's income is exempt, or effectively exempt, from taxation in the entity's country of residence.
- (4) An entity that is a \*limited partnership is a ***foreign venture capital fund of funds*** if:
  - (a) the partnership was established in a foreign country; and
  - (b) every partner who is a \*general partner is a foreign resident; and
  - (c) the partnership is not a general partner of a \*VCLP or an \*ESVCLP.
- (5) An entity that is not a \*limited partnership is a ***foreign venture capital fund of funds*** if:
  - (a) whether by operation of law or by election, the entity is not taxed as an entity in its country of residence, but the entity's income is taxed to its members according to their interests in the entity; and
  - (b) the entity was established in a foreign country; and
  - (c) the entity is a foreign resident; and
  - (d) the entity is not a \*general partner of a \*VCLP or an \*ESVCLP.
- (7) A trust is not an eligible venture capital partner if an Australian resident:
  - (a) is or is likely to become presently entitled, for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*, to; or
  - (b) has or is likely to have an individual interest, for the purposes of Division 5 of Part III of the *Income Tax Assessment Act 1936*, in;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

a share of income of the trust, either directly or indirectly through one or more interposed partnerships or trusts.

- (8) For the purposes of this section, the place of residence of a \*general partner of a \*limited partnership:
- (a) that is a company or a limited partnership; and
  - (b) that is a foreign resident;
- is the place in which the general partner has its central management and control.
- (9) For the purposes of this section, the place of residence of an entity referred to in paragraph (5)(a) is the place in which the entity has its central management and control.

### **118-425 Meaning of *eligible venture capital investment*—investments in companies**

#### *Requirements for an eligible venture capital investment*

- (1) An investment is an *eligible venture capital investment* if:
- (a) it is \*at risk; and
  - (b) it is:
    - (i) an acquisition of \*shares in a company; or
    - (ii) an acquisition of options (including warrants) originally issued by a company to acquire shares in the company; or
    - (iii) an acquisition of \*convertible notes (other than convertible notes that are \*debt interests) issued by a company; and
  - (c) the company meets the requirements of subsections (2) to (7); and
  - (d) the sum of:
    - (i) the total amount that the partnership has invested in all the \*equity interests and \*debt interests that the partnership owns in the company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) the total amount that the partnership has invested in all the equity interests and debt interests that the partnership owns in any entities that are \*connected entities of the company;  
does not exceed 30% of the partnership's \*committed capital.

*Certain entities not treated as connected entities*

- (1A) In applying subparagraph (1)(d)(ii), ignore an entity that is a \*connected entity of the company only because it is an \*associate of the company because of an investment made in the entity by the partnership.

*Location within Australia*

- (2) The company:
- (a) must, at the time the investment is made, be an Australian resident; and
  - (b) if at that time the entity making the investment does not own any other investments in the company—must meet the following requirements:
    - (i) more than 50% of the people who are currently engaged by the company to perform services must perform those services primarily in Australia;
    - (ii) more than 50% of its assets (determined by value) must be situated in Australia;during the whole of the period of 12 months, or such shorter period as \*Innovation Australia determines under section 25-5 of the *Venture Capital Act 2002*, starting from the time the investment is made.

However, subparagraph (b)(i) or (ii) does not apply to the company if Innovation Australia so determines under section 25-10 of the *Venture Capital Act 2002*.

See subsection (10) for the value of assets.

Note: A company that fails to meet the requirements of this subsection can still be eligible in certain circumstances: see subsection (12A).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Predominant activity*

- (3) The company must satisfy at least 2 of these requirements:
- (a) more than 75% of the company's assets (determined by value) must be used primarily in activities that are not ineligible activities mentioned in subsection (13);
  - (b) more than 75% of the company's employees must be engaged primarily in activities that are not ineligible activities mentioned in subsection (13);
  - (c) more than 75% of the company's total assessable income, \*exempt income and \*non-assessable non-exempt income must come from activities that are not ineligible activities mentioned in subsection (13).

Note 1: This requirement is ongoing. It is not limited to the circumstances at the time the investment was made.

Note 2: See subsection (10) for the value of assets.

Note 3: A company that fails to meet at least 2 of the requirements can still be eligible if Innovation Australia determines that the company's primary activity is not ineligible and the failure is temporary: see subsection (14).

*Investment in other entities etc.*

- (4) The company must not:
- (a) invest, in another entity, any part of the amount invested, unless the other entity:
    - (i) is \*connected with the company (except another entity that is an \*associate of the company because of an investment made in the entity by the partnership); and
    - (ii) meets the requirements of subsections (3) to (7); or
  - (b) in the capacity of a trustee, use any part of the amount invested.

However, this subsection does not prevent the company from depositing money with an \*ADI, or with a body authorised by or under a law of a foreign country to carry on banking business in that country.

Note: This requirement is ongoing. It is not limited to the circumstances at the time the investment was made.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 118-425

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*Registered auditor*

- (5) The company must, at the end of, and at all times after the end of, the income year in which the investment is made, have as its auditor:
- (a) a person registered as an auditor under a law in force in a State or a Territory; or
  - (b) if the company is no longer an Australian resident—a person registered as an auditor under a law in force in the country of which the company is a resident.

Note: This requirement is ongoing.

*Permitted entity value*

- (6) The company must not, immediately before the investment is made, exceed the \*permitted entity value.

*Listing*

- (7) The company must be a company whose \*shares:
- (a) are, at the time the investment is made, not listed for quotation in the official list of a stock exchange in Australia or a foreign country; or
  - (b) are so listed at that time, but cease to be so listed at any time during the 12 months after the investment is made.

However, the company is taken to meet the requirements of this subsection in relation to any investment made by an \*ESVCLP (whether or not shares in the company are so listed).

Note: The additional requirements for ESVCLPs deal with listing in relation to initial investments by ESVCLPs in companies: see paragraph 118-428(1)(a).

*Scrip for scrip investments*

- (8) However, a company is taken to meet the requirements of subsections (2) to (7) if:
- (a) the investment is an acquisition of \*shares in that company in exchange for shares in another company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) at the time that the \*VCLP, \*ESVCLP, \*AFOF or \*eligible venture capital investor in question acquired the shares being exchanged, the other company meets the requirements of subsections (2) to (7), but not only because this subsection applies to the other company; and
- (c) the shares in the other company that are being exchanged are all of the shares in the other company that the entity making the investment owned at the time of the exchange.

*Debt interests*

- (9) To avoid doubt, a \*debt interest cannot be an eligible venture capital investment.

*The value of an asset or investment*

- (10) The value of an asset, or an investment, of an entity at a particular time for the purposes of this section is the value of the asset or investment as shown in:
  - (a) the last audited accounts prepared for the entity for the purposes of the *Corporations Act 2001* that relates to a period ending less than 18 months before that time; or
  - (b) if there are no such audited accounts—a statement, prepared in accordance with the \*accounting standards and audited by the entity's auditor, showing that value as at a time no longer than 12 months before that time.

*Investment in holding companies*

- (11) A company is taken to meet the requirements of subsections (3) and (4) if:
  - (a) a \*VCLP, an \*ESVCLP, an \*AFOF or an \*eligible venture capital investor acquires \*shares or options in, or \*convertible notes issued by, the company; and
  - (b) the company was formed solely for the purpose of investing in another company or a unit trust; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 118-425

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- (c) within 6 months after the investment referred to in paragraph (a) was made, the company uses the money from that investment:
  - (i) in acquiring shares or options in, or convertible notes issued by, the other company, or in acquiring units or options in, or convertible notes issued by or on behalf of the trustee of, the unit trust; or
  - (ia) in meeting incidental costs of any such acquisition; or
  - (ii) on administrative expenses associated with the investment; or
  - (iii) making loans to the other company or unit trust; and
- (d) within that period of 6 months and after the end of that period:
  - (i) the other company meets the requirements of subsections (2) to (7); or
  - (ii) the unit trust meets the requirements of subsections 118-427(3) to (8);as the case requires.

Note: The requirement in paragraph (11)(d) is ongoing (unless the company becomes the head company of a consolidated group or consolidatable group: see subsection (16)).

*Application to consolidated or consolidatable groups*

- (12) This section applies to a \*consolidated group or \*consolidatable group as if:
  - (a) the \*head company of the group carried on all of the activities that are carried on by \*subsidiary members of the group; and
  - (b) the assets, employees and income of the subsidiary members of the group were assets, employees and income of the head company; and
  - (c) each subsidiary member of the group were parts of the head company rather than separate entities.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Exception to requirements relating to location within Australia*

- (12A) A company is taken to meet the requirements of subsection (2) in relation to an investment made by an entity if the sum of:
- (a) the value of the investment at the time the entity makes it; and
  - (b) the total value of all the other investments that the entity owns at that time that do not, or apart from this subsection would not, meet those requirements;
- does not exceed 20% of the partnership's \*committed capital.

Note: See subsection (10) for the value of investments.

*Ineligible activities*

- (13) These activities are ineligible activities:
- (a) property development or land ownership;
  - (b) finance, to the extent that it is any of the following:
    - (i) banking;
    - (ii) providing capital to others;
    - (iii) leasing;
    - (iv) factoring;
    - (v) securitisation;
  - (c) insurance;
  - (d) construction (including extension, improvement or up-grading) or acquisition of infrastructure facilities (within the meaning of section 93L of the *Development Allowance Authority Act 1992*) or related facilities (within the meaning of section 93M of that Act), or both;
  - (e) making investments, whether made directly or indirectly, that are directed to deriving income in the nature of interest, rents, dividends, royalties or lease payments.

For the purposes of this subsection, activities that are ancillary or incidental to a particular activity are taken to form part of that activity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Innovation Australia discretion*

- (14) A company is taken to meet the requirements of subsection (3) even if it fails to satisfy at least 2 of the requirements in that subsection if \*Innovation Australia determines under section 25-15 of the *Venture Capital Act 2002* that:
- (a) the company's primary activity is not an ineligible activity mentioned in subsection (13); and
  - (b) the failure is temporary and did not exist at the time the investment referred to in subsection (1) was made and, if it has been disposed of, when it was disposed of.

*Convertible notes and convertible preference shares*

- (15) To the extent that an investment by an entity consists of the acquisition of a \*share in a company by converting a \*convertible note, or a convertible preference share, issued by the company, the investment is, for the purpose of determining whether the company meets the requirements of subsections (2) to (7), taken to have been made at the time when the entity last acquired the convertible note or convertible preference share.

*Subsection (11) stops applying*

- (16) Subsection (11) stops applying to the company first referred to in that subsection if the company becomes the \*head company of a \*consolidated group or \*consolidatable group.

**118-427 Meaning of *eligible venture capital investment*—investments in unit trusts**

*Requirements for an eligible venture capital investment*

- (1) An investment is an ***eligible venture capital investment*** if:
- (a) it is \*at risk; and
  - (b) it is either:
    - (i) an acquisition of units in a unit trust; or
    - (ii) an acquisition of options (including warrants) originally issued by or on behalf of the trustee of a unit trust to acquire units in the unit trust; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (iii) an acquisition of \*convertible notes (other than convertible notes that are \*debt interests) issued by or on behalf of the trustee of a unit trust; and
- (c) the unit trust meets the requirements of subsections (3) to (8); and
- (d) the sum of:
  - (i) the total amount that the partnership has invested in all the \*equity interests and \*debt interests that the partnership owns in the unit trust; and
  - (ii) the total amount that the partnership has invested in all the equity interests and debt interests that the partnership owns in any entities that are \*connected entities of the unit trust;does not exceed 30% of the partnership's \*committed capital.

*Certain entities not treated as connected entities*

- (2) In applying subparagraph (1)(d)(ii), ignore an entity that is a \*connected entity of the unit trust only because it is an \*associate of the unit trust because of an investment made in the entity by the partnership.

*Location within Australia*

- (3) The unit trust:
  - (a) must, at the time the investment is made, carry on \*business in Australia; and
  - (b) must, at that time, meet at least one of the following requirements:
    - (i) the central management and control of the unit trust is in Australia;
    - (ii) more than 50% of the beneficial interests in the income of the unit trust are held by Australian residents;
    - (iii) more than 50% of the beneficial interests in the property of the unit trust are held by Australian residents; and
  - (c) if at that time the entity making the investment does not own any other investments in the unit trust—must meet the following requirements:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) more than 50% of the people who are currently engaged by the trustee of the unit trust to perform services must perform those services primarily in Australia;
- (ii) more than 50% of its assets (determined by value) must be situated in Australia;

during the whole of the period of 12 months, or such shorter period as \*Innovation Australia determines under section 25-5 of the *Venture Capital Act 2002*, starting from the time the investment is made.

However, subparagraph (c)(i) or (ii) does not apply to the unit trust if Innovation Australia so determines under section 25-10 of the *Venture Capital Act 2002*.

Note: A company that fails to meet the requirements of this subsection can still be eligible in certain circumstances: see subsection (13).

*Predominant activity*

- (4) The unit trust must satisfy at least 2 of these requirements:
  - (a) more than 75% of the unit trust's assets (determined by value) must be used primarily in activities that are not ineligible activities mentioned in subsection (14);
  - (b) more than 75% of the employees of the trustee of the unit trust must be engaged primarily in activities that are not ineligible activities mentioned in subsection (14);
  - (c) more than 75% of the unit trust's total assessable income, \*exempt income and \*non-assessable non-exempt income must come from activities that are not ineligible activities mentioned in subsection (14).

Note 1: This requirement is ongoing. It is not limited to the circumstances at the time the investment was made.

Note 2: See subsection (11) for the value of assets.

Note 3: A unit trust that fails to meet at least 2 of the requirements can still be eligible if Innovation Australia determines that the unit trust's primary activity is not ineligible and the failure is temporary: see subsection (15).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Investment in other entities etc.*

- (5) The unit trust must not:
- (a) invest, in another entity, any part of the amount invested, unless the other entity:
    - (i) is \*connected with the unit trust (except another entity that is an \*associate of the unit trust because of an investment made in the entity by the partnership); and
    - (ii) meets the requirements of subsections (4) to (8); or
  - (b) in the capacity of a trustee, use any part of the amount invested.

However, this subsection does not prevent the unit trust from depositing money with an \*ADI, or with a body authorised by or under a law of a foreign country to carry on banking business in that country.

Note: This requirement is ongoing. It is not limited to the circumstances at the time the investment was made.

*Registered auditor*

- (6) The unit trust must, at the end of, and at all times after the end of, the income year in which the investment is made, have as its auditor:
- (a) a person registered as an auditor under a law in force in a State or a Territory; or
  - (b) if the unit trust is no longer an Australian resident—a person registered as an auditor under a law in force in the country of which the unit trust is a resident.

Note: This requirement is ongoing.

*Permitted entity value*

- (7) The unit trust must not, immediately before the investment is made, exceed the \*permitted entity value.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Listing*

- (8) The unit trust must be a unit trust whose units:
- (a) are, at the time the investment is made, not listed for quotation in the official list of a stock exchange in Australia or a foreign country; or
  - (b) are so listed at that time, but cease to be so listed at any time during the 12 months after the investment is made.

However, the unit trust is taken to meet the requirements of this subsection in relation to any investment made by an \*ESVCLP (whether or not units in the unit trust are so listed).

Note: The additional requirements for ESVCLPs deal with listing in relation to initial investments by ESVCLPs in unit trusts: see paragraph 118-428(1)(a).

*Scrip for scrip investments*

- (9) However, a unit trust is taken to meet the requirements of subsections (3) to (8) if:
- (a) the investment is an acquisition of units in that unit trust in exchange for units in another unit trust; and
  - (b) at the time that the \*VCLP, \*ESVCLP, \*AFOF or \*eligible venture capital investor in question acquired the units being exchanged, the other unit trust meets the requirements of subsections (3) to (8), but not only because this subsection applies to the other unit trust; and
  - (c) the units in the other unit trust that are being exchanged are all of the units in the other unit trust that the entity making the investment owned at the time of the exchange.

*Debt interests*

- (10) To avoid doubt, a \*debt interest cannot be an \*eligible venture capital investment.

*The value of an asset or investment*

- (11) The value of an asset or investment of an entity at a particular time for the purposes of this section is the value of the asset or investment as shown in a statement, prepared in accordance with

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the \*accounting standards and audited by the entity's auditor, showing that value as at a time no longer than 12 months before that time.

*Application to groups*

- (12) If a group of entities:
- (a) is treated as a \*consolidated group because of a choice that a unit trust has made under section 713-130; or
  - (b) would be treated as a consolidated group because of such a choice:
    - (i) if a unit trust were to make such a choice; or
    - (ii) if a unit trust that is not a \*corporate unit trust or a \*public trading trust were such a trust and were to make such a choice;

this section applies in relation to the entities as if:

- (c) the unit trust carried on, as the \*head company of the consolidated group or consolidatable group, all of the activities that are carried on by the other members of the group; and
- (d) the assets, employees and income of the other members of the group were assets, employees and income of the unit trust; and
- (e) each of the other members of the group were parts of the unit trust rather than separate entities.

*Exception to requirements relating to location within Australia*

- (13) A unit trust is taken to meet the requirements of subsection (3) in relation to an investment made by an entity if the sum of:
- (a) the value of the investment at the time the entity makes it; and
  - (b) the total value of all the other investments that the entity owns at that time that do not, or apart from this subsection would not, meet those requirements;
- does not exceed 20% of the partnership's \*committed capital.

Note: See subsection (11) for the value of investments.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Ineligible activities*

- (14) These activities are ineligible activities:
- (a) property development or land ownership;
  - (b) finance, to the extent that it is any of the following:
    - (i) banking;
    - (ii) providing capital to others;
    - (iii) leasing;
    - (iv) factoring;
    - (v) securitisation;
  - (c) insurance;
  - (d) construction (including extension, improvement or up-grading) or acquisition of infrastructure facilities (within the meaning of section 93L of the *Development Allowance Authority Act 1992*) or related facilities (within the meaning of section 93M of that Act), or both;
  - (e) making investments, whether made directly or indirectly, that are directed to deriving income in the nature of interest, rents, dividends, royalties or lease payments.

For the purposes of this subsection, activities that are ancillary or incidental to a particular activity are taken to form part of that activity.

*Innovation Australia discretion*

- (15) A unit trust is taken to meet the requirements of subsection (4) even if it fails to satisfy at least 2 of the requirements in that subsection if \*Innovation Australia determines under section 25-15 of the *Venture Capital Act 2002* that:
- (a) the unit trust's primary activity is not an ineligible activity mentioned in subsection (14); and
  - (b) the failure is temporary and did not exist at the time the investment referred to in subsection (1) was made and, if it has been disposed of, when it was disposed of.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Convertible notes*

- (16) To the extent that an investment by an entity consists of the acquisition of a unit in a unit trust by converting a \*convertible note issued by or on behalf of the trustee of the unit trust, the investment is, for the purpose of determining whether the unit trust meets the requirements of subsections (3) to (8), taken to have been made at the time when the entity last acquired the convertible note.
- (17) Subsection (16) applies whether or not the acquisition of the \*convertible note was an \*eligible venture capital investment.

**118-428 Additional investment requirements for ESVCLPs**

- (1) The *additional investment requirements for ESVCLPs*, for an investment in a company or in a unit trust, are:
  - (a) if the entity making the investment does not, when the investment is made, own any other investment in the company or unit trust:
    - (i) \*shares in the company; or
    - (ii) units in the unit trust;are not, when the investment is made, listed for quotation in the official list of a stock exchange in Australia or a foreign country; and
  - (b) if the investment is \*pre-owned when the investment is made:
    - (i) the entity already owns investments in the company or unit trust; or
    - (ii) the entity will, in connection with making the investment, make other investments in the company or unit trust, some or all of which are not pre-owned; and
  - (c) if the investment is pre-owned when the investment is made—the sum of:
    - (i) the value of the investment when the entity makes it; and
    - (ii) the total value of all the other investments that the entity owns at that time;does not exceed 20% of the partnership's \*committed capital.

Note: See subsection (3) for the value of investments.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 118-430

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- (2) An investment is *pre-owned* if it was issued or allotted to an entity other than the entity that owns the investment. However, the investment is not pre-owned if it:
  - (a) was issued:
    - (i) to an underwriter or sub-underwriter of the issue of the investment; or
    - (ii) to a person for the purpose of being offered for sale; and
  - (b) was still held by the underwriter, sub-underwriter or person immediately before being acquired by the entity that now owns the investment.
- (3) The value of an investment of an entity at a particular time for the purposes of this section is the value of the investment as shown in:
  - (a) the last audited accounts prepared for the entity for the purposes of the *Corporations Act 2001* that relates to a period ending less than 18 months before that time; or
  - (b) a statement, prepared in accordance with the \*accounting standards and audited by the entity's auditor, showing that value as at a time no longer than 12 months before that time.

**118-430 Meaning of *at risk***

An \*eligible venture capital investment is *at risk* if the entity that owns the investment had no \*arrangement as to:

- (a) the maintenance of the value of the investment; or
- (b) the maintenance of any earnings or other return that might be made from owning the investment, including (if the investment relates to a unit trust) the maintenance of any conferrals of present entitlement to income or capital of the unit trust or to any distributions of income or capital of the unit trust.

**118-435 Special rule relating to investment in foreign resident holding companies**

- (1) A company that meets the requirements of subsections 118-425(6) and (7) is treated as also meeting the requirements of subsections 118-425(2), (3), (4) and (5) if:
  - (a) it is a resident of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) Canada; or
  - (ii) France; or
  - (iii) Germany; or
  - (iv) Japan; or
  - (v) the United Kingdom; or
  - (vi) the United States of America; or
  - (vii) any other foreign country prescribed by the regulations;  
and
  - (b) it beneficially owns all the \*shares in another company or all the units in a unit trust; and
  - (c) it does not carry on any \*business other than to support the primary activity of the other company or unit trust; and
  - (d) the other company meets the requirements of subsections 118-425(2) to (7), or the unit trust meets the requirements of subsections 118-427(3) to (8), as the case requires.
- (2) However, if:
- (a) the company is so treated as meeting those requirements; and
  - (b) at any time within the period of 12 months after the day on which the first \*eligible venture capital investment was made in the company:
    - (i) the other company ceases to be an Australian resident;  
or
    - (ii) the unit trust ceases to carry on \*business in Australia;  
as the case requires;
- then:
- (c) any eligible venture capital investments already made in the company or unit trust cease to be eligible venture capital investments; and
  - (d) any further investments made in the company or unit trust are not eligible venture capital investments.

### **118-440 Meaning of *permitted entity value***

- (1) An entity exceeds the *permitted entity value* immediately before a proposed investment is made in the entity if, at that time, the sum of the following exceeds the amount provided for under subsection (9):

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the total value of the entity's assets;
- (b) the total value of the assets of any other entity \*connected with the entity to the extent that they are not reflected in the value of any assets referred to in paragraph (a).

Note: The time the entity makes the investment is, for a share acquired by converting a convertible note or convertible preference share or for a unit in a unit trust acquired by converting a convertible note, the time when the entity last acquired the convertible note or convertible preference share: see subsections 118-425(15) and 118-427(16).

- (2) The total value of the assets of an entity is the total value of its assets (both current and non-current) as shown in:
  - (a) the last audited accounts prepared for the entity for the purposes of the *Corporations Act 2001* that relates to a period ending less than 18 months before that time; or
  - (b) if there are no such audited accounts—a statement, prepared in accordance with the \*accounting standards and audited by the entity's auditor, showing that value as at a time no longer than 12 months before that time.
- (3) In applying paragraphs (1)(b), (5)(b) and (7)(c), ignore the total value of the assets of an entity that is \*connected with the entity first-mentioned in subsection (1) (the **target entity**) either immediately before or immediately after the investment referred to in that subsection if it is so connected only because of \*eligible venture capital investments made in both of those entities by the same \*VCLP, \*ESVCLP, \*AFOF or \*eligible venture capital investor.
- (4) In applying paragraphs (1)(b), (5)(b) and (7)(c), ignore the total value of the assets of an entity that, immediately after the investment is made, is not \*connected with the target entity.
- (5) Despite the previous provisions of this section, the target entity exceeds the **permitted entity value** immediately before the time (the **investment time**) when the \*VCLP, \*ESVCLP, \*AFOF or \*eligible venture capital investor made the investment in the target entity if:
  - (a) the target entity was \*connected with an entity (the **linked entity**) in which the VCLP, ESVCLP, AFOF or eligible venture capital investor had made an \*eligible venture capital

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- investment at some time in the period of 12 months before the investment time; and
- (b) the sum of the total value of the assets of the target entity and of any entity \*connected with the target entity (at the investment time) and the linked entity and of any entity connected with the linked entity (at the time that the entity making the investment made its investment in the linked entity) exceeds the amount provided for under subsection (9).
- (6) The Commissioner may determine that subsection (5) does not apply if the Commissioner is satisfied that:
- (a) the activities of the target entity are not the same as, not an integral part of and not a necessary support for the activities of the linked entity; and
- (b) the making of the investment in the target entity is not part of a \*scheme to acquire interests in all or a substantial part of a group of companies that are \*connected with each other.
- (7) Despite the previous provisions of this section, the target entity exceeds the *permitted entity value* immediately before the investment time if:
- (a) the target entity was \*connected with an entity (also the *linked entity*) in which the \*VCLP, \*ESVCLP, \*AFOF or \*eligible venture capital investor had made an \*eligible venture capital investment more than 12 months before the investment time; and
- (b) the activities of the target entity are the same as, are an integral part of or are a necessary support for the activities of the linked entity; and
- (c) the sum of the total value of the assets of the target entity and of any entity \*connected with the target entity (at the investment time) and the linked entity and of any entity connected with the linked entity (at the time that the entity making the investment made its investment in the linked entity) exceeds the amount provided for under subsection (9).
- (8) In applying paragraphs (5)(b) and (7)(c), ignore the total value of the assets of an entity that is \*connected with the linked entity either immediately before or immediately after the investment in the linked entity if it is so connected only because of \*eligible

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 118-445

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venture capital investments made in both of those entities by the same \*VCLP, \*ESVCLP, \*AFOF or \*eligible venture capital investor.

- (9) The amount in relation to a proposed investment is:
- (a) if an \*ESVCLP is to make the proposed investment—\$50 million; or
  - (b) in any other case—\$250 million.

**118-445 Meaning of *committed capital***

- (1) A partner's *committed capital* in a partnership is the sum of the amounts that the partner may, under the partnership agreement establishing the partnership, become obliged to contribute to the partnership.
- (2) It does not matter whether:
- (a) the partner contributes all of those amounts; or
  - (b) any amounts contributed are subsequently returned to the partner; or
  - (c) the contributions give rise to \*equity interests or \*debt interests in the partnership, or both.
- (3) A partnership's *committed capital* is the sum of the committed capital of all of the partnership's partners.

**Subdivision 118-G—Venture capital: investment by superannuation funds for foreign residents**

**Guide to Subdivision 118-G**

**118-500 What this Subdivision is about**

A foreign resident tax exempt pension fund that invests in venture capital equity in an Australian company or fixed trust (a resident investment vehicle) can disregard a capital gain or capital loss it makes from a CGT event that happens to that equity if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the entity is registered under the *Pooled Development Funds Act 1992*; and
- (b) the entity owned the equity for at least 12 months.

### Table of sections

118-505	Exemption for certain foreign venture capital
118-510	Meaning of <i>resident investment vehicle</i>
118-515	Meaning of <i>venture capital entity</i>
118-520	Meaning of <i>superannuation fund for foreign residents</i>
118-525	Meaning of <i>venture capital equity</i>

### 118-505 Exemption for certain foreign venture capital

- (1) A \*capital gain or \*capital loss is disregarded if it is made from a \*CGT event happening in relation to a \*CGT asset that is \*venture capital equity where the asset:
  - (a) was \*acquired by a \*venture capital entity; and
  - (b) at the time of the CGT event:
    - (i) was owned by that entity; and
    - (ii) had been owned by that entity for at least 12 months.
- (2) The \*venture capital entity must be registered under Part 7A of the *Pooled Development Funds Act 1992* at the time of the \*CGT event.

### 118-510 Meaning of *resident investment vehicle*

- (1) A *resident investment vehicle* is a company that is an Australian resident, or a trust that is a \*resident trust for CGT purposes, if:
  - (a) the sum of:
    - (i) the total value of the assets of the company or trust, and
    - (ii) the total value of the assets of any company or trust \*connected with the first company or trust; and
    - (iii) the amount of the investment proposed to be made in venture capital equity in the company or trust by the relevant \*venture capital entity;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 118-515

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- is not more than \$50,000,000 just before the time (the *acquisition time*) when the relevant venture capital entity acquires venture capital equity in the company or trust; and
- (b) the primary activity of the company or trust is not, at any time, property development or land ownership.
- (2) However, a trust is not a *resident investment vehicle* unless entities have \*fixed entitlements to all of the income and capital of the trust.
- (3) The total value of the assets of a company or trust is the total value of its assets (both current and non-current) as shown in:
- (a) the last audited accounts prepared for the company or trust for the purposes of the *Corporations Act 2001* that relates to a period ending less than 18 months before the acquisition time; or
- (b) if there are no such audited accounts—a statement audited by the company’s or trust’s auditor showing that value as at a time no longer than 12 months before the acquisition time.

**118-515 Meaning of *venture capital entity***

- (1) An entity (except a partner in a partnership) is a *venture capital entity* if:
- (a) it is a foreign resident; and
- (b) it is a \*superannuation fund for foreign residents; and
- (c) it is not a \*prescribed dual resident; and
- (d) it is a resident of:
- (i) Canada; or
- (ii) France; or
- (iii) Germany; or
- (iv) Japan; or
- (v) the United Kingdom; or
- (vi) the United States of America; or
- (vii) some other foreign country prescribed by the regulations; and
- (e) its income is exempt, or effectively exempt, from taxation in its country of residence.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) A partner in a partnership is a **venture capital entity** if:
- (a) all of the partners in it are entities that are \*venture capital entities under subsection (1); or
  - (b) the partnership is a \*limited partnership and:
    - (i) all of the partners in it (except its general partner or managing partner) are venture capital entities under subsection (1); and
    - (ii) its general partner or managing partner has interests in less than 10% of the total value of the assets of the partnership.

### **118-520 Meaning of *superannuation fund for foreign residents***

- (1) A fund is a **superannuation fund for foreign residents** at a time if:
- (a) at that time, it is:
    - (i) an indefinitely continuing fund; and
    - (ii) a provident, benefit, superannuation or retirement fund; and
  - (b) it was established in a foreign country; and
  - (c) it was established, and is maintained at that time, only to provide benefits for individuals who are not Australian residents; and
  - (d) at that time, its central management and control is carried on outside Australia by entities none of whom is an Australian resident.
- (2) However, a fund is not a **superannuation fund for foreign residents** if:
- (a) an amount paid to the fund or set aside for the fund has been or can be deducted under this Act; or
  - (b) a \*tax offset has been allowed or is allowable for such an amount.

### **118-525 Meaning of *venture capital equity***

- (1) A \*CGT asset is **venture capital equity** for a \*venture capital entity if it is a \*share in a company or an interest in a trust where:
- (a) the company or trust is a \*resident investment vehicle; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 118-525

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- (b) the share or interest was issued or allotted to the entity by the company or trust; and
- (c) the entity was at risk in owning the share or interest in that it had no \*arrangement (either before or after the share or interest was issued or allotted) as to:
  - (i) the maintenance of the value of the share or interest; or
  - (ii) any earnings or other return that might be made from owning it; or
  - (iii) protection from commercial loss because of owning it.

Example: A company borrows money to purchase some shares. The terms of the loan include a term that, if the value of the shares falls below the amount of the loan, the company can repay the loan by transferring the shares to the lender.

The company's ownership of the shares is not at risk, because there is no possibility that it can lose money under the transaction.

- (2) However, \*shares or interests in the \*resident investment vehicle issued or allotted to a \*venture capital entity are not ***venture capital equity*** for the entity if:

- (a) one or more of these events happens:
  - (i) a share or interest in the resident investment vehicle that was \*acquired by some other entity before that issue or allotment is cancelled or redeemed; or
  - (ii) there is a return of some of the capital of the resident investment vehicle that was acquired before that issue or allotment; or
  - (iii) value is shifted out of a share or interest in that vehicle that was acquired before that issue or allotment; and
- (b) it is reasonable to conclude that the happening of the event referred to in paragraph (a) is connected to that issue or allotment, or to some \*arrangement between the entities concerned.

Example: The capital of an Australian company is 100,000 shares, with a market value of \$1 per share. The shares have full voting and dividend rights.

The Australian company issues another 100,000 shares to a foreign company. The new shares are issued at one cent each, but have very limited voting and dividend rights.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

The Australian company then changes the rights attaching to its shares so that the new shares have full voting and dividend rights, and the original shares have none.

Value has been shifted out of the original shares, effectively converting “old equity” to “new equity”.

- (3) In deciding whether it is reasonable to reach the conclusion referred to in paragraph (2)(b), these matters are relevant:
- (a) whether the amount of the decrease in the \*net value of the \*resident investment vehicle because of the happening of the event referred to in paragraph (2)(a) is the same as, or is calculated by reference to, the value of the issue or allotment of \*shares or interests to the \*venture capital entity; and
  - (b) the time lapse between the happening of that event and that issue or allotment.

### **Subdivision 118-H—Demutualisation of Tower Corporation**

#### **118-550 Demutualisation of Tower Corporation**

- (1) This section applies if, just before the mutual entity known in New Zealand as Tower Corporation ceased to be a mutual entity, you had membership rights in that entity.

Note: Tower Corporation demutualised on 1 October 1999.

*No capital gain or capital loss from end of membership rights*

- (2) Disregard any \*capital gain or \*capital loss that resulted from any of your membership rights in Tower Corporation ceasing to exist when that entity ceased to be a mutual entity.

Note: Subsection (2) applies to you even if, because you could not be located at the time of demutualisation, you were not immediately issued with shares in the demutualised entity in substitution for your old membership rights, and rights to shares were instead put aside in a trust.

*Cost base of replacement assets*

- (3) The \*cost base and the \*reduced cost base of any \*shares or other \*CGT assets that you \*acquire in substitution for the membership

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 118-550

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rights that have ceased to exist do not include any amounts that you paid in acquiring or maintaining those old rights.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 121—Record keeping**

### **Guide to Division 121**

#### **121-10 What this Division is about**

You must keep records of matters that affect the capital gains and losses you make. You must retain them for 5 years after the last relevant CGT event.

#### **Table of sections**

##### **Operative provisions**

121-20	What records you must keep
121-25	How long you must retain the records
121-30	Exceptions
121-35	Asset register entries

#### **Operative provisions**

##### **121-20 What records you must keep**

- (1) You must keep records of every act, transaction, event or circumstance that can reasonably be expected to be relevant to working out whether you have made a \*capital gain or \*capital loss from a \*CGT event. (It does not matter whether the CGT event has already happened or may happen in the future.)

Note 1: There are exceptions: see section 121-30.

Example 1: You dispose of a CGT asset. The records that are relevant to working out your capital gain or loss are records of:

- the date you acquired the asset;
- the date you disposed of it;
- each element of its cost base and reduced cost base and the effect of indexation on those elements;
- what you sold it for (the capital proceeds).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Chapter 3 Specialist liability rules

### Part 3-1 Capital gains and losses: general topics

#### Division 121 Record keeping

##### Section 121-20

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Example 2: Company A disposes of a CGT asset it acquired from company B (a member of the same wholly-owned group and a foreign resident) where company B obtained a roll-over under Subdivision 126-B. In addition to the records mentioned in example 1, company A needs records showing:

- the status of the 2 companies as members of the group;
- which company is the ultimate holding company in the group;
- the cost base and reduced cost base of the asset in the hands of company B just before the roll-over (because these become company A's cost base and reduced cost base).

Example 3: CGT event G2 (about shifts in share values) happens involving company X and Greg (a controller (for CGT purposes) of company X). Z Nominees Pty Ltd (an associate of Greg's) suffers a material decrease in the value of its shares in company X as a result of the shift. Z Nominees needs records showing:

- the essential elements of the relevant scheme;
- the date when the share value shift occurred;
- the amounts of the decreases and increases in the market values of all shares involved in the scheme;
- if shares are issued at a discount under the scheme, the amount of the discount;
- the cost bases and market values of the shares that decreased in value.

Note 2: There is an administrative penalty if you do not keep records as required by this Division: see section 288-25 in Schedule 1 to the *Taxation Administration Act 1953*.

- (2) The records must be in English, or be readily accessible and convertible into English. They must show what is described in this section. (They *show* something if they include whatever material is necessary for that thing to be easily identified or worked out.)
- (3) They must show the nature of the act, transaction, event or circumstance, the day when it happened or arose and:
  - (a) in the case of an act—who did it; and
  - (b) in the case of a transaction—who were the parties to it.
- (4) They must show details (including relevant amounts) of how the act, transaction, event or circumstance is relevant (or can reasonably be expected to be relevant) to working out whether you have made a \*capital gain or \*capital loss from a \*CGT event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (5) If the necessary records of an act, transaction, event or circumstance do not already exist, you must reconstruct them or have someone else reconstruct them.

Example: Your capital gain or capital loss from a CGT event may depend on the market value of property at a particular time. To record that market value properly, you may need to get a valuation done.

Penalty: 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (6) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **121-25 How long you must retain the records**

- (1) You must retain records that section 121-20 requires you to keep.
- (2) You must retain them until the end of 5 years after it becomes certain that no \*CGT event (or no further \*CGT event) can happen such that the records could reasonably be expected to be relevant to working out whether you have made a \*capital gain or \*capital loss from the event.

- (2A) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) This section has effect despite subsection 262A(4) of the *Income Tax Assessment Act 1936* (which requires records to be retained for a different period).

- (4) However, it is not necessary to retain records:

- (a) if the Commissioner notifies you that you do not need to retain them; or
- (b) for a company that has finally ceased to exist.

Note 1: There are special record keeping rules where there has been a roll-over for a merger between superannuation funds under former section 160ZZPI of the *Income Tax Assessment Act 1936*: see section 121-25 of the *Income Tax (Transitional Provisions) Act 1997*.

Penalty: 30 penalty units.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 121-30

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Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

**121-30 Exceptions**

- (1) You do not need to keep records under section 121-20 if:
  - (a) for each \*CGT event (if any) that has happened such that the records are relevant (or could reasonably be expected to be relevant) to working out whether you have made a \*capital gain or \*capital loss from the event; and
  - (b) for each \*CGT event that may happen in the future such that the records could reasonably be expected to be relevant to working out whether you might make a \*capital gain or \*capital loss from the event;any capital gain or capital loss you made (or might make) from it is to be (or would be) disregarded, except because of a roll-over.
- (2) However, the exceptions in this section do not apply to a \*CGT event as a result of which a \*capital gain or \*capital loss is disregarded under section 855-40 (about capital gains and losses of foreign residents through fixed trusts).

**121-35 Asset register entries**

- (1) You satisfy a requirement under this Division to retain records for a period if you:
  - (a) retain for that period an entry in a register for the records that satisfies the requirements in subsection (2), or a combination of the records and such an entry for them, containing all the information required to be contained in the records; and
  - (b) retain those of the records that contain the information entered in the register for at least 5 years after the requirement in paragraph (2)(b) is satisfied.
- (2) The requirements are:
  - (a) you must make an entry in a register, in English, setting out some or all of the information contained in the records; and
  - (b) another entity who is a \*registered tax agent or some other person approved by the Commissioner must certify in the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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register that the information entered is information from those records.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Part 3-3—Capital gains and losses: special topics**

### **Division 122—Roll-over for the disposal of assets to, or the creation of assets in, a wholly-owned company**

#### **Table of Subdivisions**

	Guide to Division 122
122-A	Disposal or creation of assets by an individual or trustee to a wholly-owned company
122-B	Disposal or creation of assets by partners to a wholly-owned company

#### **Guide to Division 122**

##### **122-1 What this Division is about**

A roll-over can delay the making of a capital gain or loss if:

- you dispose of a CGT asset, or all the assets of a business, to a company in which you own all the shares; or
- you create a CGT asset in such a company; or
- all the partners in a partnership dispose of partnership property to a company in which they own all the shares; or
- the partners create a CGT asset in such a company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 122-A—Disposal or creation of assets by an individual or trustee to a wholly-owned company**

### **Guide to Subdivision 122-A**

#### **122-5 What this Subdivision is about**

This Subdivision sets out when you can obtain a roll-over if you transfer a CGT asset, or all the assets of a business, to a company. It also deals with the creation of a CGT asset in a company. There are consequences for the company also.

#### **Table of sections**

##### **When is a roll-over available**

- 122-15 Disposal or creation of assets—wholly-owned company
- 122-20 What you receive for the trigger event
- 122-25 Other requirements to be satisfied
- 122-35 What if the company undertakes to discharge a liability (disposal case)
- 122-37 Rules for working out what a liability in respect of an asset is

##### **Replacement-asset roll-over if you dispose of a CGT asset**

- 122-40 Disposal of a CGT asset

##### **Replacement-asset roll-over if you dispose of all the assets of a business**

- 122-45 Disposal of all the assets of a business
- 122-50 All assets acquired on or after 20 September 1985
- 122-55 All assets acquired before 20 September 1985
- 122-60 Assets acquired before and after 20 September 1985

##### **Replacement-asset roll-over for a creation case**

- 122-65 Creation of asset

##### **Same-asset roll-over consequences for the company (disposal case)**

- 122-70 Consequences for the company (disposal case)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-3** Capital gains and losses: special topics

**Division 122** Roll-over for the disposal of assets to, or the creation of assets in, a wholly-owned company

Section 122-15

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**Same-asset roll-over consequences for the company (creation case)**

122-75 Consequences for the company (creation case)

**When is a roll-over available**

**122-15 Disposal or creation of assets—wholly-owned company**

If you are an individual or a trustee, you can choose to obtain a roll-over if one of the \*CGT events (the *trigger event*) specified in this table happens involving you and a company in the circumstances set out in sections 122-20 to 122-35.

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<b>Relevant *CGT events</b>	
<b>Event No.</b>	<b>What you do</b>
A1	*Dispose of a CGT asset, or all the assets of a business, to the company
D1	Create contractual or other rights in the company
D2	Grant an option to the company
D3	Grant the company a right to income from mining
F1	Grant a lease to the company, or renew or extend a lease

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Note 1: The roll-over starts at section 122-40.

Note 2: Section 103-25 tells you when you have to make the choice.

Example: Gavin runs a plumbing business. He wants to incorporate it so he disposes of all its assets to a company. He becomes the sole shareholder of the company.

**122-20 What you receive for the trigger event**

- (1) The consideration you receive for the trigger event happening must be only:
  - (a) \*shares in the company; or
  - (b) for a \*disposal of a \*CGT asset, or all the assets of a business, to the company (a *disposal case*)—shares in the company and the company undertaking to discharge one or more liabilities in respect of the asset or assets of the \*business (as appropriate).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: There are rules for working out what are the liabilities in respect of an asset: see section 122-37.

- (2) The \*shares cannot be \*redeemable shares.
- (3) The \*market value of the \*shares you receive for the trigger event happening must be substantially the same as:
  - (a) for a disposal case—the market value of the asset or assets you disposed of, less any liabilities the company undertakes to discharge in respect of the asset or assets (as appropriate); or
  - (b) for another trigger event (a *creation case*)—the market value of the CGT asset created in the company (the *created asset*).
- (4) In working out if the requirement in paragraph (3)(a) is satisfied, if the \*market value of the \*shares is different to what it would otherwise be only because of the possibility of liabilities attaching to the asset or assets, disregard the difference.

Note: The company may have to pay income tax if an amount is included in its assessable income because of a CGT event happening to an asset you disposed of, or it may have a liability because of accrued leave entitlements of employees. The market value of the shares will reflect these contingent liabilities.

### **122-25 Other requirements to be satisfied**

- (1) You must own all the \*shares in the company just after the time of the trigger event.

Note: You must own the shares in the same capacity as you owned or created the assets that the company now owns.

- (2) This Subdivision does not apply to the \*disposal or creation of any of the assets specified in this table:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-3** Capital gains and losses: special topics

**Division 122** Roll-over for the disposal of assets to, or the creation of assets in, a wholly-owned company

Section 122-25

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**Assets to which Subdivision does not apply**

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<b>Item</b>	<b>In this situation:</b>	<b>This Subdivision does not apply to:</b>
1	You *dispose of a *CGT asset to the company or create a CGT asset in the company	(a) a *collectable or a *personal use asset; or (b) a decoration awarded for valour or brave conduct (except if you paid money or gave any other property for it); or (c) a *precluded asset; or (d) an asset that becomes *trading stock of the company just after the *disposal or creation
2	You *dispose of all the assets of a *business to the company	(a) a *collectable or a *personal use asset; or (b) a decoration awarded for valour or brave conduct (except if you paid money or gave any other property for it); or (c) an asset that becomes *trading stock of the company just after the disposal or creation (unless it was your trading stock when you disposed of it)

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(3) A precluded asset is:

- (a) a \*depreciating asset; or
- (b) \*trading stock; or
- (c) an interest in the copyright in a \*film referred to in section 118-30.

(4) If:

- (a) the \*CGT asset or any of the assets of the \*business is a right, option, \*convertible interest or \*exchangeable interest; and
- (b) the company \*acquires another CGT asset by exercising the right or option or by converting the convertible interest or in exchange for the disposal or redemption of the exchangeable interest;

the other asset cannot become \*trading stock of the company just after the company acquired it.

(5) The \*ordinary income and \*statutory income of the company must not be exempt from income tax because it is an \*exempt entity for the income year of the trigger event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (6) If you are an individual at the time of the trigger event, either:
- (a) you and the company must both be Australian residents at that time; or
  - (b) both of the following requirements must be satisfied:
    - (i) each asset must be \*taxable Australian property at that time;
    - (ii) the shares in the company mentioned in subsection 122-20(1) must be taxable Australian property just after that time.
- (7) If you are a trustee of a trust at the time of the trigger event, either:
- (a) at that time, the trust must be a \*resident trust for CGT purposes and the company must be an Australian resident; or
  - (b) both of the following requirements must be satisfied:
    - (i) each \*CGT asset must be a CGT asset of the trust that is \*taxable Australian property at that time; and
    - (ii) the shares in the company mentioned in subsection 122-20(1) must be taxable Australian property just after that time.

**122-35 What if the company undertakes to discharge a liability (disposal case)**

*Disposal of a CGT asset*

- (1) One of the requirements in this table must be satisfied if:
- (a) you \*dispose of a \*CGT asset; and
  - (b) the company undertakes to discharge one or more liabilities in respect of it.

(The \*market value, or the \*cost base, of an asset is worked out when you disposed of it.)

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**\*What amount the liabilities cannot exceed**

<b>Item</b>	<b>In this situation:</b>	<b>the liabilities cannot exceed:</b>
1	You *acquired the asset on or after 20 September 1985	The *cost base of the asset

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-3** Capital gains and losses: special topics

**Division 122** Roll-over for the disposal of assets to, or the creation of assets in, a wholly-owned company

Section 122-37

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**\*What amount the liabilities cannot exceed**

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<b>Item</b>	<b>In this situation:</b>	<b>the liabilities cannot exceed:</b>
2	You *acquired the asset before 20 September 1985	The *market value of the asset

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Note: There are rules for working out what are the liabilities in respect of an asset: see section 122-37.

*Disposal of all the assets of a business*

- (2) One of the requirements in this table must be satisfied if:
- (a) you \*dispose of all the assets of a \*business; and
  - (b) the company undertakes to discharge one or more liabilities in respect of the assets of the business.

(The \*market value, or the \*cost base, of an asset is worked out when you disposed of it.)

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**What amount the liabilities cannot exceed**

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<b>Item</b>	<b>In this situation:</b>	<b>The liabilities cannot exceed:</b>
1	You *acquired all the assets on or after 20 September 1985	The sum of the *market values of the *precluded assets and the *cost bases of the other assets
2	You *acquired all the assets before 20 September 1985	The sum of the *market values of the assets
3	You *acquired at least one asset on or after 20 September 1985 and at least one before that day	For liabilities in respect of assets you *acquired on or after that day—the sum of the *market values of the *precluded assets and the *cost bases of the other assets; For liabilities in respect of assets you *acquired before that day—the sum of the market values of those assets

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**122-37 Rules for working out what a liability in respect of an asset is**

- (1) These rules are relevant to working out what are the liabilities in respect of an asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) A liability incurred for the purposes of a \*business that is not a liability in respect of a specific asset or assets of the business is taken to be a liability in respect of all the assets of the business.

Note: An example is a bank overdraft.

- (3) If a liability is in respect of 2 or more assets, the proportion of the liability that is in respect of any one of those assets is equal to:

$$\frac{\text{The *market value of the asset}}{\text{The total of the market values of all the assets that the liability is in respect of}}$$

## **Replacement-asset roll-over if you dispose of a CGT asset**

### **122-40 Disposal of a CGT asset**

- (1) If you choose a roll-over, a \*capital gain or \*capital loss you make from the trigger event is disregarded.
- (2) If you \*acquired the asset on or after 20 September 1985:
- (a) the first element of each \*share's \*cost base is the asset's cost base when you \*disposed of it (less any liabilities the company undertakes to discharge in respect of it) divided by the number of shares; and
  - (b) the first element of each share's \*reduced cost base is worked out similarly.
- Note 1: There are rules for working out what are the liabilities in respect of an asset: see section 122-37.
- Note 2: There are special indexation rules for roll-overs: see Division 114.
- (3) If you \*acquired the asset before 20 September 1985, you are taken to have acquired the \*shares before that day.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Replacement-asset roll-over if you dispose of all the assets of a business**

### **122-45 Disposal of all the assets of a business**

- (1) If you choose a roll-over for \*disposing of all the assets of a \*business to the company, a \*capital gain or \*capital loss you make from each of the assets of the business is disregarded.
- (2) The other consequences relate to the \*shares you receive and depend on when you \*acquired the assets of the \*business.

Note 1: There are 3 possible cases:

- you acquired all the assets on or after 20 September 1985: see section 122-50;
- you acquired all the assets before that day: see section 122-55;
- you acquired some of the assets on or after that day: see section 122-60.

Note 2: There are special indexation rules for roll-overs: see Division 114.

Note 3: There are other consequences for you and the company if you dispose of trading stock: see Division 70.

### **122-50 All assets acquired on or after 20 September 1985**

- (1) If you \*acquired all of the assets of the \*business on or after 20 September 1985:
  - (a) the first element of each \*share's \*cost base is the sum of the \*market values of the \*precluded assets and the cost bases of the other assets (less any liabilities the company undertakes to discharge in respect of all of those assets) divided by the number of shares; and
  - (b) the first element of each share's \*reduced cost base is worked out similarly.

Note 1: There are rules for working out what are the liabilities in respect of an asset: see section 122-37.

Note 2: There are special indexation rules for roll-overs: see Division 114.

Example: Nick is a small trader. He wants to incorporate his business. He disposes of all its assets to a company and receives 10 shares in return. Nick acquired all the assets of the business after 20 September 1985.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 122-55

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Trading stock, plant and equipment and office furniture are precluded assets.

The market value of Nick's trading stock when he disposed of it is \$20,000. The market value of his plant and equipment at that time is \$50,000 and the market value of his office furniture at that time is \$10,000.

The cost bases of Nick's land and buildings at that time total \$120,000.

Nick has a business overdraft of \$15,000. It is taken to be a liability in respect of all the assets of his business.

The first element of the cost base of the 10 shares is:

$$\left( \$20,000 + \$50,000 + \$10,000 + \$120,000 \right) - \$15,000 = \$185,000$$

The first element of the reduced cost base of the 10 shares is worked out similarly.

- (2) The \*market value of an asset is worked out when you \*disposed of it. The \*cost base or \*reduced cost base of an asset is worked out at the same time.

### **122-55 All assets acquired before 20 September 1985**

- (1) You are taken to have \*acquired all of the \*shares before 20 September 1985 if you acquired all the assets of the \*business before that day and none of the assets is a \*precluded asset.
- (2) However, if at least one of the assets is a \*precluded asset, you are taken to have \*acquired a whole number of the \*shares (but not all of them) before that day. The number is the greatest possible that (when expressed as a percentage of all the shares) does not exceed:
- the total of the \*market values of the assets that are not \*precluded assets, less any liabilities the company undertakes to discharge in respect of those assets;  
expressed as a percentage of:
  - the total of the market values of all the assets, less any liabilities the company undertakes to discharge in respect of those assets.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-3** Capital gains and losses: special topics

**Division 122** Roll-over for the disposal of assets to, or the creation of assets in, a wholly-owned company

**Section 122-60**

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Note: There are rules for working out what are the liabilities in respect of an asset: see section 122-37.

- (3) The first element of each other \*share's \*cost base and \*reduced cost base is the total of the \*market values of the \*precluded assets (less any liabilities the company undertakes to discharge in respect of those assets) divided by the number of those other shares.
- (4) The \*market value of an asset is worked out when you \*disposed of it. The \*cost base or \*reduced cost base of an asset is worked out at the same time.

**122-60 Assets acquired before and after 20 September 1985**

- (1) If you \*acquired some of the assets on or after 20 September 1985, you are taken to have acquired a whole number of the \*shares (but not all of them) before that day. The number is the greatest possible that (when expressed as a percentage of all the shares) does not exceed:

- the total of the \*market values of the assets (except any \*precluded assets) that you acquired before that day, less any liabilities the company undertakes to discharge in respect of those assets;

expressed as a percentage of:

- the total of the market values of all the assets, less any liabilities the company undertakes to discharge in respect of those assets.

- (2) The first element of each other \*share's \*cost base is the sum of the \*market values of the \*precluded assets and the cost bases of the other assets that you \*acquired on or after that day (less any liabilities the company undertakes to discharge in respect of all of those assets) divided by the number of those other shares.

Note: There are special indexation rules for roll-overs: see Division 114.

- (3) The first element of each other \*share's \*reduced cost base is worked out similarly.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4) The \*market value of an asset is worked out when you \*disposed of it. The \*cost base or \*reduced cost base of an asset is worked out at the same time.

## Replacement-asset roll-over for a creation case

### 122-65 Creation of asset

- (1) If you choose a roll-over, a \*capital gain or \*capital loss you make from the trigger event is disregarded.
- (2) The first element of each \*share's \*cost base is the amount applicable under this table divided by the number of shares. The first element of each share's \*reduced cost base is worked out similarly.

Creation case	
Event No.	Applicable amount
D1	the *incidental costs you incurred that relate to the trigger event
D2	the expenditure you incurred to grant the option
D3	the expenditure you incurred to grant the right
F1	the expenditure you incurred on the grant, renewal or extension of the lease

The expenditure can include a transfer of property: see section 103-5.

Example: Bill grants a licence (CGT event D1) to Tiffin Pty Ltd (a company he owns). The company issues him with 2 additional shares. He incurs legal expenses of \$1,000 to grant the licence.

Bill's cost base for each of the shares is \$500.

## Same-asset roll-over consequences for the company (disposal case)

### 122-70 Consequences for the company (disposal case)

- (1) There are these consequences for the company in a disposal case if you choose to obtain a roll-over. They are relevant for each \*CGT

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-3** Capital gains and losses: special topics

**Division 122** Roll-over for the disposal of assets to, or the creation of assets in, a wholly-owned company

**Section 122-75**

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asset (except a \*precluded asset) that you \*disposed of to the company.

Note: A capital gain or loss from a precluded asset can be disregarded: see Subdivision 118-A.

*Asset acquired on or after 20 September 1985*

- (2) If you \*acquired the asset on or after 20 September 1985:
- (a) the first element of the asset's \*cost base (in the hands of the company) is the asset's cost base when you disposed of it; and
  - (b) the first element of the asset's \*reduced cost base (in the hands of the company) is the asset's reduced cost base when you disposed of it.

Note 1: There are special indexation rules for roll-overs: see Division 114.

Note 2: The reduced cost base may be modified for a roll-over happening after a demerger: see section 125-170.

*Asset acquired before 20 September 1985*

- (3) If you \*acquired the asset before 20 September 1985, the company is taken to have acquired it before that day.

Note: A capital gain or loss from a CGT asset acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

**Same-asset roll-over consequences for the company (creation case)**

**122-75 Consequences for the company (creation case)**

- (1) There are these consequences for the company in a creation case if you choose to obtain a roll-over.
- (2) The first element of the created asset's \*cost base (in the hands of the company) is the applicable amount from the table in subsection 122-65(2).

Example: To continue the example in section 122-65, the cost base of the licence in Tiffin Pty Ltd's hands is \$1,000.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) The first element of the created asset's \*reduced cost base (in the hands of the company) is worked out similarly.

### **Subdivision 122-B—Disposal or creation of assets by partners to a wholly-owned company**

#### **Guide to Subdivision 122-B**

#### **122-120 What this Subdivision is about**

This Subdivision sets out when the partners in a partnership can obtain a roll-over on transferring a CGT asset, or all the assets of a business, to a company. It also deals with the creation of a CGT asset in a company. There are consequences for the company also.

#### **Table of sections**

##### **When is a roll-over available**

- 122-125 Disposal or creation of assets—wholly-owned company
- 122-130 What the partners receive for the trigger event
- 122-135 Other requirements to be satisfied
- 122-140 What if the company undertakes to discharge a liability (disposal case)
- 122-145 Rules for working out what a liability in respect of an interest in an asset is

##### **Replacement-asset roll-over if partners dispose of a CGT asset**

- 122-150 Capital gain or loss disregarded
- 122-155 Disposal of post-CGT or pre-CGT interests
- 122-160 Disposal of both post-CGT and pre-CGT interests

##### **Replacement-asset roll-over if the partners dispose of all the assets of a business**

- 122-170 Capital gain or loss disregarded
- 122-175 Other consequences
- 122-180 All interests acquired on or after 20 September 1985
- 122-185 All interests acquired before 20 September 1985
- 122-190 Interests acquired before and after 20 September 1985

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-3** Capital gains and losses: special topics

**Division 122** Roll-over for the disposal of assets to, or the creation of assets in, a wholly-owned company

Section 122-125

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**Replacement-asset roll-over for a creation case**

122-195 Creation of asset

**Same-asset roll-over consequences for the company (disposal case)**

122-200 Consequences for the company (disposal case)

**Same-asset roll-over consequences for the company (creation case)**

122-205 Consequences for the company (creation case)

**When is a roll-over available**

**122-125 Disposal or creation of assets—wholly-owned company**

All of the partners in a partnership can choose to obtain a roll-over if one of the \*CGT events (the *trigger event*) specified in this table happens involving the partners and a company in the circumstances set out in sections 122-130 to 122-140.

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<b>Relevant *CGT events</b>	
<b>Event No.</b>	<b>What the partners do</b>
A1	*Dispose of their interests in a *CGT asset of the partnership, or all the assets of a business carried on by the partnership, to the company
D1	Create contractual or other rights in the company
D2	Grant an option to the company
D3	Grant the company a right to income from mining
F1	Grant a lease to the company, or renew or extend a lease

---

Note 1: The roll-over starts at section 122-150.

Note 2: Section 103-25 tells you when you have to make the choice.

Example: Michael and Sandra operate a fish shop in partnership. They agree to incorporate the business so they dispose of their interests in all its assets to a company. They are the only shareholders of the company.

**122-130 What the partners receive for the trigger event**

- (1) The consideration the partners receive must be only:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) \*shares in the company; or
- (b) for a \*disposal of their interests in a \*CGT asset, or in all the assets of a business, to the company (a **disposal case**)—shares in the company and the company undertaking to discharge one or more liabilities in respect of their interests.

Note: There are rules for working out what are the liabilities in respect of an interest in an asset: see section 122-145.

- (2) The \*shares cannot be \*redeemable shares.
- (3) The \*market value of the \*shares each partner receives for the trigger event happening must be substantially the same as:
  - (a) for a disposal case—the market value of the interests in the asset or assets the partner disposed of, less any liabilities the company undertakes to discharge in respect of the interests in the asset or assets (as appropriate); or
  - (b) for another trigger event (a **creation case**)—the market value of what would have been the partner's interest in the \*CGT asset created in the company (the **created asset**) if it were an asset of the partnership.
- (4) In working out if the requirement in paragraph (3)(a) is satisfied, if the \*market value of the \*shares is different to what it would otherwise be only because of the possibility of liabilities attaching to the asset or assets, disregard the difference.

Note: The company may have to pay income tax if an amount is included in its assessable income because of a CGT event happening to an asset a partner disposed of, or it may have a liability because of accrued leave entitlements of employees. The market value of the shares will reflect these contingent liabilities.

### **122-135 Other requirements to be satisfied**

- (1) The partners must own all the \*shares in the company just after the time of the trigger event.
- (2) Each partner must own the \*shares the partner received for the trigger event happening in the same capacity that the partner:
  - (a) owned the partner's interests in the assets that the company now owns; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-3** Capital gains and losses: special topics

**Division 122** Roll-over for the disposal of assets to, or the creation of assets in, a wholly-owned company

Section 122-135

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(b) participated in the creation of the asset in the company.

Note: If a partner's interests were owned as trustee, the partner must receive shares as trustee.

(3) This Subdivision does not apply to the \*disposal or creation of any of the assets specified in this table:

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**Assets to which Subdivision does not apply**

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<b>Item</b>	<b>In this situation:</b>	<b>This Subdivision does not apply to:</b>
1	The partners *dispose of their interests in a *CGT asset to, or create a CGT asset in, the company	(a) a *collectable or a *personal use asset; or (b) a decoration awarded for valour or brave conduct (except if a partner paid money or gave any other property for it); or (c) a *precluded asset; or (d) an asset that becomes *trading stock of the company just after the *disposal or creation
2	The partners *dispose of their interests in all the assets of a business	(a) a *collectable or a *personal use asset; or (b) a decoration awarded for valour or brave conduct (except if a partner paid money or gave any other property for it); or (c) an asset that becomes *trading stock of the company just after the disposal or creation (unless it was trading stock of the partnership when it was disposed of)

---

(4) If:

- (a) the \*CGT asset or any of the assets of the \*business is a right, option, \*convertible interest or \*exchangeable interest; and
- (b) the company \*acquires another CGT asset by exercising the right or option or by converting the convertible interest or in exchange for the disposal or redemption of the exchangeable interest;

the other asset cannot become \*trading stock of the company just after the company acquired it.

(5) The \*ordinary income and \*statutory income of the company must not be exempt from income tax because it is an \*exempt entity for the income year of the trigger event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (6) For a partner who is not a trustee of a trust at the time of the trigger event, either:
- (a) the partner and the company must both be Australian residents at that time; or
  - (b) both of the following requirements must be satisfied:
    - (i) each asset must be \*taxable Australian property at that time; and
    - (ii) the shares in the company mentioned in subsection 122-130(1) must be taxable Australian property just after that time.
- (7) For a partner who is a trustee of a trust at the time of the trigger event, either:
- (a) at that time, the trust must be a \*resident trust for CGT purposes and the company must be an Australian resident; or
  - (b) both of the following requirements must be satisfied:
    - (i) each \*CGT asset must be a CGT asset of the trust that is \*taxable Australian property at that time; and
    - (ii) the shares in the company mentioned in subsection 122-130(1) must be taxable Australian property just after that time.

**122-140 What if the company undertakes to discharge a liability (disposal case)**

*Disposal of a CGT asset*

- (1) One of these requirements must be satisfied (for each partner) if:
- (a) the partners \*dispose of their interests in a \*CGT asset; and
  - (b) the company undertakes to discharge one or more liabilities in respect of the interests in the asset.

(The \*market value, or the \*cost base, of an interest is worked out at the time of the disposal.)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-3** Capital gains and losses: special topics

**Division 122** Roll-over for the disposal of assets to, or the creation of assets in, a wholly-owned company

Section 122-140

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**What amount the liabilities cannot exceed**

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<b>Item</b>	<b>In this situation:</b>	<b>the liabilities cannot exceed:</b>
1	A partner *acquired the interest on or after 20 September 1985	The *cost base of the interest
2	A partner *acquired the interest before 20 September 1985	The *market value of the interest

---

Note: There are rules for working out what are the liabilities in respect of an interest in an asset: see section 122-145.

*Disposal of all the assets of a business*

- (2) One of these requirements must be satisfied (for each partner) if:
- (a) the partners \*dispose of their interests in all the assets of a \*business; and
  - (b) the company undertakes to discharge one or more liabilities in respect of the interests in the assets.

(The \*market value, or the \*cost base, of an interest is worked out at the time of the disposal.)

---

**What amount the liabilities cannot exceed**

---

<b>Item</b>	<b>In this situation:</b>	<b>the liabilities cannot exceed:</b>
1	A partner *acquired all the interests on or after 20 September 1985	The sum of the *market values of the partner's interests in *precluded assets and the *cost bases of the partner's interests in other assets
2	A partner *acquired all the interests before 20 September 1985	The sum of the *market values of the interests

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**What amount the liabilities cannot exceed**

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<b>Item</b>	<b>In this situation:</b>	<b>the liabilities cannot exceed:</b>
3	A partner *acquired at least one interest on or after 20 September 1985 and at least one before that day	For liabilities in respect of interests *acquired on or after that day—the sum of the *market values of the partner’s interests in *precluded assets and the *cost bases of the partner’s interests in other assets  For liabilities in respect of interests *acquired before that day—the sum of the market values of those interests

---

**122-145 Rules for working out what a liability in respect of an interest in an asset is**

- (1) These rules are relevant to working out what are the liabilities in respect of a partner’s interests in an asset.
- (2) A liability incurred for the purposes of a \*business that is not a liability in respect of interests in a specific asset or assets of the business is taken to be a liability in respect of the partner’s interests in all the assets of the business.

Note: An example is a bank overdraft.

- (3) If a liability is in respect of both:
  - (a) the partner’s interests in one or more assets that the partner \*acquired on or after 20 September 1985; and
  - (b) the partner’s interests in one or more assets that the partner acquired before that day;

the proportion of the liability that is in respect of the partner’s interests that the partner acquired on or after that day is equal to:

$$\frac{\text{The *market value of the partner’s interest that the partner *acquired on or after that day}}{\text{The total of the market values of all the partner’s interest in assets that the liability is in respect of}}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Replacement-asset roll-over if partners dispose of a CGT asset**

### **122-150 Capital gain or loss disregarded**

If the partners choose a roll-over for \*disposing of their interests in a CGT asset to the company, a \*capital gain or \*capital loss any partner makes from the disposal is disregarded.

### **122-155 Disposal of post-CGT or pre-CGT interests**

- (1) If a partner \*acquired all the partner's interests in the asset on or after 20 September 1985:
  - (a) the first element of each \*share's \*cost base is the sum of the cost bases of the interests when the partner \*disposed of them (less any liabilities the company undertakes to discharge in respect of them) divided by the number of the partner's shares; and
  - (b) the first element of each share's \*reduced cost base is worked out similarly.
- Note 1: There are rules for working out what are the liabilities in respect of an interest in an asset: see section 122-145.
- Note 2: There are special indexation rules for roll-overs: see Division 114.
- (2) If a partner \*acquired all the partner's interests in the asset before 20 September 1985, the partner is taken to have acquired the \*shares before that day.

### **122-160 Disposal of both post-CGT and pre-CGT interests**

- (1) If a partner \*acquired some of the partner's interests in the asset on or after 20 September 1985 and some before that day, the partner is taken to have acquired a whole number of the \*shares (but not all of them) before that day. The number is the greatest possible that (when expressed as a percentage of all the shares the partner acquires) does not exceed:
  - the \*market value of the interests in the asset that the partner acquired before that day;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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expressed as a percentage of:

- the total of the market values of all the partner's interests in the asset.
- (2) The first element of each other \*share's \*cost base is the sum of the cost bases of the partner's interests that the partner \*acquired on or after that day (less any liabilities the company undertakes to discharge in respect of all of those interests) divided by the number of the other shares.
- Note: There are special indexation rules for roll-overs: see Division 114.
- (3) The first element of each other \*share's \*reduced cost base is worked out similarly.
- (4) The \*market value of an interest in an asset is worked out when the partner \*disposed of it. The \*cost base or \*reduced cost base of an interest in an asset is worked out at the same time.

### **Replacement-asset roll-over if the partners dispose of all the assets of a business**

#### **122-170 Capital gain or loss disregarded**

If the partners choose a roll-over for \*disposing of their interests in all the assets of a \*business to the company, a \*capital gain or \*capital loss any partner makes from the disposal is disregarded.

#### **122-175 Other consequences**

The other consequences relate to the \*shares the partners receive and depend on when they \*acquired their interests in the assets of the \*business.

Note 1: There are 3 possible cases:

- a partner acquired all the interests on or after 20 September 1985: see section 122-180;
- a partner acquired all the interests before that day: see section 122-185;
- a partner acquired some of the interests on or after that day: see section 122-190.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-3** Capital gains and losses: special topics

**Division 122** Roll-over for the disposal of assets to, or the creation of assets in, a wholly-owned company

Section 122-180

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Note 2: There are other consequences for the partnership and the company if the partners dispose of their interests in trading stock of the partnership: see Division 70.

**122-180 All interests acquired on or after 20 September 1985**

- (1) If a partner \*acquired all of the partner's interests in the assets of the \*business on or after 20 September 1985:
  - (a) the first element of the partner's \*cost base of each \*share is the sum of the \*market values of the partner's interests in the \*precluded assets and the cost bases of the partner's interests in the other assets (less any liabilities the company undertakes to discharge in respect of all of those interests) divided by the number of the partner's shares; and
  - (b) the first element of the partner's \*reduced cost base of each \*share is worked out similarly.

Note 1: There are rules for working out what are the liabilities in respect of interests: see section 122-145.

Note 2: There are special indexation rules for roll-overs: see Division 114.

- (2) The \*market value of an interest in an asset is worked out when the partner \*disposed of it. The \*cost base or \*reduced cost base of an interest is worked out at the same time.

**122-185 All interests acquired before 20 September 1985**

- (1) A partner is taken to have \*acquired all of the \*shares before 20 September 1985 if the partner acquired all the partner's interests in the assets of the \*business before that day and none of the assets is a \*precluded asset.
- (2) However, if at least one of the assets is a \*precluded asset, the partner is taken to have \*acquired a whole number of the \*shares (but not all of them) before that day. The number is the greatest possible that (when expressed as a percentage of all the shares) does not exceed:
  - the total of the \*market values of the partner's interests in the assets that are not \*precluded assets, less any liabilities

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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the company undertakes to discharge in respect of those interests;

expressed as a percentage of:

- the total of the market values of the partner's interests in all the assets, less any liabilities the company undertakes to discharge in respect of those interests.

Note: There are rules for working out what are the liabilities in respect of an interest: see section 122-145.

- (3) The first element of the partner's \*cost base and \*reduced cost base of each other \*share is the total of the \*market values of the partner's interests in the \*precluded assets (less any liabilities the company undertakes to discharge in respect of those interests) divided by the number of the other shares.
- (4) The \*market value of an interest in an asset is worked out when the partner \*disposed of it. The \*cost base or \*reduced cost base of an interest is worked out at the same time.

### **122-190 Interests acquired before and after 20 September 1985**

- (1) If a partner \*acquired some of the interests in the assets on or after 20 September 1985, the partner is taken to have acquired a whole number of the \*shares (but not all of them) before that day. The number is the greatest possible that (when expressed as a percentage of all the shares) does not exceed:
  - the total of the \*market values of the partner's interests in the assets (except any \*precluded assets) that the partner acquired before that day, less any liabilities the company undertakes to discharge in respect of those interests;expressed as a percentage of:
  - the total of the market values of all the partner's interests in the assets, less any liabilities the company undertakes to discharge in respect of those interests.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-3** Capital gains and losses: special topics

**Division 122** Roll-over for the disposal of assets to, or the creation of assets in, a wholly-owned company

Section 122-195

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- (2) The first element of the partner's \*cost base of each other \*share is the sum of the \*market values of the partner's interests in the \*precluded assets and the cost bases of the partner's interests in the other assets that the partner \*acquired on or after that day (less any liabilities the company undertakes to discharge in respect of all of those interests) divided by the number of the other shares.

Note: There are special indexation rules for roll-overs: see Division 114.

- (3) The first element of the partner's \*reduced cost base of each other \*share is worked out similarly.
- (4) The \*market value of an interest in an asset is worked out when the partner \*disposed of it. The \*cost base or \*reduced cost base of an interest in an asset is worked out at the same time.

**Replacement-asset roll-over for a creation case**

**122-195 Creation of asset**

- (1) If the partners choose a roll-over, a \*capital gain or \*capital loss any partner makes from the trigger event is disregarded.
- (2) The first element of the partner's \*cost base of each \*share is the amount applicable under this table divided by the number of shares. The first element of each share's \*reduced cost base is worked out similarly.

---

<b>Creation case</b>	
<b>Event No.</b>	<b>Applicable amount</b>
D1	the partner's share of the *incidental costs incurred that relate to the trigger event
D2	the partner's share of the expenditure incurred to grant the option
D3	the partner's share of the expenditure incurred to grant the right
F1	the partner's share of the expenditure incurred on the grant, renewal or extension of the lease

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The expenditure can include a transfer of property: see section 103-5.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Same-asset roll-over consequences for the company (disposal case)

### 122-200 Consequences for the company (disposal case)

- (1) There are these consequences for the company in a disposal case if the partners choose to obtain a roll-over. They are relevant for interests in each \*CGT asset (except a \*precluded asset) that the partners \*disposed of to the company.

Note 1: A capital gain or loss from a precluded asset can be disregarded: see Subdivision 118-A.

Note 2: The reduced cost base (as determined under this section) may be modified for a roll-over happening after a demerger: see section 125-170.

#### *Interests acquired on or after 20 September 1985*

- (2) If all of the partners' interests in an asset were \*acquired on or after 20 September 1985:
- (a) the first element of the asset's \*cost base (in the hands of the company) is the sum of the cost bases of the partners' interests in the asset when it was disposed of; and
  - (b) the first element of the asset's \*reduced cost base (in the hands of the company) is the sum of the reduced cost bases of the partners' interests in the asset when it was disposed of.

Note: There are special indexation rules for roll-overs: see Division 114.

#### *Interests acquired before 20 September 1985*

- (3) If all of the partners' interests in an asset were \*acquired before 20 September 1985, the company is taken to have acquired it before that day.

Note: A capital gain or loss from a CGT asset acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-3** Capital gains and losses: special topics

**Division 122** Roll-over for the disposal of assets to, or the creation of assets in, a wholly-owned company

Section 122-205

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*Interests acquired on or after and before 20 September 1985*

- (4) If some of the partners' interests in an asset (the **original asset**) were \*acquired on or after 20 September 1985 and some before that day, the company is taken to have acquired 2 separate \*CGT assets:
- (a) one (which the company is taken to have acquired on or after 20 September 1985) representing the extent to which the partners' interests in the original asset were acquired by the partners on or after that day; and
  - (b) another (which the company is taken to have acquired before that day) representing the extent to which the partners' interests in the original asset were acquired by the partners before that day.
- (5) The first element of the \*cost base of the separate asset that the company is taken to have \*acquired on or after 20 September 1985 is the sum of the cost bases of the partners' interests in the original asset that they acquired on or after that day.

Note: There are special indexation rules for roll-overs: see Division 114.

- (6) The first element of its \*reduced cost base is worked out similarly.

**Same-asset roll-over consequences for the company (creation case)**

**122-205 Consequences for the company (creation case)**

- (1) There are these consequences for the company in a creation case if the partners choose to obtain a roll-over.
- (2) The first element of the created asset's \*cost base (in the hands of the company) is the applicable amount from this table.

---

<b>Creation case</b>	
<b>Event No.</b>	<b>Applicable amount</b>
D1	the total *incidental costs incurred that relate to the trigger event
D2	the total expenditure incurred to grant the option
D3	the total expenditure incurred to grant the right

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Creation case</b>	
<b>Event No.</b>	<b>Applicable amount</b>
F1	the total expenditure incurred on the grant, renewal or extension of the lease

---

The expenditure can include a transfer of property: see section 103-5.

- (3) The first element of the created asset's \*reduced cost base (in the hands of the company) is worked out similarly.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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# **Income Tax Assessment Act 1997**

## **Act No. 38 of 1997 as amended**

This compilation was prepared on 2 July 2009  
taking into account amendments up to Act No. 62 of 2009

**Volume 4** includes: Table of Contents  
Sections 124-1 to 152-430

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

## **Chapter 3—Specialist liability rules**

### **Part 3-3—Capital gains and losses: special topics**





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# Contents

<b>Chapter 3—Specialist liability rules</b>	i
<b>Part 3-3—Capital gains and losses: special topics</b>	i
<b>Division 124—Replacement-asset roll-overs</b>	1
<b>Guide to Division 124</b>	2
124-1 What this Division is about .....	2
124-5 How to find your way around this Division.....	2
<b>Subdivision 124-A—General rules</b>	2
124-10 Your ownership of one CGT asset ends .....	3
124-15 Your ownership of more than one CGT asset ends.....	4
<b>Subdivision 124-B—Asset compulsorily acquired, lost or destroyed</b>	6
<b>When a roll-over is available</b>	6
124-70 Events giving rise to a roll-over.....	6
124-75 Other requirements if you receive money.....	8
124-80 Other requirements if you receive an asset.....	9
<b>The consequences of a roll-over being available</b>	10
124-85 Consequences for receiving money .....	10
124-90 Consequences for receiving an asset .....	12
124-95 You receive both money and an asset.....	12
<b>Subdivision 124-C—Statutory licences</b>	15
124-140 New statutory licences.....	15
124-145 Rollover consequences—capital gain or loss disregarded .....	16
124-150 Rollover consequences—partial roll-over .....	16
124-155 Roll-over consequences—all original licences were post-CGT .....	17
124-160 Roll-over consequences—all original licences were pre-CGT .....	18
124-165 Roll-over consequences—some original licences were pre-CGT, others were post-CGT .....	18
<b>Subdivision 124-D—Strata title conversion</b>	19
124-190 Strata title conversion .....	19
<b>Subdivision 124-E—Exchange of shares or units</b>	19
124-240 Exchange of shares in the same company.....	20
124-245 Exchange of units in the same unit trust .....	20
<b>Subdivision 124-F—Exchange of rights or options</b>	21
124-295 Exchange of rights or option to acquire shares in a company.....	21
124-300 Exchange of rights or option to acquire units in a unit trust .....	22

---

<b>Subdivision 124-G—Exchange of shares in one company for shares in another company</b>	23
<b>Guide to Subdivision 124-G</b>	23
124-350 What this Subdivision is about .....	23
124-355 Summary of rules .....	24
<b>Disposal case</b>	25
124-360 Disposal of shares in one company for shares in another one.....	25
124-365 Other requirements to be satisfied .....	25
<b>Redemption or cancellation case</b>	27
124-370 Redemption or cancellation of shares in one company for shares in another one .....	27
124-375 Other requirements to be satisfied .....	28
<b>Rules applying to both cases</b>	29
124-380 Requirements to be satisfied in both cases .....	29
124-382 Special rules for ADI restructures .....	30
<b>Consequences for the interposed company unless consolidated group continues</b>	31
124-385 Consequences for the interposed company .....	31
<b>Additional consequences for member if shares are trading stock or revenue assets</b>	32
124-390 Deferral of profit or loss on shares .....	32
<b>Subdivision 124-H—Exchange of units in a unit trust for shares in a company</b>	34
<b>Guide to Subdivision 124-H</b>	34
124-435 What this Subdivision is about .....	34
124-440 Summary of rules .....	35
<b>Disposal case</b>	35
124-445 Disposal of units in a unit trust for shares in a company .....	35
124-450 Other requirements to be satisfied .....	35
<b>Redemption or cancellation case</b>	37
124-455 Redemption or cancellation of units in a unit trust for shares in a company .....	37
124-460 Other requirements to be satisfied .....	37
<b>Rules applying to both cases</b>	38
124-465 Requirements to be satisfied in both cases .....	38
<b>Consequences for the company</b>	39
124-470 Consequences for the company .....	39
<b>Subdivision 124-I—Conversion of a body to an incorporated company</b>	40
124-520 Conversion of a body to an incorporated company .....	40

---

---

<b>Subdivision 124-J—Crown leases</b>	41
<b>Guide to Subdivision 124-J</b>	41
124-570 What this Subdivision is about .....	41
<b>Operative provisions</b>	42
124-575 Extension or renewal of Crown lease .....	42
124-580 Meaning of <i>Crown lease</i> .....	43
124-585 Original right differs in area from new right .....	43
124-590 Part of original right excised .....	43
124-595 Treating parts of new right as separate assets .....	44
124-600 What is the roll-over? .....	44
124-605 Change of lessor .....	45
<b>Subdivision 124-K—Depreciating assets</b>	46
124-655 Roll-over for depreciating assets .....	46
124-660 Right granted to associate.....	46
<b>Subdivision 124-L—Prospecting and mining entitlements</b>	47
<b>Guide to Subdivision 124-L</b>	47
124-700 What this Subdivision is about .....	47
<b>Operative provisions</b>	47
124-705 Extension or renewal of prospecting or mining entitlement .....	47
124-710 Meaning of prospecting entitlement and mining entitlement.....	48
124-715 Original entitlement differs in area from new entitlement .....	49
124-720 Part of original entitlement excised .....	49
124-725 Treating parts of new entitlement as separate assets.....	50
124-730 What is the roll-over? .....	50
<b>Subdivision 124-M—Scrip for scrip roll-over</b>	51
<b>Guide to Subdivision 124-M</b>	51
124-775 What this Subdivision is about .....	51
<b>Operative provisions</b>	52
124-780 Replacement of shares.....	52
124-781 Replacement of trust interests.....	55
124-782 Transfer or allocation of cost base of shares acquired by acquiring entity etc. ....	57
124-783 Meaning of <i>significant stakeholder</i> , <i>common stakeholder</i> , <i>significant stake</i> and <i>common stake</i> .....	59
124-784 Cost base of equity or debt given by acquiring entity to ultimate holding company .....	61
124-784AWhen arrangement is a restructure .....	62
124-784BWhat is the cost base and reduced cost base when arrangement is a restructure? .....	65
124-784CCost base of equity or debt given by acquiring entity to ultimate holding company .....	68

---

---

124-785 What is the roll-over? .....	69
124-790 Partial roll-over.....	69
124-795 Exceptions .....	70
124-800 Interest received for pre-CGT interest .....	70
124-810 Certain companies and trusts not regarded as having 300 members or beneficiaries.....	71
<b>Subdivision 124-N—Disposal of assets by a trust to a company</b>	<b>73</b>
<b>Guide to Subdivision 124-N</b>	<b>73</b>
124-850 What this Subdivision is about .....	73
<b>Operative provisions</b>	<b>73</b>
124-855 What this Subdivision deals with .....	73
124-860 Requirements for roll-over .....	74
124-865 Entities both choose the roll-over .....	75
124-870 Roll-over for owner of units or interests in a trust.....	76
124-875 Effect on the transferor and transferee.....	77
<b>Subdivision 124-O—FSR (financial services reform) transitions</b>	<b>78</b>
<b>Same owner roll-overs</b>	<b>78</b>
124-880 Old licence roll-over (same owner) .....	78
124-885 Qualified licence roll-over (same owner) .....	79
124-890 Rights roll-over (same owner) .....	80
124-895 Consequences of a same owner roll-over .....	80
<b>New owner roll-overs</b>	<b>82</b>
124-900 Old licence roll-over (new owner).....	82
124-905 Qualified licence roll-over (new owner).....	84
124-910 Rights roll-over (new owner).....	85
124-915 Consequences of a new owner roll-over (where one CGT asset comes to an end) .....	86
124-920 Consequences of a new owner roll-over (where more than one CGT asset comes to an end).....	87
<b>Extension of FSR transition period</b>	<b>89</b>
124-925 Special extension of the 10 March 2004 cut-off date (same owner roll-overs) .....	89
124-930 Special extension of the 10 March 2004 cut-off date (new owner roll-overs) .....	90
<b>Subdivision 124-P—Exchange of a membership interest in an MDO for a membership interest in another MDO</b>	<b>90</b>
<b>Guide to Subdivision 124-P</b>	<b>90</b>
124-975 What this Subdivision is about .....	90
<b>Operative provisions</b>	<b>91</b>
124-980 Exchange of membership interests in an MDO .....	91
124-985 What the roll-over is for post-CGT interests .....	92

---

---

124-990 Partial roll-over.....	92
124-995 Pre-CGT interests.....	93
<b>Subdivision 124-Q—Exchange of stapled ownership interests for ownership interests in a unit trust</b>	93
<b>Guide to Subdivision 124-Q</b>	93
124-1040 What this Subdivision is about.....	93
<b>Operative provisions</b>	94
124-1045 Exchange of stapled securities.....	94
124-1050 Conditions.....	95
124-1055 Consequences of the roll-over for exchanging members.....	96
124-1060 Consequences of the roll-over for interposed trust.....	97
124-1065 Certain foreign holders disregarded.....	98
<b>Division 125—Demerger relief</b>	100
<b>Guide to Division 125</b>	100
125-1 What this Division is about.....	100
<b>Subdivision 125-A—Object of this Division</b>	101
125-5 Object of this Division.....	101
<b>Subdivision 125-B—Consequences for owners of interests</b>	101
<b>Guide to Subdivision 125-B</b>	101
125-50 Guide to Subdivision 125-B.....	101
<b>Operative provisions</b>	102
125-55 When a roll-over is available for a demerger.....	102
125-60 Meaning of <i>ownership interest</i> and related terms.....	102
125-65 Meanings of <i>demerger group</i> , <i>head entity</i> and <i>demerger subsidiary</i> .....	104
125-70 Meanings of <i>demerger</i> , <i>demerged entity</i> and <i>demerging entity</i> .....	105
125-75 Exceptions to subsection 125-70(2).....	109
125-80 What is the roll-over?.....	111
125-85 Cost base adjustments where CGT event happens but no roll-over chosen.....	113
125-90 Cost base adjustments where no CGT event.....	114
125-95 No other cost base adjustment after demerger.....	114
125-100 No further demerger relief in some cases.....	114
<b>Subdivision 125-C—Consequences for members of demerger group</b>	115
<b>Guide to Subdivision 125-C</b>	115
125-150 Guide to Subdivision 125-C.....	115
<b>Operative provisions</b>	115
125-155 Certain capital gains or losses disregarded for demerging entity.....	115

---

---

125-160	No CGT event J1 .....	115
125-165	Adjusted capital loss for value shift under a demerger .....	116
125-170	Reduced cost base reduction if demerger asset subject to roll-over .....	116
<b>Subdivision 125-D—Corporate unit trusts and public trading trusts</b>		117
<b>Guide to Subdivision 125-D</b>		117
125-225	Guide to Subdivision 125-D .....	117
<b>Operative provisions</b>		117
125-230	Application of Division to corporate unit trusts and public trading trusts .....	117
<b>Division 126—Same-asset roll-overs</b>		118
<b>Guide to Division 126</b>		118
126-1	What this Division is about .....	118
<b>Subdivision 126-A—Marriage or relationship breakdowns</b>		118
126-5	CGT event involving spouses .....	119
126-15	CGT event involving company or trustee .....	121
126-20	Subsequent CGT event happening to roll-over asset where transferor was a CFC or a non-resident trust .....	124
126-25	Conditions for the purposes of subsections 126-5(3A) and 126-15(5) .....	124
<b>Subdivision 126-B—Companies in the same wholly-owned group</b>		125
<b>Guide to Subdivision 126-B</b>		125
126-40	What this Subdivision is about .....	125
<b>Operative provisions</b>		126
126-45	Roll-over for members of wholly-owned group .....	126
126-50	Requirements for roll-over .....	126
126-55	When there is a roll-over .....	128
126-60	Consequences of roll-over .....	129
126-75	Originating company is a CFC .....	130
126-85	Effect of roll-over on certain liquidations .....	131
<b>Subdivision 126-C—Changes to trust deeds</b>		133
<b>Guide to Subdivision 126-C</b>		133
126-125	What this Subdivision is about .....	133
126-130	Changes to trust deeds .....	133
126-135	Consequences of roll-over .....	134
<b>Subdivision 126-D—Small superannuation funds</b>		134
126-140	CGT event involving small superannuation funds .....	135

---

---

<b>Subdivision 126-E—Entitlement to shares after demutualisation and scrip roll-over</b>	138
<b>Guide to Subdivision 126-E</b>	138
126-185 What this Subdivision is about .....	138
<b>Operative provisions</b>	139
126-190 When there is a roll-over .....	139
126-195 Consequences of roll-over .....	139
<b>Subdivision 126-F—Transfer of assets of superannuation funds to meet licensing requirements</b>	140
<b>Guide to Subdivision 126-F</b>	140
126-200 What this Subdivision is about .....	140
<b>Operative provisions</b>	140
126-205 Object of this Subdivision .....	140
126-210 When there is a roll-over and what its effects are .....	141
<b>Division 128—Effect of death</b>	144
<b>Guide to Division 128</b>	144
128-1 What this Division is about .....	144
<b>General rules</b>	144
128-10 Capital gain or loss when you die is disregarded .....	144
128-15 Effect on the legal personal representative or beneficiary .....	145
128-20 When does an asset <i>pass</i> to a beneficiary? .....	147
128-25 The beneficiary is a trustee of a superannuation fund etc. ....	148
<b>Special rules for joint tenants</b>	148
128-50 Joint tenants .....	148
<b>Division 130—Investments</b>	150
<b>Guide to Division 130</b>	150
130-1 What this Division is about .....	150
<b>Subdivision 130-A—Bonus shares and units</b>	151
<b>Guide to Subdivision 130-A</b>	151
130-15 Acquisition time and cost base of bonus equities .....	151
<b>Operative provisions</b>	152
130-20 Issue of bonus shares or units .....	152
<b>Subdivision 130-B—Rights</b>	155
130-40 Exercise of rights .....	155
130-45 Timing rules .....	159
130-50 Application to options .....	159
<b>Subdivision 130-C—Convertible interests</b>	159
130-60 Shares or units acquired by converting a convertible interest .....	159

---

---

<b>Subdivision 130-D—Employee share schemes</b>	162
130-80 Share or right acquired under employee share scheme .....	162
130-83 Qualifying shares and qualifying rights .....	163
130-85 Share or right acquired under employee share scheme involving your associate .....	165
130-90 Share or right acquired under an employee share trust— beneficiary absolutely entitled .....	166
130-95 Share or right acquired under an employee share trust— 100% takeover or restructure .....	168
130-97 Stapled securities .....	168
<b>Subdivision 130-E—Exchangeable interests</b>	170
130-100 Exchangeable interest .....	170
130-105 Shares acquired in exchange for the disposal or redemption of an exchangeable interest .....	170
<b>Division 132—Leases</b>	173
132-1 Lessee incurs expenditure to get lease term varied or waived .....	173
132-5 Lessor pays lessee for improvements .....	173
132-10 Grant of a long-term lease .....	173
132-15 Lessee of land acquires reversionary interest of lessor .....	174
<b>Division 134—Options</b>	176
134-1 Exercise of options .....	176
<b>Division 149—When an asset stops being a pre-CGT asset</b>	179
<b>Subdivision 149-A—Key concepts</b>	179
149-10 What is a pre-CGT asset? .....	179
149-15 Majority underlying interests in a CGT asset .....	180
<b>Subdivision 149-B—When asset of non-public entity stops being a pre-CGT asset</b>	181
149-25 Which entities are affected .....	181
149-30 Effects if asset no longer has same majority underlying ownership .....	181
149-35 Cost base elements of asset that stops being a pre-CGT asset .....	182
<b>Subdivision 149-C—When asset of public entity stops being a pre-CGT asset</b>	182
149-50 Which entities are affected .....	183
149-55 Entity to give the Commissioner evidence periodically as to whether asset still has same majority underlying ownership .....	184
149-60 What the evidence must show .....	185
149-70 Effects if asset no longer has same majority underlying ownership .....	187
149-75 Cost base elements of asset that stops being a pre-CGT asset .....	187
149-80 No more evidence needed after asset stops being a pre-CGT asset .....	187

---



---

<b>Subdivision 149-F—How to treat a “demutualised” public entity</b>	188
149-162 Subdivision applies only if entity gives sufficient evidence .....	188
149-165 Members treated as having underlying interests in assets until demutualisation .....	188
149-170 Effect of demutualisation of interposed company .....	189
<b>Division 152—Small business relief</b>	190
<b>Guide to Division 152</b>	190
152-1 What this Division is about .....	190
<b>Subdivision 152-A—Basic conditions for relief under this Division</b>	191
<b>Guide to Subdivision 152-A</b>	191
152-5 What this Subdivision is about .....	191
<b>Basic conditions for relief</b>	193
152-10 Basic conditions for relief.....	193
152-12 Special conditions for CGT event D1 .....	196
<b>Maximum net asset value test</b>	196
152-15 Maximum net asset value test.....	196
152-20 Meaning of <i>net value of the CGT assets</i> .....	196
<b>Active asset test</b>	198
152-35 Active asset test .....	198
152-40 Meaning of <i>active asset</i> .....	199
152-42 Trustee of discretionary trust may nominate beneficiaries to be controllers of trust .....	202
152-45 Continuing time periods for involuntary disposals .....	203
<b>Treatment of passively held CGT assets</b>	205
152-47 Spouses or children taken to be affiliates for certain passively held CGT assets .....	205
152-48 Working out an entity’s aggregated turnover for passively held CGT assets.....	206
152-49 Businesses that are winding up.....	206
<b>Significant individual test</b>	207
152-50 Significant individual test.....	207
152-55 Meaning of <i>significant individual</i> .....	207
<b>CGT concession stakeholder</b>	208
152-60 Meaning of <i>CGT concession stakeholder</i> .....	208
<b>Small business participation percentage</b>	208
152-65 Small business participation percentage .....	208
152-70 Direct small business participation percentage.....	208
152-75 Indirect small business participation percentage .....	209

---

---

<b>CGT event happens to asset or interest within 2 years of an individual's death</b>	211
152-80 CGT event happens to an asset or interest within 2 years of individual's death .....	211
<b>Subdivision 152-B—Small business 15-year exemption</b>	212
<b>Guide to Subdivision 152-B</b>	212
152-100 What this Subdivision is about .....	212
152-105 15-year exemption for individuals .....	213
152-110 15-year exemption for companies and trusts .....	214
152-115 Continuing time periods for involuntary disposals .....	215
152-120 Discretionary trusts need not have a significant individual in a loss year or nil income year .....	216
152-125 Payments to company's or trust's CGT concession stakeholders are exempt.....	216
<b>Subdivision 152-C—Small business 50% reduction</b>	217
<b>Guide to Subdivision 152-C</b>	217
152-200 What this Subdivision is about .....	217
152-205 You get the small business 50% reduction .....	218
152-210 You may also get the small business retirement exemption and small business roll-over relief .....	219
152-215 15-year rule has priority .....	219
152-220 You may choose not to apply this Subdivision.....	219
<b>Subdivision 152-D—Small business retirement exemption</b>	219
<b>Guide to Subdivision 152-D</b>	219
152-300 What this Subdivision is about .....	219
152-305 Choosing the exemption .....	220
152-310 Consequences of choice.....	221
152-315 Choosing the amount to disregard .....	222
152-320 Meaning of <i>CGT retirement exemption limit</i> .....	223
152-325 Company or trust conditions.....	223
152-330 15-year rule has priority .....	226
<b>Subdivision 152-E—Small business roll-over</b>	226
<b>Guide to Subdivision 152-E</b>	226
152-400 What this Subdivision is about .....	226
<b>Operative provisions</b>	226
152-410 When you can obtain the roll-over .....	226
152-415 What the roll-over consists of.....	227
152-420 Rules where an individual who has obtained a roll-over dies .....	227
152-430 15-year rule has priority .....	228

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## **Division 124—Replacement-asset roll-overs**

### **Table of Subdivisions**

	Guide to Division 124
124-A	General rules
124-B	Asset compulsorily acquired, lost or destroyed
124-C	Statutory licences
124-D	Strata title conversion
124-E	Exchange of shares or units
124-F	Exchange of rights or options
124-G	Exchange of shares in one company for shares in another company
124-H	Exchange of units in a unit trust for shares in a company
124-I	Conversion of a body to an incorporated company
124-J	Crown leases
124-K	Depreciating assets
124-L	Prospecting and mining entitlements
124-M	Scrip for scrip roll-over
124-N	Disposal of assets by a trust to a company
124-O	FSR (financial services reform) transitions
124-P	Exchange of a membership interest in an MDO for a membership interest in another MDO
124-Q	Exchange of stapled ownership interests for ownership interests in a unit trust

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Guide to Division 124**

### **124-1 What this Division is about**

A replacement-asset roll-over allows you, in special cases, to defer the making of a capital gain or loss from one CGT event until a later CGT event happens. It involves your ownership of one CGT asset ending and you acquiring another one.

### **124-5 How to find your way around this Division**

- (1) First, find out if you can obtain a roll-over when your ownership of one or more CGT assets ends and you acquire one or more CGT assets: see Subdivisions 124-B to 124-Q.

Note 1: If you carry on a small business, you may also be able to obtain a roll-over under Subdivision 152-E.

Note 2: Subdivision 124-O (about FSR transitions) also provides for roll-overs in situations where a replacement CGT asset is acquired by a new owner.

- (2) Second, find out what the consequences are for being able to obtain a roll-over: see Subdivision 124-A.

Note: The consequences of a scrip for scrip roll-over are set out in Subdivision 124-M. The consequences of replacing a statutory licence by a new statutory licence are set out in Subdivision 124-C. The consequences of the new owner roll-overs in Subdivision 124-O (about FSR transitions) are set out in that Subdivision. The consequences of an exchange of a membership interest in an MDO are set out in Subdivision 124-P. The consequences of an exchange of stapled ownership interests are set out in Subdivision 124-Q.

- (3) Third, find out if there are any special rules relevant to your situation: see the Subdivision under which you can get the roll-over.

## **Subdivision 124-A—General rules**

### **Table of sections**

124-10 Your ownership of one CGT asset ends

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

124-15 Your ownership of more than one CGT asset ends

### **124-10 Your ownership of one CGT asset ends**

- (1) There are these consequences (in most cases) if you can obtain a roll-over when your ownership of a \*CGT asset (the *original asset*) ends and you \*acquire one or more CGT assets (the *new assets*) in a situation covered by this Division.
  - (1A) A \*car, motor cycle or similar vehicle must not be one of the new assets.
  - (2) A \*capital gain or a \*capital loss you make from the original asset is disregarded.
  - (3) If you \*acquired the original asset on or after 20 September 1985, the first element of each new asset's \*cost base is:

$$\frac{\text{The original asset's cost base} \\ \text{(worked out when your ownership of it ended)}}{\text{Number of new assets}}$$

The first element of each new asset's \*reduced cost base is worked out similarly.

- Note 1: In some cases the amount you paid to acquire the new asset also forms part of the first element: see Subdivision 124-D (about strata title conversion) and Subdivision 124-O (about FSR transitions).
- Note 2: There are modifications to the consequences in Subdivision 124-B (about compulsory acquisition, loss or destruction), Subdivision 124-J (about Crown leases), Subdivision 124-L (about prospecting and mining) and Subdivision 124-O (about FSR transitions).
- Note 3: No other elements of the cost base of the new asset are affected by the roll-over.
- Note 4: There are special indexation rules for roll-overs: see Division 114.
- Note 5: The reduced cost base may be modified for a roll-over happening after a demerger: see section 125-170.
- (4) If you \*acquired the original asset before 20 September 1985, you are taken to have acquired each new asset before that day.

Note: A capital gain or loss you make from a CGT asset you acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (5) However, subsection (4) is taken never to have applied to a \*share to which subsection 104-195(6) applies (CGT event J4).

### 124-15 Your ownership of more than one CGT asset ends

- (1) There are these consequences (in most cases) if you can obtain a roll-over when your ownership of more than one \*CGT asset (the *original assets*) ends and you acquire one or more CGT assets (the *new assets*) in a situation covered by this Division.

Example: You own 100 shares in a company. The company cancels these shares and issues you with 10 shares in return.

- (1A) A \*car, motor cycle or similar vehicle must not be one of the new assets.
- (2) A \*capital gain or a \*capital loss you make from each original asset is disregarded.
- (3) If you \*acquired all the original assets on or after 20 September 1985, the first element of each new asset's cost base is:

The total of the cost bases of all the original assets  
(worked out when your ownership of them ended)

Number of new assets

The first element of each new asset's \*reduced cost base is worked out similarly.

Note 1: No other elements of the cost base of the new asset are affected by the roll-over.

Note 2: There are special indexation rules for roll-overs: see Division 114.

- (4) If you \*acquired all the original assets before 20 September 1985, you are taken to have acquired each new asset before that day.

Note: A capital gain or loss you make from a CGT asset you acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

- (5) If you \*acquired some of the original assets before 20 September 1985, you are taken to have acquired a number of new assets before that day. It is the maximum possible that does not exceed:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

$$\text{The number of new assets} \times \frac{\text{The number of original assets you} \\ \text{*acquired before 20 September 1985}}{\text{The total number of original assets}}$$

If the result is less than one, none of the new assets are taken to have been \*acquired before 20 September 1985.

Example: To continue the example, suppose you acquired 67 of the 100 original shares before 20 September 1985. The number of new shares that you are taken to have acquired before that day cannot exceed:

$$10 \times \frac{67}{100} = 6.7$$

So, you are taken to have acquired 6 of the 10 shares before that day.

Note: Subdivision 124-O provides a different rule for FSR transitions.

- (6) These rules are relevant to each remaining new asset. The first element of each one's \*cost base is:

The total of the cost bases of all the original assets  
that you \*acquired on or after 20 September 1985  
(worked out when your ownership of them ended)

Number of remaining new assets

The first element of each one's \*reduced cost base is worked out similarly.

Note: There are special indexation rules for roll-overs: see Division 114.

Example: To continue the example, suppose the total of the cost bases of the 33 shares you acquired on or after 20 September 1985 is \$400.

The first element of the cost base of each of the remaining 4 shares is:

$$\frac{\$400}{4} = \$100$$

The first element of the reduced cost base of those 4 shares is worked out similarly.

- (7) However, subsections (4) and (5) are taken never to have applied to a \*share to which subsection 104-195(6) applies (CGT event J4).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 124-B—Asset compulsorily acquired, lost or destroyed

### Table of sections

#### When a roll-over is available

124-70	Events giving rise to a roll-over
124-75	Other requirements if you receive money
124-80	Other requirements if you receive an asset

#### The consequences of a roll-over being available

124-85	Consequences for receiving money
124-90	Consequences for receiving an asset
124-95	You receive both money and an asset

### When a roll-over is available

#### 124-70 Events giving rise to a roll-over

- (1) You may be able to choose a roll-over if one of these events happens to a \*CGT asset (the *original asset*) you own:
  - (a) it is compulsorily \*acquired by an \*Australian government agency;
  - (aa) it is compulsorily acquired by an entity (other than an Australian government agency or a \*foreign government agency) under a power of compulsory acquisition conferred by a law covered under subsection (1A);
  - (b) it, or part of it, is lost or destroyed;
  - (c) you \*dispose of it to an entity (other than a foreign government agency) in circumstances meeting all of these conditions:
    - (i) the disposal takes place after a notice was served on you by or on behalf of the entity;
    - (ii) the notice invited you to negotiate with the entity with a view to the entity acquiring the asset by agreement;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (iii) the notice informed you that if the negotiations were unsuccessful, the asset would be compulsorily acquired by the entity;
- (iv) the compulsory acquisition would have been under a power of compulsory acquisition conferred by a law covered under subsection (1A);
- (ca) you dispose of it to an entity (other than a foreign government agency) in circumstances meeting all of these conditions:
  - (i) the asset is land over which a mining lease was compulsorily granted;
  - (ii) the lease significantly affected your use of the land;
  - (iii) the lease was in force just before the disposal;
  - (iv) the entity to which you dispose of the land was the lessee under the lease;
- (cb) you dispose of it to an entity (other than a foreign government agency) in circumstances meeting all of these conditions:
  - (i) the asset is land over which a mining lease would have been compulsorily granted if you had not disposed of it;
  - (ii) that lease would have significantly affected your use of the land;
  - (iii) the entity to which you dispose of the land would have been the lessee under the lease.
- (d) if it is a lease granted to you by an \*Australian government agency under an \*Australian law—the lease expires and is not renewed.

Note 1: There are no roll-over consequences if you make a capital loss from the event.

Note 2: Section 103-25 tells you when you have to make the choice.

- (1A) A law is covered under this subsection if it is:
- (a) an \*Australian law (other than Chapter 6A of the *Corporations Act 2001*); or
  - (b) a \*foreign law (other than a foreign law corresponding to Chapter 6A of the *Corporations Act 2001*).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-75

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- (2) You must receive money or another \*CGT asset (except a \*car, motor cycle or similar vehicle), or both:
- (a) as compensation for the event happening; or
  - (b) under an insurance policy against the risk of loss or destruction of the original asset.

Note: There are other requirements that must be satisfied if:

- you receive money: see section 124-75; or
- you receive another CGT asset: see section 124-80.

- (3) The requirement in subsection (4) must be satisfied if:
- (a) you are a foreign resident just before the event happens; or
  - (b) you are the trustee of a trust that is a \*foreign trust for CGT purposes for the income year in which the event happens.
- (4) The original asset must be \*taxable Australian property just before the event happens. The other asset must be taxable Australian property just after you \*acquire it.

**124-75 Other requirements if you receive money**

- (1) If you receive money for the event happening, you can choose to obtain a roll-over only if these other requirements are satisfied.

Note: The roll-over consequences are set out in section 124-85.

- (2) You must:
- (a) incur expenditure in \*acquiring another \*CGT asset (except a \*depreciating asset whose decline in value is worked out under Division 40 or deductions for which are calculated under Division 328); or
  - (b) if part of the original asset is lost or destroyed—incur expenditure of a capital nature in repairing or restoring it.
- (3) At least some of the expenditure must be incurred:
- (a) no earlier than one year, or within such further time as the Commissioner allows in special circumstances, before the event happens; or
  - (b) no later than one year, or within such further time as the Commissioner allows in special circumstances, after the end of the income year in which the event happens.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Special rules if you acquire another asset*

- (4) If just before the event happened the original asset:
- (a) was used in your \*business; or
  - (b) was \*installed ready for use in your business; or
  - (c) was in the process of being \*installed ready for use in your business;

the other asset must be used in the business, or be installed ready for use in the business, for a reasonable time after you \*acquired it.

Otherwise, you must use the other asset (for a reasonable time after you \*acquired it) for the same purpose as, or for a similar purpose to, the purpose for which you used the original asset just before the event happened.

- (5) The other asset cannot become an item of your \*trading stock just after you \*acquire it, nor can it be a \*depreciating asset whose decline in value is worked out under Division 40 or deductions for which are calculated under Division 328.

**124-80 Other requirements if you receive an asset**

- (1) If you receive another \*CGT asset for the event happening, you can choose to obtain a roll-over only if these other requirements are satisfied.

Note: The roll-over consequences are set out in section 124-90.

- (2) The other asset cannot become an item of your \*trading stock just after you \*acquire it, nor can it be a \*depreciating asset whose decline in value is worked out under Division 40 or deductions for which are calculated under Division 328.
- (3) The \*market value of the other asset (when you \*acquire it) must be more than the \*cost base of the original asset just before the event happens.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**The consequences of a roll-over being available**

**124-85 Consequences for receiving money**

- (1) If you receive money for the event happening, there are these consequences if you choose to obtain a roll-over.

*Original asset acquired on or after 20 September 1985*

- (2) If you make a \*capital gain from the event, this table sets out in what situations the gain is reduced, not reduced or disregarded.

It also sets out in what situations the expenditure you incurred to \*acquire another \*CGT asset or to repair or restore the original asset is reduced.

**You make a capital gain from the event**

Item	In this situation:	There are these consequences
1	The money exceeds the expenditure you incurred to *acquire another CGT asset or to repair or restore the original asset	If the gain is more than the excess: (a) the gain is reduced to the amount by which the money exceeds that expenditure; and (b) that expenditure is reduced by the amount by which the gain (before it is reduced) is more than the excess
2	The money exceeds that expenditure	If the gain is less than or equal to the excess, the gain is not reduced
3	The money does not exceed that expenditure	The gain is disregarded in working out your *net capital gain or *net capital loss for the income year. That expenditure is reduced by the amount of the gain

Example: In 1999 Simon bought a small factory. In 2000 a fire destroys part of it. He receives \$100,000 under an insurance policy.

The capital gain is worked out under section 112-30.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Suppose the factory's cost base at the time of the fire is \$75,000 and the market value of the part that is not destroyed is \$150,000. The cost base of the part that is destroyed is:

$$\$75,000 \times \frac{\$100,000}{\$100,000 + \$150,000} = \$30,000$$

The capital gain is:

$$\$100,000 - \$30,000 = \$70,000$$

Case 1

Suppose Simon spent \$80,000 on repairing the factory. The money he received under the insurance policy exceeds the repair cost by \$20,000. The gain exceeds that by \$50,000.

The result is that the gain is reduced to \$20,000 and the \$80,000 he spent on repairs is reduced to \$30,000.

Case 2

Suppose Simon spent \$15,000 on repairs instead. The money he received under the policy exceeds that amount by \$85,000. This is more than the gain he made.

The gain is relevant to working out Simon's net capital gain or loss for the income year and the \$15,000 he spent on repairs forms part of the factory's cost base.

Case 3

Suppose Simon spent \$120,000 on repairs instead. The gain is disregarded and the \$120,000 is reduced to \$50,000.

*Original asset acquired before 20 September 1985*

- (3) If you \*acquired the original asset before 20 September 1985 and you incurred expenditure in acquiring another \*CGT asset, you are taken to have acquired the other asset before that day if:
- (a) the expenditure is not more than 120% of the \*market value of the original asset when the event happened; or
  - (b) a natural disaster happened so that the original asset, or part of it, is lost or destroyed and it is reasonable to treat the other asset as substantially the same as the original asset.
- (4) If you \*acquired the original asset before 20 September 1985 and you incurred expenditure of a capital nature in repairing or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-90

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restoring it, you are taken to have acquired the original asset (as repaired or restored) before that day.

**124-90 Consequences for receiving an asset**

- (1) If you receive another \*CGT asset for the event happening, there are these consequences if you choose to obtain a roll-over.
- (2) A \*capital gain you make from the original asset is disregarded.
- (3) If you \*acquired the original asset on or after 20 September 1985:
  - (a) the first element of the other asset's \*cost base is the original asset's cost base at the time of the event; and
  - (b) the first element of the other asset's \*reduced cost base is the original asset's reduced cost base at the time of the event.

Note: There are special indexation rules for roll-overs: see Division 114.

Example: Steven bought land in 1999 for \$100,000. In 2001 the government compulsorily acquires the land and gives him new land in return.

A capital gain he makes from the original land is disregarded. Suppose the original land's cost base when it is acquired is \$120,000. The first element of the new land's cost base becomes \$120,000.

- (4) If you acquired the original asset before 20 September 1985, you are taken to have \*acquired the other asset before that day.

**124-95 You receive both money and an asset**

- (1) If you receive both money and another \*CGT asset for the event happening and choose to obtain a roll-over, the requirements and consequences are different for each part of the compensation attributable to the original asset (having regard to the amount of money and the \*market value of the other asset).

*The other asset as a part of compensation*

- (2) The \*market value of the other asset (when you \*acquire it) must be more than that part of the \*cost base of the original asset that is attributable to the new asset.

Note: This requirement is different to that in subsection 124-80(3). It requires a proportional attribution of the cost base of the original asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) If you \*acquired the original asset on or after 20 September 1985:
- (a) the first element of the other asset's \*cost base is that part of the original asset's cost base at the time of the event that is attributable to the new asset; and
  - (b) the first element of the other asset's \*reduced cost base is worked out similarly.

Note: These consequences are different to those in subsection 124-90(3). They require a proportional attribution of the cost base of the original asset.

- (4) If you \*acquired the original asset before 20 September 1985, you are taken to have acquired the new asset before that day.

*Money as a part of compensation*

- (5) If you make a \*capital gain from the event, this table sets out in what situations that part of the gain on the original asset that is attributable to the amount of money you received is reduced, not reduced or disregarded.

It also sets out in what situations the expenditure you incurred to \*acquire another \*CGT asset or to repair or restore the original asset is reduced.

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**You make a capital gain from the event**

Item	In this situation:	There are these consequences
1	The money exceeds the expenditure you incurred to *acquire another CGT asset or to repair or restore the original asset	If that part of the gain that is attributable to the amount of money is more than the excess: (a) that part of the gain is reduced to the amount by which the money exceeds that expenditure; and (b) that expenditure is reduced by the amount by which that part of the gain (before it is reduced) is more than the excess
2	The money exceeds that expenditure	If that part of the gain that is attributable to the amount of money is less than or equal to the excess, the gain is not reduced

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-95

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**You make a capital gain from the event**

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<b>Item</b>	<b>In this situation:</b>	<b>There are these consequences</b>
3	The money does not exceed that expenditure	That part of the gain that is attributable to the amount of money is disregarded in working out your *net capital gain or *net capital loss for the income year. That expenditure is reduced by the amount of that part of the gain

Note: These consequences are different to those in subsection 124-85(2). They require a proportional attribution of capital gain on the original asset.

- (6) If you \*acquired the original asset before 20 September 1985 and you incurred expenditure in acquiring another \*CGT asset, you are taken to have acquired the other asset before that day if:
- (a) the expenditure you incurred in acquiring the other asset is not more than 120% of the \*market value of that part of the original asset that is attributable to the other asset when the event happened; or
  - (b) a natural disaster happened so that the original asset, or part of it, is lost or destroyed and it is reasonable to treat the other asset as substantially the same as that part of the original asset that is attributable to the new asset.

Note 1: The consequences in paragraph (6)(a) are different to those in paragraph 124-85(3)(a). They require a proportional attribution of the market value of the original asset.

Note 2: The consequences in paragraph (6)(b) are different to those in paragraph 124-85(3)(b). They require a proportional attribution of the original asset.

Example: Kris owns land, which he acquired in 1998. It is compulsorily acquired, and Kris receives \$80,000 in cash and replacement land with a market value of \$80,000.

The cost base of the original land is \$150,000.

Kris buys additional land for \$80,000.

Subsection (2) is satisfied because the market value of the replacement land (\$80,000) is more than the part of the cost base of the original land that is attributable to the replacement land:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



$$50\% \times \$150,000 = \$75,000$$

Applying subsection (5), the other part of the gain is disregarded, and the first element of the cost base of the replacement land is the part of the cost base of the original land that is attributable to the replacement land:

$$50\% \times \$150,000 = \$75,000$$

Applying subsection (3), the money he received (\$80,000) is the same as the expenditure he incurred to buy the additional land. Item 3 in the table applies. The part of the gain that is attributable to that money is disregarded:

$$50\% \times \$10,000 = \$5,000$$

The expenditure is reduced by \$5,000.

## Subdivision 124-C—Statutory licences

### 124-140 New statutory licences

- (1) There is a roll-over if:
- (a) your ownership of one or more \*statutory licences (each of which is an **original licence**) ends, resulting in \*CGT event C2 happening to the licence (or to each of the licences as part of an \*arrangement); and
  - (b) as a result of the CGT event or events, you are issued one or more new licences (each of which is a **new licence**) for the original licence (or original licences); and
  - (c) the new licence authorises (or the new licences taken together authorise) substantially similar activity as that authorised by the original licence (or by the original licences taken together).

Note: If there has been a capital improvement to the original licence: see section 108-75.

- (1A) If:
- (a) you are a foreign resident just before the \*CGT event happens (or just before one or more of the CGT events happens); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-145

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- (b) you are the trustee of a trust that is a \*foreign trust for CGT purposes for the income year in which the event happens (or for an income year in which one or more of those events happens);

there is no roll-over under this section unless the conditions in subsection (1B) are satisfied.

(1B) The conditions are that:

- (a) if there was only one original licence—the licence must be \*taxable Australian property just before the \*CGT event happens; and
  - (b) if there was more than one original licence—each original licence must be taxable Australian property just before the CGT event in relation to it happens; and
  - (c) if there is only one new licence—the licence must be taxable Australian property just after you \*acquire it; and
  - (d) if there is more than one new licence—each new licence must be taxable Australian property just after you acquire it.
- (2) The first element of the \*cost base and \*reduced cost base of the new licence includes any amount you paid to get it (which can include giving property: see section 103-5).
- (3) A *statutory licence* is an authority, licence, permit or quota (except a lease or a \*mining entitlement or \*prospecting entitlement) granted by:
- (a) an \*Australian government agency under an \*Australian law; or
  - (b) a \*foreign government agency under a \*foreign law.

**124-145 Rollover consequences—capital gain or loss disregarded**

A \*capital gain or \*capital loss you make from the original licence (or from each of the original licences) is disregarded.

**124-150 Rollover consequences—partial roll-over**

- (1) You can obtain only a partial roll-over in relation to an original licence if the \*capital proceeds for that licence includes something (the *ineligible proceeds*) other than a new licence or new licences.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

There is no roll-over for that part (the *ineligible part*) of the licence for which you received the ineligible proceeds.

Note: If there is more than one original licence, some or all of those original licences may each have an ineligible part.

- (2) The \*cost base of the ineligible part is that part of the cost base of the original licence as is reasonably attributable to the ineligible part.
- (3) The \*reduced cost base of the ineligible part is that part of the reduced cost base of the original licence as is reasonably attributable to the ineligible part.
- (4) For the purposes of sections 124-155 and 124-165, for each original licence that has an ineligible part:
  - (a) reduce the \*cost base of that licence (just before the \*CGT event that happened in relation to it) by so much of that cost base as is attributable to that ineligible part; and
  - (b) reduce the \*reduced cost base of that licence (just before the CGT event that happened in relation to it) by so much of that reduced cost base as is attributable to that ineligible part.

### **124-155 Roll-over consequences—all original licences were post-CGT**

- (1) This section applies if you \*acquired the original licence (or all of the original licences) on or after 20 September 1985.
- (2) The first element of the \*cost base of the new licence (or of each of the new licences) is such amount as is reasonable having regard to:
  - (a) the total of the cost bases of all the original licences; and
  - (b) the number, \*market value and character of the original licences; and
  - (c) the number, market value and character of the new licences.
- (3) The first element of the \*reduced cost base of the new licence (or of each of the new licences) is such amount as is reasonable having regard to:
  - (a) the total of the reduced cost bases of all the original licences; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-160

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- (b) the number, \*market value and character of the original licences; and
- (c) the number, market value and character of the new licences.

**124-160 Roll-over consequences—all original licences were pre-CGT**

If you \*acquired the original licence (or all of the original licences) before 20 September 1985, you are taken to have acquired the new licence (or all of the new licences) before that day.

**124-165 Roll-over consequences—some original licences were pre-CGT, others were post-CGT**

- (1) This section applies if:
  - (a) there was more than one original licence; and
  - (b) you \*acquired one or more of the original licences before 20 September 1985; and
  - (c) you acquired one or more of the original licences on or after that day.
- (2) Each new licence is taken to be 2 separate \*CGT assets that are both \*statutory licences:
  - (a) one (which you are taken to have \*acquired on or after 20 September 1985) representing the extent to which you acquired the original licences on or after that day; and
  - (b) another (which you are taken to have acquired before that day) representing the extent to which you acquired the original licences before that day.
- (3) The first element of the \*cost base and \*reduced cost base of the \*CGT asset mentioned in paragraph (2)(a) in relation to a new licence is worked out under the formula:

$$\text{Total post-CGT cost base} \times \frac{\text{Market value of new licence}}{\text{Market value of all new licences}}$$

where:

*market value of all new licences* is the total of the \*market values of all of the new licences.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*market value of new licence* is the \*market value of the new licence to which the \*CGT asset mentioned in paragraph (2)(a) relates.

*total post-CGT cost base* is the total of the \*cost bases of all the original licences that you \*acquired on or after 20 September 1985.

## **Subdivision 124-D—Strata title conversion**

### **124-190 Strata title conversion**

- (1) You can choose to obtain a roll-over if:
- (a) you own property that gives you a right to occupy a unit in a building; and
  - (b) the building's owner subdivides it into \*stratum units; and
  - (c) the owner transfers to you the stratum unit that corresponds to the unit you had the right to occupy just before the subdivision.

Note 1: The roll-over consequences are set out in section 124-10. The original asset is the property that gave you the right to occupy a unit in the building. The new asset is the stratum unit.

Note 2: Section 103-25 tells you when you have to make the choice.

- (2) The first element of the \*cost base and \*reduced cost base of the \*stratum unit includes any amount you paid to get it (which can include giving property: see section 103-5).

Note: The rest of the first element is worked out under Subdivision 124-A.

- (3) A *stratum unit* is a lot or unit (however described in an \*Australian law or a \*foreign law relating to strata title or similar title) and any accompanying common property.

## **Subdivision 124-E—Exchange of shares or units**

### **Table of sections**

124-240 Exchange of shares in the same company

124-245 Exchange of units in the same unit trust

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 124-240 Exchange of shares in the same company

You can choose to obtain a roll-over if:

- (a) you own \*shares (the *original shares*) of a certain class in a company; and
- (b) the company redeems or cancels all shares of that class; and
- (c) the company issues you with new shares (and you receive nothing else) in substitution for the original shares; and
- (d) the \*market value of the new shares just after they were issued is at least equal to the market value of the original shares just before they were redeemed or cancelled; and
- (e) the \*paid-up share capital of the company just after the new shares were issued is the same as just before the original shares were redeemed or cancelled; and
- (f) one of these requirements is satisfied:
  - (i) you are an Australian resident at the time of the redemption or cancellation; or
  - (ii) if you are a foreign resident at that time—the original shares were \*taxable Australian property just before that time and the new shares are taxable Australian property when they are issued.

Note 1: The roll-over consequences are set out in Subdivision 124-A. The original assets are the original shares. The new assets are the new shares.

Note 2: Section 103-25 tells you when you have to make the choice.

### 124-245 Exchange of units in the same unit trust

You can choose to obtain a roll-over if:

- (a) you own units (the *original units*) of a certain class in a unit trust; and
- (b) the trustee redeems or cancels all units of that class; and
- (c) the trustee issues you with new units (and you receive nothing else) in substitution for the original units; and
- (d) the \*market value of the new units just after they were issued is at least equal to the market value of the original units just before they were redeemed or cancelled; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (e) one of these requirements is satisfied:
- (i) you are an Australian resident at the time of the redemption or cancellation; or
  - (ii) if you are a foreign resident at that time—the original units were \*taxable Australian property just before that time and the new units are taxable Australian property when they are issued.

Note: The roll-over consequences are set out in Subdivision 124-A. The original assets are the original units. The new assets are the new units.

## **Subdivision 124-F—Exchange of rights or options**

### **Table of sections**

124-295	Exchange of rights or option to acquire shares in a company
124-300	Exchange of rights or option to acquire units in a unit trust

### **124-295 Exchange of rights or option to acquire shares in a company**

- (1) You can choose to obtain a roll-over if:
- (a) you own rights (the *original rights*) to \*acquire \*shares in a company or to acquire an option to acquire \*shares in a company; or
  - (b) you own an option (the *original option*) to acquire \*shares in a company;

and these other requirements are satisfied.

Note: Section 103-25 tells you when you have to make the choice.

- (2) The \*shares must:
- (a) be consolidated and divided into new shares of a larger amount; or
  - (b) be subdivided into new shares of a smaller amount.
- (3) The company must cancel the original rights or original option because of the consolidation or subdivision.
- (4) The company must:
- (a) issue you with new rights (relating to the new \*shares) in substitution for the original rights; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-300

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- (b) issue you with a new option (relating to the new shares) in substitution for the original option.
- (5) You must receive nothing else in substitution for the original rights or original option.
- (6) The \*market value of the new rights or new option just after it was issued must be at least equal to the market value of the original rights or original option just before it was cancelled.
- (7) One of these requirements must be satisfied:
  - (a) you must be an Australian resident at the time of the cancellation; or
  - (b) if you are a foreign resident at that time:
    - (i) the original rights or original option were \*taxable Australian property just before that time; and
    - (ii) the new rights or new option are taxable Australian property when they are issued.

Note: The roll-over consequences are set out in Subdivision 124-A. The original asset is the original rights or original option. The new asset is the new rights or new option.

### 124-300 Exchange of rights or option to acquire units in a unit trust

- (1) You can choose to obtain a roll-over if:
  - (a) you own rights (the *original rights*) to \*acquire units in a unit trust or to acquire an option to acquire units in a unit trust; or
  - (b) you own an option (the *original option*) to acquire units in a unit trust;

and these other requirements are satisfied.

Note: Section 103-25 tells you when you have to make the choice.

- (2) The units must:
  - (a) be consolidated and divided into new units of a larger amount; or
  - (b) be subdivided into new units of a smaller amount.
- (3) The trustee must cancel the original rights or original option because of the consolidation or subdivision.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4) The trustee must:
  - (a) issue you with new rights (relating to the new units) in substitution for the original rights; or
  - (b) issue you with a new option (relating to the new units) in substitution for the original option.
- (5) You must receive nothing else in substitution for the original rights or original option.
- (6) The \*market value of the new rights or new option just after it was issued must be at least equal to the market value of the original rights or original option just before it was cancelled.
- (7) One of these requirements must be satisfied:
  - (a) you must be an Australian resident at the time of the cancellation; or
  - (b) if you are a foreign resident at that time:
    - (i) the original rights or original option were \*taxable Australian property just before that time; and
    - (ii) the new rights or new option are taxable Australian property when they are issued.

Note: The roll-over consequences are set out in Subdivision 124-A. The original asset is the original rights or original option. The new asset is the new rights or new option.

## **Subdivision 124-G—Exchange of shares in one company for shares in another company**

### **Guide to Subdivision 124-G**

#### **124-350 What this Subdivision is about**

This Subdivision sets out when you can obtain a roll-over if:

- you own shares in a company; and
- there is a reorganisation of its affairs so that you become the owner of new shares in another company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **Table of sections**

124-355 Summary of rules

#### **Disposal case**

124-360 Disposal of shares in one company for shares in another one

124-365 Other requirements to be satisfied

#### **Redemption or cancellation case**

124-370 Redemption or cancellation of shares in one company for shares in another one

124-375 Other requirements to be satisfied

#### **Rules applying to both cases**

124-380 Requirements to be satisfied in both cases

124-382 Special rules for ADI restructures

#### **Consequences for the interposed company unless consolidated group continues**

124-385 Consequences for the interposed company

#### **Additional consequences for member if shares are trading stock or revenue assets**

124-390 Deferral of profit or loss on shares

### **124-355 Summary of rules**

- (1) This Subdivision deals with 2 cases in which you can choose to obtain a roll-over because of the reorganisation of a company's affairs.

Note: Section 103-25 tells you when you have to make the choice.

- (2) The first case is if you dispose of shares in one company to another company and the other company issues you with new shares. You can find the specific rules relevant to this case in sections 124-360 and 124-365.
- (3) The second case is if your shares in one company are redeemed or cancelled and another company issues you with new shares in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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return. You can find the specific rules relevant to this case in sections 124-370 and 124-375.

- (4) There are some rules that apply in both cases: see section 124-380.
- (5) There are also consequences for the other company if you can choose to obtain the roll-over: see section 124-385.

## Disposal case

### 124-360 Disposal of shares in one company for shares in another one

- (1) You can choose to obtain a roll-over if:
  - (a) you are a \*member of a company (the *original company*); and
  - (b) you and at least one other entity (the *exchanging members*) own all the \*shares in it; and
  - (c) under a \*scheme for reorganising its affairs, the exchanging members \*dispose of all their shares in it to another company (the *interposed company*) in exchange for shares in the interposed company (and nothing else);and the requirements in sections 124-365 and 124-380 are satisfied.

Note: The roll-over consequences are set out in Subdivision 124-A. The original assets are your shares in the original company. The new assets are your new shares in the interposed company.

- (2) You are taken to have chosen to obtain the roll-over if:
  - (a) immediately before the time referred to in section 124-365 as the completion time, the original company is the \*head company of a \*consolidated group; and
  - (b) immediately after the completion time, the interposed company is the head company of the group.

Note: The consolidated group continues in existence because of section 703-70.

### 124-365 Other requirements to be satisfied

- (1) The interposed company must own all the \*shares in the original company just after *all* the exchanging members have \*disposed of their shares in the original company (the *completion time*).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) Just after the completion time, *each* exchanging member must own:
- (a) a whole number of \*shares in the interposed company; and
  - (b) a percentage of the \*shares in the interposed company that were issued to *all* the exchanging members that is equal to the percentage of the shares in the original company (that were \*disposed of to the interposed company) that the member owned.

- (3) The ratio of:

- the \*market value of *each* exchanging member's \*shares in the interposed company *to* the market value of the shares in the interposed company issued to *all* the exchanging members (worked out just after the completion time);

must equal the ratio of:

- the market value of that member's shares in the original company that were \*disposed of to the interposed company *to* the market value of *all* the shares in the original company that were disposed of to the interposed company (worked out just before the first disposal).

Example: There are 100 shares in A Pty Ltd (the original company), all having the same rights. B Pty Ltd (the interposed company) acquires all the shares in A by issuing each shareholder in A 10 shares in itself for each share they have in A. All shares in B have the same rights. Bill owned 15 shares in A and received 150 shares in B in exchange.

- (4) Either:

- (a) you are an Australian resident at the time you \*disposed of your \*shares in the original company; or
- (b) if you are a foreign resident at that time:
  - (i) your shares in the original company were \*taxable Australian property just before that time; and
  - (ii) your shares in the interposed company are taxable Australian property just after the completion time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Redemption or cancellation case

### 124-370 Redemption or cancellation of shares in one company for shares in another one

- (1) You can choose to obtain a roll-over if you are a \*member of a company (the *original company*) and under a \*scheme for reorganising its affairs:
- (a) another company (the *interposed company*) \*acquires no more than 5 \*shares in the original company; and
  - (b) these are the first shares that the interposed company acquires in the original company; and
  - (c) you and at least one other entity (the *exchanging members*) own all the remaining shares in the original company; and
  - (d) the original company redeems or cancels those remaining shares; and
  - (e) each exchanging member receives shares (and nothing else) in the interposed company in return for their shares in the original company being redeemed or cancelled;
- and the requirements in sections 124-375 and 124-380 are satisfied.

Note: The roll-over consequences are set out in Subdivision 124-A. The original assets are your shares in the original company. The new assets are your new shares in the interposed company.

- (1A) You are taken to have chosen to obtain the roll-over if:
- (a) immediately before the time referred to in section 124-375 as the completion time, the original company is the \*head company of a \*consolidated group; and
  - (b) immediately after the completion time, the interposed company is the head company of the group.

Note: The consolidated group continues in existence because of section 703-70.

- (2) The original company can issue other \*shares in itself to the interposed company as part of the scheme.

Note: Some of the interposed company's shares in the original company may be taken to be acquired before 20 September 1985: see section 124-385.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 124-375 Other requirements to be satisfied

- (1) The interposed company must own all the \*shares in the original company just after *all* the exchanging members have had their shares in the original company redeemed or cancelled (the *completion time*).
  - (2) Just after the completion time, *each* exchanging member must own:
    - (a) a whole number of \*shares in the interposed company; and
    - (b) a percentage of the \*shares in the interposed company that were issued to *all* the exchanging members that is equal to the percentage of the shares in the original company (that were redeemed or cancelled) that the member owned.
  - (3) The ratio of:
    - the \*market value of each exchanging member's \*shares in the interposed company *to* the market value of the shares in the interposed company issued to *all* the exchanging members (worked out just after the completion time);must equal the ratio of:
    - the market value of that member's shares in the original company that were redeemed or cancelled *to* the market value of *all* the shares in the original company that were redeemed or cancelled (worked out just before the first redemption or cancellation).
- Example: There are 100 shares in X Pty Ltd (the original company), all having the same rights. X issues 2 shares to Y Pty Ltd (the interposed company) and cancels all other shares in itself. Y issues each shareholder in X 10 shares in itself for each share they had in X. All shares in Y have the same rights. Wil owned 10 shares in X and received 100 shares in Y in exchange.
- (4) Either:
    - (a) you are an Australian resident at the time your \*shares in the original company are redeemed or cancelled; or
    - (b) if you are a foreign resident at that time:
      - (i) your shares in the original company were \*taxable Australian property just before that time; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) your shares in the interposed company are taxable Australian property just after the completion time.

## Rules applying to both cases

### 124-380 Requirements to be satisfied in both cases

- (1) The \*shares issued in the interposed company must not be \*redeemable shares.
- (2) Each exchanging member who is issued \*shares in the interposed company must own the shares from the time they are issued to the completion time.
- (3) Just after the completion time:
  - (a) the exchanging members must own *all* the \*shares in the interposed company; or
  - (b) entities other than those members must own no more than 5 \*shares in the interposed company and the \*market value of those shares expressed as a percentage of the market value of all the shares in the interposed company is such that it is reasonable to treat the exchanging members as owning all the shares.

#### *Choice to be made by interposed company*

- (5) If:
  - (a) immediately before the completion time, the original company is the \*head company of a \*consolidated group; and
  - (b) immediately after the completion time, the interposed company is the head company of a \*consolidatable group consisting only of itself and the \*members of the group immediately before the completion time;

the interposed company must choose that the consolidated group is to continue in existence at and after the completion time.

Note: Sections 703-65 to 703-80 deal with the effects of the choice for the consolidated group.

- (6) If subsection (5) of this section does not apply, the interposed company must choose that section 124-385 apply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-382

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- (7) In either case, the interposed company must make the choice within 28 days after the completion time, or within such further time as the Commissioner allows. The choice cannot be revoked.

Note: This is an exception to the general rule about choices in section 103-25.

**124-382 Special rules for ADI restructures**

- (1) This section applies if:
- (a) the interposed company is a non-operating holding company within the meaning of the *Financial Sector (Business Transfer and Group Restructure) Act 1999*; and
  - (b) a restructure instrument under Part 4A of that Act is in force in relation to the interposed company; and
  - (c) because of the restructure to which the instrument relates, an \*ADI becomes a subsidiary (within the meaning of that Act) of the interposed company; and
  - (d) the original company is:
    - (i) the ADI; or
    - (ii) part of an extended licensed entity (within the meaning of the \*prudential standards) that includes the ADI.

*Certain preference shares disregarded*

- (2) For the purposes of this Subdivision, disregard any \*shares in the original company that can be disregarded under subsection 703-37(4).

*Certain foreign-owned shares disregarded*

- (3) For the purposes of this Subdivision:
- (a) disregard any \*shares in the original company covered by subsection (4); and
  - (b) disregard any shares in the interposed company mentioned in paragraph (4)(d).
- (4) This section covers \*shares in the original company if:
- (a) the shares are owned by a foreign holder within the meaning of the *Corporations Act 2001*; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) an agent or nominee is appointed by (or on behalf of) the foreign holder; and
- (c) the shares are disposed of to the interposed company, or are cancelled; and
- (d) as a result, the agent or nominee acquires shares in the interposed company; and
- (e) the agent or nominee disposes of the shares in the interposed company (whether separately or together with other shares covered by paragraph (d)); and
- (f) the agent or nominee:
  - (i) gives the foreign holder an amount equivalent to the \*capital proceeds of the disposal (less expenses); or
  - (ii) if the shares are disposed of together with other shares covered by paragraph (d)—gives the foreign holder an amount equivalent to the foreign holder's proportion of the \*capital proceeds of the disposal (less expenses).

### **Consequences for the interposed company unless consolidated group continues**

#### **124-385 Consequences for the interposed company**

- (1A) This section applies if the interposed company so chooses under subsection 124-380(6).
- (1) A whole number of the \*shares that the interposed company owns in the original company (just after the completion time) are taken to have been \*acquired before 20 September 1985 if any of the original company's assets as at the completion time were acquired by it before that day.

Note: Generally, a capital gain or capital loss you make from a CGT asset that you acquired before 20 September 1985 can be disregarded: see Division 104.
- (2) The number (worked out as at the completion time) is the greatest possible that (when expressed as a percentage of all the \*shares) does not exceed:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-390

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- the \*market value of the original company's assets that it \*acquired before 20 September 1985 less its liabilities (if any) in respect of those assets;  
expressed as a percentage of:
  - the market value of *all* the original company's assets less *all* of its liabilities.
- (3) The first element of the \*cost base of the interposed company's \*shares in the original company that are *not* taken to have been \*acquired before 20 September 1985 is:
  - the total of the cost bases (as at the completion time) of the original company's assets that it acquired on or after that day;  
less:
    - its liabilities (if any) in respect of those assets.
- (4) The first element of the \*reduced cost base of the interposed company's \*shares is worked out similarly.
- (5) A liability of the original company that is not a liability in respect of a specific asset or assets of the company is taken to be a liability in respect of all the assets of the company.  
Note: An example is a bank overdraft.
- (6) If a liability is in respect of 2 or more assets, the proportion of the liability that is in respect of any one of those assets is equal to:

$$\frac{\text{The *market value of the asset}}{\text{The total of the market values of all the assets that the liability is in respect of}}$$

**Additional consequences for member if shares are trading stock or revenue assets**

**124-390 Deferral of profit or loss on shares**

- (1) There are additional consequences if:
  - (a) under subsection 124-360(2), you are taken to obtain the roll-over and, at the time immediately before you \*dispose of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

your \*shares in the original company, some or all of them are your \*trading stock or \*revenue assets; or

- (b) under subsection 124-370(1A), you are taken to obtain the roll-over and, at the time immediately before the original company redeems or cancels your shares in it, some or all of them are your trading stock or revenue assets.

*Trading stock*

- (2) The amount included in your assessable income because of the \*disposal, redemption or cancellation of each of your \*shares in the original company that is your \*trading stock at that time is equal to:
- (a) if the share has been your trading stock ever since the start of the income year in which that time occurs—the total of:
- (i) its \*value as trading stock at the start of the income year; and
- (ii) the amount (if any) by which its cost has increased since the start of the income year; or
- (b) otherwise—its cost at that time.

- (3) For each of the \*shares in the interposed company that you acquired in return for those of your shares in the original company that were your \*trading stock at that time, you are taken to have paid:

$$\frac{\text{Total of the amounts included in your assessable income under subsection (2) for those shares in the original company}}{\text{Number of those shares in the interposed company}}$$

Note: The amount worked out under the formula becomes the cost of each of those shares in the interposed company.

*Revenue assets*

- (4) For each of your \*shares in the original company that is a \*revenue asset at that time, your assessable income includes the total of the amounts that (apart from this subsection) would be subtracted from the gross disposal proceeds in calculating any profit or loss on your disposing of, or ceasing to own, that share at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (5) For each of the \*shares in the interposed company that you acquired in return for those of your shares in the original company that were \*revenue assets at that time, you are taken to have paid:

$$\frac{\text{Total of the amounts included in your assessable income under subsection (4) for those shares in the original company}}{\text{Number of those shares in the interposed company}}$$

### **Subdivision 124-H—Exchange of units in a unit trust for shares in a company**

#### **Guide to Subdivision 124-H**

##### **124-435 What this Subdivision is about**

This Subdivision sets out when you can obtain a roll-over if:

- you own units in a unit trust; and
- there is a reorganisation of its affairs so that you become the owner of new shares in a company.

#### **Table of sections**

124-440 Summary of rules

##### **Disposal case**

124-445 Disposal of units in a unit trust for shares in a company

124-450 Other requirements to be satisfied

##### **Redemption or cancellation case**

124-455 Redemption or cancellation of units in a unit trust for shares in a company

124-460 Other requirements to be satisfied

##### **Rules applying to both cases**

124-465 Requirements to be satisfied in both cases

##### **Consequences for the company**

124-470 Consequences for the company

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **124-440 Summary of rules**

- (1) This Subdivision deals with 2 cases in which you can choose to obtain a roll-over because of the reorganisation of a unit trust's affairs.  
Note: Section 103-25 tells you when you have to make the choice.
- (2) The first case is if you dispose of units in a unit trust to a company and the company issues you with shares. You can find the specific rules about this case in sections 124-445 and 124-450.
- (3) The second case is if your units in a unit trust are redeemed or cancelled and a company issues you with shares. You can find the specific rules about this case in sections 124-455 and 124-460.
- (4) There are some rules that apply in both cases: see section 124-465.
- (5) There are also consequences for the company if you can choose to obtain a roll-over: see section 124-470.

### **Disposal case**

#### **124-445 Disposal of units in a unit trust for shares in a company**

You can choose to obtain a roll-over if:

- (a) you are a member of a unit trust; and
  - (b) you and at least one other entity (the *exchanging members*) own all the units in it; and
  - (c) under a \*scheme for reorganising its affairs, the exchanging members \*dispose of their units in it to a company in exchange for \*shares in the company (and nothing else);
- and the requirements in sections 124-450 and 124-465 are satisfied.

Note: The roll-over consequences are out in Subdivision 124-A. The original assets are your units in the unit trust. The new assets are your new shares in the company.

#### **124-450 Other requirements to be satisfied**

- (1) The company must own all the units in the unit trust just after *all* the exchanging members have \*disposed of their units in the unit trust (the *completion time*).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-450

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- (2) Just after the completion time, *each* exchanging member must own:
- (a) a whole number of \*shares in the company; and
  - (b) a percentage of the \*shares in the company that were issued to all the exchanging members that is equal to the percentage of the units in the unit trust (that were \*disposed of to the company) that the member owned.

- (3) The ratio of:

- the \*market value of *each* exchanging member's \*shares in the company *to* the market value of the shares in the company issued to *all* the exchanging members (worked out just after the completion time);

must equal the ratio of:

- the market value of that member's units in the unit trust that were disposed of to the company *to* the market value of *all* the units that were disposed of to the company (worked out just before the first disposal).

Example: There are 1,000 units in the A unit trust, all having the same rights. B Pty Ltd acquires all the units in A by issuing each unitholder in A 10 shares in itself for each 100 units they have in A. All shares in B have the same rights. Brian owned 300 units in A and received 30 shares in B in exchange.

- (4) Either:

- (a) you are an Australian resident at the time you \*disposed of your units in the unit trust; or
- (b) if you are a foreign resident at that time:
  - (i) your units were \*taxable Australian property just before that time; and
  - (ii) your \*shares in the company are taxable Australian property just after the completion time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Redemption or cancellation case

### 124-455 Redemption or cancellation of units in a unit trust for shares in a company

- (1) You can choose to obtain a roll-over if you are a member of a unit trust and under a \*scheme for reorganising its affairs:
- (a) a company \*acquires no more than 5 units in the trust; and
  - (b) these are the first units that the company acquires in the trust; and
  - (c) you and at least one other entity (the *exchanging members*) own all the remaining units in the trust; and
  - (d) the trustee redeems or cancels those remaining units; and
  - (e) each exchanging member receives \*shares (and nothing else) in the company in return for their units being redeemed or cancelled;

and the requirements in sections 124-460 and 124-465 are satisfied.

Note: The roll-over consequences are set out in Subdivision 124-A. The original assets are your units in the unit trust. The new assets are your new shares in the company.

- (2) The trustee of the unit trust can issue other units to the company as part of the scheme.

Note: Some of the company's units in the unit trust may be taken to be acquired before 20 September 1985: see section 124-470.

### 124-460 Other requirements to be satisfied

- (1) The company must own all the units in the unit trust just after *all* the exchanging members have had their units in the unit trust redeemed or cancelled (the *completion time*).
- (2) Just after the completion time, *each* exchanging member must own:
- (a) a whole number of \*shares in the company; and
  - (b) a percentage of the \*shares in the company that were issued to *all* the exchanging members that is equal to the percentage of the units in the unit trust (that were redeemed or cancelled) that the member owned.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(3) The ratio of:

- the \*market value of each exchanging member's \*shares in the company *to* the market value of the shares in the company issued to *all* the exchanging members (worked out just after the completion time);

must equal the ratio of:

- the market value of that member's units in the unit trust that were redeemed or cancelled *to* the market value of *all* the units that were redeemed or cancelled (worked out just before the first redemption or cancellation).

Example: There are 1,000 units in the A unit trust, all having the same rights. 2 new units in A are issued to B Pty Ltd, and all other units in A are cancelled. Each unitholder in A is issued 10 shares in B for each 100 units they have in A. All shares in B have the same rights. Alison owned 200 units in A and received 20 shares in B in exchange.

(4) Either:

- (a) you are an Australian resident at the time your units in the unit trust are redeemed or cancelled; or
- (b) if you are a foreign resident at that time:
  - (i) your units were \*taxable Australian property just before that time; and
  - (ii) your \*shares in the company are taxable Australian property just after the completion time.

## **Rules applying to both cases**

### **124-465 Requirements to be satisfied in both cases**

- (1) The \*shares issued in the company must not be \*redeemable shares.
- (2) Each exchanging member who is issued \*shares in the company must own the shares from the time they are issued to the completion time.
- (3) Just after the completion time:
  - (a) the exchanging members must own *all* the \*shares in the company; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) entities other than those members must own no more than 5 \*shares in the company and the \*market value of those shares expressed as a percentage of the market value of all the shares in the company is such that it is reasonable to treat the exchanging members as owning all the shares.

*Choice to be made by company*

- (5) The company must choose that the rules in section 124-470 apply. It must make its choice within 2 months after the completion time, or within such further time as the Commissioner allows.

Note: This is an exception to the general rule about choices in section 103-25.

## Consequences for the company

### 124-470 Consequences for the company

- (1) A whole number of the units that the company owns in the unit trust (just after the completion time) are taken to have been \*acquired before 20 September 1985 if any of the unit trust's assets as at the completion time were acquired by it before that day.

Note: Generally, a capital gain or capital loss you make from a CGT asset that you acquired before 20 September 1985 can be disregarded: see Division 104.

- (2) The number (worked out as at the completion time) is the greatest possible that (when expressed as a percentage of all the units) does not exceed:

- the \*market value of the unit trust's assets that it \*acquired before 20 September 1985 less its liabilities (if any) in respect of those assets;

expressed as a percentage of:

- the market value of *all* the unit trust's assets less *all* of its liabilities.

- (3) The first element of the \*cost base of the company's units in the unit trust that are *not* taken to have been \*acquired before 20 September 1985 is:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-520

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- the total of the cost bases (as at the completion time) of the unit trust's assets that it acquired on or after that day;
- less:
- its liabilities (if any) in respect of those assets.
- (4) The first element of the \*reduced cost base of the company's units is worked out similarly.
- (5) A liability of the unit trust that is not a liability in respect of a specific asset or assets of the trust is taken to be a liability in respect of all the assets of the trust.
- Note: An example is a bank overdraft.
- (6) If a liability is in respect of 2 or more assets, the proportion of the liability that is in respect of any one of those assets is equal to:

$$\frac{\text{The *market value of the asset}}{\text{The total of the market values of all the assets that the liability is in respect of}}$$

**Subdivision 124-I—Conversion of a body to an incorporated company**

**124-520 Conversion of a body to an incorporated company**

- (1) You can choose to obtain a roll-over if:
- (a) you are a member of a body that is incorporated under a law (other than the *Corporations Act 2001* or a similar \*foreign law relating to companies); and
  - (b) the body is converted into a company incorporated under the *Corporations Act 2001* or a similar foreign law relating to companies (without creating a new legal entity); and
  - (c) the company issues you with \*shares (and you receive nothing else) in substitution for your interest in the body just before the conversion; and
  - (d) there is no significant difference in:
    - (i) the ownership of the body just before the conversion and the ownership of the company just after the conversion; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) the mix of ownership of the body just before the conversion and the mix of ownership of the company just after the conversion; and
- (e) this requirement is satisfied:
  - (i) you are an Australian resident at the time of the conversion; or
  - (ii) if you are a foreign resident at that time—your interest in the body was \*taxable Australian property just before that time and the \*shares are taxable Australian property when they are issued.

Note 1: The roll-over consequences are set out in Subdivision 124-A. The original asset is your interest in the body. The new asset is your shares in the company.

Note 2: Section 103-25 tells you when you have to make the choice.

- (2) This section does not apply if the body is a mutual entity that is being demutualised and to whose demutualisation Division 326 in Schedule 2H of the *Income Tax Assessment Act 1936* applies.

## Subdivision 124-J—Crown leases

### Guide to Subdivision 124-J

#### 124-570 What this Subdivision is about

This Subdivision sets out the situations in which the holder of a Crown lease over land obtains a replacement asset roll-over when the lease is, among other things, renewed, extended or converted to an estate in fee simple.

#### Table of sections

##### Operative provisions

124-575	Extension or renewal of Crown lease
124-580	Meaning of <i>Crown lease</i>
124-585	Original right differs in area from new right
124-590	Part of original right excised
124-595	Treating parts of new right as separate assets

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-575

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- 124-600 What is the roll-over?  
124-605 Change of lessor

## **Operative provisions**

### **124-575 Extension or renewal of Crown lease**

- (1) There is a roll-over if:
- (a) you hold one or more \*CGT assets that are \*Crown leases over land (the *original right*); and
  - (b) the original right expires or you surrender it; and
  - (c) you are granted one or more new Crown leases over land or one or more estates in fee simple in land, or both (the *new right*); and
  - (d) the new right relates to the same land as the original right.
- Note 1: The roll-over consequences are set out in Subdivision 124-A. They might be modified: see section 124-600.
- Note 2: If there has been a capital improvement to the Crown lease: see section 108-75.
- (2) The new right must have been granted in one of these ways:
- (a) by renewing or extending the term of the original right where the renewal or extension is mainly due to your having held the original right; or
  - (b) by changing the purpose for which the land to which the original right related can be used; or
  - (c) by converting the original right to a \*Crown lease in perpetuity; or
  - (d) by converting the original right to an estate in fee simple; or
  - (e) by consolidating, or consolidating and dividing, the original right; or
  - (f) by subdividing the original right; or
  - (g) by excising or relinquishing a part of the land to which the original right related; or
  - (h) by expanding the area of that land.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **124-580 Meaning of *Crown lease***

A *Crown lease* is:

- (a) a lease of land granted by the Crown under an \*Australian law (other than the common law); or
- (b) a similar lease granted under a \*foreign law.

### **124-585 Original right differs in area from new right**

- (1) Even if the new right relates to different land to that to which the original right related, this Subdivision applies as if it relates to the same land in these cases:
  - (a) the difference in area is not significant;
  - (b) the difference in \*market value is not significant;
  - (c) the new right was granted to correct errors in or omissions from the original right;
  - (d) the new right relates to a significantly different area of land but you had made reasonable efforts to ensure that the area was the same;
  - (e) it is otherwise reasonable for this Subdivision to apply in that way.
- (2) However, the rule in subsection (1) does not apply if section 124-590 applies.

### **124-590 Part of original right excised**

- (1) There is a *partial* roll-over if you \*acquired the original right on or after 20 September 1985 and:
  - (a) the land to which the new right relates is different in area to the land the subject of the original right because a part (the *excised part*) of the land to which the original right related was excised or you relinquished it; and
  - (b) you received a payment for the expiry or surrender of the original right.

The payment can include giving property: see section 103-5.

Note: Section 124-600 sets out the effect on your cost base.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-595

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- (2) There is no roll-over for the excised part. The \*cost base of the excised part is so much of the \*cost base of the relevant \*Crown lease as is attributable to the excised part.

Its \*reduced cost base is worked out similarly.

Note: You may make a capital gain or loss on the excised part because of CGT event C2.

**124-595 Treating parts of new right as separate assets**

- (1) Each part of a \*Crown lease or an estate in fee simple that is part of the new right is taken to be a separate \*CGT asset to the extent that it relates to:
- (a) land to which a Crown lease (that was part of the original right) related where you \*acquired the lease before 20 September 1985; and
  - (b) land to which a Crown lease (that was part of the original right) related where you acquired the lease on or after 20 September 1985; and
  - (c) other land.
- (2) You are taken to have \*acquired each asset that is a separate \*CGT asset because of paragraph (1)(a) before 20 September 1985.

**124-600 What is the roll-over?**

- (1) The roll-over is mainly as specified in Subdivision 124-A.
- (2) However, you work out the \*cost base and \*reduced cost base of \*CGT assets (that you are not taken to have \*acquired before 20 September 1985) and that are part of the new right a bit differently where section 124-590 or 124-595 applies.
- (3) The first element of your \*cost base for each of those assets is:

$$\text{CB of post-CGT original right} \times \frac{\text{Market value of separate asset}}{\text{Market value of all new assets}}$$

where:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***CB of post-CGT original right*** is the sum of the \*cost bases of the \*Crown leases (that were part of the original right) and that you \*acquired on or after 20 September 1985 (just before the original right expired or was surrendered) reduced, if there is an excised part, by so much of those cost bases as is attributable to the excised part.

***market value of all new assets*** is the \*market value of all \*CGT assets (that you are not taken to have \*acquired before 20 September 1985) that are part of the new right just after you acquired them.

***market value of separate asset*** is the \*market value of the particular asset just after you \*acquired it.

- (4) The first element of the \*reduced cost base of each of those assets is worked out similarly.

### **124-605 Change of lessor**

- (1) You treat a lease of land (whether or not it is a \*Crown lease) granted to you (the ***fresh lease***) as being a renewal of your original right if:
- (a) after the grant of the original right, the land (the ***original land***) to which it related became vested in an \*Australian government agency (other than the one that granted the original right); and
  - (b) the second agency granted you the fresh lease over:
    - (i) the original land; or
    - (ii) the original land less an excised area; or
    - (iii) the original land and other land; and
  - (c) the fresh lease was granted under an \*Australian law (other than the common law).
- (2) You do this even if there is a period between the end of the original right and the grant of the fresh lease if you continued to occupy the original land during that period under a permission, licence or authority granted by the second agency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 124-K—Depreciating assets**

### **Table of sections**

124-655	Roll-over for depreciating assets
124-660	Right granted to associate

### **124-655 Roll-over for depreciating assets**

There is a roll-over for a \*depreciating asset if:

- (a) the asset is attached to land you hold under a \*quasi-ownership right granted by an \*exempt Australian government agency or an \*exempt foreign government agency; and
- (b) you \*hold the asset because of section 40-40; and
- (c) the quasi-ownership right expires or is terminated or you surrender it; and
- (d) you are granted a new quasi-ownership right over the land or an estate in fee simple in the land; and
- (e) there is no roll-over for you under Subdivision 124-J (about Crown leases) or Subdivision 124-L (about prospecting and mining entitlements).

Note 1: The roll-over consequences are set out in Subdivision 124-A.

Note 2: This section provides a roll-over for a depreciating asset in the limited circumstances where Subdivision 124-J cannot because a quasi-ownership right over land covers situations that a Crown lease does not (for example, an easement over land).

Note 3: If there has been a capital improvement to the quasi-ownership right: see section 108-75.

### **124-660 Right granted to associate**

If the \*quasi-ownership right or estate in fee simple is instead granted to an \*associate or an \*associated government entity of yours:

- (a) your \*reduced cost base of the \*depreciating asset is reduced by the \*adjustable value of the asset just before the original quasi-ownership right expired or was surrendered or terminated; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) there is no roll-over.

## **Subdivision 124-L—Prospecting and mining entitlements**

### **Guide to Subdivision 124-L**

#### **124-700 What this Subdivision is about**

This Subdivision sets out the situations in which there is a roll-over if a prospecting or mining entitlement expires or is surrendered and it is replaced by a new one.

#### **Table of sections**

##### **Operative provisions**

- 124-705 Extension or renewal of prospecting or mining entitlement  
124-710 Meaning of prospecting entitlement and mining entitlement  
124-715 Original entitlement differs in area from new entitlement  
124-720 Part of original entitlement excised  
124-725 Treating parts of new entitlement as separate assets  
124-730 What is the roll-over?

#### **Operative provisions**

##### **124-705 Extension or renewal of prospecting or mining entitlement**

- (1) There is a roll-over if:
- (a) you hold one or more \*CGT assets that are \*prospepecting entitlements or \*mining entitlements (the *original entitlement*); and
  - (b) the original entitlement expires or you surrender it; and
  - (c) you are granted one or more new prospecting entitlements or mining entitlements (the *new entitlement*); and
  - (d) the new entitlement relates to the same land as the original entitlement.

Note 1: The roll-over consequences are set out in Subdivision 124-A. They might be modified: see section 124-730.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-710

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Note 2: If there has been a capital improvement to the entitlement: see section 108-75.

- (2) The new entitlement must have been granted in one of these ways:
- (a) by renewing or extending the term of the original entitlement where the renewal or extension is mainly due to your having held the original entitlement; or
  - (b) by consolidating, or consolidating and dividing, the original entitlement; or
  - (c) by subdividing the original entitlement; or
  - (d) by converting a \*prospecting entitlement to a \*mining entitlement, or a mining entitlement to a prospecting entitlement; or
  - (e) by excising or relinquishing a part of the land to which the original entitlement related; or
  - (f) by expanding the area of that land.

**124-710 Meaning of prospecting entitlement and mining entitlement**

- (1) A *prospecting entitlement* is:
- (a) an authority, licence, permit or entitlement under an \*Australian law or \*foreign law to prospect or explore for minerals in an area; or
  - (b) a lease of land that allows the lessee to prospect or explore for minerals on the land; or
  - (c) an interest in a thing referred to in paragraph (a) or (b).
- (2) A *mining entitlement* is:
- (a) an authority, licence, permit or entitlement under an \*Australian law or \*foreign law to mine for \*minerals in an area; or
  - (b) a lease of land that allows the lessee to mine for minerals on the land; or
  - (c) an interest in a thing referred to in paragraph (a) or (b).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **124-715 Original entitlement differs in area from new entitlement**

- (1) Even if the new entitlement relates to different land to that to which the original entitlement related, this Subdivision applies as if it relates to the same land in these cases:
  - (a) the difference in area is not significant;
  - (b) the difference in \*market value is not significant;
  - (c) the new entitlement was granted to correct errors in or omissions from the original entitlement;
  - (d) it is otherwise reasonable for this Subdivision to apply in that way.
- (2) However, the rule in subsection (1) does not apply if section 124-720 applies.

### **124-720 Part of original entitlement excised**

- (1) There is *partial* roll-over if you \*acquired the original entitlement on or after 20 September 1985 and:
  - (a) the land to which the new entitlement relates is different in area to the land the subject of the original entitlement because a part (the *excised part*) of the land to which the original entitlement related was excised or you relinquished it; and
  - (b) you received a payment for the expiry or surrender of the original entitlement.

The payment can include giving property: see section 103-5.

Note: Section 124-730 sets out the effect on your cost base.

- (2) There is no roll-over for the excised part. The \*cost base of the excised part is so much of the \*cost base of the original entitlement as is attributable to the excised part.

Its \*reduced cost base is worked out similarly.

Note: You may make a capital gain or loss on the excised part because of CGT event C2.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 124-725 Treating parts of new entitlement as separate assets

- (1) Each part of a \*prospecting entitlement or \*mining entitlement that is part of the new entitlement is taken to be a separate \*CGT asset to the extent that it relates to:
  - (a) land to which a prospecting entitlement or mining entitlement (that was part of the original entitlement) related where you \*acquired the entitlement before 20 September 1985; and
  - (b) land to which a prospecting entitlement or mining entitlement (that was part of the original entitlement) related where you acquired the entitlement on or after 20 September 1985; and
  - (c) other land.
- (2) You are taken to have \*acquired each asset that is a separate \*CGT asset because of paragraph (1)(a) before 20 September 1985.

### 124-730 What is the roll-over?

- (1) The roll-over is mainly as specified in Subdivision 124-A.
- (2) However, you work out the \*cost base and \*reduced cost base of \*CGT assets (that you are not taken to have \*acquired before 20 September 1985) and that are part of the new entitlement a bit differently where section 124-720 or 124-725 applies.
- (3) The first element of your \*cost base for each of those assets is:

$$\text{CB of post-CGT original entitlement} \times \frac{\text{Market value of separate asset}}{\text{Market value of all new assets}}$$

where:

***CB of post-CGT original entitlement*** is the sum of the \*cost bases of the prospecting entitlements or mining entitlements (that were part of the original entitlement) and that you \*acquired on or after 20 September 1985 (just before the original entitlement expired or was surrendered) reduced, if there is an excised part, by so much of those cost bases as is attributable to the excised part.

***market value of all new assets*** is the \*market value of all \*CGT assets (that you are not taken to have \*acquired before

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

20 September 1985) that are part of the new entitlement just after you acquired them.

*market value of separate asset* is the \*market value of the particular asset just after you \*acquired it.

- (4) The first element of the \*reduced cost base of each of those assets is worked out similarly.

## **Subdivision 124-M—Scrip for scrip roll-over**

### **Guide to Subdivision 124-M**

#### **124-775 What this Subdivision is about**

This Subdivision allows you to choose a roll-over where post-CGT shares or trust interests you own are replaced with other shares or trust interests, for example, where there is a company takeover.

You can only choose the roll-over if you would have made a capital gain from the exchange.

#### **Table of sections**

##### **Operative provisions**

124-780	Replacement of shares
124-781	Replacement of trust interests
124-782	Transfer or allocation of cost base of shares acquired by acquiring entity etc.
124-783	Meaning of <i>significant stakeholder</i> , <i>common stakeholder</i> , <i>significant stake</i> and <i>common stake</i>
124-784	Cost base of equity or debt given by acquiring entity to ultimate holding company
124-784A	When arrangement is a restructure
124-784B	What is the cost base and reduced cost base when arrangement is a restructure?
124-784C	Cost base of equity or debt given by acquiring entity to ultimate holding company
124-785	What is the roll-over?
124-790	Partial roll-over

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-780

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- 124-795 Exceptions
- 124-800 Interest received for pre-CGT interest
- 124-810 Certain companies and trusts not regarded as having 300 members or beneficiaries

## Operative provisions

### 124-780 Replacement of shares

- (1) There is a roll-over if:
  - (a) an entity (the *original interest holder*) exchanges:
    - (i) a \*share (the entity's *original interest*) in a company (the *original entity*) for a share (the holder's *replacement interest*) in another company; or
    - (ii) an option, right or similar interest (also the holder's *original interest*) issued by the original entity that gives the holder an entitlement to acquire a share in the original entity for a similar interest (also the holder's *replacement interest*) in another company; and
  - (b) the exchange is in consequence of a single \*arrangement that satisfies subsection (2); and
  - (c) the conditions in subsection (3) are satisfied; and
  - (d) if subsection (4) applies, the conditions in subsection (5) are satisfied.

Note 1: There are some exceptions: see section 124-795.

Note 2: The original interest holder can obtain only a partial roll-over if the capital proceeds for its original interest include something other than its replacement interest: see section 124-790.

Note 3: A trustee who gets a roll-over under this Subdivision for an original interest consisting of shares issued as part of a demutualisation may be eligible for a further roll-over under Subdivision 126-E when a beneficiary becomes absolutely entitled to the replacement shares.

Example 1: You can get a roll-over if you exchange your shares in one entity for shares in another entity or if you exchange options in one entity for options in another entity. You cannot get a roll-over if you exchange options for shares.

Example 2: Examples of arrangements that could be involved include:

- a company takeover, whether or not it is regulated by the *Corporations Act 2001*, resulting in a company owning 80% or more of another company's shares.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- a scheme of arrangement governed by the *Corporations Act 2001* that involves a cancellation of some interests in an original entity resulting in another entity owning 80% or more of the interests in the original entity.

*Conditions for arrangement*

- (2) The \*arrangement must:
- (a) result in:
- (i) a company (the ***acquiring entity***) that is not a member of a \*wholly-owned group becoming the owner of 80% or more of the \*voting shares in the original entity; or
  - (ii) a company (also an ***acquiring entity***) that is a member of such a group increasing the percentage of voting shares that it owns in the original entity, and that company or members of the group becoming the owner of 80% or more of those shares; and
- (b) be one in which at least all owners of \*voting shares in the original entity (except a company referred to in paragraph (a)) could participate; and
- (c) be one in which participation was available on substantially the same terms for all of the owners of interests of a particular type in the original entity.

Note 1: The 80% or more requirement is satisfied if the acquiring entity ends up owning at least 80% of the voting shares in the original entity. This may include shares held before the arrangement started.

Note 2: Participation will be on substantially the same terms if, for example, matters such as those referred to in subsections 619(2) and (3) of the *Corporations Act 2001* affect the capital proceeds that each participant can receive.

*Conditions for roll-over*

- (3) The conditions are:
- (a) the original interest holder \*acquired its original interest on or after 20 September 1985; and
  - (b) apart from the roll-over, it would make a \*capital gain from a \*CGT event happening in relation to its original interest; and
  - (c) its replacement interest is in a company (the ***replacement entity***) that is:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-780

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- (i) the company referred to in subparagraph (2)(a)(i); or
- (ii) in any other case—the \*ultimate holding company of the \*wholly-owned group; and
- (d) the original interest holder chooses to obtain the roll-over or, if section 124-782 applies to it for the arrangement, it and the replacement entity jointly choose to obtain the roll-over; and
- (e) if that section applies, the original interest holder informs the replacement entity in writing of the \*cost base of its original interest worked out just before a CGT event happened in relation to it.

Note: If the original interest holder also exchanges a CGT asset that it acquired before 20 September 1985, the cost base of any interest received in exchange for it is worked out under section 124-800.

*Further roll-over conditions in certain cases*

- (4) The conditions specified in subsection (5) must be satisfied if the original interest holder and an acquiring entity did not deal with each other at \*arm's length and:
  - (a) neither the original entity nor the replacement entity had at least 300 \*members just before the \*arrangement started; or
  - (b) the original interest holder, the original entity and an acquiring entity were all members of the same \*linked group just before that time.

Note: There are some cases where a company will not be regarded as having 300 members: see section 124-810.

- (5) The conditions are:
  - (a) the \*market value of the original interest holder's \*capital proceeds for the exchange is at least substantially the same as the market value of its original interest; and
  - (b) its replacement interest carries the same kind of rights and obligations as those attached to its original interest.

*CUFS*

- (6) This section applies to the holder of a Chess Unit of Foreign Security as if the holder held the underlying interests that the unit represents.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Note: A Chess Unit of Foreign Security is an interest, traded on the stock market operated by ASX Limited, in a foreign share, unit or interest.

- (7) A company is the *ultimate holding company* of a \*wholly-owned group if it is not a \*100% subsidiary of another company in the group.

### 124-781 Replacement of trust interests

- (1) There is a roll-over if:
- (a) an entity (also the *original interest holder*) exchanges:
    - (i) a unit or other interest (also the holder's *original interest*) in a trust (also the *original entity*) for a unit or other interest (also the holder's *replacement interest*) in another trust (also the *acquiring entity*); or
    - (ii) an option, right or similar interest (also the holder's *original interest*) issued by the original entity that gives the holder an entitlement to acquire a unit or other interest in the original entity for a similar interest (also the holder's *replacement interest*) in another trust (also the *acquiring entity*); and
  - (b) entities have \*fixed entitlements to all of the income and capital of the original entity and the acquiring entity; and
  - (c) the exchange is in consequence of an \*arrangement that satisfies subsection (2); and
  - (d) the conditions in subsections (3) and (4) are satisfied.

Note 1: There are some exceptions: see section 124-795.

Note 2: The original interest holder can obtain only a partial roll-over if the capital proceeds for its original interest include something other than its replacement interest: see section 124-790.

#### *Conditions for arrangement*

- (2) The \*arrangement must:
- (a) result in the acquiring entity owning 80% or more of the \*trust voting interests in the original entity or, if there are none, 80% or more of the units or other interests in the original entity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-781

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- (b) be one in which at least all owners of trust voting interests (or of units or other interests) in the original entity (except the acquiring entity) could participate; and
- (c) be one in which participation was available on substantially the same terms for all of the owners of interests or units of a particular type in the original entity.

*Conditions for roll-over*

- (3) The conditions are:
  - (a) the original interest holder \*acquired its original interest on or after 20 September 1985; and
  - (b) apart from the roll-over, it would make a \*capital gain from a \*CGT event happening in relation to its original interest; and
  - (c) it chooses to obtain the roll-over or, if section 124-782 applies to it for the \*arrangement, it and the trustee of the acquiring entity jointly choose to obtain the roll-over; and
  - (d) if that section applies to it, it informs that trustee in writing of the \*cost base of its original interest as at the time just before a CGT event happened in relation to it.

Note: If the original interest holder also exchanges a CGT asset that it acquired before 20 September 1985, the cost base of any interest received in exchange for it is worked out under section 124-800.

*Further roll-over conditions in certain cases*

- (4) These conditions must be satisfied if the original interest holder and the trustee of the acquiring entity did not deal with each other at \*arm's length and neither the original entity nor the acquiring entity had at least 300 beneficiaries just before the \*arrangement started:
  - (a) the \*market value of the original interest holder's \*capital proceeds for the exchange is at least substantially the same as the market value of its original interest; and
  - (b) its replacement interest carries the same kind of rights and obligations as those attached to its original interest.

Note: There are some cases where a trust will not be regarded as having 300 beneficiaries: see section 124-810.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*CUFS*

- (5) This section applies to the holder of a Chess Unit of Foreign Security as if the holder held the underlying interests that the unit represents.

Note: A Chess Unit of Foreign Security is an interest, traded on the stock market operated by ASX Limited, in a foreign share, unit or interest.

*Meaning of trust voting interest*

- (6) A **trust voting interest** in a trust is an interest in the trust that confers rights of the same or a similar kind as the rights conferred by a \*voting share in a company.

**124-782 Transfer or allocation of cost base of shares acquired by acquiring entity etc.**

*Transfer of cost base*

- (1) The \*cost base of an original interest \*acquired by an acquiring entity under the \*arrangement from an original interest holder becomes the first element of the cost base and \*reduced cost base of the acquiring entity for the interest if:
- (a) the original interest holder obtains a roll-over; and
  - (b) the holder is a \*significant stakeholder or a \*common stakeholder for the arrangement.

Note 1: For other interests, for example, interests for which the roll-over is not chosen, the cost base will be worked out under the ordinary cost base rules in Divisions 110 and 112.

Note 2: There is a special rule to determine the cost base of equity or debt given to an ultimate holding company by an acquiring entity under an arrangement: see section 124-784.

*Allocation of cost base in cancellation case*

- (2) The \*cost base and \*reduced cost base of any interests (the **new interests**) issued by the original entity to an acquiring entity under the \*arrangement is worked out under subsection (3) if:
- (a) original interests of an original interest holder are cancelled under the arrangement; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-782

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- (b) the holder obtains a roll-over for the cancellation; and
  - (c) the holder is a \*significant stakeholder or a \*common stakeholder for the arrangement.
- (3) The first element of the \*cost base and \*reduced cost base of the new interests of an acquiring entity is that part of the cost base of the cancelled interests as can be reasonably allocated to the new interests, having regard to:
- (a) the nature of the \*arrangement; and
  - (b) the number, type and relative \*market values of the cancelled interests and the new interests; and
  - (c) any other relevant matters.

**Example:** Robert Co has 3 shareholders: Antill Co with 300 shares, Rachael Co 400 shares and Margaret Co 300 shares. The cost base of each share is \$1 and market value is \$2. Margaret Co is owned by two shareholders, John and Paul, who each have 50 shares. The market value of each share is \$20.

Under an arrangement, Robert Co cancels the shares of Antill Co and Rachael Co. They receive 30 and 40 shares respectively in Margaret Co, which becomes the sole shareholder in Robert Co. The market value of Antill Co's and Rachael Co's shares in Margaret Co is equivalent to the market value of their cancelled shares in Robert Co.

Robert Co also issues 700 shares to Margaret Co, reflecting the \$1,400 total market value of the shares issued by Margaret Co to Antill Co and Rachael Co. Before and after the arrangement, Margaret Co's shares in Robert Co were worth \$2 each.

It is necessary to reasonably allocate the cost bases of the cancelled shares (700 x \$1) to the 700 shares issued by Robert Co to Margaret Co. In this case, an allocation of \$1 per share would be reasonable.

**Note:** If no new shares are issued by Robert Co, the cost base of the original shares that Margaret Co holds would not be adjusted.

- (4) The amount allocated to a new interest under subsection (3) must not be more than its \*market value just after the \*arrangement was completed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**124-783 Meaning of *significant stakeholder*, *common stakeholder*, *significant stake* and *common stake***

*Significant stakeholder*

- (1) An original interest holder is a ***significant stakeholder*** for an \*arrangement if it had:
  - (a) a \*significant stake in the original entity just before the arrangement started; and
  - (b) a significant stake in the replacement entity just after the arrangement was completed.
- (2) Also, if an original interest holder is an acquiring entity, any other original interest holder is a ***significant stakeholder*** for an \*arrangement if it:
  - (a) had a \*significant stake in the original entity just before the \*arrangement started; and
  - (b) is an \*associate of the replacement entity just after the arrangement was completed.

*Common stakeholder*

- (3) An original interest holder is a ***common stakeholder*** for an \*arrangement if it had:
  - (a) a \*common stake in the original entity just before the arrangement started; and
  - (b) a common stake in the replacement entity just after the arrangement was completed.
- (4) If an acquiring entity for an \*arrangement is an original interest holder, each other original interest holder that has a replacement interest is a ***common stakeholder*** for the arrangement.
- (5) No original interest holder is a ***common stakeholder*** for an \*arrangement if either the original entity or the replacement entity had at least 300 \*members (for a company) or 300 beneficiaries (for a trust) just before the arrangement started.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Significant stake*

- (6) An entity has a **significant stake** in a company at a time if the entity, or the entity and the entity's \*associates between them:
- (a) have at that time \*shares carrying 30% or more of the voting rights in the company; or
  - (b) have at that time the right to receive for their own benefit 30% or more of any \*dividends that the company may pay; or
  - (c) have at that time the right to receive for their own benefit 30% or more of any distribution of capital of the company.

Note: The tests are applied to interests held directly by an entity and its associates.

Example: There are 4 shareholders in YZT Company: Sonja has 60%, Mario has 20%, Peter has 10% and Dave has 10%.

Sonja, Mario and Peter are associates. They each have a significant stake in YZT because, on an associate inclusive basis, they each have a 90% stake in YZT. Dave does not have a significant stake because his total stake, on an associate inclusive basis, is 10%.

- (7) An entity has a **significant stake** in a trust at a time if the entity, or the entity and the entity's \*associates between them, had at that time the right to receive for their own benefit 30% or more of any distribution to beneficiaries of the trust of income or capital of the trust.
- (8) No original interest holder has a **significant stake** in a company that has at least 300 \*members or a trust that has at least 300 beneficiaries if it is reasonable for the company or the trustee of the trust to conclude that this is the case on the information available to it.

Note: There are some cases where a company or trust will not be regarded as having 300 members or beneficiaries: see section 124-810.

*Common stake*

- (9) If the original entity and the acquiring entity are companies, an entity, or 2 or more entities, have a **common stake** in the original entity just before the \*arrangement started and in the acquiring entity just after the arrangement was completed if the entity or entities, and their \*associates, between them:
- (a) had 80% or more of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (i) the voting rights in the original entity just before the arrangement started; and
    - (ii) the voting rights in the replacement entity just after the arrangement was completed; or
  - (b) had the right to receive for their own benefit 80% or more of:
    - (i) any \*dividends that the original entity may pay just before the arrangement started; and
    - (ii) any dividends that the replacement entity may pay just after the arrangement was completed; or
  - (c) had the right to receive for their own benefit 80% or more of:
    - (i) any distribution of capital of the original entity just before the arrangement started; and
    - (ii) any distribution of capital of the replacement entity just after the arrangement was completed.
- (10) If the original entity and the acquiring entity are trusts, an entity, or 2 or more entities, have a **common stake** in the original entity just before the \*arrangement started and in the acquiring entity just after the arrangement was completed if the entity or entities, and their \*associates, between them:
  - (a) had, just before the arrangement started, the right to receive for their own benefit 80% or more of any distribution to beneficiaries of the original entity of income or capital of the original entity; and
  - (b) had, just after the arrangement was completed, the right to receive for their own benefit 80% or more of any distribution to beneficiaries of the replacement entity of income or capital of that entity.

### **124-784 Cost base of equity or debt given by acquiring entity to ultimate holding company**

#### *Purpose*

- (1) This section allocates an appropriate \*cost base to equity issued, or new debt owed, by an acquiring entity under the \*arrangement to the \*ultimate holding company where the cost base of an original interest was transferred or allocated under section 124-782 because

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-784A

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the original interest holder is a \*significant stakeholder or a \*common stakeholder for the arrangement.

*Allocation of cost base*

- (2) The first element of the \*cost base of the equity or debt for the \*ultimate holding company is that part of the cost base of the original interest transferred or allocated under section 124-782 as:
- (a) may be reasonably allocated to the equity or debt; and
  - (b) is not more than the \*market value of the equity or debt just after the arrangement was completed.

*No capital gain on debt repayment*

- (3) Any \*capital gain of the \*ultimate holding company from the repayment of new debt owed by an acquiring entity under the \*arrangement is disregarded to the extent that it relates to the difference between the part of the \*cost base transferred or allocated under section 124-782 and the \*market value of the debt just after the arrangement was completed.

Note: If the debt is assigned or exchanged, there may be a capital gain.

**124-784A When arrangement is a restructure**

- (1) This section applies in relation to a single \*arrangement if:
- (a) the replacement entity for the arrangement knows, or could reasonably be expected to know:
    - (i) that a roll-over under section 124-780 has been, or will be, obtained in relation to the arrangement; and
    - (ii) that there is a \*common stakeholder for the arrangement (disregarding subsections 124-783(4) and (5)); and
  - (b) subsection (2) is satisfied for the arrangement.

Note: If this section applies, the first element of the cost base and reduced cost base of interests in the original entity acquired under the arrangement is worked out under section 124-784B.

- (2) This subsection is satisfied for the \*arrangement if the result of step 2 is more than 80% of the result of step 3.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Method statement*

- Step 1. Add up the \*market value just after the \*arrangement was completed (the ***completion time***) of all of the replacement interests issued by the replacement entity under the arrangement in exchange for the following interests (the ***qualifying interests***):
- (a) original interests in the original entity;
  - (b) any interests issued by the original entity to an acquiring entity under the arrangement in respect of other original interests in the original entity cancelled under the arrangement.
- Step 2. Add to the result of step 1 the \*market value at the completion time of all of the replacement interests issued by the replacement entity under any earlier arrangement for which this section applied in exchange for qualifying interests in the original entity.
- Step 3. Add up the \*market value at the completion time of all of the:
- (a) \*shares \*on issue by the replacement entity; and
  - (b) options, rights and similar interests issued by the replacement entity that give the holder an entitlement to acquire a share in the replacement entity at or after the completion time.

*Application if an entity is listed*

- (3) For the purposes of:
- (a) subsection (2); and
  - (b) step 5 of the method statement in subsection 124-784B(2);
- if interests in an entity are listed for quotation in the official list of an \*approved stock exchange at the completion time, then the replacement entity may choose that the \*market value at that time

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-784A

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of an interest in the first-mentioned entity is taken to be the \*officially quoted price of the interest at that time.

*Application if more than one original entity*

- (4) If qualifying interests in more than one original entity are \*acquired under the \*arrangement, then, for the purposes of subsections (1) and (2):
- (a) those interests of each of those original entities are taken to have been acquired under separate arrangements; and
  - (b) those separate arrangements are taken to have happened in the same order as the acquisitions.
- (5) If qualifying interests in more than one original entity:
- (a) would be taken by subsection (4) to have been \*acquired under separate \*arrangements happening at the same time; or
  - (b) are acquired under separate arrangements that commence at the same time;
- then, for the purposes of subsections (1) and (2), the replacement entity must choose the order in which those separate arrangements are to have happened.

*Meaning of officially quoted price*

- (6) An interest in an entity has an **officially quoted price** at a particular time if, during the one week period starting on the day in which that time occurred, there was at least one transaction on the relevant stock exchange in interests of that class. That price is the weighted average of the prices at which those interests were traded on that stock exchange during that period.
- (7) For the purposes of subsection (6), if an interest is quoted on 2 or more \*approved stock exchanges on that day, the **officially quoted price** of the interest is determined under subsection (6) in respect of whichever of those the entity chooses.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**124-784B What is the cost base and reduced cost base when arrangement is a restructure?**

- (1) This section applies in relation to each qualifying interest in the original entity:
- (a) \*acquired by an acquiring entity under an \*arrangement to which section 124-784A applies; and
  - (b) for which the first element of the \*cost base of the acquiring entity is not worked out under section 124-782.

Note: Section 124-782 applies when an original interest holder is a significant stakeholder or a common stakeholder.

*First element of cost base—qualifying interests acquired in exchange for replacement interests only*

- (2) The first element of the \*cost base of the acquiring entity for the qualifying interest in the original entity is worked out as follows:

*Method statement*

Step 1. Add up:

- (a) the \*market value, at the completion time, of the original entity's \*pre-CGT assets (except \*trading stock); and
- (b) the \*cost bases, at the completion time, of the original entity's \*post-CGT assets (except trading stock); and
- (c) for the original entity's \*CGT assets (except trading stock) that had no cost base—the maximum amount of consideration the original entity would need to receive if it were to dispose, at the completion time, of those assets without an amount being assessable income of, or deductible to, the original entity; and
- (d) the amount worked out under steps 2 and 3.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Step 2. For the original entity's \*trading stock, add up:

- (a) the \*value of the trading stock at the start of the income year containing the completion time; and
- (b) for \*livestock acquired by natural increase during that income year but before the completion time—the \*cost of that livestock; and
- (c) the amount of any outgoing incurred in connection with acquiring an item of trading stock during that income year but before the completion time (except livestock acquired by natural increase); and
- (d) the amount of any outgoings forming part of the cost of the trading stock incurred by the entity during its current holding of the trading stock but before the completion time.

Step 3. For any asset of the original entity not covered by steps 1 and 2, work out the amount that would be the asset's \*cost base at the completion time if it were a \*CGT asset.

Step 4. Subtract from the result of step 1 the original entity's liabilities (if any) at the completion time in respect of those assets.

Step 5. If there is one class of \*membership interests in the original entity, divide the result of step 4 by the total number of those membership interests at the completion time.

If there are 2 or more classes of membership interests in the original entity, allocate a portion of the result of step 4 to each class in proportion to the \*market value of all the membership interests in that class and divide that result by the total number of membership interests in that class at the completion time.

Note 1: For the purposes of this subsection, Division 701 (Core rules for consolidated groups) is disregarded for an original entity that becomes

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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a subsidiary member of a consolidated group or MEC group under the arrangement (see paragraph 715-910(1)(a)).

Note 2: If the original entity is the head company of a consolidated group or MEC group, then subsection 701-1(1) (the single entity rule) and section 701-5 (the entry history rule) apply in relation to that group when working out steps 1 and 2 (see subsection 715-910(2)).

Note 3: For step 5, the replacement entity may choose to use the officially quoted price of the qualifying interests as their market value (see subsection 124-784A(3)).

*First element of cost base—interests acquired in exchange for replacement interests and cash etc.*

- (3) However, if the qualifying interest was acquired under the \*arrangement partly in exchange for one or more replacement interests and partly for something else, subsection (2) applies only for working out the first element of that part of the \*cost base of the qualifying interest that is attributable to the replacement interests.

Note 1: This means that the acquiring entity will have to apportion the cost base amount worked out under subsection (2) according to the relative values of the replacement interests and the other component.

Note 2: The first element of that part of the cost base, and reduced cost base, of the qualifying interest that is attributable to cash etc. is worked out using the general rules about cost base.

*Liabilities*

- (4) For the purposes of step 4 of subsection (2), a liability of the original entity that is not a liability in respect of a specific asset or assets of the entity is taken to be a liability in respect of all the assets of the entity.
- (5) If a liability is in respect of 2 or more assets, the proportion of the liability that is in respect of any one of those assets is equal to:

$$\frac{\text{The *market value of the asset}}{\text{The total of the *market values of all the assets that the liability is in respect of}}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-784C

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*First element of reduced cost base*

- (6) The first element of the \*reduced cost base of the acquiring entity for the qualifying interest in the original entity is worked out similarly.

*Rights and options to acquire membership interests*

- (7) For the purposes of step 5 of subsection (2), if at the completion time a person holds an option, right or similar interest (including a contingent option, right or interest), created or issued by the original entity, to acquire a \*membership interest in the original entity, that option, right or interest is treated as if it were a membership interest in the original entity.

**124-784C Cost base of equity or debt given by acquiring entity to ultimate holding company**

*Purpose*

- (1) This section allocates an appropriate \*cost base to equity issued, or new debt owed, by an acquiring entity under the \*arrangement to the \*ultimate holding company of a \*wholly-owned group where the cost base of the acquiring entity for a qualifying interest was worked out under section 124-784B.

*Allocation of cost base*

- (2) The first element of the \*cost base of the equity or debt for the \*ultimate holding company is that part of the cost base of the qualifying interest worked out under section 124-784B as:
- (a) may be reasonably allocated to the equity or debt; and
  - (b) is not more than the \*market value of the equity or debt at the completion time.

*No capital gain on debt repayment*

- (3) Any \*capital gain of the \*ultimate holding company from the repayment of new debt owed by an acquiring entity under the \*arrangement is disregarded to the extent that it relates to the difference between the part of the \*cost base worked out under

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

section 124-784B and the \*market value of the debt at the completion time.

Note: If the debt is assigned or exchanged, there may be a capital gain.

### **124-785 What is the roll-over?**

- (1) A \*capital gain you make from your original interest is disregarded.
- (2) You work out the first element of the \*cost base of each \*CGT asset you received as a result of the exchange by reasonably attributing to it the cost base (or the part of it) of your original interest for which it was exchanged and for which you obtained the roll-over.
- (3) In applying subsection (2), you reduce the \*cost base of your original interest (just before you stop owning it) by so much of that cost base as is attributable to an ineligible part (see section 124-790).
- (4) The first element of the \*reduced cost base is worked out similarly.

Example 1: Lyn exchanges 1 share with a cost base of \$10 for another share. The cost base of the new share is \$10.

Example 2: Glenn exchanges 2 shares with cost bases of \$10 and \$11 respectively for one new share. The cost base of the new share is \$21.

Example 3: Wayne exchanges 1 share with a cost base of \$9 for share A with a market value of \$5 and share B with a market value of \$10. The cost base of share A is \$3 and the cost base of share B is \$6.

### **124-790 Partial roll-over**

- (1) The original interest holder can obtain only a partial roll-over if its \*capital proceeds for its original interest include something (the *ineligible proceeds*) other than its replacement interest. There is no roll-over for that part (the *ineligible part*) of its original interest for which it received ineligible proceeds.
- (2) The \*cost base of the ineligible part is that part of the cost base of your original interest as is reasonably attributable to it.

Example: Ken owns 100 shares in Aim Ltd. Those shares have a cost base of \$2.

Ken accepts an offer from LBZ Ltd to acquire those shares. The offer is 1 share in LBZ (market value \$4) plus \$1 for each Aim share.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-795

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Ken chooses the roll-over to the extent that he can.

The cost base of the ineligible part is  $[\$100 \times \$200] \div \$500 = \$40$ .

Ken makes a capital gain of  $\$100 - \$40 = \$60$ .

**124-795 Exceptions**

- (1) You cannot obtain the roll-over if, just before you stop owning your original interest, you are a foreign resident unless, just after you \*acquire your replacement interest, the replacement interest is \*taxable Australian property.
- (2) You cannot obtain the roll-over if:
  - (a) any \*capital gain you might make from your replacement interest would be disregarded (except because of a roll-over); or
  - (b) you and the acquiring entity are members of the same \*wholly-owned group just before you stop owning your original interest and the acquiring entity is a foreign resident.

Example: An example of a capital gain or loss being disregarded as mentioned in paragraph (2)(a) is because the asset is trading stock.

Note: A roll-over may be available under Subdivision 126-B in the circumstances mentioned in paragraph (2)(b).

- (3) You cannot obtain the roll-over for the \*CGT event happening in relation to the exchange of your original interest if you can choose a roll-over under Division 122 or Subdivision 124-G for that event.

Note: Division 122 deals with the disposal of assets to a wholly-owned company, and Subdivision 124-G deals with company reorganisation.

- (4) You cannot obtain the roll-over for the \*CGT event happening in relation to the exchange of your qualifying interest if:
  - (a) the replacement entity makes a choice to that effect under this subsection; and
  - (b) that entity or the original entity notifies you in writing of the choice before the exchange.

**124-800 Interest received for pre-CGT interest**

- (1) If, in consequence of the \*arrangement, you exchange an interest that you \*acquired before 20 September 1985 for an interest in the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



replacement entity, the first element of the \*cost base and \*reduced cost base of the interest in the replacement entity is its \*market value just after you acquired it.

- (2) The \*cost base and \*reduced cost base of the interest in the replacement entity is reduced if all or part of a \*capital gain from \*CGT event K6 happening is disregarded because of subsection 104-230(10). The amount of the reduction is the amount of the \*capital gain you disregard under that subsection.

Note 1: The full list of CGT events is in section 104-5.

Note 2: Subsection 104-230(10) provides that a capital gain from CGT event K6 is disregarded to the extent that you could have chosen a roll-over under this Subdivision if your original interest had been post-CGT.

### **124-810 Certain companies and trusts not regarded as having 300 members or beneficiaries**

- (1) For the purposes of this Subdivision, a company is treated as if it did not have at least 300 \*members if subsection (3) or (5) applies to it.
- (2) For the purposes of this Subdivision, a trust is treated as if it did not have at least 300 beneficiaries if subsection (4) or (5) applies to it.

#### *Concentrated ownership*

- (3) This subsection applies to a company if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, \*shares in the company:
- (a) carrying fixed entitlements to:
    - (i) at least 75% of the company's income; or
    - (ii) at least 75% of the company's capital; or
  - (b) carrying at least 75% of the voting rights in the company.
- (4) This subsection applies to a trust if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, units or other fixed interests in the trust:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-810

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- (a) carrying \*fixed entitlements to:
  - (i) at least 75% of the trust's income; or
  - (ii) at least 75% of the trust's capital; or
- (b) if beneficiaries of the trust have a right to vote in respect of activities of the trust—carrying at least 75% of those voting rights.

*Possible variation of rights etc.*

- (5) This subsection applies to a company or trust if, because of:
  - (a) any provision in the entity's constituent document, or in any contract, agreement or instrument:
    - (i) authorising the variation or abrogation of rights attaching to any of the \*shares, units or other fixed interests in the entity; or
    - (ii) relating to the conversion, cancellation, extinguishment or redemption of any of those interests; or
  - (b) any contract, \*arrangement, option or instrument under which a person has power to acquire any of those interests; or
  - (c) any power, authority or discretion in a person in relation to the rights attaching to any of those shares, units or interests;it is reasonable to conclude that the rights attaching to any of those interests are capable of being varied or abrogated in such a way (even if they are not in fact varied or abrogated in that way) that, directly or indirectly, subsection (3) or (4) would apply to the entity.

*Single individual*

- (6) For the purposes of subsections (3) and (4), all of the following are taken to be a single individual:
  - (a) an individual, whether or not the individual holds \*shares, units or other interests in the entity concerned;
  - (b) the individual's \*associates;
  - (c) for any shares, units or interests in respect of which other individuals are nominees of the individual or of the individual's associates—those other individuals.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 124-N—Disposal of assets by a trust to a company

### Guide to Subdivision 124-N

#### 124-850 What this Subdivision is about

Entities can choose to obtain a roll-over if:

- (a) a trust disposes of all of its assets to a company;  
and
- (b) units and interests in the trust are replaced by  
shares in the company.

The roll-over may also be available for 2 or more trusts disposing of all their assets to a single company.

Note: The effect of the roll-over may be reversed if the trust does not cease to exist within 6 months: see section 104-195.

#### Table of sections

##### Operative provisions

124-855	What this Subdivision deals with
124-860	Requirements for roll-over
124-865	Entities both choose the roll-over
124-870	Roll-over for owner of units or interests in a trust
124-875	Effect on the transferor and transferee

#### Operative provisions

##### 124-855 What this Subdivision deals with

- (1) A roll-over may be available for a restructuring (a **trust restructure**) if:
  - (a) a trust, or 2 or more trusts, (the **transferor**) \*dispose of all of their \*CGT assets to a company limited by \*shares (the **transferee**); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-860

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- (b) \*CGT event E4 is capable of applying to all of the units and interests in the transferor; and
- (c) the requirements in section 124-860 are met.

Note: A roll-over is not available for a restructure undertaken by a discretionary trust.

- (2) For 2 or more transferors, units and interests in each transferor must be owned in the same proportions by the same beneficiaries.

Example: Matthew and Jaclyn each own 50% of the units in the Spring Unit Trust and the Dale Unit trust. All of the assets of both trusts are disposed of to Jonathon Pty Ltd. A roll-over for a trust restructure is available if the other requirements of this Subdivision are met.

### 124-860 Requirements for roll-over

- (1) All of the \*CGT assets owned by the transferor must be disposed of to the transferee during the \*trust restructuring period. However, ignore any CGT assets retained by the transferor to pay existing or expected debts of the transferor.
  - (2) The *trust restructuring period* for a trust restructure:
    - (a) starts just before the first \*CGT asset is \*disposed of to the transferee under the trust restructure, which must happen on or after 11 November 1999; and
    - (b) ends when the last CGT asset of the transferor is disposed of to the transferee.
  - (3) The transferee must not be an \*exempt entity.
  - (4) The transferee must be a company that:
    - (a) has never carried on commercial activities; and
    - (b) has no \*CGT assets other than small amounts of cash or debt; and
    - (c) has no losses of any kind.
- Example: It could be a shelf company.
- (5) Subsection (4) does not apply to a transferee that is the trustee of the transferor.
  - (6) Just after the end of the \*trust restructuring period:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) each entity that owned interests in a transferor just before the start of the trust restructuring period must own replacement interests in the transferee in the same proportion as it owned those interests in that transferor; and
- (b) the \*market value of the replacement interests each of those entities owns in the transferee must be at least substantially the same as the market value of the interests it owned in the transferor or transferors just before the start of the trust restructuring period.

Note: Any assets in the company just before the start of the trust restructuring period may affect the ability of owners of units or interests to comply with paragraph (6)(b).

- (7) For the purposes of subsection (6), ignore any \*shares in the transferee that:
  - (a) just before the start of the \*trust restructuring period, were owned by entities who together owned no more than 5 shares; and
  - (b) just after the end of that period, represented such a low percentage of the total \*market value of all the shares that it is reasonable to treat other entities as if they owned all the shares in the transferee.

Example: To continue the example in subsection 124-855(2), assume that Jonathon Pty Ltd was a shelf company organised for Matthew and Jaclyn by their solicitor, Indira.

Indira owned the 2 shares in Jonathon Pty Ltd before the trust restructuring period. The company issues Matthew and Jaclyn 5,000 shares each.

In these circumstances, it is reasonable to treat Matthew and Jaclyn as if they owned all the shares in Jonathon Pty Ltd.

### **124-865 Entities both choose the roll-over**

A roll-over is only available for the transferor and transferee if both the transferor and transferee choose to obtain it.

Note 1: If they do so, the consequences for the transferor and transferee are set out in section 124-875.

Note 2: An entity that owns a unit or interest in the transferor can also choose to obtain a roll-over: see section 124-870.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 124-870 Roll-over for owner of units or interests in a trust

- (1) You can choose to obtain a roll-over (whether or not the transferor and transferee choose to obtain a roll-over, and even if \*CGT event J4 applies) if:
- (a) you own units or interests in the transferor (your *original interests*); and
  - (b) the ownership of all your units or interests ends under a trust restructure in exchange for \*shares in the transferee (your *replacement interests*).

Note 1: The roll-over consequences are set out in Subdivision 124-A. The original assets are your units and interests in the transferor. The new assets are your shares in the transferee.

Note 2: The effect of the roll-over may be reversed if the transferor does not cease to exist within 6 months: see section 104-195.

- (2) You must make the choice for each of your original interests.
- (3) An entity that is a foreign resident cannot choose a roll-over under this section unless the replacement interests the entity \*acquires in the transferee are \*taxable Australian property just after their acquisition.
- (4) If you choose a roll-over, you cannot make a \*capital loss from a \*CGT event that happens to your original interests during the \*trust restructuring period.

Note: The rule in subsection (4) prevents a capital loss arising on your units or interests after the trust assets have been disposed of to the company but before your shares are issued to you.

*Exception: trading stock*

- (5) This section does not apply to your ownership of an original interest ending if:
- (a) the interest was an item of your \*trading stock and the corresponding replacement interest becomes an item of your trading stock when you \*acquire it; or
  - (b) the interest was not an item of your trading stock but the corresponding replacement interest becomes an item of your trading stock when you acquire it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **124-875 Effect on the transferor and transferee**

#### *Capital gains and losses disregarded*

- (1) Any \*capital gain or \*capital loss from \*CGT event A1 happening to the transferor under the trust restructure is disregarded (even if \*CGT event J4 applies).

Note: The effect of the roll-over may be reversed if the transferor does not cease to exist within 6 months: see section 104-195.

#### *Cost base is transferred*

- (2) The first element of the \*cost base and \*reduced cost base (for the transferee) of each \*CGT asset that the transferee \*acquires under the trust restructure is the same as the cost base and reduced cost base of that asset (for the transferor) just before that acquisition.

Note: For the cost base and reduced cost base of interests in the transferee: see Subdivision 124-A.

#### *Pre-CGT assets retain their status*

- (3) If the transferor \*acquired any of the \*CGT assets \*disposed of to the transferee under the trust restructure before 20 September 1985, the transferee is taken to have acquired it before that day.
- (4) However, subsection (3) is taken never to have applied to such an asset of the transferee if subsection 104-195(4) (CGT event J4) applies to the transferee in relation to the asset.

#### *Exception: trading stock*

- (5) This section does not apply to a \*CGT asset if:
- (a) the asset was an item of \*trading stock of the transferor and becomes an item of trading stock of the transferee; or
  - (b) the asset was not an item of trading stock of the transferor but becomes an item of trading stock of the transferee when the transferee \*acquires it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-880

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*Exception: asset must be taxable Australian property for foreign resident transferee*

- (6) For a transferee that is a foreign resident, this section only applies to a \*CGT asset that is \*taxable Australian property just after the transferee \*acquires it under the trust restructure.

**Subdivision 124-O—FSR (financial services reform) transitions**

**Table of sections**

**Same owner roll-overs**

- 124-880 Old licence roll-over (same owner)  
124-885 Qualified licence roll-over (same owner)  
124-890 Rights roll-over (same owner)  
124-895 Consequences of a same owner roll-over

**New owner roll-overs**

- 124-900 Old licence roll-over (new owner)  
124-905 Qualified licence roll-over (new owner)  
124-910 Rights roll-over (new owner)  
124-915 Consequences of a new owner roll-over (where one CGT asset comes to an end)  
124-920 Consequences of a new owner roll-over (where more than one CGT asset comes to an end)

**Extension of FSR transition period**

- 124-925 Special extension of the 10 March 2004 cut-off date (same owner roll-overs)  
124-930 Special extension of the 10 March 2004 cut-off date (new owner roll-overs)

**Same owner roll-overs**

**124-880 Old licence roll-over (same owner)**

There is a roll-over if:

- (a) you apply for an \*Australian financial services licence during the period beginning on 11 March 2002 and ending on 10 March 2004; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) at the time you make the application, you hold one or more licences, registrations, approvals, authorities or other similar things (the *old licence or licences*) that give you the status of a regulated principal within the meaning of section 1430 of the *Corporations Act 2001*; and
- (c) you are granted an Australian financial services licence as a result of the application; and
- (d) that licence covers some or all of the activities that the old licence or licences authorised you to carry on; and
- (e) the old licence or licences cease to have effect (whether wholly or partly):
  - (i) when the Australian financial services licence is granted to you; or
  - (ii) if the Australian financial services licence is granted to you after 10 March 2004—on 10 March 2004.

Note: The period in paragraph (a) may be extended in special circumstances: see section 124-925. If it is extended, the day in subparagraph (e)(ii) changes too.

### **124-885 Qualified licence roll-over (same owner)**

There is a roll-over if:

- (a) you apply for an \*Australian financial services licence during the period beginning on 11 March 2002 and ending on 10 March 2004; and
- (b) at the time you make the application, you hold an Australian financial services licence to which section 1434 of the *Corporations Act 2001* applies (the *qualified licence*); and
- (c) you are granted an Australian financial services licence as a result of the application (the *new licence*); and
- (d) if the new licence is granted on or before 10 March 2004—the qualified licence is revoked as a result of the new licence being granted to you; and
- (e) if the new licence is granted after 10 March 2004:
  - (i) the qualified licence ceases to have effect on 10 March 2004; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) if the new licence had been granted on or before 10 March 2004, the qualified licence would have been revoked as a result of the new licence being granted.

Note: The period in paragraph (a) may be extended in special circumstances: see section 124-925. If it is extended, the day in paragraphs (d) and (e) changes too.

### 124-890 Rights roll-over (same owner)

There is a roll-over if:

- (a) one or more intangible \*CGT assets owned by you cease to exist during the period beginning on 11 March 2002 and ending on 10 March 2004; and
- (b) the asset or assets cease to exist because of the termination of one or more contracts; and
- (c) the termination is directly connected with Chapter 7 of the *Corporations Act 2001* (as amended by the *Financial Services Reform Act 2001*) beginning to apply to you; and
- (d) you acquire one or more intangible CGT assets by entering into one or more contracts in substitution (whether wholly or partly) for the contract or contracts that were terminated.

Note: The period in paragraph (a) may be extended in special circumstances: see section 124-925.

### 124-895 Consequences of a same owner roll-over

- (1) In each situation covered by section 124-880, 124-885 or 124-890, where:
  - (a) your ownership of one or more \*CGT assets (the *original asset or assets*) comes to an end; and
  - (b) you acquire one or more CGT assets (the *replacement asset or assets*);the consequences of that section applying are the consequences specified in Subdivision 124-A, with the modifications set out below.
- (2) The first element of the \*cost base and \*reduced cost base of each replacement asset includes any amount you paid to get the replacement asset (which can include giving property: see

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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section 103-5). This subsection does not apply if subsection (3) applies.

Note: If subsection (3) applies, any amount you paid to get the replacement asset is included in the cost base and reduced cost base by subsection (5).

- (3) In a situation where subsection 124-15(5) would otherwise apply (where you \*acquired some original assets before 20 September 1985 and some on or after that date), use subsections (4) to (7) of this section instead of subsections 124-15(5) and (6).
- (4) Each replacement asset, or part of a replacement asset, to the extent that it relates to one or more original assets that were \*acquired before 20 September 1985, is taken to be:
  - (a) a separate asset; and
  - (b) acquired before 20 September 1985.
- (5) The first element of the \*cost base of each replacement asset that you are not taken to have \*acquired before 20 September 1985 is the sum of:
  - (a) the amount worked out under the formula in subsection (6); and
  - (b) either:
    - (i) any amount you paid to get the replacement asset (which can include giving property: see section 103-5); or
    - (ii) for a replacement asset, part of which is treated as a separate asset under subsection (4)—such part of any amount you paid to get the asset (which can include giving property: see section 103-5) as is reasonably attributable to the part of the asset that you are not taken to have acquired before 20 September 1985.
- (6) The formula is:
$$\frac{\text{The total of the *cost bases of the original assets that you *acquired on or after 20 September 1985}}{\text{The number of replacement assets that you are not taken to have *acquired before 20 September 1985}}$$

Note: If an original asset is an old licence that ceases to have effect only partly, subsection (8) modifies this formula.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-900

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- (7) The first element of each replacement asset's \*reduced cost base is worked out similarly.
- (8) If, in a situation covered by section 124-880, an old licence mentioned in that section ceases to have effect only partly, then:
  - (a) a reference in Subdivision 124-A to the original asset's \*cost base; and
  - (b) the reference in subsection (6) of this section to the total of the \*cost bases of the original assets;is taken to be a reference to such part of the cost base of the old licence as is reasonably attributable to the part of the old licence that ceases to have effect.

### New owner roll-overs

#### 124-900 Old licence roll-over (new owner)

- (1) There is a roll-over if:
  - (a) a person (the *new owner*) applies for an \*Australian financial services licence during the period beginning on 11 March 2002 and ending on 10 March 2004; and
  - (b) at the time the application is made, another person (the *original owner*) holds one or more licences, registrations, approvals, authorities or other similar things (the *old licence or licences*) that give the original owner the status of a regulated principal within the meaning of section 1430 of the *Corporations Act 2001*; and
  - (c) the new owner is granted an Australian financial services licence as a result of the application; and
  - (d) if the Australian financial services licence is granted on or before 10 March 2004—the old licence or licences cease to have effect (whether wholly or partly) because, as a result of the Australian financial services licence being granted to the new owner, the original owner starts to be covered by an exemption under subsection 911A(2) of the *Corporations Act 2001* (or would be so covered by an exemption if that subsection applied) in respect of the original owner's regulated activities (within the meaning of section 1430 of the *Corporations Act 2001*); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (e) if the Australian financial services licence is granted after 10 March 2004:
  - (i) the old licence or licences cease to have effect (whether wholly or partly) on 10 March 2004; and
  - (ii) if the Australian financial services licence had been granted before 10 March 2004, the old licence or licences would have ceased to have effect (whether wholly or partly) for the reason mentioned in paragraph (d); and
- (f) subsection (2) or (3) applies.

Note: The period in paragraph (1)(a) may be extended in special circumstances: see section 124-930. If it is extended, the day in paragraphs (d) and (e) changes too.

- (2) This subsection applies if the new owner and the original owner are members of the same \*consolidatable group at the time that the new owner \*acquires the \*Australian financial services licence.
- (3) This subsection applies if:
  - (a) at the time that the new owner \*acquires the \*Australian financial services licence, all of the following apply:
    - (i) the new owner is a company or a trust;
    - (ii) if the new owner is a trust—\*CGT event E4 is capable of applying to all of the units and interests in the trust;
    - (iii) all of the \*membership interests in the new owner are owned by the original owner; and
  - (b) the original owner is an individual who, at the same time as, or just after, the new owner acquires the Australian financial services licence:
    - (i) becomes an authorised representative (within the meaning of section 761A of the *Corporations Act 2001*) of the new owner; or
    - (ii) becomes an employee of the new owner; or
    - (iii) becomes a director (within the meaning of the *Corporations Act 2001*) of the new owner.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**124-905 Qualified licence roll-over (new owner)**

- (1) There is a roll-over if:
- (a) a person (the *new owner*) applies for an \*Australian financial services licence during the period beginning on 11 March 2002 and ending on 10 March 2004; and
  - (b) at the time the application is made, another person (the *original owner*) holds an Australian financial services licence to which section 1434 of the *Corporations Act 2001* applies (the *qualified licence*); and
  - (c) the new owner is granted an Australian financial services licence as a result of the application (the *new licence*); and
  - (d) if the new licence is granted on or before 10 March 2004—the qualified licence is revoked as a result of the new licence being granted to the new owner; and
  - (e) if the new licence is granted after 10 March 2004:
    - (i) the qualified licence ceases to have effect on 10 March 2004; and
    - (ii) if the new licence had been granted on or before 10 March 2004, the qualified licence would have been revoked as a result of the new licence being granted; and
  - (f) subsection (2) or (3) applies.
- Note: The period in paragraph (1)(a) may be extended in special circumstances: see section 124-930. If it is extended, the day in paragraphs (d) and (e) changes too.
- (2) This subsection applies if the new owner and the original owner are members of the same \*consolidatable group at the time that the new owner \*acquires the new licence.
- (3) This subsection applies if:
- (a) at the time that the new owner \*acquires the new licence, all of the following apply:
    - (i) the new owner is a company or a trust;
    - (ii) if the new owner is a trust—\*CGT event E4 is capable of applying to all of the units and interests in the trust;
    - (iii) all of the \*membership interests in the new owner are owned by the original owner; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the original owner is an individual who, at the same time as, or just after, the new owner acquires the new licence:
  - (i) becomes an authorised representative (within the meaning of section 761A of the *Corporations Act 2001*) of the new owner; or
  - (ii) becomes an employee of the new owner; or
  - (iii) becomes a director (within the meaning of the *Corporations Act 2001*) of the new owner.

### **124-910 Rights roll-over (new owner)**

- (1) There is a roll-over if:
  - (a) one or more intangible \*CGT assets owned by a person (the **original owner**) cease to exist during the period beginning on 11 March 2002 and ending on 10 March 2004; and
  - (b) the asset or assets cease to exist because of the termination of one or more contracts; and
  - (c) the termination is directly connected with the original owner choosing that another person (the **new owner**) will conduct, in place of the original owner, the business of the original owner in relation to which Chapter 7 of the *Corporations Act 2001* (as amended by the *Financial Services Reform Act 2001*) is to apply; and
  - (d) the new owner acquires one or more intangible CGT assets by entering into one or more contracts in substitution (whether wholly or partly) for the contract or contracts that were terminated; and
  - (e) subsection (2) or (3) applies.

Note: The period in paragraph (1)(a) may be extended in special circumstances: see section 124-930.

- (2) This subsection applies if the new owner and the original owner are members of the same \*consolidatable group at the time that the new owner \*acquires the \*CGT asset or assets mentioned in paragraph (1)(d).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-915

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- (3) This subsection applies if:
- (a) at the time that the new owner \*acquires the \*CGT asset or assets mentioned in paragraph (1)(d), all of the following apply:
    - (i) the new owner is a company or a trust;
    - (ii) if the new owner is a trust—\*CGT event E4 is capable of applying to all of the units and interests in the trust;
    - (iii) all of the \*membership interests in the new owner are owned by the original owner; and
  - (b) the original owner is an individual who, at the same time as, or just after, the new owner acquires the Australian financial services licence:
    - (i) becomes an authorised representative (within the meaning of section 761A of the *Corporations Act 2001*) of the new owner; or
    - (ii) becomes an employee of the new owner; or
    - (iii) becomes a director (within the meaning of the *Corporations Act 2001*) of the new owner.

**124-915 Consequences of a new owner roll-over (where one CGT asset comes to an end)**

- (1) In each situation covered by section 124-900, 124-905 or 124-910, where:
- (a) a person's (the *original owner's*) ownership of one \*CGT asset (the *original asset*) comes to an end; and
  - (b) another person (the *new owner*) acquires one or more \*CGT assets (the *replacement asset or assets*);
- the consequences of that section applying are the consequences specified in this section.
- (2) A \*capital gain or a \*capital loss that the original owner makes from a \*CGT event happening to the original asset is disregarded.
- (3) If the original owner \*acquired the original asset on or after 20 September 1985, the first element of each replacement asset's \*cost base is the sum of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the amount worked out under the formula in subsection (4);  
and
  - (b) any amount the new owner paid to get the replacement asset  
(which can include giving property: see section 103-5).
- (4) The formula is:
- $$\frac{\text{The original asset's *cost base (worked out when the original owner's ownership of it ended)}}{\text{The number of replacement asstes}}$$
- Note: If the original asset is an old licence that ceases to have effect only partly, subsection (7) modifies this formula.
- (5) The first element of each replacement asset's \*reduced cost base is worked out similarly.
  - (6) If the original owner \*acquired the original asset before 20 September 1985, the new owner is taken to have acquired each replacement asset before that day.
  - (7) If, in a situation covered by section 124-900, an old licence mentioned in that section ceases to have effect only partly, then the reference in subsection (4) of this section to the original asset's \*cost base is taken to be a reference to such part of the cost base of the old licence as is reasonably attributable to the part of the old licence that ceases to have effect.

### **124-920 Consequences of a new owner roll-over (where more than one CGT asset comes to an end)**

- (1) In each situation covered by section 124-900, 124-905 or 124-910, where:
  - (a) a person's (the *original owner's*) ownership of more than one \*CGT asset (the *original asset or assets*) comes to an end; and
  - (b) another person (the *new owner*) acquires one or more \*CGT assets (the *replacement asset or assets*);the consequences of that section applying are the consequences set out in this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-920

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- (2) A \*capital gain or a \*capital loss that the original owner makes from a \*CGT event happening to any of the original assets is disregarded.
- (3) If the original owner \*acquired all the original assets on or after 20 September 1985, the first element of each replacement asset's \*cost base is the sum of:
- (a) the amount worked out under the formula in subsection (4); and
  - (b) any amount the new owner paid to get the replacement asset (which can include giving property: see section 103-5).
- (4) The formula is:
- $$\frac{\text{The total of the *cost bases of all the original assets (worked out when the original owner's ownership of them ended)}}{\text{The number of replacement assets}}$$
- Note: If an original asset is an old licence that ceases to have effect only partly, subsection (11) modifies this formula.
- (5) The first element of each replacement asset's \*reduced cost base is worked out similarly.
- (6) If the original owner \*acquired all the original assets before 20 September 1985, the new owner is taken to have acquired each replacement asset before that day.
- (7) If the original owner \*acquired some of the original assets before 20 September 1985, each replacement asset, or part of a replacement asset, to the extent that it relates to one or more original assets that were \*acquired before 20 September 1985, is taken to be:
- (a) a separate asset; and
  - (b) acquired before 20 September 1985.
- (8) If subsection (7) applies, the first element of the \*cost base of each replacement asset that is not taken to have been \*acquired before 20 September 1985 is the sum of:
- (a) the amount worked out under the formula in subsection (9); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) either:

- (i) any amount the new owner paid to get the replacement asset (which can include giving property: see section 103-5); or
- (ii) for a replacement asset, part of which is treated as a separate asset under subsection (7)—such part of any amount the new owner paid to get the asset (which can include giving property: see section 103-5) as is reasonably attributable to the part of the asset that is not taken to have been acquired before 20 September 1985.

(9) The formula is:

$$\frac{\text{The total of the *cost bases of the original assets that the original owner *acquired on or after 20 September 1985}}{\text{The number of replacement assets that are not taken to have been *acquired before 20 September 1985}}$$

Note: If an original asset is an old licence that ceases to have effect only partly, subsection (11) modifies this formula.

- (10) The first element of each replacement asset's \*reduced cost base is worked out similarly.
- (11) If, in a situation covered by section 124-900, an old licence mentioned in that section ceases to have effect only partly, then a reference in subsection (4) or (9) of this section to the original asset's \*cost base is taken to be a reference to such part of the cost base of the old licence as is reasonably attributable to the part of the old licence that ceases to have effect.

## Extension of FSR transition period

### 124-925 Special extension of the 10 March 2004 cut-off date (same owner roll-overs)

If the Australian Securities and Investments Commission makes a declaration that provides for the relevant old legislation (within the meaning of section 1430 of the *Corporations Act 2001*) to continue to apply to you until the end of the period declared by the Commission, then:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-930

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- (a) the period mentioned in paragraphs 124-880(a), 124-885(a) and 124-890(a) is modified in its application to you so that it ends on the last day of the period declared by the Commission; and
- (b) subparagraph 124-880(e)(ii) and paragraphs 124-885(d) and (e) are modified in their application to you so that the day mentioned in those subparagraphs is the last day of the period declared by the Commission.

**124-930 Special extension of the 10 March 2004 cut-off date (new owner roll-overs)**

If the Australian Securities and Investments Commission makes a declaration that provides for the relevant old legislation (within the meaning of section 1430 of the *Corporations Act 2001*) to continue to apply to a person who is an original owner mentioned in section 124-900, 124-905 or 124-910 until the end of the period declared by the Commission, then:

- (a) the period mentioned in paragraphs 124-900(1)(a), 124-905(1)(a) and 124-910(1)(a) is modified in its application to that person so that it ends on the last day of the period declared by the Commission; and
- (b) paragraphs 124-900(1)(d) and (e) and 124-905(1)(d) and (e) are modified in their application to that person so that the day mentioned in those subparagraphs is the last day of the period declared by the Commission.

**Subdivision 124-P—Exchange of a membership interest in an MDO for a membership interest in another MDO**

**Guide to Subdivision 124-P**

**124-975 What this Subdivision is about**

You can choose a roll-over if you exchange your interest as a member of an MDO for an interest as a member of another MDO.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

You can only choose the roll-over if you would have made a capital gain from the exchange.

## Table of sections

### Operative provisions

124-980	Exchange of membership interests in an MDO
124-985	What the roll-over is for post-CGT interests
124-990	Partial roll-over
124-995	Pre-CGT interests

## Operative provisions

### 124-980 Exchange of membership interests in an MDO

- (1) There is a roll-over if:
  - (a) an entity exchanges:
    - (i) an interest (the *original interest*) in an \*MDO (the *original MDO*) as a member of the original MDO; for
    - (ii) a similar interest (the *replacement interest*) in another MDO (the *new MDO*) as a member of the new MDO; and
  - (b) both the original MDO and the new MDO are companies limited by guarantee; and
  - (c) the exchange is in consequence of a single \*arrangement that satisfies subsection (3); and
  - (d) apart from the roll-over, the entity would make a \*capital gain from a \*CGT event happening in relation to its original interest; and
  - (e) the entity chooses to obtain the roll-over; and
  - (f) the entity acquired the original interest on or after 20 September 1985.

Note: The entity can obtain only a partial roll-over if the capital proceeds for its original interest include something other than its replacement interest: see section 124-990.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-985

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- (2) In working out whether an original interest is exchanged for a similar interest, disregard a difference that consists only of a right to receive distributions of income or capital.

*Conditions for arrangement*

- (3) The \*arrangement must:
  - (a) result in the new \*MDO becoming the sole \*member of the original MDO; and
  - (b) be one in which participation was available on substantially the same terms for all of the holders of interests as members of the original MDO of a particular type.

**124-985 What the roll-over is for post-CGT interests**

- (1) A \*capital gain the entity makes from an original interest \*acquired on or after 20 September 1985 is disregarded.
- (2) The entity works out the first element of the \*cost base of each replacement interest the entity received as a result of the exchange by reasonably attributing to it the cost base (or the part of it) of the entity's original interest for which it was exchanged and for which the entity obtained the roll-over.
- (3) In applying subsection (2), the entity reduces (but not below zero) the \*cost base of the original interest (just before stopping owning it) by so much of that cost base as is attributable to an ineligible part (see section 124-990).
- (4) The first element of the \*reduced cost base of a replacement interest is worked out similarly.

**124-990 Partial roll-over**

- (1) The entity can obtain only a partial roll-over if its \*capital proceeds for its original interest include something (the *ineligible proceeds*) other than its replacement interest. There is no roll-over for that part (the *ineligible part*) of its original interest for which it received ineligible proceeds.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The \*cost base of the ineligible part is that part of the cost base of the original interest as is reasonably attributable to it.

### **124-995 Pre-CGT interests**

If the entity exchanges an original interest that the entity \*acquired before 20 September 1985 for its replacement interest, the first element of the \*cost base and \*reduced cost base of the replacement interest is zero.

### **Subdivision 124-Q—Exchange of stapled ownership interests for ownership interests in a unit trust**

#### **Guide to Subdivision 124-Q**

#### **124-1040 What this Subdivision is about**

There is a roll-over if you own ownership interests that are stapled and, as a result of a reorganisation, you stop owning those interests and you acquire or own ownership interests in an interposed unit trust.

#### **Table of sections**

##### **Operative provisions**

- 124-1045 Exchange of stapled securities
- 124-1050 Conditions
- 124-1055 Consequences of the roll-over for exchanging members
- 124-1060 Consequences of the roll-over for interposed trust
- 124-1065 Certain foreign holders disregarded

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### 124-1045 Exchange of stapled securities

- (1) There is a roll-over if:
- (a) you own \*ownership interests in 2 or more trusts, or in one or more companies and one or more trusts, and those interests are stapled together to form stapled securities; and
  - (b) at least one of the trusts is a trust whose trustee is not assessed and liable to pay tax under Division 6B or 6C of Part III of the *Income Tax Assessment Act 1936*; and
  - (c) if no company is involved—at least one of the trusts is a trust whose trustee is assessed and liable to pay tax under Division 6B or 6C of Part III of that Act; and
  - (d) under a \*scheme for reorganising the affairs of the relevant \*stapled entities, you and the other entities that own the ownership interests in the stapled entities (together the *exchanging members*):
    - (i) stop being the owner of those ownership interests and acquire ownership interests in a new unit trust (the *interposed trust*) and nothing else (a *new trust case*); or
    - (ii) retain their ownership interests in one of those trusts (also the *interposed trust*), stop being the owner of the remaining ownership interests that form the stapled securities and receive nothing other than ownership interests in the interposed trust, or an increase in value of their existing ownership interests in the interposed trust, or both (an *existing trust case*); and
  - (e) under the scheme, the interposed trust becomes the owner of:
    - (i) for a new trust case—all of the ownership interests in the stapled entities; or
    - (ii) for an existing trust case—all of the ownership interests in the other stapled entities; and
  - (f) the conditions in section 124-1050 are satisfied.

Note: Division 6B of Part III of the *Income Tax Assessment Act 1936* deals with taxing corporate unit trusts in the same way as companies. Division 6C has the same effect in relation to public trading trusts.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (2) An entity is a *stapled entity* in relation to stapled securities if \*ownership interests in the entity form part of the stapled securities.
- (3) Ignore for the purposes of subsection (1) \*ownership interests held by one \*stapled entity in another stapled entity as at the start of the day on which the Bill for this Act was introduced into the Parliament.

### **124-1050 Conditions**

- (1) Just after the \*scheme is completed (the *completion time*), each exchanging member must own a percentage of the \*ownership interests in the interposed trust that reasonably equates to the percentage of the ownership interests that the member owned in the \*stapled entities.

Example: Public Company A, Unit Trust No. 1 and Unit Trust No. 2 are stapled entities. Each stapled entity has 4,000 ownership interests on issue. There are no ownership interests in any of the stapled entities other than shares in the company and units in the trusts.

Under a scheme for reorganising the stapled entities, Unit Trust No. 3 is interposed between the stapled entities and the owners of the interests in those entities. Unit Trust No. 3 (the interposed trust) becomes the owner of all of the interests in each of the three stapled entities. Exchanging members receive one unit in the interposed trust for each stapled security they owned. All units in the interposed trust are of the same class.

Naomi owned 200 shares in Public Company A, 200 units in Unit Trust No. 1 and 200 units in Unit Trust No. 2. Naomi therefore owned 5% of the ownership interests in each of the stapled entities. Under the scheme, Naomi receives 100 units in Unit Trust No. 3 (out of a total of 2,000 units) in exchange for her ownership interests in the stapled entities. Naomi now owns 5% of the ownership interests in the interposed trust and meets the condition in subsection (1).

- (2) Just after the completion time, each exchanging member must have the same, or as nearly as practicable the same, proportionate \*market value of \*ownership interests in the interposed trust as the member had in the \*stapled entities just before that time.
- (3) In working out whether an exchanging member complies with subsection (2), an anticipated reasonable approximation of the \*market value of \*ownership interests just after the completion time is sufficient.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-1055

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Note: An anticipated reasonable approximation of market values of ownership interests may include valuations provided to exchanging members in scheme documents.

- (4) You must be an Australian resident at the completion time or, if you are a foreign resident at that time:
- (a) some or all of your \*ownership interests in the \*stapled entities must have been \*taxable Australian property just before that time; and
  - (b) your ownership interests in the interposed trust must be taxable Australian property just after that time.

**124-1055 Consequences of the roll-over for exchanging members**

- (1) A \*capital gain or \*capital loss you make as a result of the \*scheme from each of your \*ownership interests is disregarded.
- (2) If you \*acquired all of your \*ownership interests in the \*stapled entities on or after 20 September 1985, the first element of the \*cost base and \*reduced cost base of each of your ownership interests in the interposed trust is such amount as is reasonable having regard to:
  - (a) the total of the \*cost bases of all of your ownership interests in the \*stapled entities; and
  - (b) the number, \*market value and character of your ownership interests in the interposed trust.

Example: Naomi had a cost base of \$2.00 for each of her 200 Public Company A shares, \$1.50 for each of her 200 Unit Trust No. 1 units and \$0.50 for each of her 200 Unit Trust No. 2 units. The total of the cost bases of all of her membership interests is \$800.00.

It is reasonable to allocate \$8.00 to each of the 100 units in the interposed trust that she receives under the reorganisation.

- (3) If you \*acquired all of your \*ownership interests in the \*stapled entities before 20 September 1985, you are taken to have acquired all of your ownership interests in the interposed trust before that day.
- (4) If you \*acquired some of your \*ownership interests in the \*stapled entities before 20 September 1985, you are taken to have acquired

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

so many of your ownership interests in the interposed trust as is reasonable before that day having regard to:

- (a) the number, \*market value and character of your ownership interests in the stapled entities; and
- (b) the number, market value and character of your ownership interests in the interposed trust.

Note: Generally, a capital gain or capital loss from a CGT asset acquired before 20 September 1985 can be disregarded: see Division 104.

- (5) The first element of the \*cost base and \*reduced cost base of each of your \*ownership interests in the interposed trust that is not taken by subsection (4) to have been \*acquired before 20 September 1985 (your *post-CGT interests*) is such amount as is reasonable having regard to:
  - (a) the total of the cost bases of your ownership interests in the \*stapled entities that you acquired on or after 20 September 1985; and
  - (b) the number, \*market value and character of your post-CGT interests.

#### **124-1060 Consequences of the roll-over for interposed trust**

- (1) Apply this section separately for the interposed trust in relation to the \*ownership interests in each \*stapled entity that the trustee of the interposed trust \*acquires under the \*scheme.
- (2) A whole number of \*ownership interests in a \*stapled entity that the trustee \*acquires under the \*scheme are taken to have been acquired before 20 September 1985 if any of the stapled entity's assets as at the completion time were acquired by it before that day.

Note: Generally, a capital gain or capital loss from a CGT asset acquired before 20 September 1985 can be disregarded: see Division 104.
- (3) The number (worked out as at the completion time) is the greatest possible that (when expressed as a percentage of all the \*ownership interests in the \*stapled entity \*acquired by the trustee) does not exceed:
  - (a) the \*market value of the stapled entity's assets that it acquired before 20 September 1985; less

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-1065

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- (b) its liabilities (if any) in respect of those assets; expressed as a percentage of the market value of all the stapled entity's assets less all of its liabilities. The amounts in paragraphs (a) and (b) are to be worked out as at the completion time.
- (4) The first element of the \*cost base and \*reduced cost base of each of the trustee's \*ownership interests in that \*stapled entity that are not taken by subsection (3) to have been \*acquired before 20 September 1985 is such proportion as is reasonable of the total of the cost bases (as at the completion time) of that stapled entity's assets that it acquired on or after that day less its liabilities (if any) in respect of those assets.
- (5) In applying this section:
  - (a) a liability of a \*stapled entity that is not a liability in respect of a specific asset or assets of the stapled entity is a liability in respect of all the assets of the stapled entity; and
  - (b) if a liability is in respect of 2 or more assets, the proportion of the liability that is in respect of any one of those assets is such amount as is reasonable having regard to the \*market values of each of those assets.

**124-1065 Certain foreign holders disregarded**

- (1) This section has effect if:
  - (a) \*ownership interests are owned by a foreign holder within the meaning of the *Corporations Act 2001*; and
  - (b) an agent or nominee is appointed by (or on behalf of) the foreign holder; and
  - (c) the interests are \*disposed of to the interposed trust, or are cancelled; and
  - (d) as a result, the agent or nominee acquires new units or new options, rights or similar interests, or both, in the interposed trust; and
  - (e) the agent or nominee disposes of those ownership interests in the interposed trust (whether separately or together with other ownership interests covered by paragraph (d)); and
  - (f) the agent or nominee:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) gives the foreign holder an amount equivalent to the \*capital proceeds of the disposal (less expenses); or
  - (ii) if the ownership interests are disposed of together with other ownership interests covered by paragraph (d)— gives the foreign holder an amount equivalent to the foreign holder's proportion of the capital proceeds of the disposal (less expenses).
- (2) This Subdivision has effect as if the foreign holder were not an exchanging member.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 125—Demerger relief**

### **Table of Subdivisions**

	Guide to Division 125
125-A	Object of this Division
125-B	Consequences for owners of interests
125-C	Consequences for members of demerger group
125-D	Corporate unit trusts and public trading trusts

### **Guide to Division 125**

#### **125-1 What this Division is about**

Entities can obtain CGT relief for a demerger.

Owners of ownership interests in the head entity of a demerger group can obtain a roll-over to defer CGT consequences for the CGT events that happen to their interests under the demerger (see Subdivision 125-B).

Capital gains and capital losses made by members of the demerger group from certain CGT events that happen under the demerger are disregarded (see Subdivision 125-C).

Note: Dividend relief is also available: see section 44 of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 125-A—Object of this Division

### Table of sections

125-5 Object of this Division

### 125-5 Object of this Division

The object of this Division is to facilitate the demerging of entities by ensuring that capital gains tax considerations are not an impediment to restructuring a \*business.

## Subdivision 125-B—Consequences for owners of interests

### Guide to Subdivision 125-B

#### 125-50 Guide to Subdivision 125-B

You can choose to obtain a roll-over if a CGT event happens to your interests in a company or trust because of a demerger of an entity from the group of which the company or trust is the head entity.

There are cost base adjustments if you receive new interests under a demerger and no CGT event happens to your original interests.

### Table of sections

#### Operative provisions

125-55 When a roll-over is available for a demerger  
125-60 Meaning of *ownership interest* and related terms  
125-65 Meanings of *demerger group*, *head entity* and *demerger subsidiary*  
125-70 Meanings of *demerger*, *demerged entity* and *demerging entity*  
125-75 Exception: employee share schemes  
125-80 What is the roll-over?  
125-85 Cost base adjustments where CGT event happens but no roll-over chosen  
125-90 Cost base adjustments where no CGT event  
125-95 No other cost base adjustment after demerger  
125-100 No further demerger relief in some cases

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Operative provisions

### 125-55 When a roll-over is available for a demerger

- (1) You can choose to obtain a roll-over if:
- (a) you own an \*ownership interest in a company or trust (your *original interest*); and
  - (b) the company or trust is the \*head entity of a \*demerger group; and
  - (c) a \*demerger happens to the demerger group; and
  - (d) under the demerger, a \*CGT event happens to your original interest and you \*acquire a new or replacement interest (your *new interest*) in the \*demerged entity.

Note 1: Section 125-80 sets out what the roll-over is.

Note 2: You have to make cost base adjustments even if there is no CGT event: see section 125-90.

Example: Peter owns shares (his original interests) in Company A, a public company. Company B is a wholly owned subsidiary of Company A. Company A announces a demerger utilising a proportionate capital reduction and the disposal of all its shares in Company B to its 320,000 shareholders. Following the demerger all of the shareholders in Company A, including Peter, will own all of the shares in Company B (their new interests).

- (2) You cannot choose to obtain a roll-over under this Subdivision for an original interest if:
- (a) you are a foreign resident; and
  - (b) the new interest you \*acquire under the \*demerger in exchange for that original interest is not \*taxable Australian property just after you acquire it.

Note: For *taxable Australian property*, see section 855-15.

### 125-60 Meaning of *ownership interest* and related terms

- (1) An *ownership interest* in a company or trust is:
- (a) for a company, a \*share in the company or an option, right or similar interest issued by the company that gives the owner an entitlement to \*acquire a share in the company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) for a trust, a unit or other interest in the trust or an option, right or similar interest issued by the trustee that gives the owner an entitlement to acquire a unit or other interest in the trust.
- (2) However, this Subdivision applies to a \*dual listed company voting share in a company that is the \*head entity of a \*demerger group as if it were not an **ownership interest** if there are not more than 5 of those \*shares in the company.
- (3) A **dual listed company voting share** is a \*share in a company:
- (a) issued:
    - (ii) as part of a \*dual listed company arrangement; and
    - (iii) mainly for the purpose of ensuring that shareholders of both companies involved in the arrangement vote as a single decision-making body on matters affecting them; and
  - (b) that does not carry rights to financial entitlements (except the return of the amount paid up on the share and a dividend that is the equivalent of a dividend paid on an ordinary share).
- (4) A **dual listed company arrangement** is an \*arrangement under which 2 publicly listed companies, while maintaining their separate legal entity status, shareholdings and listings, align their strategic directions and the economic interests of their respective shareholders through:
- (a) the appointment of common (or almost identical) boards of directors; and
  - (b) management of the operations of the 2 companies on a unified basis; and
  - (c) the shareholders of both companies voting in effect as a single decision-making body on substantial issues affecting their combined interests; and
  - (d) equalised distributions to shareholders in accordance with an equalisation ratio applying between the 2 companies, both generally and in the event of a winding up of one or both of the companies; and
  - (e) cross-guarantees as to, or similar financial support for, each other's substantial obligations or operations, except where

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 125-65

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the effect of the relevant regulatory requirements prevents those guarantees or that financial support.

- (5) However, an arrangement is not a *dual listed company arrangement* unless one but not both of the companies is an Australian resident.

**125-65 Meanings of *demerger group*, *head entity* and *demerger subsidiary***

- (1) A *demerger group* comprises the \*head entity of the group and one or more \*demerger subsidiaries.

Note: An entity may be a member of one or more demerger groups.

- (2) A trust cannot be a member of a *demerger group* unless \*CGT event E4 is capable of applying to all of the units and interests in the trust.

Note: A discretionary trust cannot be a member of a demerger group.

- (3) A company or trust is the *head entity* of a \*demerger group if no other member of the group owns \*ownership interests in the company or trust.

- (4) If apart from this subsection, a company or trust would be the \*head entity of a \*demerger group and the company or trust, and all of its \*demerger subsidiaries, are also demerger subsidiaries of another company or trust in another demerger group, the first-mentioned company or trust is not the *head entity* of a demerger group.

- (5) A company or trust (the *first company or trust*) that would, apart from this subsection, be a member of a *demerger group* is not a member of the *demerger group* if:

- (a) the first company or trust owns, either alone or together with another company or trust that would, apart from this subsection, be a member of the \*demerger group, more than 20% but less than 80% of the \*ownership interests in a \*listed public company or \*listed widely held trust; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the listed public company or listed widely held trust chooses that the first company or trust not be a member of the demerger group.
- (6) A company is a *demerger subsidiary* of another company or a trust that is a member of a \*demerger group if the other company or the trust, either alone or together with other members of the group, owns, or has the right to \*acquire, \*ownership interests in the company that carry between them:
  - (a) the right to receive more than 20% of any distribution of income or capital by the company; or
  - (b) the right to exercise, or control the exercise of, more than 20% of the voting power of the company.
- (7) A trust is a *demerger subsidiary* of another trust or a company that is a member of a \*demerger group if the other trust or the company, either alone or together with other members of the group, owns, or has the right to \*acquire, \*ownership interests in the trust that carry between them the right to receive more than 20% of any distribution of income or capital by the trustee.

#### **125-70 Meanings of *demerger*, *demerged entity* and *demerging entity***

- (1) A *demerger* happens to a \*demerger group if:
  - (a) there is a restructuring of the demerger group; and
  - (b) under the restructuring:
    - (i) members of the demerger group \*dispose of at least 80% of their total \*ownership interests in another member of the demerger group to owners of original interests in the \*head entity of the demerger group; or
    - (ii) at least 80% of the total ownership interests of members of the demerger group in another member of the demerger group end and new interests are issued to owners of original interests in the head entity; or
    - (iii) the demerged entity issues sufficient new ownership interests in itself with the result that owners of original interests in the head entity own at least 80% of the total ownership interests in the demerged entity; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 125-70

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- (iv) some combination of the processes referred to in subparagraphs (i), (ii) and (iii) happens with the effect that members of the demerger group stop owning at least 80% of the total ownership interests owned by members of the demerger group in another member of the group; and

Note: CGT event C2 and CGT event C3 are the only relevant CGT events in a subparagraph (ii) case.

- (c) under the restructuring:
  - (i) a \*CGT event happens to an original interest owned by an entity in the head entity of the group and the entity \*acquires a new interest and nothing else; or
  - (ii) no CGT event happens to an original interest owned by an entity in the head entity of the group and the entity acquires a new interest and nothing else; and
- (d) the acquisition by entities of new interests happens only because those entities own or owned original interests; and
- (e) the new interests acquired are:
  - (i) if the head entity is a company—ownership interests in a company; or
  - (ii) if the head entity is a trust—ownership interests in a trust; and
- (g) neither the original interests nor the new interests are in a trust that is a \*superannuation fund; and
- (h) the requirements of subsection (2) are met.

Example: To continue the example from subsection 125-55(1), Peter owns 400 post-CGT shares in Company A. Companies A and B are both members of a demerger group. Company A is the head entity of the demerger group and Company B is a demerger subsidiary.

Company A proceeds to demerge 100% of its shares in Company B to its shareholders.

Company A enters into a proportionate capital reduction, returning 40 cents per share to its ordinary shareholders. Peter is entitled to \$160 (40c times 400 shares) under the capital reduction.

For Peter, the capital reduction amount of \$160 is compulsorily applied to acquire Company A's shares in Company B, at \$6.75 (a discount of 10% to current market value). Company A rounds up the fractional amounts in calculating the number of whole shares to be distributed to each shareholder. This gives Peter 24 shares in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Company B (160 divided by 6.75, rounded up to the nearest whole number).

Note: Acquiring new interests by an owner of original interests may include the allocation of the owner's entitlement to new interests to a nominee:

- to sell on the owner's behalf; or
- to hold pending the owner being located.

- (2) Each owner (an *original owner*) of original interests in the \*head entity of the \*demerger group must:
- (a) \*acquire, under the \*demerger, the same proportion, or as nearly as practicable the same proportion, of new interests in the \*demerged entity as the original owner owned in the head entity just before the demerger; and
  - (b) just after the demerger, have the same proportionate total \*market value of \*ownership interests in the head entity and demerged entity as the original owner owned in the head entity just before the demerger.

Note 1: There is an exception: see section 125-75.

Note 2: Dual listed company voting shares are not treated as ownership interests: see section 125-60.

Note 3: Fractional interests will generally not affect your ability to choose a roll-over.

Example: To continue the example from subsection (1), Company A concludes, given the circumstances of the demerger, that the market values of Peter's and the other shareholders' shares in A and B are expected to be in proportion with their original interests in Company A, and advises the shareholders of this position.

- (3) In working out whether an original owner complies with subsection (2):
- (a) disregard \*ownership interests that are original interests the owner owns in the \*demerged entity; and
  - (b) an anticipated reasonable approximation of the \*market value of ownership interests is sufficient.

Example: An anticipated reasonable approximation of market values of ownership interests may include:

- valuations provided to shareholders in scheme documents;
- the price selected for use under a sale facility;

and may be made by reference to long-term value.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 125-70

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*Exception: off-market buy-backs*

- (4) A buy-back of \*shares that is an off-market purchase for the purposes of Division 16K of Part III of the *Income Tax Assessment Act 1936* is not a \*demerger.

*Exception: roll-over available under another provision*

- (5) Circumstances where an owner of original interests can obtain a roll-over under a provision of this Act outside this Division for all of the CGT events that happened to the owner's original interests under the circumstances cannot be a **demerger**.

Note: An owner might be able to obtain a roll-over for the CGT events under Subdivision 124-E, 124-G, 124-H or 124-M.

*Meaning of demerged entity*

- (6) An entity that is a former member of a \*demerger group is a **demerged entity** if, under a \*demerger that happens to the group, \*ownership interests in the entity are acquired by:
- (a) shareholders in the \*head entity of the group; or
  - (b) unitholders or holders of interests in the head entity of the group.

*Meaning of demerging entity*

- (7) An entity that is a member of a \*demerger group just before the \*CGT event referred to in section 125-155 happens is a **demerging entity** if, under a \*demerger that happens to the group:
- (a) the entity (either alone or together with other members of the demerger group) \*dispose of at least 80% of their total \*ownership interests in another member of the demerger group to owners of original interests in the \*head entity of the demerger group; or
  - (b) at least 80% of the total ownership interests of that entity and of other members of the demerger group in another member of the demerger group end and new interests are issued to owners of original interests in the head entity; or

Note: CGT event C2 and CGT event C3 are the only relevant CGT events.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the demerged entity issues sufficient new ownership interests in itself with the result that owners of original interests in the head entity own at least 80% of the total ownership interests in the demerged entity; or
- (d) some combination of the processes referred to in paragraphs (a), (b) and (c) happens with the effect that members of the demerger group stop owning at least 80% of the total ownership interests owned by members of the demerger group in another member of the group.

### **125-75 Exceptions to subsection 125-70(2)**

#### *Employee share schemes*

- (1) In working out whether the requirements in subsection 125-70(2) are met, disregard each of the \*ownership interests described in subsections (2) and (3) if, just before the \*demerger, those interests (taking into account either or both of their number and value) represented not more than 3% of the total \*ownership interests in the entity.
- (2) An \*ownership interest in a company that is owned by an entity is disregarded under subsection (1) if the ownership interest:
  - (a) is:
    - (i) a \*qualifying share or a \*qualifying right \*acquired under an \*employee share scheme; or
    - (ii) a \*share acquired under a \*scheme to which section 26AAC of the *Income Tax Assessment Act 1936* applies; and
  - (b) is not a fully-paid ordinary share.
- (3) An \*ownership interest in a trust that is owned by an entity is disregarded under subsection (1) if the ownership interest:
  - (a) either:
    - (i) would be a \*qualifying share or a \*qualifying right \*acquired under an \*employee share scheme if Division 13A of Part III of the *Income Tax Assessment Act 1936* applied to ownership interests in a trust; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 125-75

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- (ii) forms part of a stapled security (within the meaning of that Division) that is treated as a qualifying share because of Subdivision DB of that Division; and
- (b) is not a fully-paid unit.

*Adjusting instruments*

- (4) In working out whether the requirements in subsection 125-70(2) are met, disregard each of the \*ownership interests described in subsection (5) (*adjusting instruments*) if, just before the \*demerger, those interests represented not more than 10%, or such greater percentage (not exceeding 17%) as is prescribed, of the ownership interests in the entity.
- (5) An \*ownership interest in a \*listed public company or a \*listed widely held trust that is the \*head entity of a \*demerger group is disregarded under subsection (4) if:
  - (a) the adjusting instrument was issued on terms that ensure that its value is not adversely affected by an \*arrangement undertaken by the company or trust in relation to other ownership interests in the company or trust; and
  - (b) if the adjusting instrument can be converted into an ordinary \*share in the company or an ordinary unit in the trust, any conversion will occur on a basis:
    - (i) that is set out in the terms of the issue of the instrument; and
    - (ii) that is adjusted to take into account a capital reduction or a capital reconstruction; and
  - (c) before conversion, the owner of the adjusting instrument does not have a right to participate in distributions of profit or capital except as set out in the terms of the issue of the instrument; and
  - (d) the adjusting instrument deals with the effect of a \*demerger that happens to the demerger group on the value of the instrument.

Example: Some examples of adjusting instruments are:

- convertible preference shares, including reset preference shares;
- convertible notes;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- partly paid shares where the paid-up amount is adjusted to reflect a capital reduction.

*Additional exceptions*

- (6) The regulations may provide that, in working out whether the requirements in subsection 125-70(2) are met, other \*ownership interests of a kind specified in the regulations are to be disregarded if, just before the \*demerger, those interests represented not more than a prescribed percentage of the ownership interests in the entity.
- (7) However, the total percentage of \*ownership interests to be disregarded under this section must not exceed 20% of the ownership interests in the entity.

**125-80 What is the roll-over?**

- (1) If you choose the roll-over, a \*capital gain or \*capital loss you make from a \*CGT event happening under the \*demerger to an original interest you own is disregarded.
- (2) If you choose the roll-over, the first element of the \*cost base and \*reduced cost base of:
  - (a) each new interest that you are not taken to have \*acquired before 20 September 1985; and
  - (b) if not all of your original interests ended under the \*demerger—each of your remaining original interests that you acquired on or after 20 September 1985;

is such proportion of the sum of the cost bases of all your original interests that you acquired on or after 20 September 1985 (worked out just before the demerger) as is reasonable having regard to the matters specified in subsection (3).

Note 1: These rules replace the cost base and reduced cost base adjustments in CGT event E4 and CGT event G1.

Note 2: The head entity or the demerging entity may advise you of the proportions.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 125-80

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- (3) The matters are:
- (a) the \*market values of your remaining original interests just after the \*demerger, or an anticipated reasonable approximation of those market values; and
  - (b) the market values of your new interests just after the demerger, or an anticipated reasonable approximation of those market values.

Example: To continue the example from subsection 125-70(2), Company A advises its shareholders that Company B at that time represents 5% of the market value of the group as a whole. Peter's cost base for each of his shares in A is \$4.60, and Peter recalculates his cost base as follows:

$$\text{Total cost base} = \$1840 \quad (4.60 \times 400 \text{ shares})$$

to be spread over 400 shares in A and 24 shares in B.

$$5\% \text{ of } 1840 = 92$$

$$92 \div 24 \text{ shares} = \$3.83 \text{ per B share}$$

$$1840 - 92 = 1748$$

$$1748 \div 400 = \$4.37 \text{ per A share}$$

*Pre-CGT interests*

- (4) The following subsections apply if you choose the roll-over and you \*acquired some or all of your original interests before 20 September 1985.
- (5) If you \*acquired all of your original interests before 20 September 1985, you are taken to have acquired all of your new interests before that day.
- (6) If you \*acquired some of your original interests before 20 September 1985, you are taken to have acquired a reasonable whole number of your new interests before that day having regard to:
  - (a) the \*market values of your original interests and your remaining original interests just after the \*demerger, or an anticipated reasonable approximation of those market values; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the market values of your new interests just after the demerger, or an anticipated reasonable approximation of those market values.
- (7) If a proportion, but not all, of your original interests ends under the \*demerger and you \*acquired some of your original interests before 20 September 1985, that same proportion of those interests you acquired before that day ends.

Note: CGT event K6 may be relevant if you later dispose of your interests that are treated as being pre-CGT.

Example: Bert owned 100 shares in a company of which 50 were acquired pre-CGT. Under a demerger 20 of Bert's 100 shares were cancelled in exchange for new interests. As 20% of his shares were cancelled, 10 of his pre-CGT shares are taken to have been cancelled.

*Partial roll-over*

- (8) If you choose a roll-over for some but not all of your original interests, you apply the rules in this section as if your original interests for which you chose the roll-over were your only original interests.

**125-85 Cost base adjustments where CGT event happens but no roll-over chosen**

- (1) You must adjust the \*cost base and \*reduced cost base of an \*ownership interest you own in a company or trust if:
- (a) a \*demerger happens to a \*demerger group of which the company or trust is a member; and
  - (b) you owned an original interest in the \*head entity of the demerger group just before the demerger; and
  - (c) a \*CGT event happens to the original interest and you \*acquire a new interest under the demerger; and
  - (d) you do not choose a roll-over under this Subdivision for the original interest.
- (2) The adjustments you must make are the same as the adjustments you would have to make under section 125-80 for the \*cost bases and \*reduced cost bases of the remaining original interests and new interests just after the \*CGT event if you could have chosen a

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 125-90

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roll-over under this Subdivision for the \*demerger and you had done so.

**125-90 Cost base adjustments where no CGT event**

- (1) You must adjust the \*cost base and \*reduced cost base of an \*ownership interest you own in a company or trust if:
  - (a) a \*demerger happens to a \*demerger group of which the company or trust is a member; and
  - (b) you owned an original interest in the \*head entity of the demerger group just before the demerger; and
  - (c) no \*CGT event happens to the original interest, but you \*acquire a new interest under the demerger.
- (2) The adjustments you must make are the same as the adjustments you would have to make under section 125-80 if you could have chosen a roll-over under this Subdivision for the \*demerger and you had done so.

**125-95 No other cost base adjustment after demerger**

If you have to make adjustments to the \*cost base and \*reduced cost base of your \*ownership interests under section 125-80, 125-85 or 125-90 because of a \*demerger, no other adjustment can be made under this Act to those cost bases and reduced cost bases because of something that happens under the demerger.

Note: Those sections deal with any value shift that might occur under the demerger and avoid the need for the general value shifting regime to apply.

**125-100 No further demerger relief in some cases**

This Division does not apply to the remaining \*ownership interests in a \*demerged entity if one or more members of the \*demerger group \*disposed of or cancelled less than 100% of the total ownership interests of that group in the demerged entity.

Note: After the demerger, a former member of the demerger group can undertake a further demerger to which this Division can apply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 125-C—Consequences for members of demerger group**

### **Guide to Subdivision 125-C**

#### **125-150 Guide to Subdivision 125-C**

Certain capital gains and capital losses that members of a demerger group make under a demerger are disregarded.

Certain capital losses made under a demerger are reduced where the demerger results in a value shift.

#### **Table of sections**

##### **Operative provisions**

125-155	Certain capital gains or losses disregarded for demerging entity
125-160	No CGT event J1
125-165	Adjusted capital loss for value shift under a demerger
125-170	Reduced cost base reduction if demerger asset subject to roll-over

#### **Operative provisions**

##### **125-155 Certain capital gains or losses disregarded for demerging entity**

Any \*capital gain or \*capital loss a \*demerging entity makes from \*CGT event A1, \*CGT event C2, \*CGT event C3 or \*CGT event K6 happening to its \*ownership interests in a \*demerged entity under a \*demerger is disregarded.

Note 1: The full list of CGT events is in section 104-5.

Note 2: This section will not apply if section 125-100 applies.

##### **125-160 No CGT event J1**

\*CGT event J1 does not happen to a \*demerged entity or a member of a \*demerger group under a \*demerger.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 125-165 Adjusted capital loss for value shift under a demerger

A \*capital loss made by an entity that was a member of a \*demerger group from a \*CGT event happening to a \*CGT asset under a \*demerger or after a demerger is reduced to the extent that the capital loss is reasonably attributable to a reduction in the \*market value of the asset because of the demerger.

Example: The market value of equity or loan interests in the demerging entity may be reduced by the disposal, for inadequate value, of ownership interests of another member of the demerger group to owners of original interests in the head entity of the group.

### 125-170 Reduced cost base reduction if demerger asset subject to roll-over

- (1) The \*reduced cost base of a \*CGT asset is reduced if:
  - (a) the \*market value of the asset is reduced because of a \*demerger; and
  - (b) after the demerger the asset is \*acquired by an entity from another entity (the *transferor*) in a situation where the transferor obtained a roll-over for the disposal; and
  - (c) the reduction occurred when the transferor owned the asset.
- (2) The \*reduced cost base of the asset as determined under the roll-over is reduced just after the roll-over to the extent of the reduction in \*market value caused by the \*demerger.

Note: The rules in section 125-165 and this section deal with any value shift that might occur under the demerger and avoid the need for the general value shifting regime to apply.

- (3) If the \*reduced cost base of a \*CGT asset is reduced under this section because of a \*demerger, no other adjustment can be made under this Act to that reduced cost base because of something that happens under the demerger.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 125-D—Corporate unit trusts and public trading trusts**

### **Guide to Subdivision 125-D**

#### **125-225 Guide to Subdivision 125-D**

<p>This Division applies to corporate unit trusts and public trading trusts as if they were companies.</p>
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#### **Table of sections**

##### **Operative provisions**

125-230 Application of Division to corporate unit trusts and public trading trusts

#### **Operative provisions**

##### **125-230 Application of Division to corporate unit trusts and public trading trusts**

This Division applies to a trust to which section 102K or 102S of the *Income Tax Assessment Act 1936* applies for an income year in which a \*demerger happens as if:

- (a) the trust were a company; and
- (b) \*ownership interests in it were interests in a company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 126—Same-asset roll-overs**

### **Table of Subdivisions**

	Guide to Division 126
126-A	Marriage or relationship breakdowns
126-B	Companies in the same wholly-owned group
126-C	Changes to trust deeds
126-D	Small superannuation funds
126-E	Entitlement to shares after demutualisation and scrip for scrip roll-over
126-F	Transfer of assets of superannuation funds to meet licensing requirements

### **Guide to Division 126**

#### **126-1 What this Division is about**

A same-asset roll-over allows a capital gain or loss an entity makes from disposing of a CGT asset to, or creating a CGT asset in, another entity to be disregarded. For a disposal, certain attributes of the asset are transferred to the receiving entity.

### **Subdivision 126-A—Marriage or relationship breakdowns**

#### **Table of sections**

126-5	CGT event involving spouses
126-15	CGT event involving company or trustee
126-20	Subsequent CGT event happening to roll-over asset where transferor was a CFC or a non-resident trust
126-25	Conditions for the purposes of subsections 126-5(3A) and 126-15(5)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



### 126-5 CGT event involving spouses

- (1) There is a roll-over if a \*CGT event (the *trigger event*) happens involving an individual (the *transferor*) and his or her \*spouse (the *transferee*), or a former \*spouse (also the *transferee*), because of:
- (a) a court order under the *Family Law Act 1975* or under a \*State law, \*Territory law or \*foreign law relating to breakdowns of relationships between spouses; or
  - (b) a maintenance agreement approved by a court under section 87 of the *Family Law Act 1975* or a corresponding agreement approved by a court under a corresponding \*foreign law; or
  - (d) something done under:
    - (i) a financial agreement made under Part VIIIA of the *Family Law Act 1975* that is binding because of section 90G of that Act; or
    - (ii) a corresponding written agreement that is binding because of a corresponding foreign law; or
  - (da) something done under:
    - (i) a Part VIIIAB financial agreement (within the meaning of the *Family Law Act 1975*) that is binding because of section 90UJ of that Act; or
    - (ii) a corresponding written agreement that is binding because of a corresponding foreign law; or
  - (e) something done under:
    - (i) an award made in an arbitration referred to in section 13H of the *Family Law Act 1975*; or
    - (ii) a corresponding award made in an arbitration under a corresponding State law, Territory law or foreign law; or
  - (f) something done under a written agreement:
    - (i) that is binding because of a State law, Territory law or foreign law relating to breakdowns of relationships between spouses; and
    - (ii) that, because of such a law, prevents a court making an order about matters to which the agreement applies, or that is inconsistent with the terms of the agreement in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 126-5

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relation to those matters, unless the agreement is varied or set aside.

- (2) Only these \*CGT events are relevant:
- (a) CGT events A1 and B1 (a *disposal case*); and
  - (b) CGT events D1, D2, D3 and F1 (a *creation case*).
- Note: The full list of CGT events is in section 104-5.
- (3) However, there is no roll-over if:
- (a) the \*CGT asset involved is \*trading stock of the transferor; or
  - (b) for \*CGT event B1—title in the CGT asset does not pass to the transferee at or before the end of the agreement.
- (3A) There is no roll-over because of paragraph (1)(d), (da) or (f) unless the conditions set out in section 126-25 are met.
- (4) A \*capital gain or a \*capital loss the transferor makes from the \*CGT event is disregarded.

*Consequences for the transferee (disposal case)*

- (5) For a disposal case where the transferor \*acquired the asset on or after 20 September 1985:
- (a) the *first* element of the asset's \*cost base (in the hands of the transferee) is the asset's cost base (in the hands of the transferor) at the time the transferee acquired it; and
  - (b) the *first* element of the asset's \*reduced cost base (in the hands of the transferee) is worked out similarly.

Example: Your spouse transfers land to you because of a court order under the *Family Law Act 1975*. Any capital gain or loss your spouse makes is disregarded.

If the land's cost base at the time you acquired it is \$10,000, the first element of the land's cost base in your hands becomes \$10,000.

Note 1: There are special indexation rules for roll-overs: see Division 114.

Note 2: A roll-over under this Subdivision may have an effect on the transferee's main residence exemption: see sections 118-178 and 118-180.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (6) For a disposal case where the transferor \*acquired the asset before 20 September 1985, the transferee is taken to have acquired it before that day.

Note: A capital gain or loss you make from a CGT asset you acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

- (7) For a disposal case where the transferor \*disposed of a \*collectable or \*personal use asset, the transferee is taken to have \*acquired one.

Note 1: Capital losses from collectables can be subtracted only from capital gains from collectables: see section 108-10.

Note 2: Capital losses from personal use assets are disregarded: see section 108-20.

*Consequences for the transferee (creation case)*

- (8) For a creation case, the *first* element of the asset's \*cost base (in the hands of the transferee) is the amount applicable under this table. The first element of its \*reduced cost base is worked out similarly.

<b>Creation case</b>	
<b>Event No.</b>	<b>Applicable amount</b>
D1	the *incidental costs the transferor incurred that relate to the trigger event
D2	the expenditure the transferor incurred to grant the option
D3	the expenditure the transferor incurred to grant the right
F1	the expenditure the transferor incurred on the grant, renewal or extension of the lease

The expenditure can include giving property: see section 103-5.

**126-15 CGT event involving company or trustee**

- (1) There are the roll-over consequences in section 126-5 if the trigger event involves a company (the *transferor*) or a trustee (also the *transferor*) and a \*spouse or former spouse (the *transferee*) of another individual because of:

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 126-15

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- (a) a court order under the *Family Law Act 1975* or under a \*State law, \*Territory law or \*foreign law relating to breakdowns of relationships between spouses; or
- (b) a maintenance agreement approved by a court under section 87 of the *Family Law Act 1975* or a corresponding agreement approved by a court under a corresponding \*foreign law; or
- (d) something done under:
  - (i) a financial agreement made under Part VIIIA of the *Family Law Act 1975* that is binding because of section 90G of that Act; or
  - (ii) a corresponding written agreement that is binding because of a corresponding foreign law; or
- (da) something done under:
  - (i) a Part VIIIAB financial agreement (within the meaning of the *Family Law Act 1975*) that is binding because of section 90UJ of that Act; or
  - (ii) a corresponding written agreement that is binding because of a corresponding foreign law; or
- (e) something done under:
  - (i) an award made in an arbitration referred to in section 13H of the *Family Law Act 1975*; or
  - (ii) a corresponding award made in an arbitration under a corresponding State law, Territory law or foreign law; or
- (f) something done under a written agreement:
  - (i) that is binding because of a State law, Territory law or foreign law relating to breakdowns of relationships between spouses; and
  - (ii) that, because of such a law, prevents a court making an order about matters to which the agreement applies, or that is inconsistent with the terms of the agreement in relation to those matters, unless the agreement is varied or set aside.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) There are other consequences if:
- (a) just before the time of the trigger event, an entity (including the transferee) owned another \*CGT asset of a kind covered by this table; and
  - (b) the entity \*acquired it on or after 20 September 1985; and
  - (c) a \*CGT event happens in relation to it.

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**Relevant CGT assets**

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Item	For this transferor:	The entity can own these assets:
1	Company	(a) a *share in the company; or (b) a loan to the company; or (c) an indirect interest (through one or more interposed companies or trusts) in a *share in, or loan to, the company
2	Trustee	(a) an interest or unit in the trust; or (b) a loan to the trustee; or (c) an indirect interest (through one or more interposed companies or trusts) in an interest or unit in the trust or in a loan to the trustee

Example: An individual owns all the shares in a company. The company owns land. The individual's marriage breaks down. The Family Court orders that the company transfer the land it owns to the individual's spouse. The individual later sells the shares.

- (3) The \*cost base and \*reduced cost base of the other asset are reduced by an amount that reasonably reflects the fall in its \*market value because of the trigger event. The reduction occurs at the time of the trigger event.
- (4) If the entity owning the other asset is also the transferee, the \*cost base and \*reduced cost base of the other asset are then increased by any amount that is included in the entity's assessable income for any income year because of the trigger event.

Note: The reduced cost base may be modified for a roll-over happening after a demerger: see section 125-170.

- (5) There is no roll-over because of paragraph (1)(d), (da) or (f) unless the conditions set out in section 126-25 are met.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**126-20 Subsequent CGT event happening to roll-over asset where transferor was a CFC or a non-resident trust**

- (1) This section applies if:
  - (a) there is a roll-over for the trigger event under section 126-15; and
  - (b) the transferor was:
    - (i) a \*CFC; or
    - (ii) a trustee of a trust that is a non-resident trust estate within the meaning of section 102AAB of the *Income Tax Assessment Act 1936* for the income year of the trigger event; and
  - (c) section 126-15 is relevant to:
    - (i) the calculation of the \*attributable income of the CFC under Division 7 of Part X of the *Income Tax Assessment Act 1936*; or
    - (ii) the calculation of the attributable income of the trust under Subdivision D of Division 6AAA of Part III of that Act;  
because (ignoring the residency assumptions in that Division or Subdivision) the roll-over asset was not \*taxable Australian property; and
  - (d) a subsequent \*CGT event happens in relation to the roll-over asset.
- (2) In working out the amount of any \*capital gain or \*capital loss the transferee (or a subsequent owner of the roll-over asset if there is a series of roll-overs until there is no roll-over) makes when a subsequent \*CGT event happens in relation to the asset, the modifications specified in Division 7 of Part X, or Subdivision D of Division 6AAA of Part III, of the *Income Tax Assessment Act 1936* apply.

**126-25 Conditions for the purposes of subsections 126-5(3A) and 126-15(5)**

- (1) The conditions referred to in subsections 126-5(3A) and 126-15(5) are that:
  - (a) at the time of the trigger event:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) the \*spouses, or former spouses, involved are separated;  
and
  - (ii) there is no reasonable likelihood of cohabitation being resumed; and
  - (b) the trigger event happened because of reasons directly connected with the breakdown of the relationship between the spouses or former spouses.
- (2) For the purposes of this section, the question whether \*spouses or former spouses have separated is to be determined in the same way as it is for the purposes of section 48 of the *Family Law Act 1975* (as affected by sections 49 and 50 of that Act).

### **Subdivision 126-B—Companies in the same wholly-owned group**

#### **Guide to Subdivision 126-B**

##### **126-40 What this Subdivision is about**

A roll-over may be available for the transfer of a CGT asset between 2 companies, or the creation of a CGT asset by one company in another, if:

- (a) both companies are members of the same wholly-owned group; and
- (b) at least one of the companies is a foreign resident.

##### **Table of sections**

###### **Operative provisions**

126-45	Roll-over for members of wholly-owned group
126-50	Requirements for roll-over
126-55	When there is a roll-over
126-60	Consequences of roll-over
126-75	Originating company is a CFC
126-85	Effect of roll-over on certain liquidations

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Operative provisions

### 126-45 Roll-over for members of wholly-owned group

- (1) There may be a roll-over if a \*CGT event (the *trigger event*) happens involving a company (the *originating company*) and another company (the *recipient company*) in the circumstances set out in section 126-50.
- (2) Only these \*CGT events are relevant:
  - (a) CGT events A1 and B1 (a *disposal case*); and
  - (b) CGT events D1, D2, D3 and F1 (a *creation case*).

Note: The full list of CGT events is in section 104-5.

- (3) However, there is no roll-over for \*CGT event B1 if title in the \*CGT asset does not pass to the transferee at or before the end of the agreement.

Note: CGT event J1 can happen if the recipient company stops being a 100% subsidiary of a company in the relevant group: see section 104-175.

### 126-50 Requirements for roll-over

- (1) The originating company and recipient company must be members of the same \*wholly-owned group at the time of the trigger event.

Note: This requirement is taken to be satisfied in the case of the transfer of the life insurance business of a life insurance company: see section 121AS of the *Income Tax Assessment Act 1936*.
- (2) The \*CGT asset involved (the *roll-over asset*) must not be \*trading stock of the recipient company just after the time of the trigger event.
- (3) If:
  - (a) the roll-over asset is a right or \*convertible interest referred to in Division 130, or an option referred to in Division 134, or an \*exchangeable interest; and
  - (b) the recipient company \*acquires another \*CGT asset by exercising the right or option or by converting the convertible

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- interest or in exchange for the disposal or redemption of the exchangeable interest;  
 the other asset cannot become \*trading stock of the recipient company just after the recipient company acquired it.
- (4) The \*ordinary income and \*statutory income of the recipient company must not be exempt from income tax because it is an \*exempt entity for the income year of the trigger event.
- (5) The requirements in one of the items in this table must be satisfied.

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**Additional requirements**

Item	At the time of the trigger event the originating company must be:	At the time of the trigger event the recipient company must be:	The roll-over asset must be taxable Australian property:
1	Either: (a) a foreign resident; or (b) an Australian resident but not a *prescribed dual resident	A foreign resident	Either: (a) just before and just after the trigger event, for a disposal case; or (b) just after that event, for a creation case
2	A foreign resident	An Australian resident but not a *prescribed dual resident	Either: (a) just before the trigger event, for a disposal case; or (b) just after that event, for a creation case

- (6) If the originating company or the recipient company is an Australian resident at the time of the trigger event, that company must:
- (a) be a \*member of a \*consolidated group or \*MEC group at that time; or
- (b) *not* be a member of a \*consolidatable group at that time.
- (7) If the originating company is a foreign resident, it must *not* have \*acquired the \*CGT asset described in subsection (8) because of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 126-55

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- (a) a single \*CGT event giving rise to a roll-over under a previous application of this Subdivision (as amended by the *New Business Tax System (Consolidation) Act (No. 1) 2002*) involving an Australian resident originating company other than the company that is the recipient company for the current application of this Subdivision; or
  - (b) a series (whether or not it is the longest possible series) of consecutive CGT events giving rise to roll-overs under previous applications of this Subdivision (as amended by the *New Business Tax System (Consolidation) Act (No. 1) 2002*), the earliest involving an Australian resident originating company other than the company that is the recipient company for the current application of this Subdivision.
- (8) Subsection (7) operates in relation to the \*CGT asset:
- (a) that was involved in the trigger event in a disposal case; or
  - (b) because of which the originating company was able to create the CGT asset that was involved in the trigger event in a creation case.
- (9) Subsection (7) does not apply if each of the following companies mentioned in that subsection:
- (a) the recipient company for the roll-over under the current application of this Subdivision;
  - (b) the Australian resident originating company for the roll-over under:
    - (i) for paragraph (7)(a)—the previous application of this Subdivision; or
    - (ii) for paragraph (7)(b)—the earliest previous application of this Subdivision for that series of consecutive \*CGT events;
- was, at the time of its roll-over, the \*head company of the same \*MEC group.

**126-55 When there is a roll-over**

*Capital gain or no loss*

- (1) There is a roll-over if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) either:
- (i) the trigger event would have resulted in the originating company making a \*capital gain, or making no \*capital loss and not being entitled to a deduction; or
  - (ii) the originating company \*acquired the roll-over asset before 20 September 1985; and
- (b) the originating company and recipient company both choose to obtain it.

Note: Section 103-25 sets out when the choice must be made.

### **126-60 Consequences of roll-over**

#### *Consequences for the originating company in all cases*

- (1) A \*capital gain the originating company makes from the trigger event is disregarded.

#### *Consequences for the recipient company (disposal case)*

- (2) For a disposal case, if the originating company \*acquired the roll-over asset on or after 20 September 1985:
- (a) the *first* element of the asset's \*cost base (in the hands of the recipient company) is the asset's cost base (in the hands of the originating company) when the recipient company acquired it; and
  - (b) the *first* element of the asset's \*reduced cost base (in the hands of the recipient company) is worked out similarly.

Note 1: There are special indexation rules for roll-overs: see Division 114.

Note 2: The reduced cost base may be modified for a roll-over happening after a demerger: see section 125-170.

- (3) If the originating company \*acquired the roll-over asset before 20 September 1985, the recipient company is taken to have acquired it before that day.

Note 1: A capital gain or loss you make from a CGT asset you acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see, for example, Division 149.

Note 2: Under section 716-855, where there have been certain roll-overs, the cost base and reduced cost base of pre-CGT assets for the purposes of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 126-75

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Part 3-90 (Consolidated groups) are worked out by applying subsection (2), rather than subsection (3), of this section.

- (4) If the trigger event involved a \*personal use asset of the originating company, the recipient company is taken to have \*acquired one.

*Consequences for the recipient company (creation case)*

- (5) For a creation case, the *first* element of the asset's \*cost base (in the hands of the recipient company) is the amount applicable under this table. The first element of its \*reduced cost base is worked out similarly.

<b>Creation case</b>	
<b>Event No.</b>	<b>Applicable amount</b>
D1	the *incidental costs the originating company incurred that relate to the trigger event
D2	the expenditure the originating company incurred to grant the option
D3	the expenditure the originating company incurred to grant the right
F1	the expenditure the originating company incurred on the grant, renewal or extension of the lease

The expenditure can include giving property: see section 103-5.

Note: CGT event J1 may occur if the recipient company stops being a member of the wholly-owned group while still owning the roll-over asset: see section 104-175.

**126-75 Originating company is a CFC**

- (1) This section applies if:
- (a) there is a roll-over for the trigger event under this Subdivision; and
  - (b) the originating company was a \*CFC at the time of the trigger event; and
  - (c) this Subdivision is relevant to the calculation of the \*attributable income of the originating company under Division 7 of Part X of the *Income Tax Assessment Act 1936*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- because (ignoring the residency assumptions in that Division) the roll-over asset was not \*taxable Australian property for the originating company; and
- (d) a subsequent \*CGT event happens in relation to the roll-over asset.
- (2) In working out the amount of any \*capital gain or \*capital loss the recipient company (or a subsequent owner of the roll-over asset if there is a series of roll-overs until there is no roll-over) makes when a subsequent \*CGT event happens in relation to the asset, the modifications specified in Division 7 of Part X of the *Income Tax Assessment Act 1936* apply.

### **126-85 Effect of roll-over on certain liquidations**

- (1) A \*capital gain a company (the *holding company*) makes because \*shares in its \*100% subsidiary are cancelled (an example of \*CGT event C2: see section 104-25) on the liquidation of the subsidiary is reduced if the conditions in subsection (2) are satisfied. The reduction is worked out under subsection (3).
- (2) These conditions must be satisfied:
- (a) there must be a roll-over under this Subdivision for at least one \*CGT asset that the subsidiary \*acquired on or after 20 September 1985 (the *CGT roll-over asset*) being \*disposed of by the subsidiary to the holding company in the course of the liquidation of the subsidiary;
  - (c) the disposals must either:
    - (i) be part of the liquidator's final distribution in the course of the liquidation; or
    - (ii) have occurred within 18 months of the dissolution of the subsidiary if they are part of an interim distribution in the course of the liquidation;
  - (d) the holding company must have beneficially owned all of the shares in the subsidiary for the whole period from the time of the disposal, or the first disposal, of a CGT roll-over asset until the cancellation of the shares;
  - (e) the \*market value of the CGT roll-over asset or assets must comprise at least part of the \*capital proceeds for the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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cancellation of the shares in the subsidiary that are beneficially owned by the holding company;

- (f) one or more of the shares that were cancelled (the *post-CGT shares*) must have been acquired by the holding company on or after 20 September 1985.

- (3) The reduction of the \*capital gain is worked out in this way.

*Method statement*

Step 1. Work out (disregarding this section) the sum of the \*capital gains and the sum of the \*capital losses the holding company would make on the cancellation of its shares in the subsidiary.

Step 2. Work out (disregarding this Subdivision):

- (a) the sum of the \*capital gains the subsidiary would make on the \*disposal of its CGT roll-over assets to the holding company; and
- (b) the sum of the \*capital losses it would make except for Subdivision 170-D on the disposal of its \*CGT assets to the holding company;

in the course of the liquidation assuming the \*capital proceeds were the assets' \*market values at the time of the disposal.

Step 3. If, after subtracting the sum of the \*capital losses from the sum of the \*capital gains, there is an overall capital gain from step 1 and an overall capital gain from step 2, then continue. Otherwise there is no adjustment.

Step 4. Express the number of post-CGT shares as a fraction of the total number of shares the holding company owned in the subsidiary.

Step 5. Multiply the overall \*capital gain from Step 2 by the fraction from Step 4.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Step 6. Reduce the overall \*capital gain from Step 1 by the amount from Step 5. The result is the \*capital gain the holding company makes from the cancellation of its shares in the subsidiary.

Note: This Subdivision is modified in calculating the attributable income of a CFC: see section 419 of the *Income Tax Assessment Act 1936*.

## Subdivision 126-C—Changes to trust deeds

### Guide to Subdivision 126-C

#### 126-125 What this Subdivision is about

This Subdivision sets out when there is a roll-over for a CGT event that happens because of an amendment to or replacement of the trust deed of a complying approved deposit fund, a complying superannuation fund or a fund that accepts worker entitlement contributions.

#### Table of sections

126-130	Changes to trust deeds
126-135	Consequences of roll-over

#### 126-130 Changes to trust deeds

- (1) There is a roll-over if:
  - (a) \*CGT event E1 or E2 happens in relation to a \*CGT asset because the trust deed of a \*complying approved deposit fund or \*complying superannuation fund is amended or replaced; and
  - (b) the amendment or replacement is done for the purpose of:
    - (i) complying with the *Superannuation Industry (Supervision) Act 1993*; or
    - (ii) enabling a \*complying approved deposit fund to become a \*complying superannuation fund; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 126-135

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- (c) the assets and members of the fund do not change as a consequence of the amendment or replacement.

Note: The full list of CGT events is in section 104-5.

(2) There is a roll-over if:

- (a) \*CGT event E1 or E2 happens in relation to a \*CGT asset because the trust deed of a fund is amended or replaced; and
- (b) the amendment or replacement is done for the purpose of having the fund approved as an approved worker entitlement fund under subsection 58PB(2) of the *Fringe Benefits Tax Assessment Act 1986*; and
- (c) the assets and members of the fund do not change as a consequence of the amendment or replacement.

Note: The full list of CGT events is in section 104-5.

**126-135 Consequences of roll-over**

- (1) A \*capital gain or \*capital loss made from the \*CGT event is disregarded.
- (2) If the fund that owned the \*CGT asset just before the time of the \*CGT event \*acquired it before 20 September 1985, the asset retains its status as a \*pre-CGT asset in the hands of the fund that owned it after the time of the event.
- (3) If the fund that owned the \*CGT asset just before the time of the \*CGT event \*acquired it on or after 20 September 1985:
  - (a) the first element of the asset's \*cost base (in the hands of the fund that owned the asset after the time of the event) is its cost base just before that time; and
  - (b) the first element of the asset's \*reduced cost base asset is worked out similarly; and
  - (c) the fund that owned the asset after the time of the event is taken to have acquired the asset at that time.

**Subdivision 126-D—Small superannuation funds**

**Table of sections**

126-140 CGT event involving small superannuation funds

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



## 126-140 CGT event involving small superannuation funds

### *Payment splits under Family Law Act*

- (1) There is a roll-over if:
- (a) an interest in a \*small superannuation fund is subject to a \*payment split; and
  - (b) the \*non-member spouse in relation to that interest serves a waiver notice under section 90MZA of the *Family Law Act 1975* in respect of that interest; and
  - (c) as a result of serving the notice, the trustee (the **transferor**) of the fund transfers a \*CGT asset to the trustee (the **transferee**) of another \*complying superannuation fund for the benefit of the non-member spouse.

Note: CGT event E2 may apply to the transfer.

### *Payment splits under the Superannuation Industry (Supervision) Regulations*

- (2) There is also a roll-over if:
- (a) an interest in a \*small superannuation fund (the **first fund**) is subject to a \*payment split; and
  - (b) as a result of the payment split, there is a transfer or roll over of benefits, for the benefit of the \*non-member spouse, from the first fund to another \*complying superannuation fund; and
  - (c) the transfer is under provisions of the Superannuation Industry (Supervision) Regulations 1994 dealing with superannuation interests that are subject to payment splits; and
  - (d) in order to give effect to the payment split, the trustee (the **transferor**) of the first fund transfers a \*CGT asset to the trustee (the **transferee**) of the other fund for the benefit of the non-member spouse.

Note: CGT event E2 may apply to the transfer.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Transfer of own interest in a small superannuation fund*

- (2A) There is also a roll-over if:
- (a) an individual has an interest in a \*small superannuation fund (the **first fund**); and
  - (b) the individual's \*spouse, or former spouse, also has an interest in the first fund; and
  - (c) the trustee (the **transferor**) of the first fund transfers a \*CGT asset to the trustee (the **transferee**) of another \*complying superannuation fund for the benefit of the individual; and
  - (d) the transfer is in accordance with an award, order or agreement mentioned in subsection (2B); and
  - (e) if the transfer is part of a series of transfers in accordance with the award, order or agreement—the individual will no longer have an interest in the first fund when the series of transfers is complete; and
  - (f) if the transfer is not part of a series of transfers in accordance with the award, order or agreement—as a result of the transfer, the individual no longer has an interest in the first fund; and
  - (g) there has not been a roll-over under subsection (1) or (2) or this subsection in relation to the transfer of another CGT asset from the first fund, where the transfer was:
    - (i) made because of the award, order or agreement; and
    - (ii) for the benefit of that spouse, or former spouse; and
  - (h) if the transfer is in accordance with an agreement mentioned in paragraph (2B)(d), (da) or (e), the conditions in subsection (2C) are satisfied.

Note: CGT event E2 may apply to the transfer.

- (2B) The awards, orders and agreements are:
- (a) an award made in an arbitration referred to in section 13H of the *Family Law Act 1975* or a corresponding award made in an arbitration under a corresponding \*State law, \*Territory law or \*foreign law; or
  - (b) a court order made under section 79, subsection 90AE(2) or 90AF(2) or section 90SM of the *Family Law Act 1975*; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) a court order made under a State law, Territory law or foreign law relating to breakdowns of relationships between \*spouses that corresponds to an order made under subsection 90AE(2) or 90AF(2) or section 90SM of the *Family Law Act 1975*; or
  - (d) a financial agreement made under Part VIIIA of the *Family Law Act 1975* that is binding because of section 90G of that Act or a corresponding written agreement that is binding because of a corresponding foreign law; or
  - (da) a Part VIIIAB financial agreement (within the meaning of the *Family Law Act 1975*) that is binding because of section 90UJ of that Act; or
  - (e) a written agreement:
    - (i) that is binding under a State law, Territory law or foreign law relating to breakdowns of relationships between spouses; and
    - (ii) that, because of such a law, prevents a court making an order about matters to which the agreement applies, or that is inconsistent with the terms of the agreement in relation to those matters, unless the agreement is varied or set aside.
- (2C) The conditions are that:
- (a) at the time of the transfer:
    - (i) the \*spouses, or former spouses, involved are separated; and
    - (ii) there is no reasonable likelihood of cohabitation being resumed; and
  - (b) the transfer happened because of reasons directly connected with the breakdown of the relationship between the spouses or former spouses.
- (2D) For the purposes of subsection (2C), the question whether \*spouses, or former spouses, have separated is to be determined in the same way as it is for the purposes of section 48 of the *Family Law Act 1975* (as affected by sections 49 and 50 of that Act).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 126-185

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*Roll-over consequences*

- (3) A \*capital gain or \*capital loss the transferor makes from the transfer of the asset is disregarded.
- (4) If the transferor \*acquired the asset on or after 20 September 1985:
  - (a) the first element of the asset's \*cost base (in the hands of the transferee) is the asset's cost base (in the hands of the transferor) at the time the transferee acquired it; and
  - (b) the first element of the asset's \*reduced cost base (in the hands of the transferee) is worked out similarly.
- (5) If the transferor \*acquired the asset before 20 September 1985, the transferee is taken to have acquired it before that day.

Note: A capital gain or loss you make from a CGT asset you acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

**Subdivision 126-E—Entitlement to shares after demutualisation and scrip for scrip roll-over**

**Guide to Subdivision 126-E**

**126-185 What this Subdivision is about**

This Subdivision sets out when there is a roll-over for a CGT event that happens because a beneficiary becomes absolutely entitled to a share as against the trustee where the trustee obtained a roll-over under Subdivision 124-M following a demutualisation.

**Table of sections**

**Operative provisions**

- 126-190 When there is a roll-over
- 126-195 Consequences of roll-over

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Operative provisions

### 126-190 When there is a roll-over

There is a roll-over if:

- (a) an insurance company demutualises; and
- (b) the trustee of a trust holds a \*share issued under the demutualisation in trust for an entity to whom the share would have been issued if the entity could, and were in a position to, prove the entity's entitlement to the share; and
- (c) the trustee obtains a roll-over under Subdivision 124-M of this Act (Scrip for scrip roll-over) for the share because the trustee exchanges the share for a share (the **replacement share**) in another company (whether or not the trustee receives something in addition to the replacement share); and
- (d) a \*CGT event happens in relation to the replacement share because the entity becomes absolutely entitled to the share as against the trustee.

Note: This Subdivision does not apply to the demutualisation of a private health insurer: see section 315-160.

### 126-195 Consequences of roll-over

- (1) A \*capital gain or \*capital loss the trustee makes from the \*CGT event is disregarded.
- (2) The first element of the \*cost base of the replacement share for the entity is the cost base of the replacement share in the hands of the trustee just before the \*CGT event happened. The first element of the \*reduced cost base of the replacement share for the entity is worked out similarly.

Example: The JB mutual insurance company demutualises, issuing shares in JB Limited to its policyholders. It is unable to locate some of its policyholders so it establishes a trust and issues shares to the trustee on behalf of those policyholders. Steve is one of those policyholders (being potentially entitled to 50 shares).

JB Limited is taken over by PVDM Limited. Members of JB are issued with 2 shares in PVDM for each share they have in JB. The trustee obtains a roll-over under Subdivision 124-M for the exchange. Each PVDM share held by the trustee has a cost base and reduced cost base of \$15.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 126-200

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Steve writes to the trustee and proves his entitlement to the shares held in trust for him.

There is a roll-over under this Subdivision so that any capital gain or loss made by the trustee is disregarded. The first element of the cost base and reduced cost base of each of Steve's PVDM shares is \$15.

**Subdivision 126-F—Transfer of assets of superannuation funds to meet licensing requirements**

**Guide to Subdivision 126-F**

**126-200 What this Subdivision is about**

There is a roll-over for the transfer of assets of a superannuation fund to one or more other superannuation funds that is made between 30 June 2004 and 1 July 2006 because the trustee of the first fund will not be licensed by 1 July 2006 and the other funds have or will have licensed trustees.

**Table of sections**

**Operative provisions**

- 126-205 Object of this Subdivision
- 126-210 When there is a roll-over and what its effects are

**Operative provisions**

**126-205 Object of this Subdivision**

The object of this Subdivision is to encourage compliance with the requirements of the *Superannuation Industry (Supervision) Act 1993* for the licensing of trustees of registrable superannuation entities.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## 126-210 When there is a roll-over and what its effects are

### *When there is a roll-over*

- (1) There is a roll-over if:
  - (a) after 30 June 2004 and before 1 July 2006, one or more \*CGT events happen because the trustee (the **first RSE trustee**) of a registrable superannuation entity, as defined in section 10 of the *Superannuation Industry (Supervision) Act 1993*, ceases to hold all its \*CGT assets; and
  - (b) because of the cessation, CGT assets (the **identical assets**) that, together, are identical to all the first RSE trustee's CGT assets just before the CGT events start to be held after 30 June 2004 and before 1 July 2006 by:
    - (i) the trustee (the **successor RSE trustee**) of another such registrable superannuation entity; or
    - (ii) the trustees (each of whom is a **successor RSE trustee**) of 2 or more other such registrable superannuation entities;(whether or not all the identical assets were the first RSE trustee's assets just before the CGT events); and
  - (c) the cessation and starting occur because:
    - (i) it is reasonable to assume that the first RSE trustee will not have an RSE licence under Part 2A of that Act by 1 July 2006; and
    - (ii) each successor RSE trustee has such an RSE licence, or it is reasonable to assume that each successor RSE trustee will have such an RSE licence by 1 July 2006.

Note: Under section 10 of the *Superannuation Industry (Supervision) Act 1993*, **registrable superannuation entity** is defined as covering certain kinds of superannuation funds, approved deposit funds and pooled superannuation trusts.

### *Effects of the roll-over*

- (2) A \*capital gain or \*capital loss the first RSE trustee makes from each of the \*CGT events is disregarded.
- (3) For a successor RSE trustee, the first element of the \*cost base of each of the identical assets the successor RSE trustee holds is the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

cost base of the corresponding asset for the first RSE trustee at the time of the relevant \*CGT event.

- (4) For a successor RSE trustee, the first element of the \*reduced cost base of each of the identical assets the successor RSE trustee holds is the reduced cost base of the corresponding asset for the first RSE trustee at the time of the relevant \*CGT event.

Example: There is a roll-over if the first RSE trustee had a block of land and 10,000 units in a unit trust and the following events happen on 30 June 2006 because the first RSE trustee does not have an RSE licence but each of the 2 successor RSE trustees (successor RSE trustee A and successor RSE trustee B) does:

- (a) the first RSE trustee transfers the block to successor RSE trustee A;
- (b) the first RSE trustee's units in the unit trust are cancelled at the first RSE trustee's request;
- (c) 10,000 identical units in the unit trust are issued to successor RSE trustee B because of the cancellation.

The first RSE trustee disregards any capital gain or capital loss from the transfer of the block or the cancellation of the units.

The first element of successor RSE trustee A's cost base and reduced cost base for the block is the same as the first RSE trustee's cost base and reduced cost base respectively for the block at the time of the transfer.

The first element of successor RSE trustee B's cost base and reduced cost base for the units issued to successor RSE trustee B is the same as the first RSE trustee's cost base and reduced cost base respectively for its units at the time they were cancelled.

- (5) A successor RSE trustee that starts to hold one of the identical assets because of the cessation is taken to have \*acquired the asset before 20 September 1985 if the first RSE trustee acquired the corresponding asset before that day.

Note 1: A capital gain or loss you make from a CGT asset you acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

Note 2: Subsection (5) cannot apply if the first RSE trustee was the trustee of a complying superannuation fund, complying approved deposit fund or pooled superannuation trust. This is because section 295-90 treats such a trustee as having acquired on 30 June 1988 any assets it owned on that day.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*No roll-over if successor RSE trustee not licensed*

- (6) A roll-over under this section is taken never to have happened if each successor RSE trustee does not have an RSE licence under Part 2A of the *Superannuation Industry (Supervision) Act 1993* by 1 July 2006.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 128—Effect of death**

### **Guide to Division 128**

#### **128-1 What this Division is about**

This Division sets out what happens when you die and a CGT asset you owned just before dying devolves to your legal personal representative or passes to a beneficiary in your estate.

It also contains rules about what happens when a joint tenant dies.

#### **General rules**

- 128-10 Capital gain or loss when you die is disregarded  
128-15 Effect on the legal personal representative or beneficiary  
128-20 When does an asset *pass* to a beneficiary?  
128-25 The beneficiary is a trustee of a superannuation fund etc.

#### **Special rules for joint tenants**

- 128-50 Joint tenants

### **General rules**

#### **128-10 Capital gain or loss when you die is disregarded**

When you die, a \*capital gain or \*capital loss from a \*CGT event that results for a \*CGT asset you owned just before dying is disregarded.

Note 1: Section 104-215 sets out an exception to this rule if the CGT asset passes to a beneficiary in your estate who is:

- an exempt entity; or
- the trustee of a complying superannuation entity; or
- a foreign resident.

Note 2: There is a special indexation rule for deceased estates: see section 114-10.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **128-15 Effect on the legal personal representative or beneficiary**

- (1) This section sets out what happens if a \*CGT asset you owned just before dying:
- (a) devolves to your \*legal personal representative; or
  - (b) \*passes to a beneficiary in your estate.

Note 1: Section 128-25 has different rules if the asset passes to a beneficiary in your estate who is the trustee of a complying superannuation entity.

Note 2: If the beneficiary is an exempt entity, Division 57 of Schedule 2D to the *Income Tax Assessment Act 1936* has rules about exempt entities that become taxable. It sets out what the entity is taken to have purchased its assets for when it becomes taxable.

Note 3: If the beneficiary is a foreign resident, Subdivision 855-B sets out what happens if the beneficiary becomes an Australian resident. The beneficiary is taken to have acquired each asset owned just before becoming an Australian resident for the market value of the asset at that time.

- (2) The \*legal personal representative, or beneficiary, is taken to have \*acquired the asset on the day you died.

#### *Special rule for legal personal representative*

- (3) Any \*capital gain or \*capital loss the \*legal personal representative makes if the asset \*passes to a beneficiary in your estate is disregarded.

#### *Cost base rules for both*

- (4) This table sets out the modifications to the \*cost base and \*reduced cost base of the \*CGT asset in the hands of the \*legal personal representative or beneficiary.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 128-15

**Modifications to cost base and reduced cost base**

<b>Item</b>	<b>For this kind of CGT asset:</b>	<b>The first element of the asset's cost base is:</b>	<b>The first element of the asset's reduced cost base is:</b>
1	One you *acquired on or after 20 September 1985, except one covered by item 2, 3 or 3A	the *cost base of the asset on the day you died	the *reduced cost base of the asset on the day you died
2	One that was *trading stock in your hands just before you died	the amount worked out under section 70-105	the amount worked out under section 70-105
3	A *dwelling that was your main residence just before you died, and was not then being used for the *purpose of producing assessable income	the *market value of the *dwelling on the day you died	the market value of the *dwelling on the day you died
3A	If you were a foreign resident just before you died—an asset that was not *taxable Australian property just before you died, except one covered by item 2	the *market value of the asset on the day you died	the market value of the asset on the day you died
4	One you *acquired before 20 September 1985	the *market value of the asset on the day you died	the market value of the asset on the day you died

Note 1: Section 70-105 has a general rule that the person on whom the trading stock devolves is taken to have bought it for its market value. There are some exceptions though.

Note 2: Subdivision 118-B contains other rules about dwellings acquired through deceased estates.

Note 3: The rule in item 3 in the table does not apply to a dwelling that devolved to your legal personal representative, or passed to a beneficiary in your estate, on or before 7.30 pm on 20 August 1996: see section 128-15 of the *Income Tax (Transitional Provisions) Act 1997*.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Further rule for a beneficiary*

- (5) A beneficiary can include in the \*cost base or \*reduced cost base of the asset any expenditure that the \*legal personal representative *would* have been able to include at the time the asset \*passes to the beneficiary. The beneficiary can include the expenditure on the day the representative incurred it.

Example: You die on 1 May 1995 owning land. On 15 June 1995 your legal personal representative pays \$500 council rates for the land.

On 31 July 1995 your representative transfers it to a beneficiary in your estate, who is taken to have acquired it on 1 May 1995.

The beneficiary can include the \$500 in the third element of the cost base of the land. It is included on 15 June 1995.

*Collectables and personal use assets*

- (6) The \*legal personal representative or beneficiary is taken to have \*acquired a \*collectable or a \*personal use asset if:
- (a) you acquired it on or after 20 September 1985; and
  - (b) it was a \*collectable or a \*personal use asset (as appropriate) in your hands when you died.

Note 1: Capital losses from collectables can be used only to reduce capital gains from collectables: see section 108-10.

Note 2: Capital losses from personal use assets are disregarded: see section 108-20.

**128-20 When does an asset *pass* to a beneficiary?**

- (1) A \*CGT asset *passes* to a beneficiary in your estate if the beneficiary becomes the owner of the asset:
- (a) under your will, or that will as varied by a court order; or
  - (b) by operation of an intestacy law, or such a law as varied by a court order; or
  - (c) because it is appropriated to the beneficiary by your legal personal representative in satisfaction of a pecuniary legacy or some other interest or share in your estate; or
  - (d) under a deed of arrangement if:
    - (i) the beneficiary entered into the deed to settle a claim to participate in the distribution of your estate; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 128-25

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- (ii) any consideration given by the beneficiary for the asset consisted only of the variation or waiver of a claim to one or more other \*CGT assets that formed part of your estate.

(It does not matter whether the asset is transmitted directly to the beneficiary or is transferred to the beneficiary by your \*legal personal representative.)

- (2) A \*CGT asset does *not pass* to a beneficiary in your estate if the beneficiary becomes the owner of the asset because your \*legal personal representative transfers it under a power of sale.

**128-25 The beneficiary is a trustee of a superannuation fund etc.**

- (1) This section has rules about \*cost base and \*reduced cost base that are relevant if you die and a \*CGT asset you owned just before dying \*passes to a beneficiary in your estate who (when the asset passes) is the trustee of a \*complying superannuation entity.

Note: A capital gain or loss is also made: see section 104-215.

- (2) The beneficiary is taken to have \*acquired the asset on the day you died. The first element of the \*cost base and \*reduced cost base of the asset is its \*market value on that day.
- (3) The beneficiary can include in the \*cost base or \*reduced cost base of the asset any expenditure that your \*legal personal representative *would* have been able to include at the time the asset \*passes to the beneficiary. The beneficiary can include the expenditure on the day the representative incurred it.

**Special rules for joint tenants**

**128-50 Joint tenants**

- (1) This section has rules that are relevant if a \*CGT asset is owned by joint tenants and one of them dies.
- (2) The survivor is taken to have \*acquired (on the day the individual died) the individual's interest in the asset. If there are 2 or more

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

survivors, they are taken to have acquired that interest in equal shares.

Note: Joint tenants are treated as owning a CGT asset in equal shares: see section 108-7.

- (3) If the individual who died \*acquired his or her interest in the asset on or after 20 September 1985, the first element of the \*cost base of the interest *each* survivor is taken to have acquired is:

Cost base of the interest of the individual who died  
(worked out on the day the individual died)

Number of survivors

The first element of the \*reduced cost base of the interest each survivor is taken to have \*acquired is worked out similarly.

Example: In 1999 2 individuals buy land for \$50,000 as joint tenants. Each one is taken to have a 50% interest in it. On 1 May 2001 one of them dies.

The survivor is taken to have acquired the interest of the individual who died on 1 May 2001. If the cost base of that interest on that day is \$27,000, the survivor is taken to have acquired that interest for that amount.

- (4) If the individual who died \*acquired his or her interest in the asset before 20 September 1985, the first element of the \*cost base and \*reduced cost base of the interest *each* survivor is taken to have acquired is:

\*Market value of the interest of the individual who died  
(worked out on the day the individual died)

Number of survivors

Note: There is a special indexation rule for surviving joint tenants: see section 114-10.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 130—Investments**

### **Table of Subdivisions**

	Guide to Division 130
130-A	Bonus shares and units
130-B	Rights
130-C	Convertible interests
130-D	Employee share schemes
130-E	Exchangeable interests

### **Guide to Division 130**

#### **130-1 What this Division is about**

This Division sets out the rules for these kinds of investments:

- bonus shares and units; and
- rights; and
- convertible interests; and
- shares acquired under an employee share scheme; and
- exchangeable interests.

Most are about modifying the cost base and reduced cost base of a CGT asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 130-A—Bonus shares and units

### Guide to Subdivision 130-A

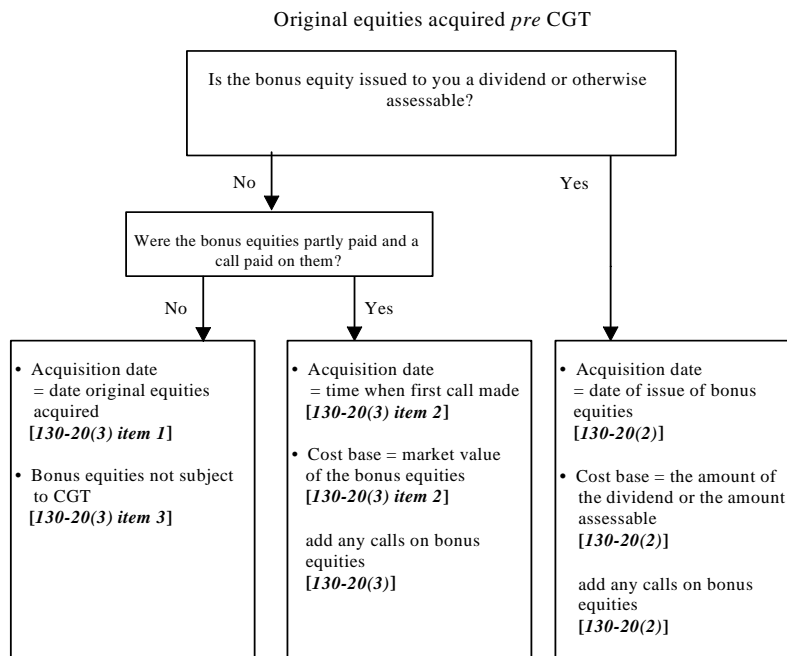
#### Table of sections

130-15 Acquisition time and cost base of bonus equities

#### Operative provisions

130-20 Issue of bonus shares or units

### 130-15 Acquisition time and cost base of bonus equities

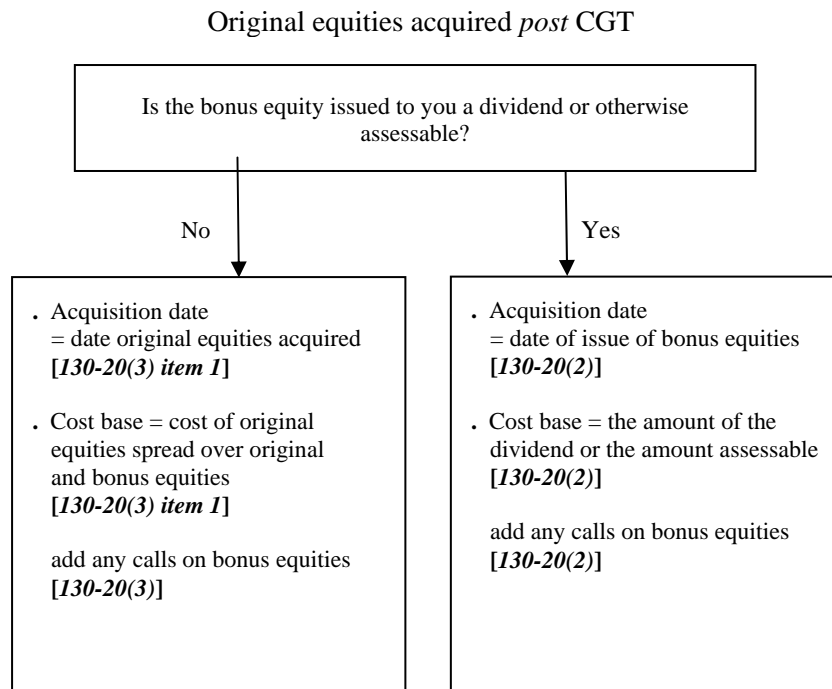



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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 130-20

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## Operative provisions

### 130-20 Issue of bonus shares or units

- (1) This section sets out what happens if:
  - (a) you own \*shares in a company or units in a unit trust (the *original equities*); and
  - (b) the company issues other shares, or the trustee issues other units, (the *bonus equities*) to you in relation to the original equities.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The first element of your \*cost base and \*reduced cost base for the bonus equities includes:
- (a) for \*shares—any part of the shares that are a \*dividend (or taken to be a dividend under subsection 45(2) or 45C(1) of the *Income Tax Assessment Act 1936*); and
  - (b) for units—any part of the other units that are or will be included in your assessable income.

You are taken to have \*acquired the bonus equities when they were issued.

Note 1: There are special indexation rules for cost base modifications: see Division 114.

Note 2: The amounts of calls you pay on partly-paid equities will also form part of the first element of their cost base and reduced cost base.

Note 3: There is a special rule for shares issued on or before 30 June 1987: see subsection 130-20(2) of the *Income Tax (Transitional Provisions) Act 1997*.

Note 4: Certain capital distributions are taken to be dividends under subsections 45(2) and 45C(1) if a company has entered into a capital streaming or dividend substitution arrangement.

- (3) This table sets out what happens if:
- (a) none of the shares are a \*dividend (or taken to be a dividend under subsection 45(2) or 45C(1) of the *Income Tax Assessment Act 1936*); or
  - (b) none of the other units are or will be included in your assessable income.

Note: Certain capital distributions are taken to be dividends under subsections 45(2) and 45C(1) if a company has entered into a capital streaming or dividend substitution arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Modifications where neither a dividend nor assessable</b>			
<b>Item</b>	<b>In this situation:</b>	<b>You are taken to have *acquired the bonus equities when:</b>	<b>There is this effect:</b>
1	You *acquire the original equities on or after 20 September 1985	You *acquired the original equities	You apportion the first element of your *cost base and *reduced cost base for the original equities in a reasonable way over both the original and bonus equities
2	You *acquire the original equities before 20 September 1985 and an amount has been paid for the bonus equities that you were required to pay	The liability to pay the amount arose	The first element of your *cost base and *reduced cost base for the bonus equities includes their *market value just before that time
3	You *acquire the original equities before 20 September 1985 and the bonus equities are fully paid	You *acquired the original equities	Any *capital gain or *capital loss you make from the bonus equities is disregarded
4	You *acquire the original equities before 20 September 1985 and the bonus equities are partly paid but no amount has been paid since the issue of the bonus equities	You *acquired the original equities	Any *capital gain or *capital loss you make from the bonus equities is disregarded

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

The amount paid or payable can include giving property: see section 103-5.

Note 1: The amounts of calls you pay on partly-paid equities will also form part of the first element of their cost base and reduced cost base.

Note 2: There is a special rule for bonus equities issued on or before 1 pm on 10 December 1986 that affects item 2 of the table: see subsection 130-20(3) of the *Income Tax (Transitional Provisions) Act 1997*.

- (3A) If only a part of a capital benefit that is bonus equities is a \*dividend, or is taken to be a dividend under subsection 45(2) or 45C(1) of the *Income Tax Assessment Act 1936*, you apportion the first element of your \*cost base and \*reduced cost base for the original equities in a reasonable way over both the original equities and the bonus equities.

*Special rule for unit trusts*

- (4) The modifications in this section are not made if, for the income year in which the bonus equities are issued, the unit trust is:
- (a) a corporate unit trust within the meaning of section 102J of the *Income Tax Assessment Act 1936*; or
  - (b) a public trading trust within the meaning of section 102R of that Act.

Note: Subsection 26BC(9E) of the *Income Tax Assessment Act 1936* (about securities lending arrangements) modifies the operation of this section.

## **Subdivision 130-B—Rights**

### **Table of sections**

130-40	Exercise of rights
130-45	Timing rules
130-50	Application to options

### **130-40 Exercise of rights**

- (1) The table in this section sets out the modifications to the rules about \*cost base and \*reduced cost base that happen if you exercise rights to \*acquire:
- (a) \*shares, or options to acquire shares, in a company; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 130-40

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(b) units, or options to acquire units, in a unit trust.

Note: The exercise of rights acquired under an employee share scheme are dealt with in Subdivision 130-D.

- (2) The modifications happen only if:
- (a) you did not pay for the rights and the condition in subsection (3) is satisfied; or
  - (b) the condition in subsection (4) is satisfied.
- The payment can include giving property: see section 103-5.
- (3) When you were issued the rights, you must:
- (a) already own shares in, or \*convertible interests issued by, the company or a company that is a member of the same \*wholly-owned group (the *original shares or interests*); or
  - (b) already own units in, or convertible interests issued by the trustee of, the unit trust (the *original units or interests*).
- (4) You must have \*acquired the rights from an entity that already owned shares, units or convertible interests of the kind referred to in subsection (3).
- (5) The company that is a member of the same \*wholly-owned group mentioned in paragraph (3)(a) includes a company that would cease to be a member of that group by the exercise of the rights.
- (6) The rights to \*acquire units or to acquire an option to acquire units in a unit trust must have been issued by the trustee after 28 January 1988.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Modifications on exercise of rights**

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<b>Item</b>	<b>In this situation:</b>	<b>The modification is...</b>
1	You exercise rights issued to you to *acquire the *shares, units or options.	The first element of your *cost base for the shares, units or options is the sum of: <ul style="list-style-type: none"> <li>(a) the cost base of the rights at the time of exercise; and</li> <li>(b) any amount paid to exercise the rights, except to the extent that the amount is represented in the paragraph (a) amount; and</li> <li>(c) all the amounts to be added under subsection (6A).</li> </ul> The first element of their *reduced cost base is worked out similarly.
2	You exercise rights you *acquired from another entity to acquire the *shares, units or options.	The first element of your *cost base for the shares, units or options is the sum of: <ul style="list-style-type: none"> <li>(a) the cost base of the rights at the time of exercise; and</li> <li>(b) any amount paid to exercise the rights, except to the extent that the amount is represented in the paragraph (a) amount; and</li> <li>(c) all the amounts to be added under subsection (6A).</li> </ul> The first element of their *reduced cost base is worked out similarly.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Modifications on exercise of rights**

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Item	In this situation:	The modification is...
3	You exercise rights issued to you to *acquire the *shares, units or options, and you acquired the original shares or *convertible interests, or the original units or convertible interests, before 20 September 1985.	The first element of your *cost base for the shares, units or options is the sum of: <ul style="list-style-type: none"> <li>(a) the *market value of the rights when they were exercised; and</li> <li>(b) any amount paid to exercise the rights, except to the extent that the amount is represented in the paragraph (a) amount; and</li> <li>(c) all the amounts to be added under subsection (6A).</li> </ul> The first element of their *reduced cost base is worked out similarly.

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(6A) An amount is to be added under this subsection if a \*capital gain made from the right has been reduced under section 118-20. This is so even though a capital gain that is made on exercise is disregarded under subsection (7). The amount to be added is the amount of the reduction.

Note: For example, a capital gain made on the exercise of the right under section 118-20 may be reduced because an amount is included in the owner's assessable income under subsection 26BB(2) of the *Income Tax Assessment Act 1936* (about assessing a gain on disposal or redemption of a traditional security) or section 159GS of that Act (about balancing adjustments on transfer of a qualifying security).

(7) A \*capital gain or \*capital loss you make from the exercise of the rights is disregarded.

Note 1: The exercise of the rights would be an example of CGT event C2 (about a CGT asset ending).

Note 2: There are transitional rules for some rights: see section 130-40 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 3: The effect of this Subdivision is modified in 2 cases by sections 102AAZBA (about non-resident trusts) and 414 (about CFC's) of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



### **130-45 Timing rules**

#### *Acquisition of rights*

- (1) If you \*acquired the rights from the company or trustee, you are taken to have acquired the rights when you acquired the original shares or interests or the original units or interests.

#### *Acquisition of shares, units or options on exercise of rights*

- (2) You are taken to have \*acquired the new \*shares, units or options when you exercise the rights.

### **130-50 Application to options**

This Subdivision applies to options in the same way that it applies to rights.

### **Subdivision 130-C—Convertible interests**

### **130-60 Shares or units acquired by converting a convertible interest**

- (1) This table sets out the modification to the rules about \*cost base and \*reduced cost base that happens if you \*acquire \*shares, or units in a unit trust, by converting a \*convertible interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Conversion of a convertible interest</b>		
<b>Item</b>	<b>In this situation:</b>	<b>The modification is...</b>
1	You *acquire *shares or units in a unit trust by converting a *convertible interest that is a *traditional security.	<p>The first element of the *cost base of the shares or units is the sum of:</p> <ul style="list-style-type: none"> <li>(a) the cost base of the convertible interest at the time of conversion; and</li> <li>(b) any amount paid to convert the convertible interest, except to the extent that the amount is represented in the paragraph (a) amount; and</li> <li>(c) all the amounts to be added under subsection (1A).</li> </ul> <p>The first element of their *reduced cost base is worked out similarly.</p>
2	You *acquire *shares (except shares acquired under an *employee share scheme) by converting a *convertible interest that is not a *traditional security.	<p>The first element of the *cost base of the shares is the sum of:</p> <ul style="list-style-type: none"> <li>(a) the cost base of the convertible interest at the time of conversion; and</li> <li>(b) any amount paid to convert the convertible interest, except to the extent that the amount is represented in the paragraph (a) amount; and</li> <li>(c) all the amounts to be added under subsection (1A).</li> </ul> <p>The first element of their *reduced cost base is worked out similarly.</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Conversion of a convertible interest**

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Item	In this situation:	The modification is...
3	You *acquire units in a unit trust by converting a *convertible interest (except one that is a *traditional security) that was issued by the trustee of the unit trust after 28 January 1988.	The first element of the *cost base of the units is the sum of: <ul style="list-style-type: none"> <li>(a) the cost base of the convertible interest at the time of conversion; and</li> <li>(b) any amount paid to convert the convertible interest, except to the extent that the amount is represented in the paragraph (a) amount; and</li> <li>(c) all the amounts to be added under subsection (1A).</li> </ul> The first element of their *reduced cost base is worked out similarly.

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(1A) An amount is to be added under this subsection if a \*capital gain from the \*convertible interest has been reduced under section 118-20. This is so even though a capital gain that is made on conversion is disregarded under subsection (3). The amount to be added is the amount of the reduction.

Note: For example, a capital gain made on the conversion under section 118-20 may be reduced because an amount is included in the owner's assessable income under subsection 26BB(2) of the *Income Tax Assessment Act 1936* (about assessing a gain on disposal or redemption of a traditional security) or section 159GS of that Act (about balancing adjustments on transfer of a qualifying security).

(1B) The payment to convert the convertible interest can include giving property (see section 103-5).

(2) You are taken to have \*acquired the shares or units when the conversion of the convertible interest happened.

(3) A \*capital gain or \*capital loss you make from converting the convertible interest is disregarded.

Note 1: The conversion of the convertible interest would be an example of CGT event C2 (about a CGT asset ending).

Note 2: There are transitional rules for some convertible notes: see section 130-60 of the *Income Tax (Transitional Provisions) Act 1997*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Subdivision 130-D—Employee share schemes

### Table of sections

130-80	Share or right acquired under employee share scheme
130-83	Qualifying shares and qualifying rights
130-85	Share or right acquired under employee share scheme involving your associate
130-90	Share or right acquired under an employee share trust—beneficiary absolutely entitled
130-95	Share or right acquired under an employee share trust—100% takeover or restructure
130-97	Stapled securities

### 130-80 Share or right acquired under employee share scheme

- (1) This section sets out what happens if you:
- (a) \*acquire a \*share or right at a discount (within the meaning of Subdivision C of Division 13A of Part III of the *Income Tax Assessment Act 1936*) under an \*employee share scheme; or
  - (b) acquire a share or right that, because of section 139DQ of that Act, is treated, for the purposes of Division 13A of Part III of that Act, as if it were a continuation of a share or right acquired under an employee share scheme.

Note: The fact that you made an election under section 139E of the *Income Tax Assessment Act 1936* does not prevent a share or right from being treated as a continuation of a share or right acquired under an employee share scheme.

- (2) The first element of the \*cost base and \*reduced cost base of the \*share or right is its \*market value (worked out under sections 139FA to 139FF of the *Income Tax Assessment Act 1936*) when you \*acquired it.
- (3) However, if:
- (a) the \*share or right was \*acquired from an \*employee share trust; and
  - (b) if the share is a \*qualifying share or the right is a \*qualifying right—the acquirer made an election under section 139E of the *Income Tax Assessment Act 1936*;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the first element of the \*cost base and \*reduced cost base of the share or right is its \*market value (worked out under sections 139FA to 139FF of the *Income Tax Assessment Act 1936*) when you first acquired a beneficial interest in the share or right.

Note: Section 130-80 of the *Income Tax (Transitional Provisions) Act 1997* may affect the cost base or reduced cost base for shares or rights held by a trust at 5 pm (by legal time in the Australian Capital Territory) on 27 February 2001.

- (4) This section does not apply to a \*share or right if:
- (a) you become an Australian resident; and
  - (aa) you are not a \*temporary resident immediately after you become an Australian resident; and
  - (b) you owned, or held a beneficial interest in, the share or right just before you became an Australian resident; and
  - (c) the share or right is not \*taxable Australian property; and
  - (d) either:
    - (i) the share or right is not a \*qualifying share or a \*qualifying right; or
    - (ii) you have made an election under section 139E of the *Income Tax Assessment Act 1936* covering the share or right.

Note 1: Sections 768-955 and 855-45 deal with shares or rights that are not taxable Australian property.

Note 2: Paragraph (aa)—see also section 768-920.

### **130-83 Qualifying shares and qualifying rights**

- (1) There is an exception if:
- (a) the \*share is a \*qualifying share or the right is a \*qualifying right; and
  - (b) you do not make an election under section 139E of the *Income Tax Assessment Act 1936* covering the share or right.

Note: If you do not make an election of this kind, the amount is included in your assessable income for the income year in which the cessation time occurs: for example, when restrictions on disposing of the share cease.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 130-83

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(1A) If:

- (a) a \*CGT event happens in relation to the \*share or right (the *original share or right*); and
- (b) it happens in connection with an acquisition (within the meaning of Subdivision C of Division 13A of Part III of the *Income Tax Assessment Act 1936*) of another share or right (the *matching share or right*); and
- (c) under section 139DQ of the *Income Tax Assessment Act 1936* the matching share or right is treated, for the purposes of Division 13A of Part III of that Act, as if it were a continuation of the original share or right;

any \*capital gain or \*capital loss you make from the CGT event is disregarded.

- (2) If \*CGT event A1, C2, E1, E2, E5 or I1 happens in relation to the \*share or right (or any \*share you \*acquired by exercising the right) in an arm's length transaction at the \*cessation time, or within 30 days after that time, any \*capital gain or \*capital loss you make from the event is disregarded.

Note: The full list of CGT events is in section 104-5.

- (3) If that event does not happen in relation to the \*share or right (or any \*share you \*acquired by exercising the right) in an arm's length transaction at the \*cessation time, or within 30 days after that time, the first element of the \*cost base and \*reduced cost base of the share or right is its market value (worked out under sections 139FA to 139FF of the *Income Tax Assessment Act 1936*) at that time.

- (4) Subsection (3) does not apply to a \*share or right if:

- (a) you become an Australian resident; and
- (aa) you are not a \*temporary resident immediately after you become an Australian resident; and
- (b) you owned, or held a beneficial interest in, the share or right just before you became an Australian resident; and
- (c) the share or right is not \*taxable Australian property; and
- (d) the cessation time for the share or right had occurred before you became an Australian resident.

Note: Sections 768-955 and 855-45 deal with shares or rights that are not taxable Australian property.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**130-85 Share or right acquired under employee share scheme involving your associate**

- (1) This section sets out the modification to the rules about \*cost base and \*reduced cost base that happens if:
- (a) you \*acquire a \*share or right at a discount (within the meaning of Subdivision C of Division 13A of Part III of the *Income Tax Assessment Act 1936*) under an \*employee share scheme; and
  - (b) an amount is included, under section 139D of the *Income Tax Assessment Act 1936*, in:
    - (i) your \*associate's assessable income; or
    - (ii) the assessable income of a company (an *affiliate company*) where you own an indirect interest in a \*share in the company or in a right to acquire a share in it through one or more interposed companies, partnerships or trusts.
- (2) The first element of the \*cost base and \*reduced cost base of the \*share or right is its market value (worked out under sections 139FA to 139FF of the *Income Tax Assessment Act 1936*) when you \*acquired it.
- (3) However, if:
- (a) the \*share or right was \*acquired from an employee share trust; and
  - (b) if the share is a \*qualifying share or the right is a \*qualifying right—the acquirer made an election under section 139E of the *Income Tax Assessment Act 1936*;
- the first element of the \*cost base and \*reduced cost base of the share or right is its market value (worked out under sections 139FA to 139FF of the *Income Tax Assessment Act 1936*) when you first acquired a beneficial interest in the share or right.
- Note: Section 130-80 of the *Income Tax (Transitional Provisions) Act 1997* may affect the cost base or reduced cost base for shares or rights held by a trust at 5 pm (by legal time in the Australian Capital Territory) on 27 February 2001.
- (4) This section does not apply to a \*share or right if:
- (a) you become an Australian resident; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 130-90

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- (aa) you are not a \*temporary resident immediately after you become an Australian resident; and
- (b) you owned, or held a beneficial interest in, the share or right just before you became an Australian resident; and
- (c) the share or right is not \*taxable Australian property.

Note 1: Sections 768-955 and 855-45 deal with shares or rights that are not taxable Australian property.

Note 2: Paragraph (aa)—see also section 768-920.

**130-90 Share or right acquired under an employee share trust—  
beneficiary absolutely entitled**

- (1) A \*capital gain or a \*capital loss a trustee or a beneficiary makes when the beneficiary becomes absolutely entitled to a \*share or right in a company is disregarded if these conditions are satisfied.
  - (1A) The beneficiary must be:
    - (a) an individual who receives (or is entitled to receive) \*withholding payments covered by subsection (5) from the company or from another company (at the time the beneficiary first became beneficially entitled to the \*share or right); or
    - (b) an \*associate or affiliate company of such an individual; or
    - (c) an individual who is engaged in foreign service (within the meaning of section 139GBA of the *Income Tax Assessment Act 1936*), or an \*associate or affiliate company of such an individual.
  - (2) The terms of the trust must have required or authorised the trustee to transfer the \*share or right to the individual, \*associate or affiliate company.
  - (3) One of the following paragraphs must apply:
    - (a) the individual, \*associate or affiliate company must have acquired the \*share or right:
      - (i) under an \*employee share scheme; or
      - (ii) alternatively in the case of a share—as a result of exercising a right acquired under an employee share scheme;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) the share or right must, because of section 139DQ of the *Income Tax Assessment Act 1936*, be a share or right that is treated, for the purposes of Division 13A of Part III of that Act, as if it were a continuation of a share or right acquired under an employee share scheme;
- (c) if the share was acquired as a result of exercising a right, the right must, because of section 139DQ of the *Income Tax Assessment Act 1936*, be a right that is treated, for the purposes of Division 13A of Part III of that Act, as if it were a continuation of a right acquired under an employee share scheme.
- (4) The \* individual, \*associate or affiliate company must not have \*acquired the \*share or right for more than the \*cost base of the share or right (in the hands of the trustee) at the time of the transfer.
- Note: There are transitional rules for some shares or rights acquired under employee share schemes: see Subdivision 130-D of the *Income Tax (Transitional Provisions) Act 1997*.
- (5) This subsection covers a \*withholding payment covered by any of the provisions in Schedule 1 to the *Taxation Administration Act 1953* listed in the table.

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**Withholding payments covered**

<b>Item</b>	<b>Provision</b>	<b>Subject matter</b>
1	Section 12-35	Payment to employee
2	Section 12-40	Payment to company director
3	Section 12-45	Payment to office holder
3A	Section 12-47	Payment to *religious practitioner
4	Section 12-50	Return to work payment
5	Subdivision 12-D	Benefit, training and compensation payments

*Stapled securities*

- (6) This section applies, in the same way as it applies in relation to a \*share or right in a company, in relation to a \*CGT asset that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 130-95

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- (a) forms part of a stapled security (within the meaning of Division 13A of Part III of the *Income Tax Assessment Act 1936*); or
  - (b) is a right to \*acquire a stapled security (within the meaning of that Division).
- (7) For the purposes of that application, a \*withholding payment from a stapled entity (within the meaning of Division 13A of Part III of the *Income Tax Assessment Act 1936*) for the stapled security is taken to be a withholding payment from the company.

**130-95 Share or right acquired under an employee share trust—  
100% takeover or restructure**

If:

- (a) a \*CGT event happens in relation to a \*share or right (the *original share or right*); and
  - (b) it happens in connection with an acquisition (within the meaning of Subdivision C of Division 13A of Part III of the *Income Tax Assessment Act 1936*) of another share or right (the *matching share or right*) by the beneficiary of an \*employee share trust; and
  - (c) under section 139DQ of the *Income Tax Assessment Act 1936* the matching share or right is treated, for the purposes of Division 13A of Part III of that Act, as if it were a continuation of the original share or right;
- any \*capital gain or \*capital loss the trustee of the employee share trust makes from the CGT event is disregarded.

**130-97 Stapled securities**

- (1) This section sets out what happens if you \*acquire a stapled security (within the meaning of Division 13A of Part III of the *Income Tax Assessment Act 1936*) that:
- (a) is treated as a \*qualifying share because of Subdivision DB of that Division; or
  - (b) because of section 139DQ of that Act is treated, for the purposes of that Division, as if it were a continuation of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (i) a qualifying share acquired under an \*employee share scheme; or
  - (ii) another stapled security (within the meaning of that Division) that is treated as a qualifying share because of Subdivision DB of that Division.
- (2) The provisions (the *applied provisions*) of Part 3-1, this Part (except this section), Subdivision 768-R and Division 855 apply, with the modifications set out in subsections (3), (4) and (5), in relation to each \*CGT asset that forms part of the stapled security in the same way as the applied provisions apply in relation to:
- (a) a CGT asset that is a \*share \*acquired under an \*employee share scheme; and
  - (b) a CGT asset that is a \*qualifying share.
- Note 1: The assets that form part of a stapled security are an ordinary share and one or more other interests that are either shares or units in a unit trust: see section 139GCD of the *Income Tax Assessment Act 1936*.
- Note 2: There are modifications to this application in subsections 115-30(1A) and (1B).
- (3) The applied provisions apply as if an election under section 139E of the *Income Tax Assessment Act 1936* in relation to the stapled security were an election in relation to each of the assets.
- (4) The applied provisions apply as if the \*cessation time for the stapled security were the cessation time for each of the assets.

*Modification relating to cost base and reduced cost base*

- (5) Subsection (6) applies for the purposes of the application, in relation to a \*CGT asset that forms part of a stapled security, of a provision of this Subdivision providing that the first element of the \*cost base and \*reduced cost base of a \*share is its market value (worked out under sections 139FA to 139FF of the *Income Tax Assessment Act 1936*) at a time.
- (6) The first element of the \*cost base and \*reduced cost base of a \*CGT asset that forms part of the stapled security is so much of the market value (worked out under sections 139FA to 139FF of the *Income Tax Assessment Act 1936*) of the stapled security at that time as is reasonably attributable to the asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 130-E—Exchangeable interests**

### **Table of sections**

130-100	Exchangeable interest
130-105	Shares acquired in exchange for the disposal or redemption of an exchangeable interest

### **130-100 Exchangeable interest**

An *exchangeable interest* is a \*traditional security or \*qualifying security that:

- (a) was issued on the basis that it will or may be:
  - (i) disposed of to the issuer of the traditional security or the qualifying security or to a \*connected entity of the issuer of the traditional security or the qualifying security; or
  - (ii) redeemed;  
in exchange for \*shares in a company that is neither:
  - (iii) the issuer of the traditional security or the qualifying security; nor
  - (iv) a connected entity of the issuer of the traditional security or the qualifying security; and
- (b) was issued on or after 1 July 2001.

### **130-105 Shares acquired in exchange for the disposal or redemption of an exchangeable interest**

*Cost base and reduced cost base*

- (1) The table has effect:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Exchange of an exchangeable interest**

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Item	In this situation:	The rules about cost base and reduced cost base are modified in this way...
1	You *acquire shares in a company in exchange for the disposal of an *exchangeable interest, and the disposal of the exchangeable interest was to: (a) the issuer of the exchangeable interest; or (b) a *connected entity of the issuer of the exchangeable interest.	The first element of the *cost base of the shares is the sum of: (a) the cost base of the exchangeable interest at the time of the disposal; and (b) any amount paid for the exchange, except to the extent that the amount is represented in the paragraph (a) amount; and (c) all the amounts to be added under subsection (2).  The first element of their *reduced cost base is worked out similarly.
2	You *acquire shares in a company in exchange for the redemption of an *exchangeable interest.	The first element of the *cost base of the shares is the sum of: (a) the cost base of the exchangeable interest at the time of the redemption; and (b) any amount paid for the exchange, except to the extent that the amount is represented in the paragraph (a) amount; and (c) all the amounts to be added under subsection (2).  The first element of their *reduced cost base is worked out similarly.

- (2) An amount is to be added under this subsection if a \*capital gain on the disposal or redemption of the exchangeable interest has been reduced under section 118-20. This is so even though a capital gain that is made on the disposal or redemption of the exchangeable interest is disregarded under subsection (4). The amount to be added is the amount of the reduction.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 130-105

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- (3) The payment for the exchange can include giving property (see section 103-5).

*Other CGT consequences*

- (4) The table has effect:

<b>Exchange of an exchangeable interest</b>		
<b>Item</b>	<b>In this situation:</b>	<b>This is the result:</b>
1	You *acquire shares in a company in exchange for the disposal of an *exchangeable interest, and the disposal of the exchangeable interest was to: (a) the issuer of the exchangeable interest; or (b) a *connected entity of the issuer of the exchangeable interest.	(a) you are taken to have acquired the shares when the disposal of the exchangeable interest happened; and (b) a *capital gain or *capital loss you make from the disposal of the exchangeable interest is disregarded.
2	You *acquire shares in a company in exchange for the redemption of an *exchangeable interest.	(a) you are taken to have acquired the shares when the redemption of the exchangeable interest happened; and (b) a *capital gain or *capital loss you make from the redemption of the exchangeable interest is disregarded.

*Application*

- (5) This section applies to the disposal or redemption of an \*exchangeable interest on or after 1 July 2001.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Division 132—Leases**

### **Table of sections**

132-1	Lessee incurs expenditure to get lease term varied or waived
132-5	Lessor pays lessee for improvements
132-10	Grant of a long-term lease
132-15	Lessee of land acquires reversionary interest of lessor

### **132-1 Lessee incurs expenditure to get lease term varied or waived**

If the lessee of property incurs expenditure in obtaining the consent of the lessor to vary or waive a term of the lease, the fourth element of the lease's \*cost base and \*reduced cost base includes the amount of that expenditure.

The expenditure can include giving property: see section 103-5.

### **132-5 Lessor pays lessee for improvements**

The fourth element of the \*cost base and \*reduced cost base of property that was subject to a lease includes any payment (because of the lease expiring or being surrendered or forfeited) by the lessor to the lessee for expenditure of a capital nature incurred by the lessee in making improvements to the lease property.

The payment or expenditure can include giving property: see section 103-5.

### **132-10 Grant of a long-term lease**

- (1) These rules apply if \*CGT event F2 happens for a lessor of property.
- (2) For any later \*CGT event that happens to the land or the lessor's lease of it, its \*cost base and \*reduced cost base (including the cost base and reduced cost base of any building, part of a building, structure or improvement that is treated as a separate \*CGT asset) excludes:
  - (a) any expenditure incurred before \*CGT event F2 happens; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 132-15

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- (b) the \*cost of any \*depreciating asset for which the lessor has deducted or can deduct an amount for the asset's decline in value under this Act.

Note: Subdivision 108-D sets out when a building, structure or improvement is treated as a separate CGT asset.

- (3) The fourth element of the property's \*cost base and \*reduced cost base includes any payment by the lessor to the lessee to vary or waive a term of the lease or for the forfeiture or surrender of the lease, reduced by the amount of any \*input tax credit to which the lessor is entitled for the variation or waiver.
- (4) The expenditure or payment can include giving property: see section 103-5.

**132-15 Lessee of land acquires reversionary interest of lessor**

- (1) This table sets out what happens if:
  - (a) the lessee of land \*acquires the reversionary interest of the lessor in the land; and
  - (b) Subdivision 124-J (roll-over provisions for Crown leases) does not apply to the acquisition.

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**Lessee acquires reversionary interest of lessor**

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<b>Item</b>	<b>In this situation:</b>	<b>The lessee is taken to have *acquired the land at this time:</b>	<b>The lessee is taken to have acquired the land for:</b>
1	The lease was originally granted for 99 years or more	When the lease was granted or assigned to the lessee	Any premium the lessee paid for the grant or assignment of the lease, plus the amount the lessee paid to *acquire the reversionary interest

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



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**Lessee acquires reversionary interest of lessor**

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<b>Item</b>	<b>In this situation:</b>	<b>The lessee is taken to have *acquired the land at this time:</b>	<b>The lessee is taken to have acquired the land for:</b>
2	The lease was originally granted for less than 99 years	When the lessee *acquired the reversionary interest	(a) if the lessee *acquired the lease after 19 September 1985—any premium the lessee paid for the grant or assignment of the lease, plus the amount the lessee paid to acquire the reversionary interest; or  (b) if the lessee acquired the lease before 20 September 1985—the *market value of the land when the lessee acquired it

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(2) All the payments can include giving property: see section 103-5.

Note: CGT events F1 to F5 deal specifically with leases. See also (in particular) CGT event C2 (about cancellation, surrender and similar endings).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 134—Options

### 134-1 Exercise of options

- (1) This table sets out the effects of the exercise of an option (including an option that has been renewed or extended) on the \*cost bases and \*reduced cost bases of the grantor and the entity that exercises the option (the *grantee*).

<b>Exercise of options</b>		
<b>Item</b>	<b>In this situation:</b>	<b>Effect on cost base and reduced cost base:</b>
1	Option binds grantor to: (a) *dispose of a *CGT asset; or (b) create (including grant or issue) a CGT asset (call option)	<i>For the grantee</i> The first element of the grantee's *cost base and *reduced cost base for the CGT asset is what the grantee paid for the option (or to renew or extend it) plus any amount the grantee paid to exercise it <i>For the grantor</i> See section 116-65
2	Option binds grantor to *acquire a *CGT asset (put option)	<i>For the grantor</i> The first element of the grantor's *cost base and *reduced cost base for the asset acquired is any amount paid to exercise the option reduced by any payment received by the grantor for the option (or to renew or extend it) <i>For the grantee</i> The second element of the grantee's cost base and reduced cost base for the asset acquired by the grantor includes any payment the grantee made to acquire the option (or to renew or extend it)

Note 1: If you granted, renewed or extended an option, CGT event C3 or D2 may happen.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note 2: Item 1 in the table is modified for certain options granted before 20 September 1985: see section 134-1 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 3: Item 1 in the table is modified for shares or rights acquired at a discount (within the meaning of Subdivision C of Division 13A of Part III of the *Income Tax Assessment Act 1936*) under an employee share scheme—in certain circumstances you can be taken to have paid the market value for an option: see Subdivision 130-D and section 112-15.

(2) All the payments can include giving property: see section 103-5.

Example 1: Steven obtains an option to buy a yacht (for \$75,000) from Tom. Steven pays \$5,000 for the option.

Steven exercises the option. The first element of his cost base and reduced cost base for the yacht includes the expenditure he incurred for the option.

So, the first element of his cost base and reduced cost base for the yacht is:

$$\$75,000 + \$5,000 = \$80,000$$

Example 2: An entity owns 1,000 shares in a company. Bill grants the entity an option which, if exercised, would require him to buy the shares for \$2 each. The entity pays Bill 10 cents per share for the option.

The entity exercises the option. Bill paid \$2,000 for the shares. He received \$100 from the entity for granting the option.

The first element of Bill's cost base and reduced cost base for the shares is:

$$\$2,000 - \$100 = \$1,900$$

In working out whether the entity made a capital gain or loss on the sale of the shares, the second element of its cost base (and reduced cost base) includes the \$100 the entity paid for the option.

(4) A \*capital gain or \*capital loss the grantee makes from exercising the option is disregarded. However, this rule does not apply if the grantee \*acquired the option under a trust restructure (see Subdivision 124-N) and, on exercising the option, held the resulting asset as an item of \*trading stock.

Note 1: The exercise of the option would be an example of CGT event C2 (about a CGT asset ending).

Note 2: There is an exemption for the grantor if the option is exercised: see subsection 104-40(5).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 134-1

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- (5) This Division does not apply to rights or options to which Subdivision 130-B applies.

Note: Subdivision 130-B deals (amongst other things) with rights and options issued by a company or trust where you did not pay or give anything to acquire them.

- (6) This Division does not apply to:
- (a) an option to the extent that the option binds the grantor to \*dispose of \*foreign currency; or
  - (b) an option to the extent that the option binds the grantor to \*acquire \*foreign currency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 149—When an asset stops being a pre-CGT asset**

### **Table of Subdivisions**

- 149-A Key concepts
- 149-B When asset of non-public entity stops being a pre-CGT asset
- 149-C When asset of public entity stops being a pre-CGT asset
- 149-F How to treat a “demutualised” public entity

### **Subdivision 149-A—Key concepts**

#### **Table of sections**

- 149-10 What is a pre-CGT asset?
- 149-15 Majority underlying interests in a CGT asset

#### **149-10 What is a pre-CGT asset?**

A \*CGT asset that an entity owns is a *pre-CGT asset* if, and only if:

- (a) the entity last acquired the asset before 20 September 1985; and
- (b) the entity was not, immediately before the start of the 1998-99 income year, taken under:
  - (i) former subsection 160ZZS(1) of the *Income Tax Assessment Act 1936*; or
  - (ii) Subdivision C of Division 20 of former Part IIIA of that Act;to have acquired the asset on or after 20 September 1985; and
- (c) the asset has not stopped being a pre-CGT asset of the entity because of this Division.

Note: There are transitional rules for assets that stopped being pre-CGT assets under the *Income Tax Assessment Act 1936*: see section 149-5 of the *Income Tax (Transitional Provisions) Act 1997*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 149-15 Majority underlying interests in a CGT asset

- (1) **Majority underlying interests** in a \*CGT asset consist of:
  - (a) more than 50% of the beneficial interests that \*ultimate owners have (whether directly or \*indirectly) in the asset; and
  - (b) more than 50% of the beneficial interests that ultimate owners have (whether directly or indirectly) in any \*ordinary income that may be \*derived from the asset.
- (2) An **underlying interest** in a \*CGT asset is a beneficial interest that an \*ultimate owner has (whether directly or \*indirectly) in the asset or in any \*ordinary income that may be \*derived from the asset.
- (3) An **ultimate owner** is:
  - (a) an individual; or
  - (b) a company whose \*constitution prevents it from making any distribution, whether in money, property or otherwise, to its members; or
  - (c) the Commonwealth, a State or a Territory; or
  - (d) a municipal corporation; or
  - (e) a local governing body; or
  - (f) the government of a foreign country, or of part of a foreign country.
- (4) An \*ultimate owner **indirectly** has a beneficial interest in a \*CGT asset of another entity (that is *not* an ultimate owner) if he, she or it would receive for his, her or its own benefit any of the capital of the other entity if:
  - (a) the other entity were to distribute any of its capital; and
  - (b) the capital were then successively distributed by each entity interposed between the other entity and the ultimate owner.
- (5) An \*ultimate owner **indirectly** has a beneficial interest in \*ordinary income that may be \*derived from a \*CGT asset of another entity (that is *not* an ultimate owner) if he, she or it would receive for his, her or its own benefit any of a \*dividend or income if:
  - (a) the other entity were to pay that dividend, or otherwise distribute that income; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the dividend or income were then successively paid or distributed by each entity interposed between the other entity and the ultimate owner.

### **Subdivision 149-B—When asset of non-public entity stops being a pre-CGT asset**

#### **Table of sections**

149-25	Which entities are affected
149-30	Effects if asset no longer has same majority underlying ownership
149-35	Cost base elements of asset that stops being a pre-CGT asset

#### **149-25 Which entities are affected**

This Subdivision provides for when a \*CGT asset of an entity stops being a \*pre-CGT asset (unless the entity is covered by section 149-50).

Note: Subdivision 149-C deals with when an asset of such an entity stops being a pre-CGT asset.

#### **149-30 Effects if asset no longer has same majority underlying ownership**

- (1) The asset stops being a \*pre-CGT asset at the earliest time when \*majority underlying interests in the asset were *not* had by \*ultimate owners who had \*majority underlying interests in the asset immediately before 20 September 1985. Also, Part 3-1 and this Part (except this Division) apply to the asset as if the entity had acquired it at that earliest time.
- (2) If the Commissioner is satisfied, or thinks it reasonable to assume, that at all times on and after 20 September 1985 and before a particular time \*majority underlying interests in the asset *were* had by \*ultimate owners who had \*majority underlying interests in the asset immediately before that day, subsection (1) applies as if that were in fact the case.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 149-35

*New owner standing in shoes of former owner*

- (3) Subsection (4) affects how the \*majority underlying interests in the asset are worked out if an \*ultimate owner (the **new owner**) has acquired a percentage (the **acquired percentage**) of the \*underlying interests in the asset because of an event described in column 2 of an item in the table. The **former owner** is the entity described in column 3 of that item.

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**Events leading to new owner standing in for former owner**

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<b>Item</b>	<b>For this kind of event:</b>	<b>The former owner is:</b>
1	*CGT event A1 or B1 if there is a roll-over under Subdivision 126-A (about marriage or relationship breakdowns) for the event	the entity that, immediately before the event happened, owned the *CGT asset to which the event relates
2	the death of a person	that person

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- (4) This section applies as if the new owner had (in addition to any other \*underlying interests), at any time when the former owner had a percentage (the **former owner's percentage**) of the underlying interests in the asset, a percentage of the underlying interests in the asset equal to the acquired percentage, or the former owner's percentage at that time, whichever is the less.

**149-35 Cost base elements of asset that stops being a pre-CGT asset**

- (1) This section affects the \*cost base and \*reduced cost base of the asset if it stops being a \*pre-CGT asset.
- (2) The first element of each is the asset's \*market value at the time referred to in subsection 149-30(1).

**Subdivision 149-C—When asset of public entity stops being a pre-CGT asset**

**Table of sections**

149-50	Which entities are affected
149-55	Entity to give the Commissioner evidence periodically as to whether asset still has same majority underlying ownership

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- 149-60 What the evidence must show
- 149-70 Effects if asset no longer has same majority underlying ownership
- 149-75 Cost base elements of asset that stops being a pre-CGT asset
- 149-80 No more evidence needed after asset stops being a pre-CGT asset

### **149-50 Which entities are affected**

- (1) This Subdivision provides for when a \*CGT asset of an entity of any of these kinds stops being a \*pre-CGT asset:
  - (a) a company \*shares in which (except shares that carry the right to a fixed rate of \*dividend) are listed for quotation in the official list of an \*approved stock exchange;
  - (b) a \*publicly traded unit trust;
  - (c) a \*mutual insurance company;
  - (d) a \*mutual affiliate company;
  - (e) a company (other than one covered by paragraph (a)) all the \*shares in which are beneficially owned, whether directly, or indirectly through one or more interposed entities, by one or more of the following:
    - (i) a company covered by paragraph (a);
    - (ii) a \*mutual insurance company;
    - (iii) a \*mutual affiliate company;
    - (iv) a \*publicly traded unit trust;
- (2) A **publicly traded unit trust** is a unit trust the units in which:
  - (a) are listed for quotation in the official list of an \*approved stock exchange; or
  - (b) are ordinarily available for subscription or purchase by the public.
- (3) This Division applies as if what is done or not done by the trustee of a \*publicly traded unit trust had been done or not done by the trust.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**149-55 Entity to give the Commissioner evidence periodically as to whether asset still has same majority underlying ownership**

- (1) Within 6 months after each \*test day, the entity must give the Commissioner written evidence about the \*majority underlying interests in the asset at the end of that day. (The Commissioner can extend the period for doing so.)
- (1A) The evidence must be given in a form that makes the information about those interests readily apparent.
- (1B) The only consequences of failing to give the evidence are those set out in section 149-70. It is not an offence to fail to give the evidence.

*Test days*

- (2) Each of these days is a *test day*:
  - (aa) 30 June 1999;
  - (a) a day that is 5 years (or a multiple of 5 years) after 30 June 1999 (but see subsection (3));
  - (b) if the entity is covered by paragraph 149-50(1)(a) or (e)—a day on which there is \*abnormal trading in \*shares in the company;
  - (c) if the entity is a \*publicly traded unit trust—a day on which there is \*abnormal trading in units in the trust;
  - (d) if the entity is a company all the \*shares in which are beneficially owned, whether directly, or indirectly through one or more interposed entities, by one or more of the following:
    - (i) a company \*shares in which (except shares that carry the right to a fixed rate of \*dividend) are listed for quotation in the official list of an \*approved stock exchange;
    - (ii) a \*publicly traded unit trust;a day on which there is \*abnormal trading in \*shares in the other company or in units in that unit trust.

Note: Subsections (6) and (7) change the normal rules about abnormal trading.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) If a day (the *fifth anniversary*) that would otherwise be a \*test day because of paragraph (2)(a) is:
- (a) a Saturday; or
  - (b) a Sunday; or
  - (c) a day that is a public holiday or a bank holiday in the place where the records of ownership of shares or other interests in the entity are kept;
- the next day that is *not* covered by a paragraph of this subsection is a *test day* instead of the fifth anniversary.

*Determining the end of a day*

- (4) For the purposes of this section, the end of a day is determined according to legal time in the place where the records of ownership of shares or other interests in the entity are kept.

*Special rules about abnormal trading*

- (5) Subsections (6) and (7) change how Subdivision 960-H applies for the purposes of determining under this section whether there is \*abnormal trading in \*shares in a company or in units in a unit trust.
- (6) An issue, redemption or transfer, or any other dealing, is a *trading* if, and only if, it changes the respective proportions in which \*ultimate owners have \*underlying interests in \*CGT assets of the company or trust.
- (7) Section 960-235 (about suspected transactions involving 5% or more of \*shares in the company or units in the trust) is disregarded.

### **149-60 What the evidence must show**

- (1A) To avoid the consequences in section 149-70, the following condition must be complied with.
- (1) On the basis solely of the evidence given to the Commissioner under subsection 149-55(1), the Commissioner must be satisfied that, or think it reasonable to assume that, at the end of the \*test day, \*majority underlying interests in the asset were had by

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 149-60

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\*ultimate owners who also had \*majority underlying interests in the asset at the end of the starting day. The *starting day* is:

- (a) a day the entity chooses under subsection (2); or
- (b) if no day is so chosen—19 September 1985.

(2) The day chosen:

- (a) must be no earlier than 1 July 1985 and no later than 30 June 1986; and
- (b) must be one the choice of which will allow evidence to be given that enables a reasonable approximation of the \*ultimate owners who had \*underlying interests in the assets of the entity at the end of 19 September 1985.

*How unidentified owners are treated*

(3) So far as the evidence does not show who had \*underlying interests in the asset at the end of the \*starting day, the evidence must be treated on the assumption that those interests were then had by \*ultimate owners who did *not* have \*underlying interests in the asset at the end of the \*test day.

*New owner standing in the shoes of former owner*

(4) Subsection (5) affects how the evidence must be treated if an \*ultimate owner (the *new owner*) has acquired a percentage (the *acquired percentage*) of the \*underlying interests in the asset because of an event described in column 2 of an item in the table. The *former owner* is the entity described in column 3 of that item.

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**Events leading to new owner standing in for former owner**

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<b>Item</b>	<b>For this kind of event:</b>	<b>The former owner is:</b>
1	*CGT event A1 or B1 if there is a roll-over under Subdivision 126-A (about marriage or relationship breakdowns) for the event	the entity that, immediately before the event happened, owned the *CGT asset to which the event relates
2	the death of a person	that person

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (5) The evidence must be treated on the assumption that the new owner had (in addition to any other \*underlying interests), at any time when the former owner had a percentage (the *former owner's percentage*) of the \*underlying interests in the asset, a percentage of the underlying interests in the asset equal to the acquired percentage, or the former owner's percentage at that time, whichever is the less.

*Determining the end of a day*

- (6) For the purposes of this section, the end of a day is determined according to legal time in the place where the records of ownership of shares or other interests in the entity are kept.

**149-70 Effects if asset no longer has same majority underlying ownership**

- (1) The asset stops being a \*pre-CGT asset if the condition in subsection 149-60(1) is not satisfied.
- (2) Also, Part 3-1 and this Part (except this Division) apply to the asset as if the entity had acquired it at the end of the \*test day (as determined under subsection 149-55(4)).

**149-75 Cost base elements of asset that stops being a pre-CGT asset**

- (1) This section affects the \*cost base and \*reduced cost base of the asset if it stops being a \*pre-CGT asset.
- (2) The first element of each is the asset's \*market value at the time referred to in subsection 149-70(2).

**149-80 No more evidence needed after asset stops being a pre-CGT asset**

After the asset stops being a \*pre-CGT asset, the entity need not give the Commissioner any more evidence about it under section 149-55.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 149-F—How to treat a “demutualised” public entity**

### **Table of sections**

149-162	Subdivision applies only if entity gives sufficient evidence
149-165	Members treated as having underlying interests in assets until demutualisation
149-170	Effect of demutualisation of interposed company

### **149-162 Subdivision applies only if entity gives sufficient evidence**

- (1) This Subdivision applies only if, on the basis solely of evidence the entity gives the Commissioner, the Commissioner is satisfied, or thinks it reasonable to assume, that this Subdivision applies to the entity.
- (2) The evidence must be given in a form that makes it readily apparent whether this Subdivision applies.

### **149-165 Members treated as having underlying interests in assets until demutualisation**

- (1) This section modifies the treatment of evidence that an entity gives the Commissioner under section 149-55 as to the \*ultimate owners who had \*underlying interests in the asset at a particular time if the entity:
  - (a) was:
    - (i) a \*mutual insurance company; or
    - (ii) a \*mutual affiliate company;at the end of the \*starting day (as determined under subsection 149-60(6)); and
  - (b) has since stopped being a company of either of those kinds, but has continued in existence as either a company covered by paragraph 149-50(1)(a) or (e) or a \*publicly traded unit trust; and
  - (c) when it stopped being an entity of either of those kinds (the *stopping time*), had more than 50 members.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The entity may require the Commissioner to treat the evidence on the assumption that an \*ultimate owner who:
- (a) immediately before the stopping time was a member of the entity; and
  - (b) immediately after the stopping time had an \*underlying interest in the asset;
- had the interest at all times from and including the end of the \*starting day until immediately after the stopping time.

### **149-170 Effect of demutualisation of interposed company**

- (1) This section modifies the treatment of evidence that an entity (the *head entity*) gives the Commissioner under section 149-55 as to the \*ultimate owners who had \*underlying interests in the asset at a particular time if another entity (the *interposed company*):
- (a) was:
    - (i) a \*mutual insurance company; or
    - (ii) a \*mutual affiliate company;at the end of the \*starting day (as determined under subsection 149-60(6)) for the head entity; and
  - (b) has since stopped being a company of either of those kinds, but has continued in existence as either a company covered by paragraph 149-50(1)(a) or (e) or a \*publicly traded unit trust; and
  - (c) when it stopped being an entity of either of those kinds (the *stopping time*), had more than 50 members.
- (2) The head entity may require the Commissioner to treat the evidence on the assumption that an \*ultimate owner who:
- (a) immediately before the stopping time was a member of the interposed company; and
  - (b) immediately after the stopping time had, through the interposed company, an \*underlying interest in the asset;
- had the interest at all times from and including the end of the \*starting day until immediately after the stopping time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 152—Small business relief**

### **Guide to Division 152**

#### **152-1 What this Division is about**

To help small business, if the basic conditions for relief are satisfied, capital gains can be reduced by the various concessions in this Division. Those basic conditions are in Subdivision 152-A. Some of the concessions have additional, specific conditions that must also be satisfied.

The 4 available small business concessions are:

- (a) the 15-year exemption (in Subdivision 152-B);
- (b) the 50% reduction (in Subdivision 152-C);
- (c) the retirement concession (in Subdivision 152-D);
- (d) the roll-over (in Subdivision 152-E).

A capital gain that qualifies for the 15-year exemption is disregarded entirely and is not taken into account under the method statement in subsection 102-5(1). By contrast, the other concessions are only activated by step 4 of that method statement. This means that you must apply all available capital losses against your capital gains (under steps 1 and 2) before you can reduce them using those 3 concessions.

#### **Table of Subdivisions**

152-A	Basic conditions for relief under this Division
152-B	Small business 15-year exemption
152-C	Small business 50% reduction
152-D	Small business retirement exemption

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



152-E Small business roll-over

## **Subdivision 152-A—Basic conditions for relief under this Division**

### **Guide to Subdivision 152-A**

#### **152-5 What this Subdivision is about**

This Subdivision sets out some basic conditions for relief. If the basic conditions are satisfied, an entity may be able to reduce its capital gains using the small business concessions in this Division.

The 3 major basic conditions are:

- (a) the entity must be a small business entity or a partner in a partnership that is a small business entity, or the net value of assets that the entity and related entities own must not exceed \$6,000,000;
- (b) the CGT asset must be an active asset;
- (c) if the asset is a share or interest in a trust, there must be a CGT concession stakeholder just before the CGT event, and the entity claiming the concession must be a CGT concession stakeholder in the company or trust or CGT concession stakeholders in the company or trust must have a small business participation percentage in the entity of at least 90%.

Some of the concessions have additional, specific conditions that also must be satisfied. For example, the 15-year exemption applies only if you have held the CGT asset for at least 15 years and you retire.

There are limitations on the availability of the small business concessions for CGT events J2, J5 and J6.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

You do not need to satisfy the basic conditions for the retirement exemption in relation to CGT events J5 and J6.

## Table of sections

### Basic conditions for relief

- 152-10 Basic conditions for relief
- 152-12 Special conditions for CGT event D1

### Maximum net asset value test

- 152-15 Maximum net asset value test
- 152-20 Meaning of net value of the CGT assets

### Active asset test

- 152-35 Active asset test
- 152-40 Meaning of active asset
- 152-42 Trustee of discretionary trust may nominate beneficiaries to be controllers of trust
- 152-45 Continuing time periods for involuntary disposals

### Treatment of passively held CGT assets

- 152-47 Spouses or children taken to be affiliates for certain passively held CGT assets
- 152-48 Working out an entity's aggregated turnover for passively held CGT assets
- 152-49 Businesses that are winding up

### Significant individual test

- 152-50 Significant individual test
- 152-55 Meaning of *significant individual*

### CGT concession stakeholder

- 152-60 Meaning of *CGT concession stakeholder*

### Small business participation percentage

- 152-65 Small business participation percentage
- 152-70 Direct small business participation percentage
- 152-75 Indirect small business participation percentage

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**CGT event happens to asset or interest within 2 years of an individual's death**

152-80 CGT event happens to an asset or interest within 2 years of individual's death

**Basic conditions for relief**

**152-10 Basic conditions for relief**

(1) A \*capital gain (except a capital gain from \*CGT event K7) you make may be reduced or disregarded under this Division if the following basic conditions are satisfied for the gain:

(a) a \*CGT event happens in relation to a \*CGT asset of yours in an income year;

Note: This condition does not apply in the case of CGT event D1: see section 152-12.

(b) the event would (apart from this Division) have resulted in the gain;

(c) at least one of the following applies:

(i) you are a \*small business entity for the income year;

(ii) you satisfy the maximum net asset value test (see section 152-15);

(iii) you are a partner in a partnership that is a small business entity for the income year and the CGT asset is an interest in an asset of the partnership;

(iv) the conditions mentioned in subsection (1A) or (1B) are satisfied in relation to the CGT asset in the income year;

Note: For determining whether an entity is a *small business entity*, see Subdivision 328-C (as affected by section 152-48).

(d) the CGT asset satisfies the active asset test (see section 152-35).

Note: This condition does not apply in the case of CGT event D1: see section 152-12.

*Passively held assets—affiliates and entities connected with you*

(1A) The conditions in this subsection are satisfied in relation to the \*CGT asset in the income year if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 152-10

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- (a) your \*affiliate, or an entity that is \*connected with you, is a \*small business entity for the income year; and
- (b) you do not carry on a \*business in the income year (other than in partnership); and
- (c) if you carry on a business in partnership—the CGT asset is not an interest in an asset of the partnership; and
- (d) in any case—the small business entity referred to in paragraph (a) is the entity that, at a time in the income year, carries on the business (as referred to in subparagraph 152-40(1)(a)(ii) or (iii) or paragraph 152-40(1)(b)) in relation to the CGT asset.

Note 1: For determining whether an entity is a *small business entity*, see Subdivision 328-C (as affected by section 152-48).

Note 2: For businesses that are winding up, see section 152-49 and subsection 328-110(5).

*Passively held assets—partnerships*

- (1B) The conditions in this subsection are satisfied in relation to the \*CGT asset in the income year if:
- (a) you are a partner in a partnership in the income year; and
  - (b) the partnership is a \*small business entity for the income year; and
  - (c) you do not carry on a \*business in the income year (other than in partnership); and
  - (d) the CGT asset is not an interest in an asset of the partnership; and
  - (e) the business you carry on as a partner in the partnership referred to in paragraph (a) is the business that you, at a time in the income year, carry on (as referred to in subparagraph 152-40(1)(a)(i) or paragraph 152-40(1)(b)) in relation to the CGT asset.

Note 1: For determining whether an entity is a *small business entity*, see Subdivision 328-C (as affected by section 152-48).

Note 2: For businesses that are winding up, see section 152-49 and subsection 328-110(5).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Additional basic conditions for shares in a company or interests in a trust*

- (2) If the \*CGT asset is a \*share in a company or an interest in a trust (the ***object company or trust***), one of these additional basic conditions must be satisfied just before the \*CGT event:
- (a) you are a \*CGT concession stakeholder in the object company or trust; or
  - (b) CGT concession stakeholders in the object company or trust together have a \*small business participation percentage in you of at least 90%.

Example: A discretionary trust sells shares in an operating company (the object company). Anna receives 90% of the distributions from the trust, and the trust has a 50% interest in the object company.

The trust cannot be a CGT concession stakeholder in the object company because it is not an individual and therefore cannot satisfy paragraph (2)(a).

However, the trust can satisfy paragraph (2)(b) because Anna is a CGT concession stakeholder in the object company (because her small business participation percentage in the object company is 45%, which is greater than 20%) and her small business participation percentage in the trust is 90%.

*Extra conditions for some concessions*

- (3) In addition to the basic conditions in this section, some of the concessions in this Division have extra conditions that must be satisfied for the concession to be available. These extra conditions are set out in the relevant Subdivisions.

*Special rules for certain CGT events*

- (4) Subdivisions 152-B and 152-C do not apply to \*CGT events J2, J5 and J6. In addition, Subdivision 152-E does not apply to CGT events J5 and J6.

Note 1: Those CGT events are about previous applications of the roll-over in Subdivision 152-E.

Note 2: This Subdivision does not apply to CGT events J5 and J6 in relation to the retirement exemption (see subsection 152-305(4)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 152-12 Special conditions for CGT event D1

- (1) Paragraphs 152-10(1)(a) and (d) do not apply in the case of \*CGT event D1.
- (2) Instead, it is a basic condition that the right you create that triggers the \*CGT event must be inherently connected with a \*CGT asset of yours that satisfies the active asset test (see section 152-35).

### Maximum net asset value test

#### 152-15 Maximum net asset value test

You satisfy the maximum net asset value test if, just before the \*CGT event, the sum of the following amounts does not exceed \$6,000,000:

- (a) the \*net value of the CGT assets of yours;
- (b) the net value of the CGT assets of any entities \*connected with you;
- (c) the net value of the CGT assets of any \*affiliates of yours or entities connected with your affiliates (not counting any assets already counted under paragraph (b)).

Note: Some assets are not included in the definition of *net value of the CGT assets*: see subsections 152-20(2), (3) and (4).

#### 152-20 Meaning of *net value of the CGT assets*

##### *Meaning of net value of the CGT assets*

- (1) The *net value of the CGT assets* of an entity is the amount (whether positive, negative or nil) obtained by subtracting from the sum of the \*market values of those assets the sum of:
  - (a) the liabilities of the entity that are related to the assets; and
  - (b) the following provisions made by the entity:
    - (i) provisions for annual leave;
    - (ii) provisions for long service leave;
    - (iii) provisions for unearned income;
    - (iv) provisions for tax liabilities.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Assets to be disregarded*

- (2) In working out the **net value of the CGT assets** of an entity:
- (a) disregard \*shares, units or other interests (except debt) in another entity that is \*connected with the first-mentioned entity or with an \*affiliate of the first-mentioned entity, but include any liabilities related to any such shares, units or interests; and
  - (b) if the entity is an individual, disregard:
    - (i) assets being used solely for the personal use and enjoyment of the individual, or the individual's \*affiliate (except a \*dwelling, or an \*ownership interest in a dwelling, that is the individual's main residence, including any adjacent land to which the main residence exemption can extend because of section 118-120); and
    - (ii) except for an amount included under subsection (2A), the \*market value of a dwelling, or an ownership interest in a dwelling, that is the individual's main residence (including any relevant adjacent land); and
    - (iii) a right to, or to any part of, any allowance, annuity or capital amount payable out of a \*superannuation fund or an \*approved deposit fund; and
    - (iv) a right to, or to any part of, an asset of a superannuation fund or of an approved deposit fund; and
    - (v) a policy of insurance on the life of an individual.

*Individual's dwelling*

- (2A) In working out the **net value of the CGT assets** of an individual, if:
- (a) a \*dwelling of the individual, an \*ownership interest in such a dwelling or any relevant adjacent land, was used, during all or part of the \*ownership period of the dwelling, by the individual to produce assessable income to a particular extent; and
  - (b) the individual satisfied paragraph 118-190(1)(c) (about interest deductibility) at least to some extent;
- include such amount as is reasonable having regard to the extent to which that paragraph was satisfied.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 152-35

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Note: The net value of the CGT assets of the individual will be reduced by the same proportion of the individual's liabilities related to the dwelling, ownership interest or adjacent land.

*Net value of the CGT assets of others*

(3) In working out the *net value of the CGT assets* of:

- (a) your \*affiliate; or
- (b) an entity that is \*connected with your affiliate;

include only those assets that are used, or held ready for use, in the carrying on of a \*business by you or another entity \*connected with you (whether the business is carried on alone or jointly with others).

(4) However, disregard assets under subsection (3) that are used, or held ready for use, in the carrying on of a \*business by an entity that is \*connected with you only because of your \*affiliate.

Example: You and your husband sell a florist's business that you jointly carry on. Your husband also wholly owns a company that carries on a newsagency business. You yourself have no other involvement with the newsagency business.

Under subsection (4), you disregard the newsagency company's assets in working out whether you satisfy the maximum net asset value test because, although the company is "connected" with you, it is so connected only because of your affiliate (your husband).

## Active asset test

### 152-35 Active asset test

(1) A \*CGT asset satisfies the active asset test if:

- (a) you have owned the asset for 15 years or less and the asset was an \*active asset of yours for a total of at least half of the period specified in subsection (2); or
- (b) you have owned the asset for more than 15 years and the asset was an active asset of yours for a total of at least 7<sup>1</sup>/<sub>2</sub> years during the period specified in subsection (2).

(2) The period:

- (a) begins when you \*acquired the asset; and
- (b) ends at the earlier of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (i) the \*CGT event; and
- (ii) if the relevant business ceased to be carried on in the 12 months before that time or any longer period that the Commissioner allows—the cessation of the business.

#### **152-40 Meaning of *active asset***

- (1) A \*CGT asset is an ***active asset*** at a time if, at that time:
  - (a) you own the asset (whether the asset is tangible or intangible) and it is used, or held ready for use, in the course of carrying on a \*business that is carried on (whether alone or in partnership) by:
    - (i) you; or
    - (ii) your \*affiliate; or
    - (iii) another entity that is \*connected with you; or
  - (b) if the asset is an intangible asset—you own it and it is inherently connected with a business that is carried on (whether alone or in partnership) by you, your affiliate, or another entity that is connected with you.

Note 1: An intangible asset need satisfy only paragraph (a) or paragraph (b).

Note 2: The meaning of ***connected with*** in subparagraph (1)(a)(iii) and paragraph (b) is affected by section 152-42.

Note 3: An example of an asset that is inherently connected with a business is goodwill or the benefit of a restrictive covenant.

Note 4: For businesses that are winding up, see section 152-49 and subsection 328-110(5).

- (2) Subsection 392-20(1) is disregarded in determining, for the purposes of subsection (1) of this section, whether an entity is carrying on a \*business.

Note: An entity would be taken to be carrying on a primary production business under subsection 392-20(1) if the business is carried on by a trust and the entity is presently entitled to trust income.

- (3) A \*CGT asset is also an ***active asset*** at a given time if, at that time, you own it and:
  - (a) it is either a \*share in a company that is an Australian resident at that time or an interest in a trust that is a \*resident

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 152-40

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trust for CGT purposes for the income year in which that time occurs; and

- (b) the total of:
- (i) the \*market values of the active assets of the company or trust; and
  - (ii) the market value of any financial instruments of the company or trust that are inherently connected with a business that the company or trust carries on; and
  - (iii) any cash of the company or trust that is inherently connected with such a business;

is 80% or more of the market value of all of the assets of the company or trust.

- (3A) A \*share in a company, or an interest in a trust, mentioned in paragraph (3)(a) is an **active asset** at a time (the **later time**) if:
- (a) the share or interest was an active asset at an earlier time; and
  - (b) it is reasonable to conclude that the share or interest is still an active asset at the later time.

Note: This ensures that the 80% test does not need to be applied on a day to day basis.

- (3B) A \*share in a company, or an interest in a trust, mentioned in paragraph (3)(a) is an **active asset** at a time if:
- (a) the share or interest fails to meet the requirements under subsection (3) at that time; and
  - (b) the failure is of a temporary nature only.

Note: If a share in a company or an interest in a trust is chosen as a replacement asset, this ensures that a temporary failure of the 80% test does not automatically lead to CGT event J2 happening.

*Exceptions*

- (4) However, the following \*CGT assets cannot be **active assets**:
- (a) interests in an entity that is \*connected with you, other than \*shares and interests covered by subsection (3);
  - (b) shares in a company, other than:
    - (i) shares in a \*widely held company that are covered by subsection (3), (3A) or (3B) and held by a \*CGT concession stakeholder of the company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) shares in any other company that are covered by subsection (3), (3A) or (3B);
- (c) interests in a trust, other than:
  - (i) interests in a trust to which subsection (5) applies that are covered by subsection (3), (3A) or (3B) and held by a CGT concession stakeholder of the trust; and
  - (ii) interests in any other trust that are covered by subsection (3), (3A) or (3B);
- (d) financial instruments (such as loans, debentures, bonds, promissory notes, futures contracts, forward contracts, currency swap contracts and a right or option in respect of a share, security, loan or contract);
- (e) an asset whose main use by you is to \*derive interest, an annuity, rent, royalties or foreign exchange gains unless:
  - (i) the asset is an intangible asset and has been substantially developed, altered or improved by you so that its \*market value has been substantially enhanced; or
  - (ii) its main use for deriving rent was only temporary.

Example: A company uses a house purely as an investment property and rents it out. The house is not an *active asset* because the company is not using the house in the course of carrying on a business. If, on the other hand, the company ran the house as a guest house the house would be an *active asset* because the company would be using it to carry on a business and not to derive rent.

- (4A) For the purposes of paragraph (4)(e), in determining the main use of an asset:
  - (a) disregard any personal use or enjoyment of the asset by you; and
  - (b) treat any use by your \*affiliate, or an entity that is \*connected with you, as your use.
- (5) This subsection applies to a trust if:
  - (a) interests in the trust are listed for quotation in the official list of an \*approved stock exchange; or
  - (b) the trust has more than 50 \*members, unless the trust is a discretionary trust or a trust where at least one of the following conditions is met during an income year:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 152-42

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- (i) no more than 20 persons held, or had the right to acquire or become the holders of, \*membership interests representing at least 75% of the value of the membership interests in the trust;
- (ii) if there are \*trust voting interests in the trust—at least 75% of the trust voting interests in the trust was capable of being controlled by no more than 20 persons;
- (iii) at least 75% of the amount of any distribution made by the trustee during the year was made to no more than 20 persons;
- (iv) if no distribution was made by the trustee during the year—the Commissioner is of the opinion that, if a distribution had been made during the year, at least 75% of the distribution would have been made to no more than 20 persons.

**152-42 Trustee of discretionary trust may nominate beneficiaries to be controllers of trust**

- (1) This section applies for the purposes of determining, for the purposes of subparagraph 152-40(1)(a)(iii) or paragraph 152-40(1)(b), whether an entity is \*connected with you.

Note: This affects whether a CGT asset that you own satisfies the active asset test.

- (2) The trustee of a discretionary trust may nominate not more than 4 beneficiaries as being controllers of the trust for an income year (the *relevant income year*) for which the trustee did not make a distribution of income or capital if the trust had a \*tax loss, or no taxable income, for that year.

- (3) A nomination under subsection (2) has effect as if each nominated beneficiary controlled the trust for the relevant income year in a way described in section 328-125.

Note: This means each nominated beneficiary is connected with the trust.

- (4) A nomination under subsection (2) must:
- (a) be in writing; and
  - (b) be signed by the trustee and by each nominated beneficiary.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **152-45 Continuing time periods for involuntary disposals**

#### *Asset compulsorily acquired, lost or destroyed*

- (1) If a \*CGT asset is an asset (the *new asset*) you acquired to satisfy the requirement in subsection 124-70(2) or 124-75(2) for a roll-over under Subdivision 124-B, then the active asset test in section 152-35 applies as if:
- (a) you had acquired the new asset when you acquired the old asset; and
  - (b) the new asset had been your \*active asset at all times when the original asset was your active asset; and
  - (c) the new asset had not been your active asset at all times when the original asset was not your active asset.

Note 1: Subdivision 124-B allows you to choose a roll-over if your CGT asset is compulsorily acquired, lost or destroyed.

Note 2: If this subsection applies to a CGT asset, then section 152-115 (which is about continuing time periods) will apply for the 15-year exemption.

#### *Assets replaced during FSR transition (same owner roll-overs)*

- (1A) If a \*CGT asset is an asset (the *new asset*) you acquired in a situation covered by section 124-880, 124-885 or 124-890, then the active asset test in section 152-35 applies as if:
- (a) you had acquired the new asset when you acquired the original asset; and
  - (b) the new asset had been your \*active asset at all times when the original asset was your active asset; and
  - (c) the new asset had not been your active asset at all times when the original asset was not your active asset.

Note 1: Subdivision 124-O provides a roll-over for certain CGT assets that come to an end as a result of an FSR transition.

Note 2: If this subsection applies to a CGT asset, then section 152-115 (which is about continuing time periods) will apply for the 15-year exemption.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 152-45

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*Assets replaced during FSR transition (new owner roll-overs)*

- (1B) If a \*CGT asset is an asset (the *new asset*) acquired in a situation covered by section 124-900, 124-905 or 124-910, then the active asset test in section 152-35 applies as if:
- (a) the new owner had acquired the new asset when the original owner acquired the original asset; and
  - (b) the new asset had been the \*active asset of the new owner at all times when the original asset was the original owner's active asset; and
  - (c) the new asset had not been the active asset of the new owner at all times when the original asset was not the original owner's active asset.

Note 1: Subdivision 124-O provides a roll-over for certain CGT assets that come to an end as a result of an FSR transition.

Note 2: If this subsection applies to a CGT asset, then section 152-115 (which is about continuing time periods) will apply for the 15-year exemption.

*Marriage or relationship breakdowns*

- (2) If you were the transferee of a \*CGT asset for which there has been a roll-over under Subdivision 126-A, then you may choose that the active asset test in section 152-35 applies as if:
- (a) you had acquired the asset when the transferor acquired the asset; and
  - (b) the asset had been an \*active asset of yours at all times when the asset was an active asset of the transferor; and
  - (c) the asset had not been an active asset of yours at all times when the asset was not an active asset of the transferor.

Note 1: Section 103-25 tells you when the choice must be made.

Note 2: There is a roll-over under Subdivision 126-A if CGT assets are transferred because of a marriage or relationship breakdown.

Note 3: If you don't make the choice, the time of acquisition is simply the time of the transfer.

Note 4: Making the choice here has certain consequences for the 15-year exemption: see section 152-115.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Treatment of passively held CGT assets

### 152-47 Spouses or children taken to be affiliates for certain passively held CGT assets

- (1) This section applies if:
  - (a) one entity (the *asset owner*) owns a \*CGT asset (whether the asset is tangible or intangible); and
  - (b) either:
    - (i) the asset is used, or held ready for use, in the course of carrying on a \*business in an income year by another entity (the *business entity*); or
    - (ii) the asset is inherently connected with a business that is carried on in an income year by another entity (the *business entity*); and
  - (c) the business entity is not (apart from this section) an \*affiliate of, or \*connected with, the asset owner.
- (2) For the purposes of this Subdivision, in determining whether the business entity is an \*affiliate of, or is \*connected with, the asset owner, take the following to be affiliates of an individual:
  - (a) a \*spouse of the individual;
  - (b) a \*child of the individual, being a child who is under 18 years.
- (3) If an entity is an \*affiliate of, or \*connected with, another entity as a result of subsection (2), then the \*spouse or \*child mentioned in that subsection is, in addition, taken to be an affiliate of the individual for the purposes of this Subdivision, and for the purposes of sections 328-110 to 328-125 to the extent that they relate to this Subdivision.

Example: The spouse or child mentioned in subsection (2) is taken to be an affiliate of the individual for the purposes of working out which entities are affiliates of or connected with entities under section 152-48.
- (4) To avoid doubt, subsection (2) applies:
  - (a) for the purposes of reducing or disregarding, under this Division, any \*capital gain from any \*CGT asset; but

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(b) only while:

- (i) a \*spouse remains a spouse; or
- (ii) a \*child remains a child who is under 18 years.

**152-48 Working out an entity's aggregated turnover for passively held CGT assets**

- (1) This section applies for the purposes of section 328-115 to determine whether an entity (the *test entity*) is a \*small business entity for the purposes of subsection 152-10(1A) or (1B).
- (2) An entity (the *deemed entity*) is taken to be an \*affiliate of, or \*connected with, the test entity (as the case requires) if:
  - (a) the deemed entity is an affiliate of, or connected with, the entity that owns the \*CGT asset referred to in subsection 152-10(1A) or (1B); and
  - (b) the deemed entity is not (apart from this section) an affiliate of, or connected with, the test entity.
- (3) If:
  - (a) the entity that owns the \*CGT asset referred to in subsection 152-10(1B) is a partner in 2 or more partnerships; and
  - (b) the asset is:
    - (i) used, or held ready for use, in the course of carrying on a \*business that is carried on by at least 2 of those partnerships; or
    - (ii) inherently connected with businesses that are carried on by at least 2 of those partnerships;then, each partnership referred to in paragraph (b) that is not (apart from this section) \*connected with the test entity is taken to be connected with the test entity.

**152-49 Businesses that are winding up**

- (1) This section applies to an entity in an income year (the *CGT event year*) if:
  - (a) a \*business that the entity previously carried on (including in partnership) is being wound up in that year; and
  - (b) either:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (i) the asset was used, or held ready for use, in the course of carrying on the business at a time in the income year in which the business stopped being carried on; or
  - (ii) if the asset is an intangible asset—the asset was inherently connected with the business that was carried on at a time in the income year in which the business stopped being carried on.
- (2) For the purposes of paragraphs 152-40(1)(a) and (b) as they apply for the purposes of paragraphs 152-10(1A)(d) and (1B)(e):
- (a) the entity is taken to carry on the \*business at a time in the CGT event year; and
  - (b) either:
    - (i) the \*CGT asset is taken to be used, or held ready for use, in the course of carrying on the business at that time; or
    - (ii) if the asset is an intangible asset—the CGT asset is taken to be inherently connected with the business at that time.

Note: The entity might also be taken to be a small business entity in the CGT event year (see subsection 328-110(5)).

## Significant individual test

### 152-50 Significant individual test

An entity satisfies the significant individual test if the entity had at least one \*significant individual just before the \*CGT event.

### 152-55 Meaning of *significant individual*

An individual is a *significant individual* in a company or a trust at a time if, at that time, the individual has a \*small business participation percentage in the company or trust of at least 20%.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## CGT concession stakeholder

### 152-60 Meaning of *CGT concession stakeholder*

An individual is a *CGT concession stakeholder* of a company or trust at a time if the individual is:

- (a) a \*significant individual in the company or trust; or
- (b) a spouse of a significant individual in the company or trust, if the spouse has a \*small business participation percentage in the company or trust at that time that is greater than zero.

## Small business participation percentage

### 152-65 Small business participation percentage

An entity's *small business participation percentage* in another entity at a time is the percentage that is the sum of:

- (a) the entity's \*direct small business participation percentage in the other entity at that time; and
- (b) the entity's \*indirect small business participation percentage in the other entity at that time.

### 152-70 Direct small business participation percentage

- (1) An entity holds a *direct small business participation percentage* at the relevant time in an entity equal to the percentage worked out using this table:

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<i>An entity's direct small business participation percentage</i>	
<b>In this entity:</b>	<b>Is:</b>
1 A company	This percentage that the entity has because of holding the legal and equitable interests in *shares in the company: <ul style="list-style-type: none"><li>(a) the percentage of the voting power in the company; or</li><li>(b) the percentage of any *dividend that the company may pay; or</li><li>(c) the percentage of any distribution of capital that the</li></ul>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***An entity's direct small business participation percentage***

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<b>In this entity:</b>	<b>Is:</b>
	company may make; or, if they are different, the smaller or smallest.
2 A trust (where entities have entitlements to all the income and capital of the trust)	This percentage: (a) the percentage of any distribution of income that the trustee may make to which the entity would be beneficially entitled; or (b) the percentage of any distribution of capital that the trustee may make to which the entity would be beneficially entitled; or, if they are different, the smaller.
3 A trust (where entities do not have entitlements to all the income and capital of the trust)	This percentage: (a) if the trustee makes distributions of income during the income year (the <b><i>current year</i></b> ) in which that time occurs—the percentage of the distributions to which the entity was beneficially entitled; or (b) if the trustee makes distributions of capital during the current year—the percentage of the distributions to which the entity was beneficially entitled; or, if 2 different percentages are applicable, the smaller.

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(2) For item 1 in the table, ignore \*redeemable shares.

**152-75 Indirect small business participation percentage**

- (1) Work out the ***indirect small business participation percentage*** that an entity (the ***holding entity***) holds at a particular time in another entity (the ***test entity***) by multiplying:
- (a) the holding entity's \*direct small business participation percentage (if any) in another entity (the ***intermediate entity***) at that time; by
  - (b) the sum of:
    - (i) the intermediate entity's direct small business participation percentage (if any) in the test entity at that time; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 152-75

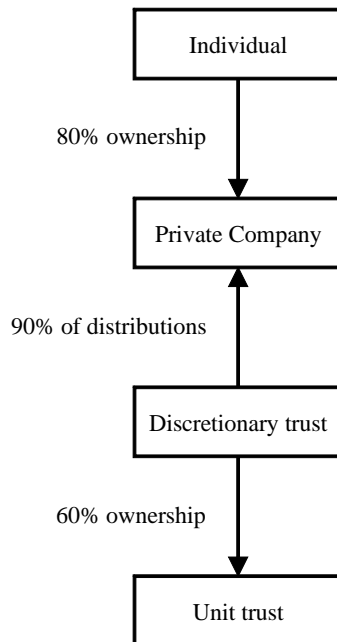
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- (ii) the intermediate entity's indirect small business participation percentage (if any) in the test entity at that time (as worked out under one or more other applications of this section).

Note: When testing an intermediate entity's indirect small business participation percentage in another entity, the intermediate entity becomes the holding entity.

- (2) If there is more than one intermediate entity to which paragraph (1)(a) applies at that time, the holding entity's *indirect small business participation percentage* is the sum of the percentages worked out under subsection (1) in relation to each of those intermediate entities.

Example: The individual mentioned in the diagram has an indirect small business participation percentage in the unit trust.



Multiplying the percentages as mentioned in subsection (1) produces small business participation percentage of 43.2%.

If the individual had a direct small business participation percentage of 10% in the unit trust, that would be added to the individual's

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

indirect small business participation percentage to produce a small business participation percentage in the trust of 53.2%.

## **CGT event happens to asset or interest within 2 years of an individual's death**

### **152-80 CGT event happens to an asset or interest within 2 years of individual's death**

- (1) This section applies if:
  - (a) a \*CGT asset:
    - (i) forms part of the estate of a deceased individual; or
    - (ii) was owned by joint tenants and one of them dies; and
  - (b) any of the following applies:
    - (i) the asset devolves to the individual's \*legal personal representative;
    - (ii) the asset \*passes to a beneficiary of the individual;
    - (iii) an interest in the asset is \*acquired by the surviving joint tenant or tenants (as the case may be) as mentioned in section 128-50;
    - (iv) the asset devolves to a trustee of a trust established by the will of the individual; and
  - (c) the deceased individual referred to in subparagraph (a)(i) or (ii) would have been entitled to reduce or disregard a \*capital gain under this Division if a \*CGT event had happened in relation to the CGT asset immediately before his or her death; and
  - (d) a CGT event happens in relation to the CGT asset within 2 years of the individual's death.
- (2) A person mentioned in subsection (2A) is entitled to reduce or disregard a \*capital gain under this Division in the same way as the deceased individual would have been entitled to as if:
  - (a) paragraph 152-105(d) only required the deceased individual to have been 55 or over, or permanently incapacitated, at the time of the \*CGT event referred to in paragraph (1)(c) of this section; and
  - (b) paragraph 152-305(1)(b) did not apply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 152-100

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- (2A) The following persons (as the case requires) are entitled to reduce or disregard a \*capital gain under this Division in accordance with subsection (2):
- (a) the \*legal personal representative of the individual;
  - (b) the beneficiary of the individual;
  - (c) the surviving joint tenant or tenants;
  - (d) the trustee or a beneficiary of the trust.
- (3) The Commissioner may extend the time limit in paragraph (1)(d).

**Subdivision 152-B—Small business 15-year exemption**

**Guide to Subdivision 152-B**

**152-100 What this Subdivision is about**

A small business entity can disregard a capital gain arising from a CGT asset that it has owned for at least 15 years if certain conditions are met. Capital losses are not affected.

Also, any amount of income a company or trust derives from a CGT event covered by this Subdivision is neither assessable income nor exempt income. If the company or trust makes payments to its CGT concession stakeholders that are attributable to the exempt amount, the payments will not be taken into account in determining the taxable income of the company, trust or recipient.

The main conditions are that:

- the basic conditions for relief in Subdivision 152-A are satisfied;
- the entity continuously owned the asset for the 15-year period leading up to the CGT event;
- if the entity is an individual, the individual retires or is permanently incapacitated;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- if the entity is a company or trust, the entity had a significant individual for a total of at least 15 years during which the entity owned the asset and the individual who was the significant individual just before the CGT event retires or is permanently incapacitated.

The Subdivision also allows time periods to continue to run if there has been a roll-over because of marriage or relationship breakdown or compulsory acquisition.

### Table of sections

152-105	15-year exemption for individuals
152-110	15-year exemption for companies and trusts
152-115	Continuing time periods for involuntary disposals
152-120	Discretionary trusts need not have a significant individual in a loss year or nil income year
152-125	Payments to company's or trust's CGT concession stakeholders are exempt

### 152-105 15-year exemption for individuals

If you are an individual, you can disregard any \*capital gain arising from a \*CGT event if all of the following conditions are satisfied:

- (a) the basic conditions in Subdivision 152-A are satisfied for the gain;
- (b) you continuously owned the \*CGT asset for the 15-year period ending just before the CGT event;

Note: Section 152-115 allows for continuation of the period if there is an involuntary disposal of the asset.

- (c) if the CGT asset is a \*share in a company or an interest in a trust—the company or trust had a \*significant individual for a total of at least 15 years (even if the 15 years was not continuous and it was not always the same significant individual) during which you owned the CGT asset;

Note: There is an exception for discretionary trusts that have tax losses or no taxable income for an income year: see section 152-120.

- (d) either:
  - (i) you are 55 or over at the time of the CGT event and the event happens in connection with your retirement; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) you are permanently incapacitated at the time of the CGT event.

### **152-110 15-year exemption for companies and trusts**

- (1) An entity that is a company or trust can disregard any \*capital gain arising from a \*CGT event if all of the following conditions are satisfied:
  - (a) the basic conditions in Subdivision 152-A are satisfied for the gain;
  - (b) the entity continuously owned the \*CGT asset for the 15-year period ending just before the CGT event;
    - Note: Section 152-115 allows for continuation of the period if there is an involuntary disposal of the asset.
  - (c) the entity had a \*significant individual for a total of at least 15 years (even if the 15 years was not continuous and it was not always the same significant individual) during which the entity owned the CGT asset;
    - Note: There is an exception for discretionary trusts that have tax losses or no taxable income for an income year: see section 152-120.
  - (d) an individual who was a significant individual of the company or trust just before the CGT event either:
    - (i) was 55 or over at that time and the event happened in connection with the individual's retirement; or
    - (ii) was permanently incapacitated at that time.
- (2) Any \*ordinary income or \*statutory income the company or trust \*derives from a \*CGT event that would be covered by subsection (1) (assuming the event gave rise to a \*capital gain, even if it didn't) is neither assessable income nor \*exempt income.

#### *Exception*

- (3) However, subsection (2) does not apply to income \*derived by a company or trust as a result of a \*balancing adjustment event occurring to a \*depreciating asset:
  - (a) whose decline in value is worked out under Division 40; or
  - (b) deductions for which are calculated under Division 328.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## 152-115 Continuing time periods for involuntary disposals

### *Asset compulsorily acquired, lost or destroyed*

- (1) If a \*CGT asset is an asset (the **new asset**) you acquired to satisfy the requirement in subsection 124-70(2) or 124-75(2) for a roll-over under Subdivision 124-B, then paragraphs 152-105(b) and 152-110(1)(b) and (c) (the 15-year and significant individual rules) apply as if you had acquired the new asset when you acquired the original asset.

Note: Subdivision 124-B allows you to choose a roll-over if your CGT asset is compulsorily acquired, lost or destroyed.

### *Assets replaced during FSR transition (same owner roll-overs)*

- (1A) If a \*CGT asset is an asset (the **new asset**) you acquired in a situation covered by section 124-880, 124-885 or 124-890, then paragraphs 152-105(b) and 152-110(1)(b) and (c) (the 15-year and significant individual rules) apply as if you had acquired the new asset when you acquired the original asset.

Note: Subdivision 124-O provides a roll-over for certain CGT assets that come to an end as a result of an FSR transition.

### *Asset replaced during FSR transition (new owner roll-overs)*

- (1B) If a \*CGT asset is an asset (the **new asset**) acquired in a situation covered by section 124-900, 124-905 or 124-910, then paragraphs 152-105(b) and 152-110(1)(b) and (c) (the 15-year and significant individual rules) apply as if the new owner had acquired the new asset when the original owner acquired the original asset.

Note: Subdivision 124-O provides a roll-over for certain CGT assets that come to an end as a result of an FSR transition.

### *Marriage or relationship breakdowns*

- (2) If you made the choice mentioned in subsection 152-45(2) for a \*CGT asset, then paragraphs 152-105(b) and (c) and 152-110(1)(b) and (c) (the 15-year and significant individual rules) apply as if you had acquired the asset when the transferor acquired it.

Note: There is a roll-over under Subdivision 126-A if CGT assets are transferred because of a marriage or relationship breakdown.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **152-120 Discretionary trusts need not have a significant individual in a loss year or nil income year**

Paragraphs 152-105(c) and 152-110(1)(c) apply for a trust referred to in item 3 of the table in subsection 152-70(1) as if the trust had a \*significant individual during an income year for which the trustee did not make a distribution of income or capital, if the trust had a \*tax loss, or no taxable income, for that income year.

Note: This is because the trust might not have had the funds to make a distribution during that income year, which would prevent it from having a significant individual in that year.

### **152-125 Payments to company's or trust's CGT concession stakeholders are exempt**

- (1) This section applies if:
  - (a) one of the following applies:
    - (i) under section 152-110, a \*capital gain (the *exempt amount*) of a company or trust is disregarded;
    - (ii) under section 152-110, an amount of income (the *exempt amount*) is \*non-assessable non-exempt income of a company or trust;
    - (iii) subparagraph (i) of this paragraph would have applied to an amount (the *exempt amount*) except that the capital gain was disregarded anyway because the relevant \*CGT asset was \*acquired before 20 September 1985; and
  - (b) the company or trust makes one or more payments (whether directly or indirectly through one or more interposed entities) in relation to the exempt amount within 2 years after the relevant \*CGT event to an individual who was a \*CGT concession stakeholder of the company or trust just before the event.

Note: A normal business payment, for example, a payment of wages, would not be made "in relation to the exempt amount".

- (2) In determining the taxable income of the company, the trust, the individual, or any of the interposed entities, disregard the total amount of the payment or payments made to the \*CGT concession stakeholder, up to the following limit:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Stakeholder's participation percentage  $\times$  Exempt amount

where:

***stakeholder's participation percentage*** means:

- (a) in the case of a company or a trust referred to in item 2 of the table in subsection 152-70(1)—the stakeholder's \*small business participation percentage in the company or trust just before the relevant \*CGT event; or
- (b) in the case of a trust referred to in item 3 of that table—the amount (expressed as a percentage) worked out using the following formula:

$$\frac{100}{\text{Number of *CGT concession stakeholders of the trust just before the *CGT event}}$$

- (3) If a company makes such a payment, this Act applies to the payment, to the extent that it is less than or equal to the limit mentioned in subsection (2), as if:
  - (a) it were not a \*dividend; and
  - (b) it were not a \*frankable distribution.
- (4) The Commissioner may extend the time limit under paragraph (1)(b).

### **Subdivision 152-C—Small business 50% reduction**

#### **Guide to Subdivision 152-C**

##### **152-200 What this Subdivision is about**

This Subdivision tells you how to apply the small business CGT concessions mentioned in step 4 of the method statement in subsection 102-5(1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

A capital gain is reduced by 50% if the basic conditions in Subdivision 152-A are satisfied.

If the capital gain has already been reduced by the discount percentage, the 50% reduction under this Subdivision applies to that reduced gain.

The capital gain may be further reduced by the small business retirement exemption or a small business rollover, or both.

Alternatively, you may choose not to apply the 50% reduction and instead apply the small business retirement exemption or small business rollover.

None of these rules apply if the 15-year exemption already applies to the capital gain, since such a gain is disregarded anyway.

### **Table of sections**

152-205	You get the small business 50% reduction
152-210	You may also get the small business retirement exemption and small business roll-over relief
152-215	15-year rule has priority
152-220	You may choose not to apply this Subdivision

### **152-205 You get the small business 50% reduction**

The amount of a \*capital gain remaining after applying step 3 of the method statement in subsection 102-5(1) is reduced by 50%, if the basic conditions in Subdivision 152-A are satisfied for the gain.

**Example:** For an individual (other than one who opts to claim indexation instead of the discount), the discount percentage that applies under step 3 of the method statement is 50%. Therefore, the combined effect of the discount percentage and this section would be to reduce the original capital gain by a total of 75%.

For an individual who opts to claim indexation, or a company, there is no discount percentage, so the individual or company would simply get the 50% reduction under this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**152-210 You may also get the small business retirement exemption and small business roll-over relief**

- (1) The \*capital gain, as reduced under section 152-205, may also qualify for:
  - (a) the small business retirement exemption (see Subdivision 152-D); or
  - (b) a small business roll-over (see Subdivision 152-E); or both.
- (2) If it qualifies for both of those concessions, you may choose which order to apply them in.

**152-215 15-year rule has priority**

This Subdivision does not apply to a \*capital gain to which Subdivision 152-B (15-year exemption) applies.

Note: Under that Subdivision, such a gain is entirely disregarded, so there is no need for any further concession to apply.

**152-220 You may choose not to apply this Subdivision**

You may choose not to apply the reduction mentioned in section 152-205 to a particular \*capital gain.

Note: Making this choice might allow a company or trust to make larger tax-free payments under the small business retirement exemption: see section 152-325.

**Subdivision 152-D—Small business retirement exemption**

**Guide to Subdivision 152-D**

**152-300 What this Subdivision is about**

You can choose to disregard a capital gain from a CGT event happening to a CGT asset of your small business if the capital proceeds from the event are used in connection with your retirement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 152-305

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There is a lifetime limit of \$500,000 for all choices that can be made in respect of an individual under this Subdivision.

You may choose not to apply the concession in section 152-205 (small business 50% reduction) before this one. For an additional concession, see also Subdivision 152-E (small business roll-over).

You do not need to satisfy the basic conditions for this exemption in relation to CGT events J5 and J6.

**Table of sections**

152-305	Choosing the exemption
152-310	Consequences of choice
152-315	Choosing the amount to disregard
152-320	Meaning of CGT retirement exemption limit
152-325	Company or trust conditions
152-330	15-year rule has priority

**152-305 Choosing the exemption**

*Individual*

- (1) If you are an individual, you can choose to disregard all or part of a \*capital gain if:
- (a) the basic conditions in Subdivision 152-A are satisfied for the gain; and
  - (b) if you are under 55 just before you make the choice—you contribute an amount equal to the asset's \*CGT exempt amount to a \*complying superannuation fund or an \*RSA; and
- Note: For the non-deductibility of the contribution, see subsection 290-150(4).
- (c) the contribution is made:
    - (i) if the relevant CGT event is CGT event J2, J5 or J6—when you made the choice; or
    - (ii) otherwise—at the later of when you made the choice and when you received the proceeds.

Note 1: Section 103-25 tells you when the choice must be made.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (1A) If you receive the \*capital proceeds from the \*CGT event in instalments, paragraphs (1)(b) and (c) apply to each instalment in succession (up to the asset's \*CGT exempt amount).

*Company or trust*

- (2) A company or a trust (except a public entity—see subsection (3)) can also choose to disregard such an amount if:
- (a) the basic conditions in Subdivision 152-A are satisfied for the \*capital gain; and
  - (b) the entity satisfies the significant individual test (see section 152-50); and
  - (c) the company or trust conditions in section 152-325 are satisfied.

Note: Section 103-25 tells you when the choice must be made.

- (3) Entities of a kind referred to in subsection 328-125(8) cannot make the choice.
- (4) Paragraphs (1)(a) and (2)(a) do not apply if the \*capital gain arose from \*CGT event J5 or J6.

### **152-310 Consequences of choice**

*Consequences in all cases*

- (1) If the individual, company or trust makes the choice mentioned in section 152-305 for any part of the \*capital gain from the \*CGT asset, that part of the capital gain equal to its \*CGT exempt amount is disregarded.

*Additional consequences in relation to company or trust*

- (2) Any payment or part of one the company or trust makes to comply with section 152-325:
- (a) is exempt from income tax for the \*CGT concession stakeholder to whom it is made; and
  - (b) cannot be deducted from the company's or trust's assessable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Additional consequences in relation to interposed entities*

- (3) If:
- (a) an entity (the ***paying entity***) receives a payment (whether directly or indirectly through one or more interposed entities) that a company or trust makes to comply with section 152-325; and
  - (b) the paying entity passes on the payment to the \*CGT concession stakeholder or another interposed entity;
- then:
- (c) the payment cannot be deducted from the paying entity's assessable income; and
  - (d) the payment received by the paying entity is not assessable income and is not \*exempt income.

**152-315 Choosing the amount to disregard**

- (1) You can choose to disregard all or part of each \*capital gain to which this Subdivision applies.
- Note 1: You make capital gains equal to any parts that you do not choose to disregard.
- Note 2: Section 103-25 tells you when the choice must be made.
- (2) However, the choice must be made in a way that ensures that:
- (a) for an individual—your \*CGT retirement exemption limit is not exceeded; or
  - (b) for a company or trust—the CGT retirement exemption limit of each individual for whom the choice is made is not exceeded.
- (3) The amount chosen for the asset is its ***CGT exempt amount***.
- (4) The \*CGT exempt amount must be specified in writing.
- (5) If a company or trust is making the choice and it has more than one \*CGT concession stakeholder, it must specify in writing the percentage of each \*CGT asset's \*CGT exempt amount that is attributable to each of those stakeholders. One or more of the percentages may be nil, but all of the percentages must add up to 100%.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Example:** Daryl is a significant individual in a company. The company specifies 90% for Daryl under subsection (5) (which means that the percentage specified for the other stakeholder must be 10%). Daryl's retirement exemption limit is \$500,000.

To determine whether subsection (2) is complied with, Daryl would take 90% of the asset's CGT exempt amount, add that to amounts previously specified in choices made by or for him under this Subdivision and see whether the total exceeds \$500,000.

**Note:** Subsections (4) and (5) are exceptions to the general rule about choices in section 103-25.

### **152-320 Meaning of *CGT retirement exemption limit***

- (1) An individual's *CGT retirement exemption limit* at a time is \$500,000 reduced by the \*CGT exempt amounts of \*CGT assets specified in choices previously made by or for the individual under this Subdivision.
- (2) If the individual was one of at least 2 \*CGT concession stakeholders of a company or trust, and the company or trust made a choice for the individual, only the individual's percentage (see subsection 152-315(5)) of the assets' \*CGT exempt amounts is taken into account under subsection (1) for that choice.

### **152-325 Company or trust conditions**

#### *Company or trust to make payments*

- (1) A company or trust must make a payment (whether directly or indirectly through one or more interposed entities) to at least one of its \*CGT concession stakeholders if:
  - (a) the company or trust makes a choice under this Subdivision to disregard a \*capital gain from \*CGT event J2, J5 or J6; or
  - (b) the company or trust receives an amount of \*capital proceeds from a \*CGT event for which it makes a choice under this Subdivision.
- (2) If the company or trust receives the \*capital proceeds from the CGT event in instalments, subsection (1) applies to each instalment in succession (up to the relevant \*CGT exempt amount).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 152-325

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*Amount and timing of payments*

- (3) If a payment is made to more than one \*CGT concession stakeholder, the amount of each such payment is to be worked out by reference to each individual's percentage (see subsection 152-315(5)) of the relevant \*CGT exempt amount.
- (3A) If the \*CGT concession stakeholder to whom the payment is made is an employee of the company or trust, the payment must not be of a kind mentioned in section 82-135 (disregarding paragraph (fa) of that section).
- (4) The payment must be made by:
  - (a) if paragraph (1)(a) applies—7 days after the company or trust makes the choice; and
  - (b) otherwise—the later of:
    - (i) 7 days after the company or trust makes the choice; and
    - (ii) 7 days after the company or trust receives an amount of \*capital proceeds from the \*CGT event.
- (5) The amount of the payment, or the sum of the amounts of the payments, required to be made under this section must be equal to the lesser of:
  - (a) either:
    - (i) if paragraph (1)(a) applies—the amount of the \*capital gain from the \*CGT event that the company or trust disregarded; or
    - (ii) otherwise—the amount of \*capital proceeds received; and
  - (b) the relevant \*CGT exempt amount.

*Payments may be joint or separate*

- (6) If this section requires the company or trust to make 2 or more payments to a single \*CGT concession stakeholder (whether or not by the same time), the company or trust may meet that requirement by making one payment or by making separate payments.
- (7) If a \*CGT concession stakeholder is under 55 just before a payment is made under this section in relation to him or her:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the company or trust must make the payment to the CGT concession stakeholder by contributing it for the stakeholder to a \*complying superannuation fund or an \*RSA in respect of the stakeholder; and
- (b) the company or trust must notify the trustee of the fund or the \*RSA provider at the time the contribution is made that the contribution is made in accordance with this section.

Note: For the non-deductibility of the contribution, see subsection 290-150(4).

- (8) For the purposes of Part 3-30, treat a payment mentioned in paragraph (7)(a), made in accordance with this section, as a contribution made by the \*CGT concession stakeholder.

*Payments are not dividends or frankable distributions*

- (9) Subsection (10) applies if:
  - (a) a company makes a payment to comply with subsection (1) to:
    - (i) a \*CGT concession stakeholder; or
    - (ii) an interposed entity, in relation to a CGT concession stakeholder; or
  - (b) both of the following apply:
    - (i) an interposed entity receives a payment (whether directly or indirectly through one or more interposed entities) that a company or trust makes to comply with subsection (1), in relation to a CGT concession stakeholder;
    - (ii) the interposed entity passes on the payment to the CGT concession stakeholder or another interposed entity.
- (10) This Act applies to the payment, to the extent that it is less than or equal to the amount mentioned in subsection (3) for the stakeholder, as if:
  - (a) it were not a \*dividend; and
  - (b) it were not a \*frankable distribution.
- (11) Subsection (10) applies in relation to the payment despite section 109 and Division 7A of Part III of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **152-330 15-year rule has priority**

This Subdivision does not apply to a \*capital gain to which Subdivision 152-B (15-year exemption) applies.

Note: Under that Subdivision, such a gain is entirely disregarded, so there is no need for any further concession to apply.

## **Subdivision 152-E—Small business roll-over**

### **Guide to Subdivision 152-E**

#### **152-400 What this Subdivision is about**

A small business roll-over allows you to defer the making of a capital gain from a CGT event happening in relation to one or more small business assets if the basic conditions in Subdivision 152-A are satisfied for the gain.

You may choose not to apply the concession in section 152-205 (small business 50% reduction) before this one. For an additional exemption, see also Subdivision 152-D (small business retirement exemption).

### **Table of sections**

#### **Operative provisions**

- 152-410 When you can obtain the roll-over
- 152-415 What the roll-over consists of
- 152-420 Rules where an individual who has obtained a roll-over dies
- 152-430 15-year rule has priority

### **Operative provisions**

#### **152-410 When you can obtain the roll-over**

You can choose to obtain a roll-over under this Subdivision for a \*capital gain if the basic conditions in Subdivision 152-A are satisfied for the gain.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Note 1: You can choose the roll-over even if you have not yet acquired a replacement asset or incurred fourth element expenditure, but:
- (a) CGT event J5 happens if, by the end of the replacement asset period, you do not acquire the asset or incur the expenditure (see section 104-197); and
  - (b) CGT event J6 happens if, by the end of the replacement asset period, the cost of the replacement asset or the amount of fourth element expenditure incurred (or both) is less than the amount of the capital gain that you disregarded (see section 104-198).
- Note 2: If you have acquired a replacement asset or incurred fourth element expenditure but there is a change in relation to the replacement asset or improved asset after the end of the replacement asset period, CGT event J2 may happen: see section 104-185.

### **152-415 What the roll-over consists of**

If you choose the roll-over, you can choose to disregard all or part of each \*capital gain to which this Subdivision applies.

Note: If you choose to disregard only some of the capital gain, you make a capital gain equal to the remaining amount.

Example: The original capital gain was \$100,000. You have reduced it to \$25,000 under other concessions (apart from the roll-over). If you choose to disregard \$20,000, you are left with a final capital gain of \$5,000.

### **152-420 Rules where an individual who has obtained a roll-over dies**

- (1) This section applies if:
- (a) a replacement asset, or an asset in relation to which \*fourth element expenditure has been incurred, formed part of the estate of an individual who has died; and
  - (b) either or both of the following apply:
    - (i) the asset has devolved to the deceased's \*legal personal representative;
    - (ii) the asset has \*passed to a beneficiary of the deceased; and
  - (c) a change covered by subsection 104-185(2) or (3) did not happen while the deceased owned it or, if the asset has passed to a beneficiary, while the asset was in the hands of the deceased's legal personal representative.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 152-430

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- (2) For the purposes of this Subdivision, anything done or not done by the deceased in relation to the asset is treated as though it had been done or not done by the \*legal personal representative.
- (3) For the purposes of this Subdivision, if the asset has \*passed to a beneficiary, anything done or not done by the deceased or by the deceased's \*legal personal representative (including because of the operation of subsection (2)) in relation to the asset is treated as though it had been done or not done by the beneficiary.

**152-430 15-year rule has priority**

This Subdivision does not apply to a \*capital gain to which Subdivision 152-B (15-year exemption) applies.

Note: Under that Subdivision, such a gain is entirely disregarded, so there is no need for any further concession to apply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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# **Income Tax Assessment Act 1997**

## **Act No. 38 of 1997 as amended**

This compilation was prepared on 2 July 2009  
taking into account amendments up to Act No. 62 of 2009

**Volume 5** includes: Table of Contents  
Sections 164-1 to 220-800

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

## **Chapter 3—Specialist liability rules**





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# Contents

<b>Chapter 3—Specialist liability rules</b>	i
<b>Part 3-5—Corporate taxpayers and corporate distributions</b>	1
<b>Division 164—Non-share capital accounts for companies</b>	1
<b>Guide to Division 164</b>	1
164-1 What this Division is about .....	1
<b>Operative provisions</b>	1
164-5 Object .....	1
164-10 Non-share capital account .....	2
164-15 Credits to non-share capital account .....	3
164-20 Debits to non-share capital account .....	5
<b>Division 165—Income tax consequences of changing ownership         or control of a company</b>	7
<b>Guide to Division 165</b>	7
165-1 What this Division is about .....	7
<b>Subdivision 165-A—Deducting tax losses of earlier income years</b>	8
<b>Guide to Subdivision 165-A</b>	8
165-5 What this Subdivision is about .....	8
<b>Operative provisions</b>	8
165-10 To deduct a tax loss .....	8
165-12 Company must maintain the same owners .....	9
165-13 Alternatively, the company must satisfy the same business test .....	11
165-15 The same people must control the voting power, or the company must satisfy the same business test .....	12
165-20 When company can deduct <i>part</i> of a tax loss .....	13
<b>Subdivision 165-B—Working out the taxable income and tax loss                 for the income year of the change</b>	13
<b>Guide to Subdivision 165-B</b>	13
165-23 What this Subdivision is about .....	13
165-25 Summary of this Subdivision .....	14
165-30 Flow chart showing the application of this Subdivision .....	16
<b>When a company must work out its taxable income and tax loss                 under this Subdivision</b>	17
165-35 On a change of ownership, unless the company satisfies the same business test .....	17
165-37 Who has <i>more than a 50% stake</i> in the company during a period .....	17

---

165-40	On a change of control of the voting power in the company, unless the company satisfies the same business test .....	19
<b>Working out the company's taxable income</b>		20
165-45	First, divide the income year into periods.....	20
165-50	Next, calculate the notional loss or notional taxable income for each period.....	20
165-55	How to attribute deductions to periods .....	21
165-60	How to attribute assessable income to periods .....	22
165-65	How to calculate the company's taxable income for the income year .....	24
<b>Working out the company's tax loss</b>		25
165-70	How to calculate the company's tax loss for the income year .....	25
<b>Special rules that apply if the company is in partnership</b>		26
165-75	How to calculate the company's notional loss or notional taxable income for a period when the company was a partner .....	26
165-80	How to calculate the company's share of a partnership's notional loss or notional net income for a period if both entities have the same income year.....	27
165-85	How to calculate the company's share of a partnership's notional loss or notional net income for a period if the entities have different income years .....	27
165-90	Company's full year deductions include a share of partnership's full year deductions.....	28
<b>Subdivision 165-CA—Applying net capital losses of earlier income years</b>		29
<b>Guide to Subdivision 165-CA</b>		29
165-93	What this Subdivision is about .....	29
<b>Operative provisions</b>		29
165-96	When a company cannot apply a net capital loss.....	29
<b>Subdivision 165-CB—Working out the net capital gain and the net capital loss for the income year of the change</b>		30
<b>Guide to Subdivision 165-CB</b>		30
165-99	What this Subdivision is about .....	30
<b>When a company must work out its net capital gain and net capital loss under this Subdivision</b>		31
165-102	On a change of ownership, or of control of voting power, unless the company satisfies the same business test .....	31
<b>Working out the company's net capital gain and net capital loss</b>		31
165-105	First, divide the income year into periods.....	31
165-108	Next, calculate the notional net capital gain or notional net capital loss for each period .....	31
165-111	How to work out the company's net capital gain.....	32
165-114	How to work out the company's net capital loss .....	33

---

---

<b>Subdivision 165-CC—Change of ownership or control of company that has an unrealised net loss</b>	34
<b>Guide to Subdivision 165-CC</b>	34
165-115 What this Subdivision is about .....	34
165-115AASpecial rules to save compliance costs .....	34
<b>Operative provisions</b>	35
165-115AApplication of Subdivision.....	35
165-115BWhat happens when the company makes a capital loss or becomes entitled to a deduction in respect of a CGT asset after a changeover time.....	38
165-115BAWhat happens when a CGT event happens after a changeover time to a CGT asset of the company that is trading stock .....	40
165-115BBOrder of application of assets: residual unrealised net loss .....	41
165-115CChangeover time—change in ownership of company .....	42
165-115DChangeover time—change in control of company .....	44
165-115EWhat is an unrealised net loss .....	44
165-115FNotional gains and losses .....	47
<b>Subdivision 165-CD—Reductions after alterations in ownership or control of loss company</b>	49
<b>Guide to Subdivision 165-CD</b>	49
165-115GAWhat this Subdivision is about .....	49
165-115GBWhen adjustments must be made.....	49
165-115GCHow adjustments are calculated.....	50
165-115HHow this Subdivision applies .....	51
<b>Operative provisions</b>	54
165-115JObject of Subdivision .....	54
165-115KApplication and interpretation.....	55
165-115LAlteration time—alteration in ownership of company .....	56
165-115MAlteration time—alteration in control of company .....	57
165-115NAlteration time—declaration by liquidator or administrator .....	58
165-115PNotional alteration time—disposal of interests in company within 12 months before alteration time .....	58
165-115QNotional alteration time—disposal of interests in company earlier than 12 months before alteration time .....	60
165-115RWhen company is a loss company at first or only alteration time in income year .....	61
165-115SWhen company is a loss company at second or later alteration time in income year .....	63
165-115TReduction of certain amounts included in company’s overall loss at alteration time .....	65
165-115UAdjusted unrealised loss .....	65
165-115VNotional losses .....	68

---

---

165-115W	Calculation of trading stock decrease .....	69
165-115X	Relevant equity interest .....	70
165-115Y	Relevant debt interest .....	72
165-115Z	What constitutes a controlling stake in a company .....	74
165-115ZA	Reductions and other consequences if entity has relevant equity interest or relevant debt interest in loss company immediately before alteration time .....	75
165-115ZB	Adjustment amounts for the purposes of section 165-115ZA .....	78
165-115ZC	Notices to be given .....	81
165-115ZD	Adjustment (or further adjustment) for interest realised at a loss after global method has been used .....	85
<b>Subdivision 165-C—Deducting bad debts</b>		89
<b>Guide to Subdivision 165-C</b>		89
165-117	What this Subdivision is about .....	89
<b>Operative provisions</b>		90
165-119	Application of Subdivision .....	90
165-120	To deduct a bad debt .....	90
165-123	Company must maintain the same owners .....	91
165-126	Alternatively, the company must satisfy the same business test .....	93
165-129	Same people must control the voting power, or the company must satisfy the same business test .....	94
165-132	When tax losses resulting from bad debts cannot be deducted .....	95
<b>Subdivision 165-D—Tests for finding out whether the company has maintained the same owners</b>		96
<b>The primary and alternative tests</b>		97
165-150	Who has more than 50% of the voting power in the company .....	97
165-155	Who has rights to more than 50% of the company's dividends .....	97
165-160	Who has rights to more than 50% of the company's capital distributions .....	98
165-165	Rules about tests for a condition or occurrence of a circumstance .....	98
165-175	Tests can be satisfied by a single person .....	101
<b>Rules affecting the operation of the tests</b>		101
165-180	Arrangements affecting beneficial ownership of shares .....	101
165-185	Shares treated as not having carried rights .....	101
165-190	Shares treated as always having carried rights .....	102
165-200	Rules do not affect totals of shares, units in unit trusts or rights carried by shares and units .....	103
165-202	Shares held by government entities and charities etc .....	103
165-203	Companies where no shares have been issued .....	104

---

---

165-205	Death of beneficial owner.....	104
165-207	Trustees of family trusts .....	104
165-208	Companies in liquidation etc. ....	105
165-209	Dual listed companies.....	106
<b>Subdivision 165-E—The same business test</b>		106
165-210	The test .....	106
165-212D	Restructure of MDOs etc.....	107
165-212E	Entry history rule does not apply for the purposes of the same business test.....	108
<b>Subdivision 165-F—Special provisions relating to ownership by non-fixed trusts</b>		108
165-215	Special alternative to change of ownership test for Subdivision 165-A.....	108
165-220	Special alternative to change of ownership test for Subdivision 165-B .....	110
165-225	Special way of dividing the income year under Subdivision 165-B .....	111
165-230	Special alternative to change of ownership test for Subdivision 165-C .....	113
165-235	Information about non-fixed trusts with interests in company.....	114
165-240	Notices where requirements of section 165-235 are met .....	116
165-245	Meaning of expressions .....	117
<b>Subdivision 165-G—Other special provisions</b>		117
165-250	Control of companies in liquidation etc.....	117
165-255	Incomplete periods .....	118
<b>Division 166—Income tax consequences of changing ownership or control of a widely held or eligible Division 166 company</b>		120
<b>Guide to Division 166</b>		120
166-1	What this Division is about .....	120
<b>Subdivision 166-AA—The object of this Division</b>		121
166-3	The object of this Division .....	121
<b>Subdivision 166-A—Deducting tax losses of earlier income years</b>		121
166-5	How Subdivision 165-A applies to a widely held or eligible Division 166 company.....	122
166-15	Companies can choose that this Subdivision is not to apply to them.....	123
<b>Subdivision 166-B—Working out the taxable income, tax loss, net capital gain and net capital loss for the income year of the change</b>		124
166-20	How Subdivisions 165-B and 165-CB apply to a widely held or eligible Division 166 company.....	124

---

---

166-25	How to work out the taxable income, tax loss, net capital gain and net capital loss.....	125
166-35	Companies can choose that this Subdivision is not to apply to them.....	126
<b>Subdivision 166-C—Deducting bad debts</b>		126
166-40	How Subdivision 165-C applies to a widely held or eligible Division 166 company.....	127
166-50	Companies can choose that this Subdivision is not to apply to them.....	128
<b>Subdivision 166-CA—Changeover times and alteration times</b>		129
166-80	How Subdivision 165-CC or 165-CD applies to a widely held or eligible Division 166 company.....	129
166-90	Companies can choose that this Subdivision is not to apply to them.....	130
<b>Subdivision 166-D—Tests for finding out whether the widely held or eligible Division 166 company has maintained the same owners</b>		131
<b>Guide to Subdivision 166-D</b>		131
166-135	What this Subdivision is about.....	131
<b>The ownership tests: substantial continuity of ownership</b>		131
166-145	The ownership tests: substantial continuity of ownership.....	131
166-165	Relationship with rules in Division 165.....	133
<b>Corporate change in a company</b>		133
166-175	Corporate change in a company.....	133
<b>Subdivision 166-E—Concessional tracing rules</b>		135
<b>Guide to Subdivision 166-E</b>		135
166-215	What this Subdivision is about.....	135
<b>Application of this Subdivision</b>		136
166-220	Application of this Subdivision.....	136
<b>Stakes of less than 10% in the tested company</b>		137
166-225	Direct stakes of less than 10% in the tested company.....	137
166-230	Indirect stakes of less than 10% in the tested company.....	138
166-235	Voting, dividend and capital stakes.....	140
<b>Stakes held directly and/or indirectly by widely held companies</b>		141
166-240	Stakes held directly and/or indirectly by widely held companies.....	141
166-245	Stakes held by other entities.....	143
<b>When identity of foreign stakeholders is not known</b>		146
166-255	Bearer shares in foreign listed companies.....	146
166-260	Depository entities holding stakes in foreign listed companies.....	148

---

---

<b>Other rules relating to voting power and rights</b>	150
166-265 Persons who actually control voting power or have rights are taken not to control power or have rights .....	150
166-270 Single notional entity stakeholders taken to have minimum voting control, dividend rights and capital rights .....	150
166-272 Same shares or interests to be held .....	151
<b>When the rules in this Subdivision do not apply</b>	155
166-275 Rules in this Subdivision intended to be concessional.....	155
166-280 Controlled test companies .....	155
<b>Division 170—Treatment of certain company groups for income tax purposes</b>	157
<b>Subdivision 170-A—Transfer of tax losses within certain wholly-owned groups of companies</b>	157
<b>Guide to Subdivision 170-A</b>	157
170-1 What this Subdivision is about .....	157
170-5 Basic principles for transferring tax losses .....	158
<b>Effect of transferring a tax loss</b>	159
170-10 When a company can transfer a tax loss .....	159
170-15 Income company is taken to have incurred transferred loss .....	159
170-20 Who can deduct transferred loss .....	160
170-25 Tax treatment of consideration for transferred tax loss.....	160
<b>Conditions for transfer</b>	161
170-30 Companies must be in existence and members of the same wholly-owned group etc. ....	161
170-32 Tax loss incurred by the loss company because of a transfer under Subdivision 707-A.....	162
170-33 Alternative test of relations between the loss company and other companies.....	163
170-35 The loss company .....	165
170-40 The income company .....	166
170-42 If the income company has become the head company of a consolidated group or MEC group.....	166
170-45 Maximum amount that can be transferred .....	168
170-50 Transfer by written agreement.....	170
170-55 Losses must be transferred in order they are incurred .....	171
170-60 Income company cannot transfer transferred tax loss.....	171
<b>Effect of agreement to transfer more than can be transferred</b>	172
170-65 Agreement transfers as much as can be transferred .....	172
170-70 Amendment of assessments.....	172
<b>Australian permanent establishments of foreign financial entities</b>	172
170-75 Treatment like Australian branches of foreign banks .....	172

---

---

<b>Subdivision 170-B—Transfer of net capital losses within certain wholly-owned groups of companies</b>	173
<b>Guide to Subdivision 170-B</b>	173
170-101 What this Subdivision is about .....	173
170-105 Basic principles for transferring a net capital loss .....	174
<b>Effect of transferring a net capital loss</b>	175
170-110 When a company can transfer a net capital loss .....	175
170-115 Who can apply transferred loss.....	175
170-120 Gain company is taken to have made transferred loss .....	176
170-125 Tax treatment of consideration for transferred tax loss.....	176
<b>Conditions for transfer</b>	177
170-130 Companies must be in existence and members of the same wholly-owned group etc. ....	177
170-132 Net capital loss made by the loss company because of a transfer under Subdivision 707-A.....	178
170-133 Alternative test of relations between the loss company and other companies.....	179
170-135 The loss company .....	181
170-140 The gain company .....	182
170-142 If the gain company has become the head company of a consolidated group or MEC group.....	182
170-145 Maximum amount that can be transferred .....	184
170-150 Transfer by written agreement.....	186
170-155 Losses must be transferred in order they are made .....	187
170-160 Gain company cannot transfer transferred net capital loss .....	187
<b>Effect of agreement to transfer more than can be transferred</b>	188
170-165 Agreement transfers as much as can be transferred.....	188
170-170 Amendment of assessments.....	188
<b>Australian permanent establishments of foreign financial entities</b>	188
170-174 Treatment like Australian branches of foreign banks .....	188
<b>Subdivision 170-C—Provisions applying to both transfers of tax losses and transfers of net capital losses within wholly-owned groups of companies</b>	189
<b>Guide to Subdivision 170-C</b>	189
170-201 What this Subdivision is about .....	189
<b>Operative provisions</b>	190
170-205 Object of Subdivision .....	190
170-210 Transfer of tax loss: direct and indirect interests in the loss company .....	190
170-215 Transfer of tax loss: direct and indirect interests in the income company.....	193

---



---

170-220	Transfer of net capital loss: direct and indirect interests in the loss company .....	196
170-225	Transfer of net capital loss: direct and indirect interests in the gain company .....	198
<b>Subdivision 170-D—Transactions by a company that is a member of a linked group</b>		201
<b>Guide to Subdivision 170-D</b>		201
170-250	What this Subdivision is about .....	201
<b>Operative provisions</b>		202
170-255	Application of Subdivision .....	202
170-260	Linked group .....	203
170-265	Connected entity .....	204
170-270	Immediate consequences for originating company .....	206
170-275	Subsequent consequences for originating company .....	206
170-280	What happens if certain events happen in respect of the asset.....	207
<b>Division 175—Use of a company’s tax losses or deductions to avoid income tax</b>		210
<b>Guide to Division 175</b>		210
175-1	What this Division is about .....	210
<b>Subdivision 175-A—Tax benefits from unused tax losses</b>		210
175-5	When Commissioner can disallow deduction for tax loss .....	211
175-10	First case: income or capital gain injected into company because of available tax loss.....	211
175-15	Second case: someone else obtains a tax benefit because of tax loss available to company .....	212
<b>Subdivision 175-B—Tax benefits from unused deductions</b>		213
175-20	Income or capital gain injected into company because of available deductions .....	213
175-25	Deduction injected into company because of available income or capital gain.....	214
175-30	Someone else obtains a tax benefit because of a deduction, income or capital gain available to company.....	214
175-35	Tax loss resulting from disallowed deductions.....	216
<b>Subdivision 175-CA—Tax benefits from unused net capital losses of earlier income years</b>		216
175-40	When Commissioner can disallow net capital loss of earlier income year .....	216
175-45	First case: capital gain injected into company because of available net capital loss .....	217
175-50	Second case: someone else obtains a tax benefit because of net capital loss available to company .....	218

---

---

<b>Subdivision 175-CB—Tax benefits from unused capital losses of the current year</b>	219
175-55 When Commissioner can disallow capital loss of current year .....	219
175-60 Capital gain injected into company because of available capital loss .....	219
175-65 Capital loss injected into company because of available capital gain .....	220
175-70 Someone else obtains a tax benefit because of capital loss or gain available to company .....	220
175-75 Net capital loss resulting from disallowed capital losses .....	221
<b>Subdivision 175-C—Tax benefits from unused bad debt deductions</b>	222
175-80 When Commissioner can disallow deduction for bad debt.....	222
175-85 First case: income or capital gain injected into company because of available bad debt .....	222
175-90 Second case: someone else obtains a tax benefit because of bad debt deduction available to company .....	223
<b>Subdivision 175-D—Common rules</b>	224
175-95 When a person has a shareholding interest in the company.....	224
175-100 Commissioner may disallow excluded losses etc. of insolvent companies .....	224
<b>Division 180—Information about family trusts with interests in companies</b>	226
<b>Guide to Division 180</b>	226
180-1 What this Division is about .....	226
<b>Subdivision 180-A—Information relevant to Division 165</b>	226
180-5 Information about family trusts with interests in companies .....	226
180-10 Notice where requirements of section 180-5 are met.....	228
<b>Subdivision 180-B—Information relevant to Division 175</b>	230
180-15 Information about family trusts with interests in companies .....	230
180-20 Notice where requirements of section 180-15 are met.....	232
<b>Division 195—Special types of company</b>	234
<b>Subdivision 195-A—Pooled development funds (PDFs)</b>	234
<b>Guide to Subdivision 195-A</b>	234
195-1 What this Subdivision is about .....	234
<b>Working out a PDF's taxable income and tax loss</b>	235
195-5 Deductibility of PDF tax losses .....	235
195-10 PDF cannot transfer tax loss .....	235
195-15 Tax loss for year in which company becomes a PDF .....	235

---

---

<b>Working out a PDF's net capital gain and net capital loss</b>	236
195-25 Applying a PDF's net capital losses .....	236
195-30 PDF cannot transfer net capital loss .....	236
195-35 Net capital loss for year in which company becomes a PDF .....	236
<b>Subdivision 195-B—Limited partnerships</b>	237
<b>Guide to Subdivision 195-B</b>	237
195-60 What this Subdivision is about .....	237
<b>Operative provisions</b>	238
195-65 Tax losses cannot be transferred to a VCLP, an ESVCLP, an AFOF or a VCMP .....	238
195-70 Previous tax losses can be deducted after ceasing to be a VCLP, an ESVCLP, an AFOF or a VCMP .....	238
195-75 Determinations to take account of income years of less than 12 months .....	239
<b>Division 197—Tainted share capital accounts</b>	240
<b>Guide to Division 197</b>	240
197-1 What this Division is about .....	240
<b>Subdivision 197-A—What transfers into a company's share capital account does this Division apply to?</b>	240
197-5 Division generally applies to an amount transferred to share capital account from another account .....	241
197-10 Exclusion for amounts that could be identified as share capital .....	241
197-15 Exclusion for amounts transferred under debt/equity swaps.....	242
197-20 Exclusion for amounts transferred leading to there being no shares with a par value—non-Corporations Act companies .....	242
197-25 Exclusion for transfers from option premium reserves.....	243
197-30 Exclusion for transfers made in connection with demutualisations of non-insurance etc. companies .....	243
197-35 Exclusion for transfers made in connection with demutualisations of insurance etc. companies .....	244
197-37 Exclusion for transfers made in connection with demutualisations of private health insurers.....	245
197-40 Exclusion for post-demutualisation transfers relating to life insurance companies.....	246
<b>Subdivision 197-B—Consequence of transfer: franking debit arises</b>	248
197-45 A franking debit arises in relation to the transfer.....	248
<b>Subdivision 197-C—Consequence of transfer: tainting of share capital account</b>	249
197-50 The share capital account becomes tainted (if it is not already tainted).....	249
197-55 Choosing to untaint a tainted share capital account .....	250

---

---

197-60	Choosing to untaint—liability to untainting tax .....	250
197-65	Choosing to untaint—further franking debits may arise .....	252
197-70	Due date for payment of untainting tax .....	253
197-75	General interest charge for late payment of untainting tax .....	253
197-80	Notice of liability to pay untainting tax .....	254
197-85	Evidentiary effect of notice of liability to pay untainting tax .....	254
<b>Part 3-6—The imputation system</b>		<b>256</b>
<b>Division 200—Guide to Part 3-6</b>		<b>256</b>
<b>Guide to Division 200</b>		<b>256</b>
200-1	What this Division is about .....	256
200-5	The imputation system.....	256
200-10	Franking a distribution .....	257
200-15	The franking account.....	257
200-20	How a distribution is franked .....	257
200-25	A corporate tax entity must not give its members credit for more tax than the entity has paid .....	257
200-30	Benchmark rule .....	258
200-35	Effect of receiving a franked distribution .....	258
200-40	An Australian corporate tax entity can pass the benefit of having received a franked distribution on to its members .....	258
200-45	Special rules for franking by some entities.....	259
<b>Division 201—Objects and application of Part 3-6</b>		<b>260</b>
201-1	Objects.....	260
201-5	Application of this Part.....	260
<b>Division 202—Franking a distribution</b>		<b>261</b>
<b>Subdivision 202-A—Franking a distribution</b>		<b>261</b>
<b>Guide to Subdivision 202-A</b>		<b>261</b>
202-1	What this Subdivision is about .....	261
<b>Operative provisions</b>		<b>261</b>
202-5	Franking a distribution .....	261
<b>Subdivision 202-B—Who can frank a distribution?</b>		<b>262</b>
<b>Guide to Subdivision 202-B</b>		<b>262</b>
202-10	What this Subdivision is about .....	262
<b>Operative provisions</b>		<b>262</b>
202-15	Franking entities .....	262
202-20	Residency requirement when making a distribution.....	263
<b>Subdivision 202-C—Which distributions can be franked?</b>		<b>263</b>
<b>Guide to Subdivision 202-C</b>		<b>263</b>
202-25	What this Subdivision is about .....	263
202-30	Frankable distributions .....	264

---

---

<b>Operative provisions</b>	264
202-35 Object .....	264
202-40 Frankable distributions .....	264
202-45 Unfrankable distributions .....	264
202-47 Distributions of certain ADI profits following restructure.....	265
<b>Subdivision 202-D—Amount of the franking credit on a distribution</b>	266
<b>Guide to Subdivision 202-D</b>	266
202-50 What this Subdivision is about .....	266
202-55 What is the maximum franking credit for a frankable distribution?.....	267
<b>Operative provisions</b>	267
202-60 Amount of the franking credit on a distribution .....	267
202-65 Where the franking credit stated in the distribution statement exceeds the maximum franking credit for the distribution .....	267
<b>Subdivision 202-E—Distribution statements</b>	268
<b>Guide to Subdivision 202-E</b>	268
202-70 What this Subdivision is about .....	268
<b>Operative provisions</b>	268
202-75 Obligation to give a distribution statement .....	268
202-80 Distribution statement .....	269
202-85 Changing the franking credit on a distribution by amending the distribution statement.....	270
<b>Division 203—Benchmark rule</b>	272
<b>Guide to Division 203</b>	272
203-1 What this Division is about .....	272
203-5 Benchmark rule .....	272
203-10 Benchmark franking percentage .....	273
<b>Operative provisions</b>	273
203-15 Object .....	273
203-20 Application of the benchmark rule .....	273
203-25 Benchmark rule .....	274
203-30 Setting a benchmark franking percentage.....	274
203-35 Franking percentage .....	275
203-40 Franking periods—where the entity is not a private company.....	275
203-45 Franking period—private companies.....	276
203-50 Consequences of breaching the benchmark rule.....	276
203-55 Commissioner’s powers to permit a departure from the benchmark rule .....	278

---

---

<b>Division 204—Anti-streaming rules</b>	280
<b>Subdivision 204-A—Objects and application</b>	280
204-1 Objects.....	280
204-5 Application.....	280
<b>Subdivision 204-B—Linked distributions</b>	281
<b>Guide to Subdivision 204-B</b>	281
204-10 What this Subdivision is about.....	281
<b>Operative provisions</b>	281
204-15 Linked distributions.....	281
<b>Subdivision 204-C—Substituting tax-exempt bonus share for franked distributions</b>	283
<b>Guide to Subdivision 204-C</b>	283
204-20 What this Subdivision is about.....	283
<b>Operative provisions</b>	283
204-25 Substituting tax-exempt bonus shares for franked distributions.....	283
<b>Subdivision 204-D—Streaming distributions</b>	285
<b>Guide to Subdivision 204-D</b>	285
204-26 What this Subdivision is about.....	285
<b>Operative provisions</b>	285
204-30 Streaming distributions.....	285
204-35 When does a franking debit arise if the Commissioner makes a determination under paragraph 204-30(3)(a).....	289
204-40 Amount of the franking debit.....	289
204-41 Amount of the exempting debit.....	290
204-45 Effect of a determination about distributions to favoured members.....	291
204-50 Assessment and notice of determination.....	291
204-55 Right to review where a determination made.....	292
<b>Subdivision 204-E—Disclosure requirements</b>	292
<b>Guide to Subdivision 204-E</b>	292
204-65 What this Subdivision is about.....	292
<b>Operative provisions</b>	293
204-70 Application of this Subdivision.....	293
204-75 Notice to the Commissioner.....	293
204-80 Commissioner may require information where the Commissioner suspects streaming.....	294

---

---

<b>Division 205—Franking accounts, franking deficit tax liabilities and the related tax offset</b>	295
<b>Guide to Division 205</b>	295
205-1 What this Division is about .....	295
205-5 Franking accounts, franking deficit tax liabilities and the related tax offset .....	296
<b>Operative provisions</b>	296
205-10 Each entity that is or has been a corporate tax entity has a franking account .....	296
205-15 Franking credits .....	297
205-20 Paying a PAYG instalment or income tax .....	299
205-25 Residency requirement for an event giving rise to a franking credit or franking debit .....	300
205-30 Franking debits .....	301
205-35 Refund of income tax .....	304
205-40 Franking surplus and deficit .....	304
205-45 Franking deficit tax.....	304
205-50 Deferring franking deficit.....	305
205-70 Tax offset arising from franking deficit tax liabilities .....	306
<b>Division 207—Effect of receiving a franked distribution</b>	310
<b>Guide to Division 207</b>	310
207-5 Overview .....	310
<b>Subdivision 207-A—Effect of receiving a franked distribution generally</b>	311
<b>Guide to Subdivision 207-A</b>	311
207-10 What this Subdivision is about .....	311
<b>Operative provisions</b>	312
207-15 Applying the general rule .....	312
207-20 General rule—gross-up and tax offset .....	312
<b>Subdivision 207-B—Franked distribution received through certain partnerships and trustees</b>	313
<b>Guide to Subdivision 207-B</b>	313
207-25 What this Subdivision is about .....	313
<b>Gross-up and tax offset</b>	314
207-30 Applying this Subdivision .....	314
207-35 Gross-up—distribution made to, or flows indirectly through, a partnership or trustee .....	314
207-45 Tax offset—distribution flows indirectly to an entity.....	316
<b>Key concepts</b>	316
207-50 When a franked distribution flows indirectly to or through an entity.....	316

---

---

207-55	Share of a franked distribution .....	319
207-57	Share of the franking credit on a franked distribution .....	322
<b>Subdivision 207-C—Residency requirements for the general rule</b>		322
<b>Guide to Subdivision 207-C</b>		322
207-60	What this Subdivision is about .....	322
207-65	Satisfying the residency requirement.....	323
<b>Operative provisions</b>		323
207-70	Gross-up and tax offset under section 207-20 .....	323
207-75	Residency requirement .....	323
<b>Subdivision 207-D—No gross-up or tax offset where distribution would not be taxed</b>		324
<b>Guide to Subdivision 207-D</b>		324
207-80	What this Subdivision is about .....	324
<b>Operative provisions</b>		325
207-85	Applying this Subdivision .....	325
207-90	Distribution that is made to an entity.....	325
207-95	Distribution that flows indirectly to an entity .....	326
<b>Subdivision 207-E—Exceptions to the rules in Subdivision 207-D</b>		329
<b>Guide to Subdivision 207-E</b>		329
207-105	What this Subdivision is about .....	329
<b>Operative provisions</b>		330
207-110	Effect of non-assessable income on gross up and tax offset .....	330
<b>Exempt institutions</b>		331
207-115	Which exempt institutions are eligible for a refund? .....	331
207-117	Residency requirement .....	332
207-119	Entity not treated as exempt institution eligible for refund in certain circumstances.....	332
207-120	Entity may be ineligible because of a distribution event .....	333
207-122	Entity may be ineligible if distribution is in the form of property other than money.....	334
207-124	Entity may be ineligible if other money or property also acquired .....	335
207-126	Entity may be ineligible if distributions do not match trust share amounts .....	336
207-128	Reinvestment choice.....	336
207-130	Controller’s liability .....	338
207-132	Treatment of benefits provided by an entity to a controller.....	342
207-134	Entity’s present entitlement disregarded in certain circumstances .....	342
207-136	Review of certain decisions.....	343

---



---

<b>Subdivision 207-F—No gross-up or tax offset where the imputation system has been manipulated</b>	343
<b>Guide to Subdivision 207-F</b>	343
207-140 What this Subdivision is about .....	343
<b>Operative provisions</b>	344
207-145 Distribution that is made to an entity .....	344
207-150 Distribution that flows indirectly to an entity .....	346
207-155 When is a distribution made as part of a dividend stripping operation? .....	349
207-160 Distribution that is treated as an interest payment .....	349
<b>Division 208—Exempting entities and former exempting entities</b>	351
<b>Guide to Division 208</b>	351
208-5 What is an exempting entity? .....	351
208-10 Former exempting entities .....	352
208-15 Distributions by exempting entities and former exempting entities .....	352
<b>Subdivision 208-A—What are exempting entities and former exempting entities?</b>	352
208-20 Exempting entities .....	353
208-25 Effective ownership of entity by prescribed persons .....	353
208-30 Accountable membership interests .....	354
208-35 Accountable partial interests .....	357
208-40 Prescribed persons .....	358
208-45 Persons who are taken to be prescribed persons .....	359
208-50 Former exempting companies .....	361
<b>Subdivision 208-B—Franking with an exempting credit</b>	361
<b>Guide to Subdivision 208-B</b>	361
208-55 What this Subdivision is about .....	361
<b>Operative provisions</b>	362
208-60 Franking with an exempting credit .....	362
<b>Subdivision 208-C—Amount of the exempting credit on a distribution</b>	362
<b>Guide to Subdivision 208-C</b>	362
208-65 What this Subdivision is about .....	362
<b>Operative provisions</b>	363
208-70 Amount of the exempting credit on a distribution .....	363
<b>Subdivision 208-D—Distribution statements</b>	363
<b>Guide to Subdivision 208-D</b>	363
208-75 Guide to Subdivision 208-D .....	363

---

---

<b>Operative provisions</b>	364
208-80 Additional information to be included by a former exempting entity or exempting entity .....	364
<b>Subdivision 208-E—Distributions to be franked with exempting credits to the same extent</b>	364
<b>Guide to Subdivision 208-E</b>	364
208-85 What this Subdivision is about .....	364
<b>Operative provisions</b>	365
208-90 All frankable distributions made within a franking period must be franked to the same extent with an exempting credit .....	365
208-95 Exempting percentage .....	365
208-100 Consequences of breaching the rule in section 208-90 .....	365
<b>Subdivision 208-F—Exempting accounts and franking accounts of exempting entities and former exempting entities</b>	366
<b>Guide to Subdivision 208-F</b>	366
208-105 What this Subdivision is about .....	366
<b>Operative provisions</b>	367
208-110 Exempting account .....	367
208-115 Exempting credits .....	367
208-120 Exempting debits .....	371
208-125 Exempting surplus and deficit .....	373
208-130 Franking credits arising because of status as exempting entity or former exempting entity .....	374
208-135 Relationships that will give rise to a franking credit under item 5 of the table in section 208-130 .....	381
208-140 Membership of the same effectively wholly-owned group .....	382
208-145 Franking debits arising because of status as exempting entity or former exempting entity .....	383
208-150 Residency requirement .....	385
208-155 Eligible continuing substantial member .....	385
208-160 Distributions that are affected by a manipulation of the imputation system .....	387
208-165 Amount of the exempting credit or franking credit arising because of a distribution franked with an exempting credit .....	388
208-170 Where a determination under paragraph 177EA(5)(b) of the <i>Income Tax Assessment Act 1936</i> affects part of the distribution .....	388
208-175 When does a distribution franked with an exempting credit flow indirectly to an entity? .....	389
208-180 What is an entity's share of the exempting credit on a distribution? .....	390
208-185 Minister may convert exempting surplus to franking credit of former exempting entity previously owned by the Commonwealth .....	390

---

---

<b>Subdivision 208-G—Tax effects of distributions by exempting entities</b>	391
<b>Guide to Subdivision 208-G</b>	391
208-190 What this Subdivision is about .....	391
<b>Operative provisions</b>	392
208-195 Division 207 does not generally apply .....	392
208-200 Distributions to exempting entities .....	392
208-205 Distributions to employees acquiring shares under an eligible employee share scheme .....	392
208-210 Subsidiaries .....	393
208-215 Eligible employee share scheme .....	393
<b>Subdivision 208-H—Tax effect of a distribution franked with an exempting credit</b>	394
<b>Guide to Subdivision 208-H</b>	394
208-220 What this Subdivision is about .....	394
<b>Operative provisions</b>	394
208-225 Division 207 does not generally apply .....	394
208-230 Distributions to exempting entities and former exempting entities .....	395
208-235 Distributions to employees acquiring shares under an eligible employee share scheme .....	395
208-240 Distributions to certain individuals .....	395
<b>Division 210—Venture capital franking</b>	397
<b>Guide to Division 210</b>	397
210-1 Purpose of venture capital franking .....	397
210-5 How is this achieved? .....	397
210-10 What is a venture capital credit? .....	398
210-15 What does the PDF have to do to distribute the credits? .....	398
210-20 Limits on venture capital franking .....	398
<b>Subdivision 210-A—Franking a distribution with a venture capital credit</b>	399
<b>Guide to Subdivision 210-A</b>	399
210-25 What this Subdivision is about .....	399
<b>Operative provisions</b>	399
210-30 Franking a distribution with a venture capital credit .....	399
<b>Subdivision 210-B—Participating PDFs</b>	399
<b>Guide to Subdivision 210-B</b>	399
210-35 What this Subdivision is about .....	399
<b>Operative provisions</b>	400
210-40 What is a participating PDF .....	400

---

---

<b>Subdivision 210-C—Distributions that are frankable with a venture capital credit</b>	400
<b>Guide to Subdivision 210-C</b>	400
210-45 What this Subdivision is about .....	400
<b>Operative provisions</b>	400
210-50 Which distributions can be franked with a venture capital credit? .....	400
<b>Subdivision 210-D—Amount of the venture capital credit on a distribution</b>	401
<b>Guide to Subdivision 210-D</b>	401
210-55 What this Subdivision is about .....	401
<b>Operative provisions</b>	401
210-60 Amount of the venture capital credit on a distribution.....	401
<b>Subdivision 210-E—Distribution statements</b>	402
<b>Guide to Subdivision 210-E</b>	402
210-65 What this Subdivision is about .....	402
<b>Operative provisions</b>	402
210-70 Additional information to be included when a distribution is franked with a venture capital credit.....	402
<b>Subdivision 210-F—Rules affecting the allocation of venture capital credits</b>	403
<b>Guide to Subdivision 210-F</b>	403
210-75 What this Subdivision is about .....	403
<b>Operative provisions</b>	403
210-80 Draining the venture capital surplus when a distribution frankable with venture capital credits is made.....	403
210-81 Distributions to be franked with venture capital credits to the same extent.....	404
210-82 Consequences of breaching the rule in section 210-81 .....	405
<b>Subdivision 210-G—Venture capital sub-account</b>	405
<b>Guide to Subdivision 210-G</b>	405
210-85 What this Subdivision is about .....	405
210-90 The venture capital sub-account .....	406
210-95 Venture capital deficit tax.....	406
<b>Operative provisions</b>	407
210-100 Venture capital sub-account .....	407
210-105 Venture capital credits.....	407
210-110 Determining the extent to which a franking credit is reasonably attributable to a particular payment of tax .....	408
210-115 Participating PDF may elect to have venture capital credits arise on its assessment day .....	408

---

---

210-120	Venture capital debits .....	409
210-125	Venture capital debit where CGT limit is exceeded .....	410
210-130	Venture capital surplus and deficit .....	411
210-135	Venture capital deficit tax.....	412
210-140	Effect of a liability to pay venture capital deficit tax on franking deficit tax .....	412
210-145	Effect of a liability to pay venture capital deficit tax on the franking account.....	413
210-150	Deferring venture capital deficit.....	413
<b>Subdivision 210-H—Effect of receiving a distribution franked with a venture capital credit</b>		414
<b>Guide to Subdivision 210-H</b>		414
210-155	What this Subdivision is about .....	414
210-160	The significance of a venture capital credit .....	415
210-165	Recipients for whom the venture capital credit is not significant.....	415
<b>Operative provisions</b>		415
210-170	Tax offset for certain recipients of distributions franked with venture capital credits.....	415
210-175	Amount of the tax offset.....	417
210-180	Application of Division 207 where the recipient is entitled to a tax offset under section 210-170.....	417
<b>Division 214—Administering the imputation system</b>		418
<b>Guide to Division 214</b>		418
214-1	Purpose of the system .....	418
214-5	Key features.....	418
<b>Subdivision 214-A—Franking returns</b>		419
<b>Guide to Subdivision 214-A</b>		419
214-10	What this Subdivision is about .....	419
<b>Operative provisions</b>		420
214-15	Notice to give a franking return—general notice.....	420
214-20	Notice to a specific corporate tax entity .....	420
214-25	Content and form of a franking return .....	421
214-30	Franking account balance .....	421
214-35	Venture capital sub-account balance .....	421
214-40	Meaning of <i>franking tax</i> .....	422
214-45	Effect of a refund on franking returns .....	422
214-50	Evidence.....	423
<b>Subdivision 214-B—Franking assessments</b>		423
<b>Guide to Subdivision 214-B</b>		423
214-55	What this Subdivision is about .....	423

---

---

<b>Operative provisions</b>	424
214-60 Commissioner may make a franking assessment.....	424
214-65 Commissioner taken to have made a franking assessment on first return.....	425
214-70 Part-year assessment.....	426
214-75 Validity of assessment.....	426
214-80 Objections.....	426
214-85 Evidence.....	426
<b>Subdivision 214-C—Amending franking assessments</b>	427
<b>Guide to Subdivision 214-C</b>	427
214-90 What this Subdivision is about.....	427
<b>Operative provisions</b>	427
214-95 Amendments within 3 years of the original assessment.....	427
214-100 Amended assessments are treated as franking assessments.....	428
214-105 Further return as a result of a refund affecting a franking deficit tax liability.....	428
214-110 Later amendments—on request.....	428
214-115 Later amendments—failure to make proper disclosure.....	429
214-120 Later amendments—fraud or evasion.....	429
214-125 Further amendment of an amended particular.....	430
214-130 Other later amendments.....	430
214-135 Amendment on review etc.....	430
214-140 Notice of amendments.....	431
<b>Subdivision 214-D—Collection and recovery</b>	431
<b>Guide to Subdivision 214-D</b>	431
214-145 What this Subdivision is about.....	431
<b>Operative provisions</b>	431
214-150 Due date for payment of franking tax.....	431
214-155 General interest charge.....	433
214-160 Refunds of amounts overpaid.....	433
214-165 Security for payment of tax.....	433
<b>Subdivision 214-E—Records, information and tax agents</b>	434
<b>Guide to Subdivision 214-E</b>	434
214-170 What this Subdivision is about.....	434
<b>Operative provisions</b>	434
214-175 Record keeping.....	434
214-180 Power of Commissioner to obtain information.....	435
214-185 Tax agents.....	435

---

---

<b>Division 215—Consequences of the debt/equity rules</b>	436
<b>Subdivision 215-A—Application of the imputation system to non-share equity interests</b>	436
215-1 Application of the imputation system to non-share equity interests.....	436
<b>Subdivision 215-B—Non-share dividends that are unfrankable to some extent</b>	436
<b>Guide to Subdivision 215-B</b>	436
215-5 What this Subdivision is about .....	436
215-10 Certain non-share dividends by ADIs unfrankable.....	436
215-15 Non-share dividends are unfrankable if profits are unavailable .....	438
215-20 Working out the available frankable profits .....	439
215-25 Anticipating available frankable profits.....	440
<b>Division 216—Cum dividend sales and securities lending arrangements</b>	442
<b>Subdivision 216-A—Circumstances where a distribution to a member of a corporate tax entity is treated as having been made to someone else</b>	442
216-1 When a distribution made to a member of a corporate tax entity is treated as having been made to someone else .....	442
216-5 First situation (cum dividend sales) .....	442
216-10 Second situation (securities lending arrangements).....	443
216-15 Distribution closing time .....	444
<b>Subdivision 216-B—Statements to be made where there is a cum dividend sale or securities lending arrangement</b>	444
216-20 Cum dividend sale—statement by securities dealer.....	444
216-25 Cum dividend sale—statement by party .....	445
216-30 Securities lending arrangements—statement by borrower.....	445
<b>Division 218—Application of imputation rules to co-operative companies</b>	446
218-5 Application of imputation rules to co-operative companies .....	446
<b>Division 219—Imputation for life insurance companies</b>	447
<b>Guide to Division 219</b>	447
219-1 What this Division is about .....	447
<b>Subdivision 219-A—Application of imputation rules to life insurance companies</b>	447
219-10 Application of imputation rules to life insurance companies.....	447

---

---

<b>Subdivision 219-B—Franking accounts of life insurance companies</b>	448
219-15 Franking credits .....	448
219-30 Franking debits .....	452
219-40 Residency requirement .....	453
219-45 Assessment day .....	453
219-50 Amount attributable to shareholders' share of income tax liability .....	454
219-55 Adjustment resulting from an amended assessment .....	455
219-70 Tax offset under section 205-70 .....	456
219-75 Working out franking credits and franking debits where a tax offset under section 205-70 is applied .....	457
<b>Division 220—Imputation for NZ resident companies and related companies</b>	460
<b>Guide to Division 220</b>	460
220-1 What this Division is about .....	460
<b>Subdivision 220-A—Objects of this Division</b>	460
220-15 Objects.....	461
220-20 What is an <i>NZ resident</i> ?.....	461
<b>Subdivision 220-B—NZ company treated as Australian resident for imputation system if company chooses</b>	462
220-25 Application of provisions of Part 3-6 outside this Division.....	462
220-30 What is an <i>NZ franking company</i> ?.....	462
220-35 Making an NZ franking choice.....	463
220-40 When is an NZ franking choice in force? .....	463
220-45 Revoking an NZ franking choice.....	463
220-50 Cancelling an NZ franking choice.....	463
<b>Subdivision 220-C—Modifications of other Divisions of this Part</b>	464
<b>Franking NZ franking companies' distributions</b>	466
220-100 Residency requirement for franking .....	466
220-105 Unfrankable distributions by NZ franking companies.....	466
220-110 Maximum franking credit under section 202-60.....	466
<b>NZ franking companies' franking accounts etc.</b>	467
220-205 Franking credit for payment of NZ franking company's withholding tax liability.....	467
220-210 Effect of franked distribution to NZ franking company or flowing indirectly to NZ franking company .....	467
220-215 Effect on franking account if NZ franking choice ceases to be in force.....	468

---



---

<b>Franking accounts of NZ franking company and some of its 100% subsidiaries</b>	469
220-300 NZ franking company's franking account affected by franking accounts of some of its 100% subsidiaries .....	469
<b>Effect of NZ franking company making distribution that is non-assessable and non-exempt</b>	472
220-350 Providing for a franking credit to arise .....	472
<b>Effects of supplementary dividend from NZ franking company</b>	473
220-400 Gross-up and tax offset for distribution from NZ franking company reduced by supplementary dividend .....	473
220-405 Franked distribution and supplementary dividend flowing indirectly .....	474
220-410 Franking credit reduced if tax offset reduced .....	477
<b>Rules about exempting entities</b>	477
220-500 Publicly listed post-choice NZ franking company and its 100% subsidiaries are not exempting entities .....	477
220-505 Post-choice NZ franking company is not automatically prescribed person .....	478
220-510 Parent company's status as prescribed person sets status of all other members of same wholly-owned group .....	478
<b>NZ franking companies' exempting accounts</b>	479
220-605 Effect on exempting account if NZ franking choice ceases to be in force .....	479
<b>Tax effect of distribution franked by NZ franking company with an exempting credit</b>	480
220-700 Tax effect of distribution franked by NZ franking company with an exempting credit .....	480
<b>Joint and several liability for NZ resident company's unmet franking liabilities</b>	480
220-800 Joint and several liability for NZ resident company's franking tax etc. ....	480



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## **Part 3-5—Corporate taxpayers and corporate distributions**

### **Division 164—Non-share capital accounts for companies**

#### **Guide to Division 164**

##### **164-1 What this Division is about**

A company that issues non-share equity interests will have a notional account called a *non-share capital account*. This account records contributions to the company in relation to those non-share equity interests and returns made by the company of those contributions.

A non-share distribution that represents a return of contributions is not taxed as a dividend (subject to the anti-avoidance provisions dealing with dividend substitution). In certain circumstances a company may use its share capital account as the source for such distributions.

#### **Table of sections**

##### **Operative provisions**

164-5	Object
164-10	Non-share capital account
164-15	Credits to non-share capital account
164-20	Debits to non-share capital account

#### **Operative provisions**

##### **164-5 Object**

- (1) This Division provides for the \*non-share capital account through which a company records contributions made to it in respect of \*non-share equity interests and returns by it of those contributions.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 164-10

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- (2) This allows a \*non-share distribution to be characterised as either:
- (a) a \*non-share dividend; or
  - (b) a \*non-share capital return.

**164-10 Non-share capital account**

- (1) A company has a *non-share capital account* if:
- (a) the company issues a \*non-share equity interest in the company on or after 1 July 2001; or
  - (b) the company has issued a non-share equity interest in the company before 1 July 2001 that is still in existence on 1 July 2001; or
  - (c) a \*debt interest in the company changes at a particular time (the *change time*) to an \*equity interest in the company because of subsection 974-110(1) or (2); or
  - (d) the following conditions are satisfied in relation to an interest in the company:
    - (i) immediately before subsection 974-75(4) ceases to have effect, the interest is taken to be a debt interest in the company because of that subsection;
    - (ii) the interest is an equity interest in the company at the time (the *change time*) that is immediately after that cessation;
    - (iii) subsection 974-75(6) does not apply to the interest in relation to the income year that includes the change time; or
  - (e) the following conditions are satisfied in relation to an interest in the company:
    - (i) subsection 974-75(6) applies to the interest in relation to a particular income year;
    - (ii) that subsection does not apply to the interest in relation to the next income year;
    - (iii) the interest is an equity interest in the company at the time (the *change time*) that is the start of that next income year.
- (2) The account continues in existence even if the company ceases to have any \*non-share equity interests on issue.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) The balance of the account cannot fall below nil.
- (4) The only credits and debits that may be made to the account are those provided for in sections 164-15 and 164-20.

### **164-15 Credits to non-share capital account**

- (1) If the company issues a \*non-share equity interest in the company on or after 1 July 2001, there is a credit to the \*non-share capital account equal to:

Amount received – Share capital account credit

where:

*amount received* is the \*market value, when it is provided, of the consideration the company receives for the issue of the interest.

*share capital account credit* is the amount of any credit made to the company's \*share capital account in respect of the issue of the interest.

Note: The issue of a non-share equity interest can give rise to a credit to the company's share capital account if the interest consists, for example, of a stapled security that includes a share in the company's capital.

- (2) If paragraph 164-10(1)(c), (d) or (e) applies in relation to a particular interest in the company, there is a credit to the \*non-share capital account at the change time referred to in that paragraph of an amount equal to:

Amount received – Share capital  
account credit – Amount returned

where:

*amount received* is the \*market value, when it was provided, of the consideration the company received for the issue of the interest.

*amount returned* is so much of the amount received as has been returned to a holder of the interest before the change time.

*share capital account credit* is the amount of any credit made to the company's \*share capital account in respect of the issue of the interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 164** Non-share capital accounts for companies

Section 164-15

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- (3) If the company has a \*non-share capital account at the beginning of 1 July 2001 because of a \*non-share equity interest the company issued before 1 July 2001, there is a credit to the non-share capital account on that day for each non-share equity interest in the company that:
- (a) was issued before 1 July 2001; and
  - (b) is still in existence on 1 July 2001.

- (4) The amount of the credit under subsection (3) is:

$$\text{Amount received} - \frac{\text{Return of}}{\text{amount received}} - \frac{\text{Share capital}}{\text{account credit}}$$

where:

**amount received** is the \*market value, when it is provided, of the consideration the company receives for the issue of the interest.

**return of amount received** is the sum of the amounts paid before 1 July 2001 by way of return, in whole or in part, of the amount received.

**share capital account credit** is the sum of any amounts credited before 1 July 2001 to the company's \*share capital account in respect of the issue of the interest.

- (5) To avoid doubt, if:
- (a) it appears that a credit to the company's \*non-share capital account has arisen under this section because an interest in the company appears to be, or have become, an \*equity interest at a time in a particular income year; and
  - (b) because subsection 974-75(6) or 974-110(1A) is subsequently found to apply in relation to the interest and that income year, the interest was not in fact, or did not in fact become, an equity interest at that time;
- the credit referred to in paragraph (a) is taken never to have arisen.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **164-20 Debits to non-share capital account**

- (1) The company may debit the whole or a part of a \*non-share distribution against the company's \*non-share capital account:
  - (a) to the extent to which the distribution is made as consideration for the surrender, cancellation or redemption of a \*non-share equity interest in the company; or
  - (b) to the extent to which:
    - (i) the distribution is made in connection with a reduction in the \*market value of a non-share equity interest in the company; and
    - (ii) the amount of the distribution is equal to the amount of the reduction in market value.
- (2) The total of the amounts debited to the account in respect of a particular \*non-share equity interest must not exceed the total of the amounts credited to the account in respect of the interest.
- (3) If:
  - (a) an \*equity interest in the company changes at a particular time (the *change time*) to a \*debt interest in the company because of subsection 974-110(1) or (2); or
  - (b) an equity interest in the company changes to a debt interest in the company, with effect from a time (the *change time*) that is the start of a particular income year, because of subsection 974-110(1A); or
  - (c) the following conditions are satisfied in relation to an interest in the company:
    - (i) subsection 974-75(6) does not apply to the interest in relation to a particular income year;
    - (ii) the interest is an equity interest in the company at the end of that income year;
    - (iii) subsection 974-75(6) applies to the interest from the time (the *change time*) that is the start of the next income year;there is, or is taken to have been, a debit to the \*non-share capital account at the change time equal to:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 164** Non-share capital accounts for companies

Section 164-20

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Credits in relation to the interest    –    Debits in relation to the interest

where:

*credits in relation to the interest* is the sum of all the credits that have been made to the \*non-share capital account in relation to the interest before the change time.

*debits in relation to the interest* is the sum of all the debits that have been made to the \*non-share capital account in relation to the interest before the change time.

- (4) To avoid doubt, if:
- (a) it appears that a debit to the company's \*non-share capital account has arisen because an interest in the company appears to be, or have become, a \*debt interest at a time in a particular income year; and
  - (b) because subsection 974-75(6) or 974-110(1A) is subsequently found not to apply in relation to the interest and that income year, the interest was not in fact, or did not in fact become, a debt interest at that time;
- the debit referred to in paragraph (a) is taken never to have arisen.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 165—Income tax consequences of changing ownership or control of a company**

### **Table of Subdivisions**

#### Guide to Division 165

- 165-A Deducting tax losses of earlier income years
- 165-B Working out the taxable income and tax loss for the income year of the change
- 165-CA Applying net capital losses of earlier income years
- 165-CB Working out the net capital gain and the net capital loss for the income year of the change
- 165-CC Change of ownership or control of company that has an unrealised net loss
- 165-CD Reductions after alterations in ownership or control of loss company
- 165-C Deducting bad debts
- 165-D Tests for finding out whether the company has maintained the same owners
- 165-E The same business test
- 165-F Special provisions relating to ownership by non-fixed trusts

### **Guide to Division 165**

#### **165-1 What this Division is about**

A change in the ownership or control of a company can affect:

- whether it can deduct its tax losses of earlier income years; and
- how it calculates its taxable income and tax loss for the income year of the change; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- whether it can deduct debts owed to it that are written off as bad.

### **Subdivision 165-A—Deducting tax losses of earlier income years**

#### **Guide to Subdivision 165-A**

##### **165-5 What this Subdivision is about**

A company cannot deduct a tax loss unless:

- (a) it has the same owners and the same control throughout the period from the start of the loss year to the end of the income year; or
- (b) it satisfies the same business test by carrying on the same business, entering into no new kinds of transactions and conducting no new kinds of business.

#### **Table of sections**

##### **Operative provisions**

165-10	To deduct a tax loss
165-12	Company must maintain the same owners
165-13	Alternatively, the company must satisfy the same business test
165-15	The same people must control the voting power, or the company must satisfy the same business test
165-20	When company can deduct <i>part</i> of a tax loss

#### **Operative provisions**

##### **165-10 To deduct a tax loss**

A company cannot deduct a \*tax loss unless either:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) it meets the conditions in section 165-12 (which is about the company maintaining the same owners); or

Note: See section 165-215 for a special alternative to these conditions.

- (b) it meets the condition in section 165-13 (which is about the company satisfying the same business test).

Note: In the case of a widely held or eligible Division 166 company, Subdivision 166-A modifies how this Subdivision applies, unless the company chooses otherwise.

## **165-12 Company must maintain the same owners**

### *Ownership test period*

- (1) In determining whether section 165-10 prevents a company from deducting a \*tax loss, the ***ownership test period*** is the period from the start of the \*loss year to the end of the income year.

Note: See section 165-255 for the rule about incomplete test periods.

### *Voting power*

- (2) There must be persons who had \*more than 50% of the voting power in the company at all times during the \*ownership test period.

Note: See section 165-150 to work out who had more than 50% of the voting power.

### *Rights to dividends*

- (3) There must be persons who had rights to \*more than 50% of the company's dividends at all times during the \*ownership test period.

Note: See section 165-155 to work out who had rights to more than 50% of the company's dividends.

### *Rights to capital distributions*

- (4) There must be persons who had rights to \*more than 50% of the company's capital distributions at all times during the \*ownership test period.

Note: See section 165-160 to work out who had rights to more than 50% of the company's capital distributions.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 165** Income tax consequences of changing ownership or control of a company

Section 165-12

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*When to apply the primary test*

- (5) To work out whether a condition in this section was satisfied at all times during the \*ownership test period, apply the primary test for that condition unless subsection (6) requires the alternative test to be applied.

Note: For the primary test, see subsections 165-150(1), 165-155(1) and 165-160(1).

*When to apply the alternative test*

- (6) Apply the alternative test for that condition if one or more other companies beneficially owned \*shares or interests in shares in the company at any time during the \*ownership test period.

Note: For the alternative test, see subsections 165-150(2), 165-155(2) and 165-160(2).

*Conditions in subsections (2), (3) and (4) may be treated as having been satisfied in certain circumstances*

- (7) If any of the conditions in subsections (2), (3) and (4) have not been satisfied, those conditions are taken to have been satisfied if:
- (a) they would have been satisfied except for the operation of section 165-165; and
  - (b) the company has information from which it would be reasonable to conclude that less than 50% of the \*tax loss has been reflected in deductions, capital losses, or reduced assessable income, that occurred, or could occur in future, because of the happening of any \*CGT event in relation to any \*direct equity interests or \*indirect equity interests in the company during the \*ownership test period.
- (7A) If the company is:
- (a) a \*non-profit company; or
  - (b) a \*mutual affiliate company; or
  - (c) a \*mutual insurance company;
- during the whole of the \*ownership test period, the conditions in subsections (3) and (4) are taken to have been satisfied by the company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Time of happening of CGT event*

- (8) The happening of a \*CGT event in relation to a \*direct equity interest or \*indirect equity interest in the company that results in the failure of the company to satisfy a condition in subsection (2), (3) or (4) is taken, for the purposes of paragraph (7)(b), to have occurred during the \*ownership test period.

**165-13 Alternatively, the company must satisfy the same business test**

- (1) This section sets out the condition that a company must meet to be able to deduct the \*tax loss if:
- (a) the company fails to meet a condition in subsection 165-12(2), (3) or (4); or
  - (b) it is not practicable to show that the company meets the conditions in those subsections.

Note Other provisions may treat the company as meeting, or failing to meet, the conditions in subsections 165-12(2), (3) and (4).

- (2) The company must satisfy the \*same business test for the income year (the *same business test period*). Apply the test to the \*business the company carried on immediately before the time (the *test time*) shown in the relevant item of the table.

<b>Test time</b>		
<b>Item</b>	<b>If:</b>	<b>The test time is:</b>
1	It is practicable to show there is a period that meets these conditions:  (a) the period starts at the start of the *ownership test period or, if the company came into being during the *loss year, at the time the company came into being;  (b) the company would meet the conditions in subsections 165-12(2), (3) and (4) if the period were the ownership test period for the purposes of this Act	The latest time that it is practicable to show is in the period
2	Item 1 does not apply and the company was in being throughout the *loss year	The start of the loss year

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-15

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Test time		
Item	If:	The test time is:
3	Item 1 does not apply and the company came into being during the *loss year	The end of the loss year

For the same business test: see Subdivision 165-E.

**165-15 The same people must control the voting power, or the company must satisfy the same business test**

- (1) Even if a company meets the conditions in section 165-12 or 165-13, it cannot deduct the \*tax loss if:
  - (a) for some or all of the part of the \*ownership test period that started at the end of the \*loss year, a person controlled, or was able to control, the voting power in the company (whether directly, or indirectly through one or more interposed entities); and
  - (b) for some or all of the \*loss year, that person did *not* control, and was *not* able to control, that voting power (directly, or indirectly in that way); and
  - (c) that person began to control, or became able to control, that voting power (directly, or indirectly in that way) for the purpose of:
    - (i) getting some benefit or advantage in relation to how this Act applies; or
    - (ii) getting such a benefit or advantage for someone else; or for purposes including that purpose.
- Note: A person can still control the voting power in a company that is in liquidation etc.: see section 165-250.
- (2) However, that person's control of the voting power, or ability to control it, does not prevent the company from deducting the \*tax loss if the company satisfies the \*same business test for the income year (the *same business test period*).
- (3) Apply the \*same business test to the \*business that the company carried on immediately before the time (the *test time*) when the person began to control that voting power, or became able to control it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

For the same business test: see Subdivision 165-E.

### **165-20 When company can deduct *part* of a tax loss**

- (1) If section 165-10 (which is about deducting a tax loss) prevents a company from deducting a \*tax loss, the company can deduct the *part of the tax loss* that was incurred during a *part of the loss year*.
- (2) However, the company can do this only if, assuming that *part* of the \*loss year had been treated as the *whole* of the loss year for the purposes of section 165-10, the company would have been entitled to deduct the \*tax loss.

### **Subdivision 165-B—Working out the taxable income and tax loss for the income year of the change**

#### **Guide to Subdivision 165-B**

#### **165-23 What this Subdivision is about**

A company that has not had the same ownership and control during the income year, and has not satisfied the same business test, works out its taxable income and tax loss under this Subdivision.

#### **Table of sections**

- 165-25 Summary of this Subdivision
- 165-30 Flow chart showing the application of this Subdivision

#### **When a company must work out its taxable income and tax loss under this Subdivision**

- 165-35 On a change of ownership, unless the company satisfies the same business test
- 165-37 Who has *more than a 50% stake* in the company during a period
- 165-40 On a change of control of the voting power in the company, unless the company satisfies the same business test

#### **Working out the company's taxable income**

- 165-45 First, divide the income year into periods
- 165-50 Next, calculate the notional loss or notional taxable income for each period

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 165** Income tax consequences of changing ownership or control of a company

Section 165-25

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- 165-55 How to attribute deductions to periods
- 165-60 How to attribute assessable income to periods
- 165-65 How to calculate the company's taxable income for the income year

**Working out the company's tax loss**

- 165-70 How to calculate the company's tax loss for the income year

**Special rules that apply if the company is in partnership**

- 165-75 How to calculate the company's notional loss or notional taxable income for a period when the company was a partner
- 165-80 How to calculate the company's share of a partnership's notional loss or notional net income for a period if both entities have the same income year
- 165-85 How to calculate the company's share of a partnership's notional loss or notional net income for a period if the entities have different income years
- 165-90 Company's full year deductions include a share of partnership's full year deductions

**165-25 Summary of this Subdivision**

- (1) The company calculates its taxable income for the income year in this way:

*Method statement*

- Step 1. Divide the income year into periods: each change in ownership or control is a dividing point between periods.
- Step 2. Treat each period as if it were an income year and work out the notional loss or notional taxable income for that period.
- Step 3. Work out the taxable income for the year of the change by adding up:
  - each notional taxable income; and
  - any full year amounts (amounts of assessable income not taken into account at Step 2);and then subtracting any full year deductions (deductions not taken into account at Step 2).

Note: Do *not* take into account any notional loss.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) As well as a taxable income, the company will have a tax loss. It is the total of:
- each notional loss; and
  - excess full year deductions of particular kinds.
- (3) Special rules apply if the company was in partnership at some time during the income year.

For the special rules that apply if the company was in partnership: see sections 165-75 to 165-90.

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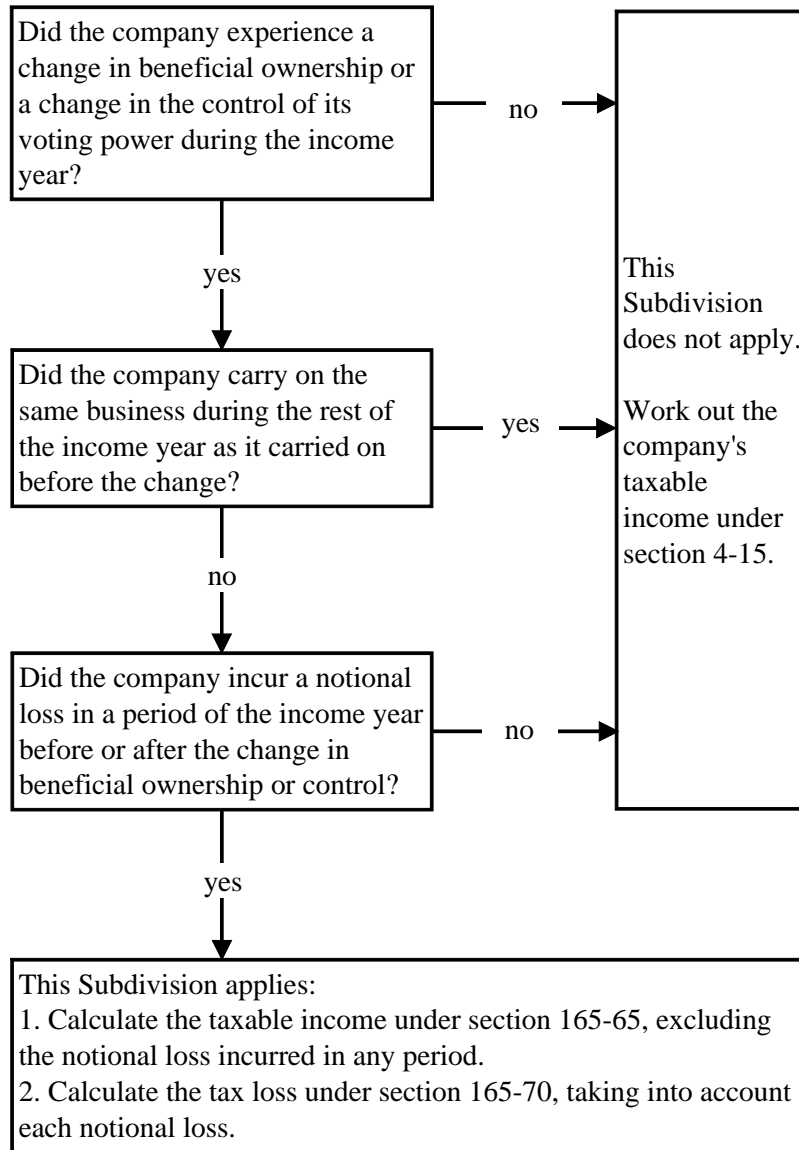
\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 165-30

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**165-30 Flow chart showing the application of this Subdivision**



Note: If the company was a partner during the income year, special rules apply to calculating a notional loss or notional taxable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **When a company must work out its taxable income and tax loss under this Subdivision**

### **165-35 On a change of ownership, unless the company satisfies the same business test**

A company must calculate its taxable income and \*tax loss under this Subdivision unless:

- (a) there are persons who had \*more than a 50% stake in the company during the whole of the income year; or

Note: See section 165-220 for a special alternative to the condition in this paragraph.

- (b) there is only *part* of the income year (a part that started at the start of the income year) during which the same persons had \*more than a 50% stake in the company, but the company satisfies the \*same business test for the *rest* of the income year (the *same business test period*).

For the purposes of paragraph (b), apply the \*same business test to the \*business that the company carried on immediately before the time (the *test time*) when that part ended.

Note 1: For the same business test, see Subdivision 165-E.

Note 2: In the case of a widely held or eligible Division 166 company, Subdivision 166-B modifies how this Subdivision applies, unless the company chooses otherwise.

### **165-37 Who has more than a 50% stake in the company during a period**

(1) If:

- (a) there are persons who had \*more than 50% of the voting power in the company during the whole of a period (the *ownership test period*) consisting of the income year or a part of it; and
- (b) there are persons who had rights to \*more than 50% of the company's dividends during the whole of the ownership test period; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 165** Income tax consequences of changing ownership or control of a company

Section 165-37

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(c) there are persons who had rights to \*more than 50% of the company's capital distributions during the whole of the ownership test period;

those persons had *more than a 50% stake* in the company during the ownership test period.

- (2) To work out whether a condition in subsection (1) was satisfied during the \*ownership test period, apply the primary test for that condition unless subsection (3) requires the alternative test to be applied.

For the primary tests: see subsections 165-150(1), 165-155(1) and 165-160(1).

- (3) Apply the alternative test for that condition if one or more other companies beneficially owned \*shares, or interests in shares, in the company at any time during the \*ownership test period.

For the alternative tests: see subsections 165-150(2), 165-155(2) and 165-160(2).

*Conditions in subsection (1) may be treated as having been satisfied in certain circumstances*

- (4) If any of the conditions in subsection (1) have not been satisfied, those conditions are taken to have been satisfied if:

- (a) they would have been satisfied except for the operation of section 165-165; and
- (b) the company has information from which it would be reasonable to conclude that less than 50% of the \*notional loss for the \*ownership test period has been reflected in deductions, capital losses, or reduced assessable income, that occurred, or could occur in future, because of the happening of any \*CGT event in relation to any \*direct equity interests or \*indirect equity interests in the company during that period.

- (4A) If the company is:

- (a) a \*non-profit company; or
- (b) a \*mutual affiliate company; or
- (c) a \*mutual insurance company;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

during the whole of the \*ownership test period, the conditions in paragraphs (1)(b) and (c) are taken to have been satisfied by the company.

*Time of happening of CGT event*

- (5) The happening of a \*CGT event in relation to a \*direct equity interest or \*indirect equity interest in the company that results in the failure of the company to satisfy a condition in subsection (1) is taken, for the purposes of paragraph (4)(b), to have occurred during the \*ownership test period.

**165-40 On a change of control of the voting power in the company, unless the company satisfies the same business test**

- (1) A company must calculate its taxable income and tax loss under this Subdivision if, during the income year, a person begins to control, or becomes able to control, the voting power in the company (whether directly, or indirectly through one or more interposed entities) for the purpose, or for purposes including the purpose, of:
- (a) getting some benefit or advantage in relation to how this Act applies; or
  - (b) getting such a benefit or advantage for someone else.

Note: A person can still control the voting power in a company that is in liquidation etc.: see section 165-250.

- (2) However, that person's control of the voting power, or ability to control it, does not require the company to calculate its taxable income under this Subdivision if the company satisfies the \*same business test for the *rest* of the income year (the **same business test period**).
- (3) Apply the \*same business test to the \*business that the company carried on immediately before the time (the **test time**) when the person began to control that voting power, or became able to control it.

For the same business test: see Subdivision 165-E.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Working out the company's taxable income

### 165-45 First, divide the income year into periods

- (1) Divide the income year into periods as follows.
- (2) The first period starts at the start of the income year. Each later period starts immediately after the end of the previous period.
- (3) The last period ends at the end of the income year. Each period (except the last) ends at the *earlier* of:
  - (a) the *latest* time that would result in persons having \*more than a 50% stake in the company during the whole of the period; or
  - (b) the *earliest* time when a person begins to control, or becomes able to control, the voting power in the company (whether directly, or indirectly through one or more interposed entities) for the purpose, or for purposes including the purpose, of:
    - (i) getting some benefit or advantage to do with how this Act applies; or
    - (ii) getting such a benefit or advantage for someone else.

Note: See section 165-255 for the rule about incomplete periods.

- (4) However, what would otherwise be 2 or more successive periods are treated as a single period if the company satisfies the \*same business test for all of them, considered as a single period (the *same business test period*). Apply the same business test to the \*business the company carried on immediately before the end of the first of the periods (the *test time*).

Note 1: For the same business test, see Subdivision 165-E.

Note 2: See section 165-225 for a special alternative to this section.

### 165-50 Next, calculate the notional loss or notional taxable income for each period

- (1) The company has a \*notional loss for a period if the deductions attributed to the period under section 165-55 exceed the assessable income attributed to the period under section 165-60. The *notional loss* is the amount of the excess.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

For a period during which the company was in partnership,  
the notional loss is worked out under section 165-75.

- (2) On the other hand, if that assessable income exceeds those deductions, the company has a *notional taxable income* for the period, equal to the excess.

For a period during which the company was in partnership,  
the notional taxable income is worked out under section 165-75.

- (3) If the company has a \*notional loss for *none* of the periods in the income year, this Subdivision has no further application, and the company's taxable income for the income year is calculated in the usual way.

The usual way of working out taxable income is set out in section 4-15.

### **165-55 How to attribute deductions to periods**

- (1) The company's deductions for the income year are attributed to periods in the income year as follows.
- (2) The following deductions are attributed to each period in proportion to the length of the period:
- (a) deductions for the decline in value of a \*depreciating asset;  
See Division 40.
  - (b) deductions for \*exploration or prospecting, or \*mining capital expenditure, in connection with mining or quarrying;  
See section 40-80 and Subdivisions 40-H and 40-I.
  - (c) deductions for expenditure, deductions for which are spread over 2 or more income years, but not:
    - (i) deductions for exploration or prospecting, or capital expenditure, in connection with mining or quarrying; or  
See Subdivision 40-I.
    - (ii) \*full year deductions (see subsection (5));
  - (d) deductions for expenditure of capital monies in connection with an Australian \*film.  
See section 124ZAFA of the *Income Tax Assessment Act 1936*.
- (3) All other deductions (except \*full year deductions) are attributed to periods as if each period were an income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 165-60

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- (4) \*Full year deductions are not attributed to any of the periods. They are brought in at a later stage of the process of calculating the company's taxable income for the income year.
- (5) These are *full year deductions*:
- (a) deductions for bad debts under section 8-1 (about general deductions) or section 25-35 (about bad debts);
  - (b) deductions for losses on debt/equity swaps under section 63E of the *Income Tax Assessment Act 1936*;
  - (c) deductions, so far as they are allowable under Division 8 (which is about deductions) because Subdivision H (Period of deductibility of certain advance expenditure) of Division 3 of Part III of the *Income Tax Assessment Act 1936* applies to the company in relation to the income year;
  - (fa) deductions for payments of pensions, gratuities or retiring allowances under section 25-50;
  - (fb) deductions for gifts under Division 30;
  - (f) deductions for \*tax losses of earlier income years;  
See Division 36.
  - (j) deductions for Farm Management Deposits.  
See Schedule 2G to the *Income Tax Assessment Act 1936*.
- (6) However, a deduction for the balance of capital expenditure is *not* a *full year deduction* if the deduction results from the disposal, loss, lapse, termination of use or destruction of the property.

**165-60 How to attribute assessable income to periods**

- (1) The company's assessable income for the income year is attributed to periods in the income year as follows.
- (2) The following amounts are attributed to periods so far as they are reasonably attributable to those periods:
- (a) amounts included in the company's assessable income under section 97 (Beneficiary of a trust estate who is not under a legal disability) of the *Income Tax Assessment Act 1936*; or
  - (b) amounts included in the company's assessable income under section 98A (Non-resident beneficiaries assessable in respect of certain income) of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (2A) However, so much of an amount included in the company's assessable income under section 97 or 98A of the *Income Tax Assessment Act 1936* as is a \*capital gain that forms part of a \*net capital gain is not attributed to a period.
- (3) The following items of assessable income are attributed to each period in proportion to the length of the period:
- (a) insurance recoveries for loss of livestock or trees;  
See section 385-130.
  - (b) amounts included in assessable income as a result of elections relating to the forced disposal of livestock;  
See Subdivision 385-E and section 385-160.
  - (c) recoupment of mains electricity connection expenditure.  
See items 1.16 and 2.5 in section 20-30, which lists deductions for which recoupments are assessable under Subdivision 20-A.
- (4) An amount included in the company's assessable income under section 385-135 (Election to defer including profit on second wool clip) is attributed to the period when the wool would ordinarily have been shorn.
- (5) An amount included in the company's assessable income that is a \*dividend under:
- (a) section 65 (Payments to associated persons); or
  - (c) section 109 (Excessive payments to shareholders and associates);
- of the *Income Tax Assessment Act 1936* is attributed to the period when the amount was paid or credited, whichever occurred first.
- (6) All other items of assessable income (except \*full year amounts) are attributed to periods as if each period were an income year.
- (6A) A \*net capital gain is not attributed to a period.
- Note: This is because Subdivision 165-CB provides for how the company must work out its net capital gain for the income year.
- (7) **Full year amounts** are amounts referred to in paragraphs (2)(a) and (b), so far as they are *not* reasonably attributable to a period, but do not include any part of a \*capital gain that forms part of a \*net capital gain. Full year amounts are brought in at a later stage of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 165-65

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process of calculating the company's taxable income for the income year.

**165-65 How to calculate the company's taxable income for the income year**

(1) The company's *taxable income* for the income year is calculated as follows.

(2) Add up the \*notional taxable incomes (if any) worked out under section 165-50 or 165-75.

Note: A notional *loss* for a period is *not* taken into account, but counts towards the company's tax loss for the income year.

(3) Add the \*full year amounts referred to in subsection 165-60(7) (if any) and any \*net capital gain of the company for the income year.

(4) Subtract the company's \*full year deductions of these kinds:

(a) deductions for bad debts under section 8-1 (about general deductions) or section 25-35 (about bad debts);

(c) deductions, so far as they are allowable under Division 8 (which is about deductions) because Subdivision H (Period of deductibility of certain advance expenditure) of Division 3 of Part III of the *Income Tax Assessment Act 1936* applies to the company in relation to the income year;

unless they exceed the total of the \*notional taxable incomes and the \*full year amounts. (If they equal or exceed that total, the company does not have a taxable income for the income year.)

(5) If an amount remains, subtract from it the company's other \*full year deductions, in the order shown in subsection 165-55(5), unless they exceed the amount remaining. (If they equal or exceed that amount, the company does not have a taxable income for the income year.)

(6) If an amount remains, it is the company's *taxable income* for the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Working out the company's tax loss

### 165-70 How to calculate the company's tax loss for the income year

- (1) The company's *tax loss* for the income year is calculated as follows.
- (2) Total the \*notional losses worked out under section 165-50 or 165-75.
- (3) Add to the total in subsection (2) the amount (if any) by which the company's \*full year deductions of these kinds:
  - (a) deductions for bad debts under section 8-1 (about general deductions) or section 25-35 (about bad debts);
  - (c) deductions, so far as they are allowable under Division 8 (which is about deductions) because Subdivision H (Period of deductibility of certain advance expenditure) of Division 3 of Part III of the *Income Tax Assessment Act 1936* applies to the company in relation to the income year;exceed the total of:
  - (d) the \*notional taxable incomes (if any); and
  - (e) the \*full year amounts referred to in section 165-60 (if any); and
  - (f) any \*net capital gain of the company for the income year.
- (4) If the company \*derived exempt income, subtract its \*net exempt income (worked out under section 36-20).
- (5) Any amount remaining is the company's *tax loss* for the income year, which is called a *loss year*.

Note: The meanings of *tax loss* and *loss year* are modified by section 36-55 for a corporate tax entity that has an amount of excess franking offsets.

To find out *how much* of the tax loss can be deducted in later income years: see Subdivision 165-A.

To find out *how* to deduct it: see section 36-17.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Special rules that apply if the company is in partnership

### 165-75 How to calculate the company's notional loss or notional taxable income for a period when the company was a partner

- (1) This section applies if at any time during a period the company was a partner in one or more partnerships.
- (2) The company has a \*notional loss for the period if the total (the *loss total*) of:
  - (a) the deductions attributed to the period under section 165-55; and
  - (b) the \*company's share of each \*notional loss (if any) of a partnership for the period;exceeds the total (the *income total*) of:
  - (c) the assessable income attributed to the period under section 165-60; and
  - (d) the \*company's share of each \*notional net income (if any) of a partnership for the period.

The *notional loss* is the amount of the excess.

Note: A notional loss is taken into account in working out the company's tax loss under section 165-70.

- (3) On the other hand, if the income total exceeds the loss total, the company has a *notional taxable income* for the period, equal to the excess.

Note: A notional taxable income is taken into account in working out the company's taxable income under section 165-65.

- (4) If the company has a \*notional taxable income for *all* periods in the income year, this Subdivision has no further application, and the company's taxable income for the income year is calculated in the usual way.

Note: The usual way of working out taxable income is set out in section 4-15.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**165-80 How to calculate the company's share of a partnership's notional loss or notional net income for a period if both entities have the same income year**

- (1) This section applies if at any time during a period the company is a partner in a partnership that has an income year that starts and ends when the company's income year starts and ends.
- (2) The partnership's *notional loss* or *notional net income* for the period is calculated in the same way as the \*notional loss or \*notional taxable income of a company.
- (3) The *company's share* is calculated by dividing:
  - the company's interest in the partnership's net income or partnership loss of the income year;by
  - the amount of that net income or partnership loss;and expressing the result as a percentage.
- (4) However, if the partnership had neither a net income nor a partnership loss, the *company's share* is a percentage that is fair and reasonable having regard to the extent of the company's interest in the partnership.

**165-85 How to calculate the company's share of a partnership's notional loss or notional net income for a period if the entities have different income years**

- (1) This section applies if at any time during a period the company is a partner in a partnership that has an income year that starts and ends at a different time from when the company's income year starts and ends.
- (2) So much of the partnership's net income or partnership loss of an income year as was \*derived during the period is a *notional net income* or *notional loss* of the partnership for the period. (For the purposes of this subsection, the partnership's net income or partnership loss is calculated without taking account of the partnership's \*full year deductions for that income year.)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 165** Income tax consequences of changing ownership or control of a company

Section 165-90

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Note: The partnership's full year deductions are dealt with in section 165-90.

- (3) The *company's share* is calculated by dividing:
- the company's interest in the partnership's net income or partnership loss of that income year;
- by
- the amount of that net income or partnership loss;
- and expressing the result as a percentage.

**165-90 Company's full year deductions include a share of partnership's full year deductions**

- (1) This section applies if at any time during the income year the company is a partner in a partnership that has one or more \*full year deductions for the income year of the partnership that corresponds to the income year of the company.
- (2) The partnership's \*full year deductions are treated as full year deductions of the company, but only to the extent of the \*company's share.
- (3) If the partnership's income year is the same as the company's, the *company's share* is calculated by dividing:
- the company's interest in the partnership's net income or partnership loss of the income year;
- by
- the amount of that net income or partnership loss;
- and expressing the result as a percentage.
- (4) However, if the partnership had neither a net income nor a partnership loss, the *company's share* is a percentage that is fair and reasonable having regard to the extent of the company's interest in the partnership.
- (5) If the partnership's income year does not start and end at the same time as the company's income year, the *company's share* is a

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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percentage that is fair and reasonable having regard to all relevant circumstances.

### **Subdivision 165-CA—Applying net capital losses of earlier income years**

#### **Guide to Subdivision 165-CA**

##### **165-93 What this Subdivision is about**

In working out its net capital gain for an income year, a company cannot apply a net capital loss for an earlier income year unless:

- (a) it has the same owners and the same control from the start of the loss year to the end of the income year; or
- (b) it satisfies the same business test by carrying on the same business, entering into no new kinds of transactions and conducting no new kinds of business.

#### **Table of sections**

##### **Operative provisions**

165-96 When a company cannot apply a net capital loss

#### **Operative provisions**

##### **165-96 When a company cannot apply a net capital loss**

- (1) In working out its \*net capital gain for the \*current year, a company cannot apply a \*net capital loss it has for an earlier income year if Subdivision 165-A would prevent it from deducting the loss for the current year if:
  - (a) the loss were a \*tax loss of the company for that earlier income year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-99

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(b) section 165-20 (about deducting part of a tax loss) were disregarded.

Note 1: A company's net capital gain for an income year is usually worked out under section 102-5.

Note 2: Subdivision 165-A deals with the deductibility of a company's tax loss for an earlier income year if there has been a change in the ownership or control of the company in the period from the start of the loss year to the end of the income year.

Note 3: Subdivision 165-F may affect the application of Subdivision 165-A.

- (2) If subsection (1) prevents the company from applying the \*net capital loss, it can apply the *part* of the loss that it made during a *part* of that earlier income year, but only if, assuming that part of that income year had been treated as the whole of it, the company would have been entitled to apply the net capital loss.

**Subdivision 165-CB—Working out the net capital gain and the net capital loss for the income year of the change**

**Guide to Subdivision 165-CB**

**165-99 What this Subdivision is about**

A company that has not had the same ownership and control during the income year, and has not satisfied the same business test, works out its net capital gain and net capital loss under this Subdivision.

**Table of sections**

**When a company must work out its net capital gain and net capital loss under this Subdivision**

165-102 On a change of ownership, or of control of voting power, unless the company satisfies the same business test

**Working out the company's net capital gain and net capital loss**

165-105 First, divide the income year into periods

165-108 Next, calculate the notional net capital gain or notional net capital loss for each period

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



165-111 How to work out the company's net capital gain

165-114 How to work out the company's net capital loss

### **When a company must work out its net capital gain and net capital loss under this Subdivision**

#### **165-102 On a change of ownership, or of control of voting power, unless the company satisfies the same business test**

A company must calculate its \*net capital gain and \*net capital loss for the income year under this Subdivision if:

- (a) it must calculate its taxable income and \*tax loss for the income year under Subdivision 165-B; or

Note: Subdivision 165-F may affect the application of Subdivision 165-B.

- (b) it would be required to calculate them under that Subdivision but for subsection 165-50(3) (about cases where that Subdivision would make no difference to the taxable income).

Note: In the case of a widely held or eligible Division 166 company, Subdivision 166-B modifies how this Subdivision applies, unless the company chooses otherwise.

### **Working out the company's net capital gain and net capital loss**

#### **165-105 First, divide the income year into periods**

Divide the income year into periods according to section 165-45 (which is about working out the company's taxable income under Subdivision 165-B).

#### **165-108 Next, calculate the notional net capital gain or notional net capital loss for each period**

- (1) The company has a *notional net capital gain* for a period if the total of the \*capital gains it made during the period exceeds the total of the \*capital losses it made during the period. The *notional net capital gain* is the amount of the excess.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-111

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- (2) On the other hand, if the total of those losses exceeds the total of those gains, the company has a ***notional net capital loss*** for the period, equal to the excess.
- (3) If the company has a \*notional net capital loss for none of the periods in the income year, this Subdivision has no further application, and the company's \*net capital gain for the income year is calculated in the usual way.

The usual way of working out the net capital gain is set out in section 102-5.

*Trust's capital gain attributed to company beneficiary*

- (4) If some or all (the ***attributable amount***) of an amount included in the company's assessable income for the income year under:
  - (a) section 97 (Beneficiary of a trust estate who is not under a legal disability) of the *Income Tax Assessment Act 1936*; or
  - (b) section 98A (Non-resident beneficiaries assessable in respect of certain income) of that Act;

is attributable to a \*capital gain that the trust made at a particular time during the period, this section applies to the attributable amount as if it were a \*capital gain made by the company at that time.

**165-111 How to work out the company's net capital gain**

The company's ***net capital gain*** for the income year is worked out in this way:

**Working out the company's net capital gain**

Step 1. Add up the \*notional net capital gains (if any) worked out under section 165-108.

Note: A notional net capital *loss* for a period is *not* taken into account, but counts towards the company's net capital loss for the income year.

Step 2. Add to the Step 1 amount so much of each amount included in the company's assessable income for the income year under:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(a) section 97 (Beneficiary of a trust estate who is not under a legal disability) of the *Income Tax Assessment Act 1936*; or

(b) section 98A (Non-resident beneficiaries assessable in respect of certain income) of that Act;

as is attributable to a \*capital gain that the trust made outside the income year.

Note: This is relevant only if the trust has an income year that starts and ends at a different time from when the company's income year starts and ends.

Step 3. If the Step 2 amount is *more than* zero, reduce it by applying any unapplied \*net capital losses from previous income years. (If this reduces it to zero, the company has no net capital gain for the income year.)

Note: To apply net capital losses: see section 102-15.

Step 4. If the Step 3 amount is *more than* zero, it is the company's ***net capital gain***.

Note : For exceptions and modifications to these rules: see section 102-30.

### **165-114 How to work out the company's net capital loss**

The company's ***net capital loss*** for the income year is worked out in this way:

**Working out the company's net capital loss**

Step 1. Add up the \*notional net capital losses (if any) worked out under section 165-108.

Step 2. If the Step 1 amount is *more than* zero, it is the company's ***net capital loss***.

Note 1: The net capital loss can be applied against the company's capital gains for a later income year: see sections 102-5 and 102-15.

Note 2: For exceptions and modifications to these rules: see section 102-30.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 165-CC—Change of ownership or control of company that has an unrealised net loss**

### **Guide to Subdivision 165-CC**

#### **165-115 What this Subdivision is about**

If a change occurs in the ownership or control of a company that has an unrealised net loss, the company cannot, to the extent of the unrealised net loss, have capital losses taken into account, or deduct revenue losses, in respect of CGT events that happen to CGT assets that it owned at the time of the change, unless it satisfies the same business test.

#### **165-115AA Special rules to save compliance costs**

- (1) A company is exempt from these rules if, at the time of the change in ownership or control, it (together with certain related entities) has a net asset value of not more than \$6,000,000 under the test in section 152-15 (for small business CGT relief).
- (2) In working out whether it has an unrealised net loss, a company can choose to work out the \*market value of each of its assets individually, or of all of its assets together.
- (3) If a company works out the \*market value of each of its assets individually, it may choose to exclude every asset that it acquired for less than \$10,000, in which case:
  - (a) unrealised losses and gains on the excluded assets will not be taken into account in calculating the company's unrealised net loss; and
  - (b) losses on the excluded assets will be allowed without the company being subject to the same business test.

#### **Table of sections**

##### **Operative provisions**

165-115A Application of Subdivision

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- 165-115B What happens when the company makes a capital loss or becomes entitled to a deduction in respect of a CGT asset after a changeover time
- 165-115BA What happens when a CGT event happens after a changeover time to a CGT asset of the company that is trading stock
- 165-115BB Order of application of assets: residual unrealised net loss
- 165-115C Changeover time—change in ownership of company
- 165-115D Changeover time—change in control of company
- 165-115E What is an unrealised net loss
- 165-115F Notional gains and losses

## Operative provisions

### 165-115A Application of Subdivision

#### *Application*

- (1) This Subdivision applies to a company if:
  - (a) a changeover time has occurred or occurs in relation to the company after the commencement time; and
  - (b) at the changeover time the company had an unrealised net loss (see section 165-115E); and
  - (c) either of the following applies:
    - (i) the company makes a \*capital loss, or apart from this Subdivision would be entitled to a deduction, in respect of a \*CGT event that happens to a \*CGT asset referred to in subsection (1A);
    - (ii) the company makes a \*trading stock loss in respect of a CGT asset referred to in subsection (1A) that is an item of \*trading stock; and
  - (d) the company would not, at the changeover time, satisfy the maximum net asset value test under section 152-15.

#### *CGT assets in respect of which Subdivision applies*

- (1A) The \*CGT assets for the purposes of paragraph 165-115A(1)(c) are:
  - (a) any CGT asset that the company owned at the changeover time; and
  - (b) any CGT asset that the company did not own at the changeover time but had owned at a previous time, where:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 165** Income tax consequences of changing ownership or control of a company

Section 165-115A

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- (i) a deferral event referred to in subsection 170-255(1) happened before the changeover time; and
- (ii) the deferral event involved the company as the originating company referred to in that subsection; and
- (iii) the deferral event would have resulted in the company making a \*capital loss, or becoming entitled to a deduction, in respect of the CGT asset except for section 170-270; and
- (iv) the company is not taken to have made a capital loss at or before the changeover time, or to have become entitled to a deduction at that time, under section 170-275 in respect of the asset.

*Company may choose to disregard CGT assets acquired for less than \$10,000*

- (1B) A company may choose, for the purposes of the application of this Subdivision to it in respect of a particular changeover time, that every \*CGT asset that has been acquired by it for less than \$10,000 is to be disregarded.

However, the choice does not affect the application of the \*global method of working out whether the company has an unrealised net loss (see subsection 165-115E(2)).

*Time for making choice*

- (1C) A choice under subsection (1B) must be made on or before:
- (a) the day on which the company lodges its \*income tax return for the income year in which the relevant changeover time occurred; or
  - (b) such later day as the Commissioner allows.

*Trading stock loss*

- (1D) A company is taken to have made a **trading stock loss** in respect of an asset that is an item of \*trading stock if, and only if:
- (a) one of the following applies:
    - (i) the company \*disposes of the item;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) the item stops being trading stock (within the meaning of section 70-80);
- (iii) the item is revalued under Division 70; and
- (b) if subparagraph (a)(i) or (ii) applies—the item's \*market value at the time when it is disposed of or stops being trading stock is less than:
  - (i) in respect of an item that has been valued under Division 70—its latest value under the Division; or
  - (ii) otherwise—its cost at that time; and
- (c) if subparagraph (a)(iii) applies—the item's value under the revaluation is less than:
  - (i) in respect of an item that has previously been valued under Division 70—its latest value under that Division before the revaluation; or
  - (ii) otherwise—its cost at the time of the revaluation.

The difference worked out under paragraph (b) or (c), as the case may be, constitutes the amount of the \*trading stock loss.

*Commencement time*

- (2) For the purposes of this Subdivision, the **commencement time** of a company is:
  - (a) if the company was in existence at 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999—that time; or
  - (b) if the company came into existence after that time—the time when it came into existence.

*Reference time*

- (2A) For the purposes of the application of this Subdivision to a company in relation to a particular time (the **test time**), the **reference time** is:
  - (a) if no changeover time occurred in respect of the company before the test time—the commencement time; or
  - (b) otherwise—the time immediately after the last changeover time that occurred in respect of the company before the test time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-115B

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*Asset owned at more than one changeover time*

- (3) If:
- (a) 2 or more changeover times have occurred or occur in relation to a company; and
  - (b) the company owned a particular asset at more than one of those changeover times;

this Subdivision applies to the company in respect of that asset only in relation to the later or latest of those changeover times.

Note: For *changeover time* see sections 165-115C and 165-115D.

**165-115B What happens when the company makes a capital loss or becomes entitled to a deduction in respect of a CGT asset after a changeover time**

*Where capital loss or deduction is equal to or less than residual unrealised net loss*

- (1) If the \*capital loss or deduction referred to in subparagraph 165-115A(1)(c)(i) is equal to or less than the company's residual unrealised net loss at the time of the occurrence of the event that resulted in the capital loss or entitled the company to the deduction:
- (a) the capital loss is taken to have been a \*net capital loss; or
  - (b) the deduction is taken to have been a \*tax loss;
- of the company for the income year immediately before the income year in which the changeover time occurred.

*Where capital loss or deduction is greater than residual unrealised net loss*

- (2) If the \*capital loss or deduction referred to in subparagraph 165-115A(1)(c)(i) is greater than the company's residual unrealised net loss at the time of the occurrence of the event that resulted in the capital loss or entitled the company to the deduction:
- (a) the part of the capital loss that is equal to the residual unrealised net loss is taken to have been a \*net capital loss; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



(b) the part of the deduction that is equal to the residual unrealised net loss is taken to have been a \*tax loss; of the company for the income year immediately before the income year in which the changeover time occurred.

*Company does not meet certain conditions in relation to net capital loss or tax loss*

- (3) The company is taken not to have met, at the changeover time, the conditions in subsections 165-12(2), (3) and (4) in relation to the \*net capital loss or the \*tax loss. The changeover time is the **test time** for applying section 165-13 to the company.

*Need to meet same business test*

- (4) The effect of subsection (3) is that the company cannot apply the \*net capital loss (see section 165-10 as it applies because of section 165-96), or deduct the \*tax loss (see section 165-10), unless it meets the condition in section 165-13 (the same business test).

*Consequences for net capital loss*

- (5) The \*net capital loss cannot be applied against \*capital gains made in an income year before the income year in which the company made the capital loss referred to in subparagraph 165-115A(1)(c)(i).

*Consequences for tax loss*

- (6) The \*tax loss cannot be deducted from assessable income \*derived in an income year before the income year in which the company would have been entitled to the deduction referred to in subparagraph 165-115A(1)(c)(i).

Note: For **changeover time** see sections 165-115C and 165-115D.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**165-115BA What happens when a CGT event happens after a changeover time to a CGT asset of the company that is trading stock**

*Application*

- (1) This section applies to the company if, after the changeover time, the company makes a \*trading stock loss in respect of an item of \*trading stock as mentioned in subparagraph 165-115A(1)(c)(ii).

*Where trading stock loss is equal to or less than residual unrealised net loss*

- (2) If the \*trading stock loss is equal to or less than the company's residual unrealised net loss at the time of the occurrence of the trading stock loss, the amount of the trading stock loss is to be included in the company's assessable income.

*Where trading stock loss is greater than unrealised net loss*

- (3) If the \*trading stock loss is greater than the company's residual unrealised net loss at the time of the occurrence of the trading stock loss, the part of the trading stock loss that is equal to the residual unrealised net loss is to be included in the company's assessable income.

*No increase in assessable income if company satisfies the same business test*

- (4) Neither subsection (2) nor (3) applies to the company if the company meets the condition in section 165-13 (the same business test).

*Assumptions for purposes of same business test*

- (5) In determining whether the company meets the condition in section 165-13, assume:
- (a) that the \*trading stock loss (if subsection (2) applies) or the part of the trading stock loss (if subsection (3) applies) is a \*net capital loss of the company for the income year

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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immediately before the income year in which the changeover time occurred; and

- (b) that the company failed, at the changeover time, to meet the condition in subsections 165-12(2), (3) and (4) in relation to the net capital loss referred to in paragraph (a); and
- (c) that the changeover time is the *test time*; and
- (d) that the same business test period is the income year in which the loss occurred.

### **165-115BB Order of application of assets: residual unrealised net loss**

*Order in which assets are to be applied*

- (1) In applying subsection 165-115B(2) or 165-115BA(3) in respect of assets that the company owned at the changeover time:
  - (a) the company's \*capital losses are taken to have been made, the company is taken to have become entitled to deductions and the company is taken to have made \*trading stock losses in the order in which the events that resulted in the capital losses, deductions or trading stock losses occurred; and
  - (b) if 2 or more such events occurred at the same time, they are taken to have occurred in such order as the company determines.

*Residual unrealised net loss*

- (2) The company's **residual unrealised net loss**, at the time of an event (the **relevant event**) that resulted in the company making a \*capital loss, becoming entitled to a deduction or making a \*trading stock loss, in respect of an asset, is the amount worked out using the following formula:

$$\text{Unrealised net loss} - \begin{array}{l} \text{Previous capital losses, deductions} \\ \text{or trading stock losses} \end{array}$$

where:

**previous capital losses, deductions or trading stock losses** means the total of the following:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-115C

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- (a) capital losses that the company made, deductions to which the company became entitled, or trading stock losses that the company made, as a result of events earlier than the relevant event in respect of assets that the company owned at the \*changeover time;
- (b) each reduction that section 715-105 (as applying to the company as the \*head company of a \*consolidated group or \*MEC group) makes in respect of such an asset because an entity ceased before the time of the relevant event to be a \*subsidiary member of the group (but counting only the greater or greatest such reduction if 2 or more are made for the same asset);

or nil if there are none.

*unrealised net loss* means the company's unrealised net loss at the last changeover time that occurred before the relevant event.

Note: For *changeover time* see sections 165-115C and 165-115D.

**165-115C Changeover time—change in ownership of company**

- (1) A time (the *test time*) is a *changeover time* in respect of a company if:
  - (a) persons who had \*more than 50% of the voting power in the company at the reference time do not have more than 50% of that voting power immediately after the test time; or
  - (b) persons who had rights to \*more than 50% of the company's dividends at the reference time do not have rights to more than 50% of those dividends immediately after the test time; or
  - (c) persons who had rights to \*more than 50% of the company's capital distributions at the reference time do not have rights to more than 50% of those distributions immediately after the test time.

Note 1: See section 165-150 to work out who had more than 50% of the voting power in the company.

Note 2: See section 165-155 to work out who had rights to more than 50% of the company's dividends.

Note 3: See section 165-160 to work out who had rights to more than 50% of the company's capital distributions.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note 4: For *reference time* see subsection 165-115A(2A).

- (2) To work out whether paragraph (1)(a), (b) or (c) applied at a particular time, apply the primary test unless subsection (3) requires the alternative test to be applied.

Note: For the primary test see subsections 165-150(1), 165-155(1) and 165-160(1).

- (3) Apply the alternative test if one or more other companies beneficially owned \*shares or interests in shares in the company at any time during the period from the reference time to the \*test time.

Note: For the alternative test see subsections 165-150(2), 165-155(2) and 165-160(2).

- (4) A \*test time that would, apart from this subsection, be a changeover time in respect of the company because of the application of subsection (1) is taken not to be a changeover time if:

- (a) that subsection would not have applied except for the operation of section 165-165; and
- (b) the company has information from which it would be reasonable to conclude that less than 50% of the company's unrealised net loss at the test time has been reflected in deductions, capital losses, or reduced assessable income, that occurred, or could occur in future, because of the happening of any \*CGT event in relation to any \*direct equity interests or \*indirect equity interests in the company during the period from the reference time to the test time.

- (4A) If the company is:

- (a) a \*non-profit company; or
- (b) a \*mutual affiliate company; or
- (c) a \*mutual insurance company;

during the whole of the period from the reference time to the \*test time, the test time is taken not to be a \*changeover time in respect of the company because of the application of paragraphs (1)(b) and (c).

- (5) The happening of any \*CGT event in relation to a \*direct equity interest or \*indirect equity interest in the company that results in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 165-115D

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the time of the happening of the event being a *changeover time* in respect of the company is taken, for the purposes of paragraph (4)(b), to have occurred during the period referred to in that paragraph.

**165-115D Changeover time—change in control of company**

- (1) A time (the *test time*) is also a *changeover time* in respect of a company if, at the test time:
  - (a) a person or persons who did not control, and were not able to control, the voting power in the company at the reference time began to control, or became able to control, that voting power immediately after the test time; and
  - (b) that person or those persons so began, or became able, to control that voting power for the purpose of:
    - (i) getting some benefit or advantage in relation to how this Act applies; or
    - (ii) getting such a benefit or advantage for someone else; or for purposes including that purpose.

Note: A person can still control the voting power in a company that is in liquidation etc.: see section 165-250.

- (2) In this section:

*control* of the voting power in a company means control of that voting power either directly, or indirectly through one or more interposed entities.

**165-115E What is an unrealised net loss**

- (1) The question whether a company has an *unrealised net loss* at a particular time (the *relevant time*) is worked out in this way (the *individual asset method*), unless the company chooses to work it out using the \*global method (set out in subsection (2)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Method statement*

Step 1. Work out under section 165-115F in respect of each \*CGT asset that the company owned at the relevant time any notional capital gain or notional revenue gain or any notional capital loss or notional revenue loss that the company has at that time in respect of the asset.

The sum of the notional capital gains is the company's ***unrealised capital gain*** at the relevant time.

The sum of the notional capital losses is the company's ***unrealised capital loss*** at the relevant time.

The sum of the notional revenue gains is the company's ***unrealised revenue gain*** at the relevant time.

The sum of the notional revenue losses is the company's ***unrealised revenue loss*** at the relevant time.

Step 2. Add up the unrealised capital gain and the unrealised revenue gain at the relevant time. The total is the ***unrealised gross gain*** at that time.

Step 3. Add up the unrealised capital loss and the unrealised revenue loss at the relevant time. The total is the ***unrealised gross loss*** at that time.

Step 4. If the unrealised gross loss at the relevant time exceeds the unrealised gross gain at that time, the excess is the company's ***preliminary unrealised net loss*** at that time.

Step 5. Add up the company's preliminary unrealised net loss and any \*capital loss, deduction or share of a deduction disregarded under section 170-270 in relation to an asset referred to in paragraph 165-115A(1A)(b). The total is the company's ***unrealised net loss*** at the relevant time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The **global method** of working out whether the company has an **unrealised net loss** at the relevant time is as follows:

*Method statement*

Step 1. Work out the total \*market value of all \*CGT assets that the company owned at the relevant time (including those it \*acquired for less than \$10,000), using a valuation method that would generally be regarded as appropriate in the circumstances.

Step 2. Work out the total of the \*cost bases of those \*CGT assets at the relevant time.

Note: If a CGT asset that the company owned at the relevant time was also trading stock or a revenue asset at that time, see subsection (3) of this section.

Step 3. If the step 2 amount exceeds the step 1 amount, the excess is the company's **preliminary unrealised net loss** at the relevant time.

Step 4. Add up the company's preliminary unrealised net loss and any \*capital loss, deduction or share of a deduction disregarded under section 170-270 in relation to an asset referred to in paragraph 165-115A(1A)(b). The total is the company's **unrealised net loss** at the relevant time.

- (3) If:

- (a) a \*CGT asset that the company owned at the relevant time was also \*trading stock or a \*revenue asset at that time; and
- (b) the asset's \*cost base at the relevant time is *less than* the amount that would be compared under section 165-115F with the asset's \*market value in working out a notional revenue gain or notional revenue loss that the company has at the relevant time in respect of the asset;

then, for the purposes of step 2 of the method statement in subsection (2) of this section, the amount that would be so compared is to be taken into account *instead of* that cost base.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4) A choice to use the \*global method must be made on or before:
  - (a) the day on which the company lodges its \*income tax return for the income year in which the relevant time occurred; or
  - (b) such later day as the Commissioner allows.

### **165-115F Notional gains and losses**

- (1) This section applies for the purpose of calculating whether a company has at a particular time (the *relevant time*) a notional capital gain, a notional capital loss, a notional revenue gain or a notional revenue loss in respect of a \*CGT asset that it owned at that time.
- (2) The calculation is to be made on the assumption that the company disposed of the asset at its \*market value at the relevant time.
- (3) In relation to an asset other than an item of trading stock:
  - (a) if the company would make a \*capital gain in respect of the disposal of the asset—the company has at the relevant time in respect of the asset a *notional capital gain* equal to the amount of the capital gain; or
  - (b) if an amount (other than a capital gain) would be included in the company's assessable income in respect of the disposal of the asset—the company has at the relevant time in respect of the asset a *notional revenue gain* equal to the amount so included; or
  - (c) if the company would make a \*capital loss in respect of the disposal of the asset—the company has at the relevant time in respect of the asset a *notional capital loss* equal to the amount of the capital loss; or
  - (d) if the company would be entitled to a deduction in respect of the disposal of the asset—the company has at the relevant time in respect of the asset a *notional revenue loss* equal to the amount of the deduction.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-115F

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- (4) In relation to an asset that is an item of trading stock:
  - (a) if the item's \*market value at the relevant time exceeds:
    - (i) in respect of an item that has been valued under Division 70—the item's latest valuation under that Division; or
    - (ii) otherwise—the \*cost of the item at the relevant time; the company has at the relevant time in respect of the article a **notional revenue gain** equal to the excess; or
  - (b) if the item's market value at the relevant time is less than:
    - (i) in respect of an item that has been valued under Division 70—the item's latest valuation under that Division; or
    - (ii) otherwise—the \*cost of the item at the relevant time; the company has at the relevant time in respect of the article a **notional revenue loss** equal to the difference.
- (5) A company may choose that this section is to apply to the company at the relevant time in respect of an asset to which subsection (6) applied at that time as if references to the \*market value of the asset were references to its \*written down value.
- (6) This subsection applies to an asset at the relevant time if:
  - (a) the asset is a \*depreciating asset (not a building or structure) for whose decline in value the company has deducted or can deduct an amount; and
  - (b) the expenditure incurred by the company to \*acquire the asset was less than \$1,000,000 (the expenditure can include the giving of property: see section 103-5); and
  - (c) it would be reasonable for the company to conclude that the \*market value of the asset at that time was not less than 80% of its \*written down value at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 165-CD—Reductions after alterations in ownership or control of loss company**

### **Guide to Subdivision 165-CD**

#### **165-115GA What this Subdivision is about**

This Subdivision prevents multiple recognition of a company's losses when significant equity and debt interests that entities (not individuals) have in the company are realised.

#### **165-115GB When adjustments must be made**

- (1) The operation of this Subdivision is triggered at an alteration time, which is when:
  - (a) an alteration takes place in the ownership or control of the company; or
  - (b) a liquidator or administrator of the company declares that shares or financial instruments are worthless (CGT event G3).
  
- (2) An alteration time is the trigger for making reductions and other adjustments to the reduced cost base of significant equity and debt interests in the company that are owned by an entity (not an individual) that, alone or with its associates, has a controlling stake in the company and either:
  - (a) has a \*direct equity interest or \*indirect equity interest of at least 10% in the company; or
  - (b) is owed a debt of at least \$10,000 by the company or by another entity that has a significant equity or debt interest in the company.

Deductions that relate to such interests held as trading stock or otherwise on revenue account are also reduced.
  
- (3) Adjustments may also be made when such an entity's interests in the company are partly realised within 12 months before an alteration time or if, under an arrangement, such interests are

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 165-115GC

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realised partly within that period or at the alteration time and partly at an earlier time.

- (4) However, entities in which there are no interests in respect of which the company's losses have been, or can be, duplicated are not affected by this Subdivision.

**165-115GC How adjustments are calculated**

- (1) Adjustments are based on the overall loss of the company. This comprises its realised losses and unrealised losses on CGT assets.
- (2) Special rules, directed at saving compliance costs, apply to determine whether unrealised losses have to be counted at an alteration time and, if so, how to work them out.
- (3) The company may not have to calculate its unrealised losses if the alteration time is not also a changeover time for the purposes of Subdivision 165-CC (about change of ownership or control of a company that has an unrealised net loss), and the company has no realised losses.
- (4) The company does not have to count unrealised losses at an alteration time if (together with certain related entities) it has a net asset value of not more than \$6,000,000 under the test in section 152-15 (for small business CGT relief).
- (5) In working out its unrealised losses on CGT assets, the company can choose to work out the \*market value of each of its assets individually, or of all of its assets together.
- (6) If the company works out the \*market value of each of its assets individually, unrealised losses on assets acquired for less than \$10,000 do not have to be calculated at any time.
- (7) Amounts (whether realised or unrealised) counted at a previous alteration time are not counted again at a later alteration time. (This does not apply to unrealised losses worked out by reference to the \*market value of all the company's assets together.)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (8) However, if unrealised amounts are *not* counted at a previous alteration time (for example, because of the \$10,000 exclusion, or because you satisfy the maximum net asset value test in section 152-15) and are not required to be taken into account in adjustments made at that time, they may be counted at a later time as part of a realised loss.
- (9) A formula is provided for making adjustments in straightforward cases if applying the formula gives a reasonable result having regard to the object of the Subdivision. Otherwise, reasonable adjustments must be made having regard to a number of stated factors.
- (10) To help entities to make the adjustments, any entity that, in its own right, has a controlling stake in the company is required to provide a written notice to its associates setting out relevant information. In limited circumstances, the company itself may have to provide a written notice to entities that, to its knowledge, have a significant equity or debt interest in it.

#### **165-115H How this Subdivision applies**

- (1) This Subdivision provides for certain taxation consequences for an entity (not an individual) that had a significant equity or debt interest in a loss company immediately before an alteration time occurred in respect of the company.
- (2) The following flowchart explains how to work out whether this Subdivision applies to an entity.

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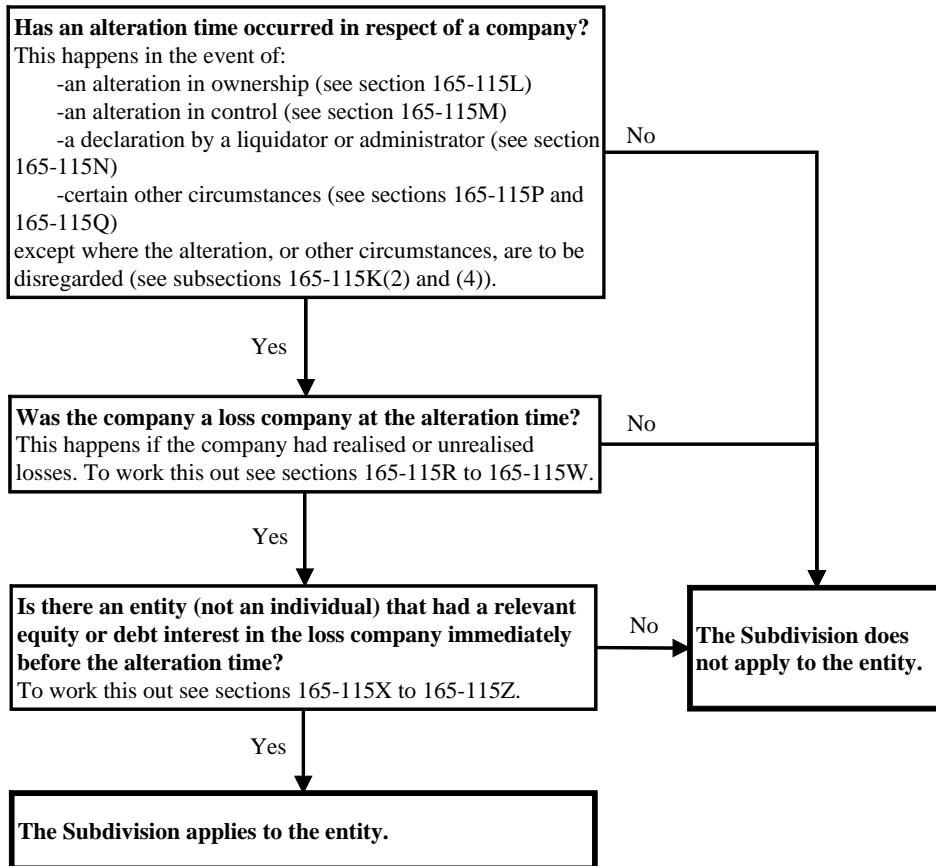
\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 165-115H

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**Application of Subdivision**



(3) If this Subdivision applies to an entity, reductions are made to:

- (a) the reduced cost base of the entity's equity or debt (see subsection 165-115ZA(3)); or
- (b) any deduction to which the entity is entitled in respect of the disposal of the equity or debt (see subsection 165-115ZA(4)); or
- (c) deductions in respect of, and the cost of, any of the equity or debt that is trading stock (see subsection 165-115ZA(5)).

Example: The following is an example of how this Subdivision operates:

Facts: Alpha Co acquired 80% of the shares in Beta Co on 5 May 1998 for \$1,000.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Gamma Co owns 20% of the shares in Beta Co.

On 6 February 2000, Alpha Co disposed of its shares for \$600.

At the beginning of the 1999-2000 income year, Beta Co had an unapplied net capital loss of \$500 from the 1998-99 income year. This loss was fully reflected in the market value of shares in Beta Co.

Alpha Co and Gamma Co are not associated in any way.

Result:

- Step 1: An alteration time occurred in respect of Beta Co as a result of the change in ownership that occurred when Alpha Co sold its shares.
- Step 2: Beta Co was a loss company at the alteration time because it had an unapplied net capital loss from an earlier income year.
- Step 3: Alpha Co had a relevant equity interest in Beta Co immediately before the alteration time because it had a controlling stake and significant interest (80% equity interest). Gamma Co did not have a relevant equity interest in Beta Co because it did not have a controlling stake.
- Step 4: Because Alpha Co had a relevant equity interest in Beta Co, the reduced cost bases of its shares in Beta Co are reduced by 80% of Beta Co's net capital loss:

$$80\% \times \$500 = \$400$$

Alpha Co does not make a capital gain on the disposal of its shares in Beta Co because the capital proceeds (\$600) are less than the cost bases (\$1,000).

Nor did Alpha Co make a capital loss on the disposal of its shares in Beta Co because the capital proceeds (\$600) are not less than the reduced cost bases as further reduced by this Subdivision (\$600).

The net capital loss in Beta Co is not duplicated on the sale of Alpha Co's shares in Beta Co.

- Step 5. There are no notice requirements in this simple case. If Gamma Co and Alpha Co were associates (so that Gamma Co had a relevant equity interest in Beta Co), Alpha Co would need to provide the following information to Gamma Co:
- (a) the alteration time: 6 February 2000;
  - (b) Beta Co's overall loss at the alteration time: \$500;
  - (c) details of the overall loss: a net capital loss of \$500 for the 1998-99 income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Table of sections**

### **Operative provisions**

- 165-115J Object of Subdivision
- 165-115K Application and interpretation
- 165-115L Alteration time—alteration in ownership of company
- 165-115M Alteration time—alteration in control of company
- 165-115N Alteration time—declaration by liquidator or administrator
- 165-115P Notional alteration time—disposal of interests in company within 12 months before alteration time
- 165-115Q Notional alteration time—disposal of interests in company earlier than 12 months before alteration time
- 165-115R When company is a loss company at first or only alteration time in income year
- 165-115S When company is a loss company at second or later alteration time in income year
- 165-115T Reduction of certain amounts included in company's overall loss at alteration time
- 165-115U Adjusted unrealised loss
- 165-115V Notional losses
- 165-115W Calculation of trading stock decrease
- 165-115X Relevant equity interest
- 165-115Y Relevant debt interest
- 165-115Z What constitutes a controlling stake in a company
- 165-115ZAReductions and other consequences if entity has relevant equity interest or relevant debt interest in loss company immediately before alteration time
- 165-115ZBAdjustment amounts for the purposes of section 165-115ZA
- 165-115ZCNotices to be given
- 165-115ZDAdjustment (or further adjustment) for interest realised at a loss after global method has been used

## **Operative provisions**

### **165-115J Object of Subdivision**

The main object of this Subdivision is to make appropriate adjustments (under section 165-115ZA) to the tax values of significant equity and debt interests held directly or indirectly by entities other than individuals in a \*loss company whose ownership or control alters.

The purpose of the adjustments is to prevent the duplication of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



company's realised and unrealised losses when any of those interests are \*disposed of or otherwise realised. This happens because the company's losses are reflected in the values of the interests.

### **165-115K Application and interpretation**

#### *Application*

- (1) This Subdivision applies if:
- (a) an alteration time occurs in respect of a company; and
  - (b) the company is a \*loss company at the alteration time; and
  - (c) one or more entities had relevant equity interests or relevant debt interests in the company immediately before the alteration time.

Note 1: For *alteration time*, see sections 165-115L, 165-115M, 165-115N, 165-115P and 165-115Q.

Note 2: For *relevant equity interests* and *relevant debt interests*, see sections 165-115X and 165-115Y.

#### *Alteration time before commencement time to be disregarded*

- (2) An *alteration time* does not include a time before the commencement time.

#### *Commencement time*

- (3) The *commencement time* for a company is:
- (a) if the company was in existence at 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999—that time; or
  - (b) if the company came into existence after that time—the time when it came into existence.

#### *Certain alteration times to be disregarded*

- (4) If:
- (a) a time (the *test time*) would, apart from this subsection, be an alteration time in relation to a company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-115L

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- (b) the company does not have any losses of the kinds referred to in paragraphs 165-115R(3)(a), (b), (c) and (d) and 165-115S(3)(a) and (b); and
- (c) the test time is not a changeover time in relation to the company under Subdivision 165-CC; and
- (d) if the test time were such a changeover time, it would be reasonable for the company to conclude that it would not have an unrealised net loss at that time under section 165-115E;

the test time is taken not to be an alteration time in relation to the company.

*Application to CGT events other than disposals*

- (5) This Subdivision applies to a \*CGT event (other than a \*disposal) happening in relation to a CGT asset (for example, an interest in a company that is constituted by an equity or debt):
  - (a) in the same way as it applies to a disposal of a CGT asset; and
  - (b) as if the asset had been disposed of at the time when the CGT event happens.

**165-115L Alteration time—alteration in ownership of company**

- (1) A time (the *test time*) is an *alteration time* in respect of a company if:
  - (a) persons who had \*more than 50% of the voting power in the company at the reference time do not have more than 50% of that voting power immediately after the test time; or
  - (b) persons who had rights to \*more than 50% of the company's dividends at the reference time do not have rights to more than 50% of those dividends immediately after the test time; or
  - (c) persons who had rights to \*more than 50% of the company's capital distributions at the reference time do not have rights to more than 50% of those distributions immediately after the test time.

Note 1: See section 165-150 to work out who had more than 50% of the voting power in the company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 2: See section 165-155 to work out who had rights to more than 50% of the company's dividends.

Note 3: See section 165-160 to work out who had rights to more than 50% of the company's capital distributions.

(2) The *reference time* is:

- (a) if no alteration time occurred in respect of the company before the \*test time—the commencement time; or
- (b) otherwise—the time immediately after the last alteration time.

(3) To work out whether paragraph (1)(a), (b) or (c) applied at a particular time, apply the primary test unless subsection (4) requires the alternative test to be applied.

Note: For the primary test see subsections 165-150(1), 165-155(1) and 165-160(1).

(4) Apply the alternative test if one or more other companies beneficially owned \*shares or interests in shares in the company at any time during the period from the reference time to the \*test time.

Note: For the alternative test see subsections 165-150(2), 165-155(2) and 165-160(2).

(5) If the company is:

- (a) a \*non-profit company; or
- (b) a \*mutual affiliate company; or
- (c) a \*mutual insurance company;

during the whole of the period from the reference time to the \*test time, the test time is taken not to be an \*alteration time in respect of the company because of the application of paragraphs (1)(b) and (c).

### **165-115M Alteration time—alteration in control of company**

(1) A time (the *test time*) is also an *alteration time* in respect of a company if, at the test time:

- (a) a person or persons who did not control, and were not able to control, the voting power in the company at the reference time began to control, or became able to control, that voting power immediately after the test time; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-115N

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- (b) that person or those persons so began, or became able, to control that voting power for the purpose of:
  - (i) getting some benefit or advantage in relation to how this Act applies; or
  - (ii) getting such a benefit or advantage for someone else; or for purposes including that purpose.

Note: A person can still control the voting power in a company that is in liquidation etc.: see section 165-250.

- (2) The *reference time* is:
  - (a) if no alteration time occurred in respect of the company before the \*test time—the commencement time; or
  - (b) otherwise—the time immediately after the last alteration time.

- (3) In this section:

*control* of the voting power in a company means control of that voting power either directly, or indirectly through one or more interposed entities.

**165-115N Alteration time—declaration by liquidator or administrator**

If a liquidator or administrator makes a declaration referred to in section 104-145 in relation to a company, the time of the declaration is also an *alteration time* in respect of the company.

**165-115P Notional alteration time—disposal of interests in company within 12 months before alteration time**

- (1) This section applies if:
  - (a) an alteration time occurs in respect of a \*loss company; and
  - (b) an entity \*disposed of an interest in the company (an *equity*) or a debt (a *debt*) at a time (the *disposal time*) within 12 months before the alteration time but not earlier than the commencement time; and
  - (c) immediately before the disposal time, the entity had a relevant equity interest or a relevant debt interest in the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- company that included the equity or debt, or would have had such an interest if any previous disposals of interests or debts by the entity had not occurred; and
- (d) immediately before the alteration time, the entity had a relevant equity interest or a relevant debt interest in the company, or would have had such an interest if any previous disposals of interests or debts by the entity had not occurred.
- (2) The references in paragraphs (1)(c) and (d) to previous \*disposals of interests or debts by the entity are references to:
- (a) previous disposals within the period referred to in paragraph (1)(b); and
- (b) previous disposals before that period if those previous disposals and any one or more of the following:
- (i) the disposal of the equity or debt;
- (ii) a disposal referred to in paragraph (a);
- (iii) a disposal at the alteration time;
- occurred as part of an \*arrangement.
- (3) The time immediately before the \*disposal of the equity or debt is taken to have been an alteration time (a ***notional alteration time***) in respect of the company.
- (4) The entity:
- (a) is taken to have had, immediately before the notional alteration time, a relevant equity interest in the company constituted by the equity or a relevant debt interest in the company constituted by the debt, as the case may be; and
- (b) is taken not to have had, immediately before the notional alteration time, any other relevant equity interest or relevant debt interest in the company.
- (5) No entity (other than the entity referred to in paragraph (1)(b)) is taken to have had a relevant equity interest or a relevant debt interest in the company immediately before the notional alteration time.
- (6) In applying this Subdivision in relation to the company in respect of a time after a notional alteration time, the notional alteration time is taken not to have occurred.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 165-115Q

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Note: For *relevant equity interests* and *relevant debt interests*, see sections 165-115X and 165-115Y.

**165-115Q Notional alteration time—disposal of interests in company earlier than 12 months before alteration time**

- (1) This section applies if:
- (a) an alteration time occurs in respect of a \*loss company; and
  - (b) an entity that \*disposed of an interest in the company (the *later equity*) or a debt (the *later debt*) at, or within 12 months before, the alteration time also disposed of an interest in the company (the *earlier equity*) or a debt (the *earlier debt*) at a time (the *earlier disposal time*) earlier than 12 months before the alteration time but not earlier than the commencement time; and
  - (c) the disposal of the later equity or later debt and the disposal of the earlier equity or earlier debt occurred as part of an \*arrangement; and
  - (d) immediately before the earlier disposal time, the entity had a relevant equity interest or a relevant debt interest in the company that included the earlier equity or earlier debt, or would have had such an interest if any previous disposals of interests or debts by the entity had not occurred; and
  - (e) immediately before the alteration time, the entity had a relevant equity interest or a relevant debt interest in the company, or would have had such an interest if any previous disposals of interests or debts by the entity had not occurred.
- (2) The references in paragraphs (1)(d) and (e) to previous \*disposals of interests or debts by the entity are references to:
- (a) previous disposals within the period referred to in paragraph (1)(b); and
  - (b) previous disposals before that period if those previous disposals and any one or more of the following:
    - (i) the disposal of the equity or debt;
    - (ii) a disposal referred to in paragraph (a);
    - (iii) a disposal at the alteration time; occurred as part of an \*arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) The time immediately before the \*disposal of the earlier equity or earlier debt is taken to have been an alteration time (a *notional alteration time*) in respect of the company.
- (4) The entity:
  - (a) is taken to have had, immediately before the notional alteration time, a relevant equity interest in the company constituted by the earlier equity or a relevant debt interest in the company constituted by the earlier debt, as the case may be; and
  - (b) is taken not to have had, immediately before the notional alteration time, any other relevant equity interest or relevant debt interest in the company.
- (5) No entity (other than the entity referred to in paragraph (1)(b)) is taken to have had a relevant equity interest or a relevant debt interest in the company immediately before the notional alteration time.
- (6) In applying this Subdivision in relation to the company in respect of a time after a notional alteration time, the notional alteration time is taken not to have occurred.

Note: For *relevant equity interests* and *relevant debt interests*, see sections 165-115X and 165-115Y.

### **165-115R When company is a loss company at first or only alteration time in income year**

#### *Application*

- (1) The question whether a company is a *loss company* at the first or only alteration time in a particular income year is to be worked out in this way.

#### *Assumed income year*

- (2) Assume that the period that started at the beginning of the income year and ended at the alteration time is an income year and apply paragraphs (3)(a), (b), (c) and (d) on that assumption.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*What is a loss company*

- (3) The company is a **loss company** at the alteration time if:
- (a) at the beginning of the income year it had an undeducted \*tax loss or undeducted tax losses for an earlier income year or earlier income years; or
  - (b) at the beginning of the income year it had an unapplied \*net capital loss or unapplied net capital losses for an earlier income year or earlier income years; or
  - (c) it has a tax loss for the income year, calculated as if the income year were a period for the purposes of Subdivision 165-B; or
  - (d) it has a net capital loss for the income year, calculated as if the income year were a period for the purposes of Subdivision 165-CB; or
  - (e) it has an adjusted unrealised loss at the alteration time.

Note: For **adjusted unrealised loss**, see section 165-115U.

*How losses are to be calculated*

- (4) In applying subsection (3):
- (a) an undeducted \*tax loss or unapplied \*net capital loss that was taken into account in working out under this section whether the company was a \*loss company at an alteration time in a previous income year is to be disregarded; and
  - (b) Subdivision 170-D is to be disregarded.

*Overall loss*

- (5) The sum of:
- (a) the amount or amounts of any \*tax loss or tax losses referred to in paragraph (3)(a); and
  - (b) the amount or amounts of any \*net capital loss or net capital losses referred to in paragraph (3)(b); and
  - (c) the amount of any tax loss referred to in paragraph (3)(c); and
  - (d) the amount of any net capital loss referred to in paragraph (3)(d); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



(e) the amount of any adjusted unrealised loss referred to in paragraph (3)(e);

is the \*loss company's **overall loss** at the alteration time.

Note: The loss company's overall loss is relevant for the purposes of subsections 165-115ZB(3) and (6).

*Certain losses to be disregarded*

(6) A reference in a paragraph of subsection (3) and in the corresponding paragraph of subsection (5) to a particular loss is a reference only to a loss to the extent to which it represents an outlay or loss of any of the economic resources of the company.

Note: Where the income tax law allows, as all or part of a loss, an amount for the decline in value of a depreciating asset that exceeds the actual economic depreciation or depletion of the asset concerned, the excess is not to be regarded for the purposes of this subsection as representing an outlay or loss of economic resources of the company.

(6A) Subsection (6) does not apply to paragraphs (3)(e) and (5)(e) if the company has chosen to use the \*global method of working out whether it has an adjusted unrealised loss at the alteration time.

*Amounts of losses may be reduced*

(7) The amounts referred to in paragraphs (5)(a) to (d) may be reduced under section 165-115T.

**165-115S When company is a loss company at second or later alteration time in income year**

*Application*

(1) The question whether a company is a **loss company** at an alteration time (the **current alteration time**) that is the second or a later alteration time in the same income year is to be worked out in this way.

*Assumed income year*

(2) Assume that the period that started immediately after the last alteration time and ended at the current alteration time is an income year and apply paragraphs (3)(a) and (b) on that assumption.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-115S

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*What is a loss company*

- (3) The company is a **loss company** at the current alteration time if:
- (a) it has a \*tax loss for the income year, calculated as if the income year were a period for the purposes of Subdivision 165-B; or
  - (b) it has a \*net capital loss for the income year, calculated as if the income year were a period for the purposes of Subdivision 165-CB; or
  - (c) it has an adjusted unrealised loss at the current alteration time.

Note: For **adjusted unrealised loss**, see section 165-115U.

*How losses are to be calculated*

- (4) In applying subsection (3), Subdivision 170-D is to be disregarded.

*Overall loss*

- (5) The sum of:
- (a) the amount of any \*tax loss referred to in paragraph (3)(a); and
  - (b) the amount of any \*net capital loss referred to in paragraph (3)(b); and
  - (c) the amount of any adjusted unrealised loss referred to in paragraph (3)(c);

is the \*loss company's **overall loss** at the current alteration time.

Note: The loss company's overall loss is relevant for the purposes of subsections 165-115ZB(3) and (6).

*Certain losses to be disregarded*

- (6) A reference in a paragraph of subsection (3) and in the corresponding paragraph of subsection (5) to a particular loss is a reference only to a loss to the extent to which it represents an outlay or loss of any of the economic resources of the company.

Note: Where the income tax law allows, as all or part of a loss, an amount for the decline in value of a depreciating asset that exceeds the actual economic depreciation or depletion of the asset concerned, the excess

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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is not to be regarded for the purposes of this subsection as representing an outlay or loss of economic resources of the company.

- (6A) Subsection (6) does not apply to paragraphs (3)(c) and (5)(c) if the company has chosen to use the \*global method of working out whether it has an adjusted unrealised loss at the current alteration time.

*Amounts of losses may be reduced*

- (7) The amounts referred to in paragraphs (5)(a) and (b) may be reduced under section 165-115T.

### **165-115T Reduction of certain amounts included in company's overall loss at alteration time**

- (1) In working out under section 165-115R or 165-115S whether a company was a \*loss company at an alteration time (the **current alteration time**), if a loss (the **realised loss**) referred to in paragraph 165-115R(3)(a), (b), (c) or (d) or 165-115S(3)(a) or (b) that the company had at the current alteration time reflected an amount of a notional revenue loss, a trading stock decrease or a notional capital loss included in an adjusted unrealised loss, that the company had at a previous alteration time, the realised loss is taken to be reduced by that amount.

Note 1: For **notional revenue loss** and **notional capital loss** see section 165-115V.

Note 2: For **trading stock decrease** see section 165-115W.

- (2) Subsection (1) does not apply to an adjusted unrealised loss that the company had at a previous alteration time if the company has chosen to use the \*global method of working out whether it has an adjusted unrealised loss at that previous time.

### **165-115U Adjusted unrealised loss**

- (1) The question whether a company has an **adjusted unrealised loss** at an alteration time (the **relevant alteration time**) is worked out in this way (the **individual asset method**), unless the company chooses to work it out using the \*global method (set out in subsection (1B)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Method statement*

Step 1. Work out under section 165-115V or 165-115W in respect of each \*CGT asset that the company owned at the relevant alteration time any notional capital loss, notional revenue loss or trading stock decrease that the company has at that time in respect of the asset.

To the extent that a notional capital loss or a notional revenue loss in respect of an asset at the relevant alteration time reflected an amount that was counted at an earlier alteration time, do not count it again at the relevant alteration time.

Step 2. Add up the notional capital losses and the notional revenue losses that the company had at the relevant alteration time. The total is the company's ***nominal unrealised loss*** at that time.

Step 3. Add up the trading stock decreases that the company had at the relevant alteration time. The total is the company's ***overall trading stock decrease*** at that time.

Step 4. The sum of the company's nominal unrealised loss and overall trading stock decrease at the relevant time is the company's ***adjusted unrealised loss*** at that time.

Note: Certain alteration times are disregarded (see subsections 165-115K(2) and (4)).

(1A) Step 1 in the method statement in subsection (1) does not apply to an amount that was counted at an earlier alteration time if the company has chosen to use the \*global method of working out whether it has an adjusted unrealised loss at that earlier time.

(1B) The ***global method*** of working out whether the company has an ***adjusted unrealised loss*** at the relevant alteration time is as follows:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Method statement*

Step 1. Work out the total \*market value of all \*CGT assets that the company owned at the relevant alteration time (including those it \*acquired for less than \$10,000), using a valuation method that would generally be regarded as appropriate in the circumstances.

Step 2. Work out the total of the \*cost bases of those \*CGT assets at the relevant time.

Note: If a CGT asset that the company owned at the relevant time was also trading stock or a revenue asset at that time, see subsection (1C) of this section.

Step 3. If the step 2 amount exceeds the step 1 amount, the excess is the company's ***adjusted unrealised loss*** at the relevant time.

(1C) If:

- (a) a \*CGT asset that the company owned at the relevant alteration time was also \*trading stock or a \*revenue asset at that time; and
- (b) the asset's \*cost base at the relevant alteration time is *less than* the amount that, if the relevant alteration time were a changeover time, would be compared under section 165-115F with the asset's \*market value in working out a notional revenue gain or notional revenue loss that the company would have at the changeover time in respect of the asset;

then, for the purposes of step 2 of the method statement in subsection (1B) of this section, the amount that would be so compared is to be taken into account *instead of* that cost base.

(1D) A choice to use the \*global method must be made on or before:

- (a) the day on which the company lodges its \*income tax return for the income year in which the relevant alteration time occurred; or
- (b) such later day as the Commissioner allows.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-115V

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- (2) However, the company does not have an adjusted unrealised loss at the relevant alteration time if the company would, at that time, satisfy the maximum net asset value test under section 152-15.

**165-115V Notional losses**

- (1) This section applies for the purpose of calculating whether a company has at an alteration time a notional capital loss or a notional revenue loss in respect of a \*CGT asset that it owned at that time.
- (2) However, a company does not have a notional capital loss or a notional revenue loss at an alteration time in respect of a CGT asset that it \*acquired for less than \$10,000.
- (3) The calculation is to be made on the assumption that the company disposed of the asset at its \*market value at the alteration time.
- (4) If the company would make a \*capital loss in respect of the disposal of the asset, the company has at the alteration time in respect of the asset a **notional capital loss** equal to the amount of the capital loss.
- (5) If the company would be entitled to a deduction in respect of the disposal of the asset, the company has at the alteration time in respect of the asset a **notional revenue loss** equal to the amount of the deduction.
- (6) A company may choose that this section is to apply to the company at the alteration time in respect of an asset to which subsection (7) applied at that time as if the reference in subsection (3) to the \*market value of the asset were a reference to its \*written down value.
- (7) This subsection applies to an asset at the alteration time if:
  - (a) the asset is a \*depreciating asset (not a building or structure) for whose decline in value the company has deducted or can deduct an amount; and
  - (b) the expenditure incurred by the company to \*acquire the asset was less than \$1,000,000 (the expenditure can include the giving of property: see section 103-5); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) it would be reasonable for the company to conclude that the \*market value of the asset at the alteration time was not less than 80% of its \*written down value at that time.

### **165-115W Calculation of trading stock decrease**

- (1) The question whether there is a *trading stock decrease* in relation to a company at an alteration time for a \*CGT asset of the company that was an item of \*trading stock at that time is worked out in this way.

*Method statement*

- Step 1. Work out whether the item's \*market value immediately before the alteration time was less than:
- (a) if there was no earlier alteration time in the income year in which that alteration time occurred—the item's value under subsection 70-40(1) at the start of that income year or its cost if subsection 70-40(2) applies; or
  - (b) if there was an earlier alteration time or there were earlier alteration times in that income year—the item's market value immediately before that earlier alteration time or the later or latest of those earlier alteration times, as the case may be, or its cost if the company did not own it at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 165-115X

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Step 2. If the item's \*market value immediately before the alteration time was less than:

- (a) the item's value or cost referred to in paragraph (a) in step 1; or
- (b) its market value or cost (as applicable) in paragraph (b) in step 1;

as the case requires, the difference is the *trading stock decrease* for the item.

To the extent (if any) to which the difference reflects an amount counted at an earlier alteration time, do not count that amount again.

Note: Certain alteration times are disregarded (see subsections 165-115K(2) and (4)).

- (1A) Step 2 in the method statement in subsection (1) does not apply to an amount counted at an earlier alteration time if the company has chosen to use the \*global method of working out whether it has an adjusted unrealised loss at that earlier time.
- (2) However, a company does not have a trading stock decrease at an alteration time in respect of an item of \*trading stock that it \*acquired for less than \$10,000.

**165-115X Relevant equity interest**

- (1) An entity (not an individual) has a *relevant equity interest* in a \*loss company at a particular time if:
  - (a) at that time the entity has a controlling stake in the loss company (see section 165-115Z); and
  - (b) at that time the entity has an interest (an *equity*) that gives, or interests (each of which is also called an *equity*) that between them give, the entity:
    - (i) the control of, or the ability to control, 10% or more of the voting power in the loss company (either directly, or indirectly through one or more interposed entities); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (ii) the right to receive (either directly, or indirectly through one or more interposed entities) 10% or more of any dividends that the loss company may pay; or
  - (iii) the right to receive (either directly, or indirectly through one or more interposed entities) 10% or more of any distribution of capital of the loss company; and
- (c) the equity or each equity is either:
  - (i) an interest (including a \*share or shares, or an option or right to acquire a share or shares) in the loss company; or
  - (ii) an interest (including an option or right to acquire an interest) held by the entity directly in another entity that has a relevant equity interest or relevant debt interest in the loss company.
- (2) The equity or equities constitute the entity's relevant equity interest in the \*loss company.
- (3) An entity (the **first entity**) that, apart from this subsection, would have a relevant equity interest in a \*loss company at a particular time does not have such an interest if, at that time, there is no other entity that has a direct or indirect interest in, or is owed a debt by, the first entity, being an interest or debt in respect of which:
  - (a) the other entity could, if a \*CGT event happened in respect of the interest or debt, make a \*capital loss (other than a capital loss that would be disregarded) that reflects any part of the loss company's overall loss; or
  - (b) the other entity has deducted or can deduct, or could deduct at a later time:
    - (i) an amount in respect of the cost of the \*acquisition of the interest or debt; or
    - (ii) a net loss on the \*disposal of the interest or debt; where the deduction reflected, or would reflect, any part of the loss company's overall loss.
- (4) However, subsection (3) does not apply to the first entity in respect of a particular time if an entity that had a direct or indirect interest in, or was owed a debt by, the first entity at an earlier time:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 165-115Y

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- (a) made a capital loss (other than a capital loss that was disregarded) because a \*CGT event happened in respect of the interest or debt, where the capital loss reflected any part of the \*loss company's overall loss; or
  - (b) has deducted or could have deducted at an earlier time, or could deduct at a later time, an amount in respect of the cost of the \*acquisition, or a net loss on the \*disposal, of the interest or debt, where the deduction reflected or would have reflected, or would reflect, as the case may be, any part of the company's overall loss.
- (5) An individual is not taken to have a **relevant equity interest** in a \*loss company at any time.
- (6) A partnership that consists only of individuals is not taken to have a **relevant equity interest** in a \*loss company at any time.
- (7) If section 106-30, 106-50 or 106-60 would treat an act referred to in that section that is done in relation to an interest as having been done by an individual, the interest is not a relevant equity interest.

**165-115Y Relevant debt interest**

- (1) An entity (not an individual) has a **relevant debt interest** in a \*loss company at a particular time if, at that time:
- (a) the entity has a controlling stake in the loss company (see section 165-115Z); and
  - (b) the entity is owed by the loss company a debt of not less than \$10,000 (a **debt**) or debts at least one of which is not less than \$10,000 (each debt of not less than \$10,000 is also called a **debt**).
- (2) An entity (not an individual) also has a **relevant debt interest** in a \*loss company at a particular time if, at that time:
- (a) the entity has a controlling stake in the loss company; and
  - (b) the entity is owed by an entity (the **debtor entity**) other than the loss company a debt of not less than \$10,000 (also a **debt**) or debts at least one of which is not less than \$10,000 (each debt of not less than \$10,000 is also called a **debt**); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the debtor entity has a relevant equity interest or a relevant debt interest in the loss company.
- (3) The total of the debts referred to in subsections (1) and (2) constitutes the entity's relevant debt interest in the \*loss company.
- (4) An entity (the *first entity*) that, apart from this subsection, would have a relevant debt interest in a \*loss company at a particular time does not have such an interest if, at that time, there is no other entity that has a direct or indirect interest in, or is owed a debt by, the first entity, being an interest or debt in respect of which:
- (a) the other entity could, if a \*CGT event happened in respect of the interest or debt, make a \*capital loss (other than a capital loss that would be disregarded) that reflects any part of the loss company's overall loss; or
  - (b) the other entity could deduct, or can deduct or could deduct at a later time:
    - (i) an amount in respect of the cost of the \*acquisition of the interest or debt; or
    - (ii) a net loss on the \*disposal of the interest or debt; where the deduction reflects, or would have reflected, any part of the loss company's overall loss.
- (5) However, subsection (4) does not apply to the first entity in respect of a particular time if an entity that had a direct or indirect interest in, or was owed a debt by, the first entity at an earlier time:
- (a) made a capital loss (other than a capital loss that would be disregarded) at an earlier time because a \*CGT event happened in respect of the interest or debt, where the capital loss reflected any part of the \*loss company's overall loss; or
  - (b) has deducted or could have deducted at an earlier time, or could deduct at a later time, an amount in respect of the cost of the \*acquisition, or a net loss on the \*disposal, of the interest or debt, where the deduction reflected or would have reflected, or would reflect, as the case may be, any part of the company's overall loss.
- (6) An individual is not taken to have a *relevant debt interest* in a \*loss company at any time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 165-115Z

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- (7) A partnership that consists only of individuals is not taken to have a **relevant debt interest** in a \*loss company at any time.
- (8) If section 106-30, 106-50 or 106-60 would treat an act referred to in that section that is done in relation to a debt as having been done by an individual, the debt is not a relevant debt interest.

**165-115Z What constitutes a controlling stake in a company**

- (1) An entity has a **controlling stake in a company** at a particular time if the entity, or the entity and the entity's \*associates between them:
  - (a) are able at that time to exercise, or control the exercise of, more than 50% of the voting power in the company (either directly, or indirectly through one or more interposed entities); or
  - (b) have at that time the right to receive (either directly, or indirectly through one or more interposed entities) more than 50% of any dividends that the company may pay; or
  - (c) have at that time the right to receive (either directly, or indirectly through one or more interposed entities) more than 50% of any distribution of capital of the company.

Note: The effect of subsection (1) is that, if an entity has a controlling stake in a company, each associate of the entity also has a controlling stake in the company.

- (2) If:
  - (a) apart from this subsection, an interest that gives an entity and its \*associates (if any):
    - (i) the ability to exercise, or control the exercise of, any of the voting power in a company; or
    - (ii) the right to receive dividends that a company may pay; or
    - (iii) the right to receive a distribution of capital of a company;would, in the application of paragraph (1)(a), (b) or (c), be counted more than once; and
  - (b) the interest is both direct and indirect;only the direct interest is to be counted.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**165-115ZA Reductions and other consequences if entity has relevant equity interest or relevant debt interest in loss company immediately before alteration time**

*Application of section*

- (1) This section applies to an entity (an *affected entity*) that has a relevant equity interest or a relevant debt interest, or both, in a \*loss company immediately before a time (a *relevant time*) that is an alteration time in respect of the loss company.

Note: This section and section 165-115ZB can apply differently for a company that has used the global method of working out whether it has an adjusted unrealised loss at an alteration time. See section 165-115ZD.

*Application of section nullified in certain circumstances*

- (2) However, if:
- (a) this section has applied to an entity in respect of a debt owed to the entity; and
  - (b) section 245-10 in Schedule 2C to the *Income Tax Assessment Act 1936* (which relates to the forgiveness of commercial debts) also applied in respect of the debt at the same time or at a later time;

any reductions or other consequences affecting the entity in respect of the debt under this section are taken not to have occurred or to have been required to occur.

Note: An amendment of an assessment can be made at any time to give effect to this subsection (see subsection 170(10AA) of the *Income Tax Assessment Act 1936*).

*Reduction of reduced cost base*

- (3) The \*reduced cost base of an equity or debt that was \*acquired on or after 20 September 1985 is to be reduced immediately before the relevant time by the adjustment amount calculated under section 165-115ZB.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-115ZA

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*Reduction of deduction—equity or debt is not trading stock*

- (4) If an equity or debt is not an item of \*trading stock of the affected entity immediately before the relevant time, any amount that the entity can deduct in respect of the disposal of any of the equity or debt is to be reduced by the adjustment amount calculated under section 165-115ZB.

*Reduction of cost—equity or debt is trading stock*

- (5) If:
- (a) an equity or debt is an item of \*trading stock of the affected entity immediately before the relevant time; and
  - (b) the \*cost for the purposes of Division 70 of the equity or debt exceeds its \*market value immediately before the relevant time;

then, subject to any later application or applications of this Subdivision, the cost of the equity or debt for the purposes of Division 70, and any deduction for an outlay to \*acquire it, are reduced by the lesser of the following amounts or, if they are equal, by one of them:

- (c) the adjustment amount calculated under section 165-115ZB;
- (d) the amount of the excess referred to in paragraph (b).

*Subsection (4) to apply only in respect of certain income years*

- (6) For the purpose of working out:
- (a) deductions under section 8-1; or
  - (b) whether an amount is included in assessable income under subsection 70-35(2); or
  - (c) whether an amount can be deducted under subsection 70-35(3);

subsection (5) applies only in respect of income years ending after the later of the following:

- (d) the commencement time;
- (e) the time 12 months before the relevant time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Further election to value trading stock*

- (7) If an election has been made under section 70-45 to value an item of \*trading stock on hand at the end of an income year otherwise than at its \*cost and subsection (5) applies in respect of it, a further election may be made under that section to value the item of trading stock at cost.

*Previous applications of this section in relation to trading stock to be taken into account*

- (8) In applying this section to the affected entity in respect of an equity or debt that is \*trading stock of the entity, any previous applications of this section to the entity in respect of the equity or debt are to be taken into account.

*Cost of equity or debt that becomes trading stock after relevant time*

- (9) If:
- (a) an equity or debt becomes an item of \*trading stock of the affected entity after the relevant time; and
  - (b) had the equity or debt been an item of trading stock of the affected entity at an earlier time that was, or at 2 or more earlier times each of which was, the relevant time for the purposes of a previous application or previous applications of this section, its \*cost for the purposes of Division 70 would have exceeded its \*market value at the earlier time or at one of the earlier times;

its cost for the purposes of Division 70 is taken to be its market value at the earlier time or the smallest of its market values at the earlier times.

*Reduction of proceeds of disposal of trading stock*

- (10) If:
- (a) an equity or debt was an item of \*trading stock of the affected entity immediately before a relevant time or became such an item of trading stock after a relevant time; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 165-115ZB

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- (b) the equity or debt is \*disposed of by the entity after the relevant time concerned; and
- (c) the equity or debt is an item of trading stock of the affected entity at the time of the disposal; and
- (d) the proceeds of the disposal exceed the \*market value of the equity or debt immediately before the relevant time concerned or the market value of the equity or debt immediately before any previous relevant time;

the proceeds of the disposal are taken to be reduced by so much of the amount or the total of the amounts of any reductions made by any previous application or applications of subsection (5) in relation to the affected entity in respect of the equity or debt as does not exceed the excess amount or the greater or greatest of the excess amounts referred to in paragraph (d).

**165-115ZB Adjustment amounts for the purposes of section 165-115ZA**

- (1A) This section has effect for the purposes of:
  - (a) section 165-115ZA; and
  - (b) sections 715-255 and 715-270 (about effect of alteration time for head company on membership interests of leaving entity just before leaving time).

*Calculation of adjustment amount*

- (1) An adjustment amount in relation to an equity or debt is to be worked out by the affected entity, and applied by it in making reductions:
  - (a) if subsection (2) applies—in accordance with subsection (3); or
  - (b) otherwise—in accordance with subsection (6).

*Selection of method of calculation*

- (2) This subsection applies if:
  - (a) the affected entity has a relevant equity interest, but does not have a relevant debt interest, in the \*loss company immediately before the alteration time and:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (i) all the \*shares in the loss company are of the same class and have the same \*market value; and
- (ii) the equity consists only of a share or shares in the loss company; or
- (b) the affected entity has both a relevant equity interest, and a relevant debt interest under subsection 165-115Y(1), in the loss company immediately before the alteration time and:
  - (i) all the shares in the loss company are of the same class and have the same market value; and
  - (ii) the equity consists only of a share or shares in the loss company; and
  - (iii) the debt consists of a single debt or 2 or more debts of the same kind;

and the reductions that would result from the application of subsection (3) would be reasonable in the circumstances.

*Formula method*

- (3) The **adjustment amount** to be worked out under this subsection is the amount worked out using the formula:

$$\frac{\text{The number of shares in the loss company constituted by the equity immediately before the alteration time}}{\text{The total number of shares in the loss company immediately before the alteration time}} \times \text{The amount of the loss company's overall loss at the alteration time}$$

and the amount so worked out is to be applied in making reductions as follows:

- (a) the adjustment amount is to be applied in relation to the \*share or shares constituting the equity; and
- (b) if there is an amount remaining after making reductions in relation to those shares—the amount remaining is to be applied in relation to any debt or, if there is a debt consisting of 2 or more separate debts, in relation to those debts.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Applying adjustment amount under formula method to shares*

- (4) If the adjustment amount referred to in subsection (3) is to be applied in relation to an equity consisting of 2 or more \*shares:
- (a) it is to be applied equally among the shares; and
  - (b) if there is any amount remaining after the application of part of the adjustment amount to a share, the amount remaining is to be applied to any other share, or equally among any other shares, to the maximum extent possible.

*Applying adjustment amount under formula method to debt*

- (5) If the adjustment amount referred to in subsection (3) or part of it is to be applied in relation to a debt (the **overall debt**) and the overall debt consists of 2 or more debts (the **constituent debts**), the amount to be applied in relation to each constituent debt is the amount worked out using the formula:

$$\frac{\text{The adjustment amount or part of the adjustment amount}}{\text{The adjustment amount or part of the adjustment amount}} \times \frac{\text{The amount of the constituent debt}}{\text{The amount of the overall debt}}$$

*Non-formula method*

- (6) The **adjustment amount** to be worked out under this subsection is the amount that is appropriate having regard to:
- (a) the object of this Subdivision and other matters set out in section 165-115J; and
  - (b) the extent of the affected entity's relevant equity interests or relevant debt interests, as the case may be, in the \*loss company immediately before the alteration time; and
  - (c) when, and under what circumstances, the relevant equity interests or relevant debt interests were \*acquired by the affected entity; and
  - (d) the loss company's overall loss at the alteration time; and
  - (e) the extent to which that overall loss has reduced the \*market values of the equity or debt; and
  - (f) to prevent double counting, the extent of any adjustments required under this Subdivision because of any application of this Subdivision to another loss company in which the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

affected entity has a relevant equity interest or relevant debt interest;

and the amount so worked out is to be applied in making reductions in an appropriate way.

*How to work out the extent to which the overall loss has reduced the market value of an equity or debt*

- (7) To avoid doubt in applying paragraph (6)(e) in relation to an equity or a debt, if factors other than an overall loss altered the \*market value of the equity or debt, the extent to which the overall loss reduced that market value is taken to be the extent to which that market value would have been reduced apart from those other factors.

Note 1: For a company's **overall loss** see subsections 165-115R(5) and 165-115S(5).

Note 2: An example of a factor other than the overall loss is the unrealised value of assets (including assets in respect of which there is an unrealised gain) of the loss company, whether or not generated by outlays or economic losses reflected in the loss for income tax purposes.

### **165-115ZC Notices to be given**

#### *Application*

- (1) This section applies when an alteration time occurs in respect of a \*loss company.

Note: Section 165-115ZC of the *Income Tax (Transitional Provisions) Act 1997* affects the operation of this section.

#### *Controlling entity*

- (2) For the purposes of this section, an entity is a **controlling entity** of a \*loss company if:
- (a) the entity is not an individual; and
  - (b) the entity, disregarding any of its \*associates, has a controlling stake in the loss company; and
  - (c) no other entity (except an individual or 2 or more individuals between them) has a controlling stake in the entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 165-115ZC

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*Foreign resident controlling entity to be disregarded in certain circumstances*

(3) If:

- (a) apart from this subsection, an entity that is a foreign resident would be a controlling entity of a \*loss company; and
- (b) there is an entity that is an Australian resident and would be a controlling entity of the loss company if all the foreign residents that held direct or indirect interests in the Australian resident were individuals;

then, for the purposes of this section, the entity referred to in paragraph (a) is taken not to be a controlling entity of the company but the Australian resident is taken to be a controlling entity of the company.

*Notice by controlling entity of loss company*

(4) An entity that was a controlling entity of the \*loss company immediately before the alteration time must, before the end of 6 months after the latest of the following:

- (a) the alteration time;
- (b) the day on which the *New Business Tax System (Miscellaneous) Act (No. 2) 2000* received the Royal Assent;
- (c) the time (if any) specified by the Commissioner;

give a written notice, setting out the information mentioned in subsection (6), to each of its \*associates that, to the loss company's knowledge, had a relevant equity interest or relevant debt interest in the loss company immediately before the alteration time.

Penalty: 30 penalty units.

*Notice by loss company*

(5) If:

- (a) there was no controlling entity of the \*loss company immediately before the alteration time; or
- (b) no entity that was a controlling entity of the loss company immediately before the alteration time told the loss company in writing, within 2 months after the later of the following:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (i) the alteration time;
- (ii) the day on which the *New Business Tax System (Miscellaneous) Act (No. 2) 2000* received the Royal Assent;

that it had given, or proposed to give, notices to its associates under subsection (4);

the loss company must, before the end of 6 months after the latest of the following:

- (c) the alteration time;
- (d) the day on which the *New Business Tax System (Miscellaneous) Act (No. 2) 2000* received the Royal Assent;
- (e) the time (if any) specified by the Commissioner;

give a written notice, setting out the information mentioned in subsection (6), to each entity that, to the loss company's knowledge, had a relevant equity interest or relevant debt interest in the company immediately before the alteration time.

Penalty: 30 penalty units.

*Offences are strict liability*

- (5A) An offence under subsection (4) or (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Information to be included in notice*

- (6) The information to be contained in a notice given under subsection (4) or (5) must include:
- (a) the time that is the alteration time; and
  - (b) the amount of the \*loss company's overall loss at that time; and
  - (c) for each income year for which the loss company had at that time a \*tax loss or \*net capital loss referred to in subsection 165-115R(3) or 165-115S(3)—the type and amount of the loss; and
  - (d) the amount of any adjusted unrealised loss that the loss company had at that time; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-115ZC

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- (e) particulars (for the purpose of assisting the entity to whom the notice is given (the *recipient*) to comply with the requirements of this Subdivision) of the amounts, proportions, and times of \*acquisition, of all relevant equity interests and relevant debt interests in the loss company held by entities through which the recipient had relevant equity interests or relevant debt interests in the loss company.

*Entity or loss company not required to give information about matters that are not known to it*

- (7) An entity or \*loss company is not required by this section to set out information in a notice unless:
  - (a) the information is known to the entity or company; or
  - (b) the entity or company could reasonably be expected to know the information and can readily obtain it.

*Commissioner's power to specify a later time for giving notice*

- (7A) The Commissioner may, by written notice given to an entity, or \*loss company, that is required to give a notice under subsection (4) or (5), specify a time later than the alteration time as the start of the 6 months mentioned in the subsection.

*Commissioner's power to waive requirement for notice*

- (7B) The Commissioner may give an entity or \*loss company a written declaration that subsection (4) or (5) does not apply to require the entity or company to give a notice relating to the alteration time. If the Commissioner does so, the subsection does not apply in relation to the alteration time.

*Considerations relating to Commissioner's powers*

- (7C) In deciding whether to specify a time for the purposes of subsection (4) or (5) or declare that the subsection does not apply, the Commissioner must consider:
  - (a) the consequences of doing so for each entity to which notice must be given under the subsection (apart from any such declaration); and
  - (b) any other matters that the Commissioner considers relevant.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Obligations of person not affected by failure to give notice*

- (8) Any failure by an entity or the \*loss company to give a notice to a person under this section does not affect any obligation of the person to comply with the requirements of this Subdivision.

**165-115ZD Adjustment (or further adjustment) for interest realised at a loss after global method has been used**

- (1) This section affects how sections 165-115ZA and 165-115ZB apply to an interest (the *equity*) in, or a debt owed by, a company if, apart from this section, a loss (the *realised loss*):
- (a) would be \*realised for income tax purposes by a \*realisation event that happens to the equity or debt; or
  - (b) would be so realised but for Subdivision 170-D (which defers realisation of capital losses and deductions);
- and the company chose to use the \*global method of working out whether it had an adjusted unrealised loss at the last alteration time:
- (c) that happened for the company before the realisation event; and
  - (d) immediately before which the equity or debt was, or was part of:
    - (i) if the company was a \*loss company at that alteration time—a relevant equity interest, or a relevant debt interest, that an entity had in the company; or
    - (ii) otherwise—what would have been such an interest if the company had been a loss company at that alteration time.

Note: If that last alteration time is before the day on which the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002* received the Royal Assent, the owner of the equity or debt may choose to apply section 165-115ZD of the *Income Tax (Transitional Provisions) Act 1997* instead of this section.

- (2) In addition to any application to the equity or debt, in relation to that last alteration time, that sections 165-115ZA and 165-115ZB have apart from this section, those sections apply (and are taken always to have applied) to the equity or debt, in relation to that last alteration time, as if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 165-115ZD

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- (a) the company had an adjusted unrealised loss at that time worked out under this section; and
  - (b) the company were therefore a \*loss company at that time; and
  - (c) that adjusted unrealised loss were the company's overall loss at that time.
- (3) For the purposes of how sections 165-115ZA and 165-115ZB apply because of this section, the adjustment amount under section 165-115ZB is to be worked out and applied in accordance with subsection 165-115ZB(6) (the non-formula method).

*Adjusted unrealised loss worked out under this section*

- (4) The adjusted unrealised loss referred to in paragraph (2)(a) is worked out using this method statement:

*Method statement*

- Step 1. Add up the amount or value of each thing covered by subsection (5). (If the total exceeds the realised loss, reduce the total by the excess.)
- Step 2. Reduce the step 1 amount by so much of the realised loss as it is reasonable to conclude is attributable to *none* of these:
- (a) a notional capital loss, or a notional revenue loss, that the company has at that last alteration time in respect of a \*CGT asset;
  - (b) a trading stock decrease in relation to that time for a CGT asset that was \*trading stock of the company at that time.

Note: If the equity or debt is a revenue asset, the realised loss is different from the loss referred to in subsection (1): see subsection (9).

- (5) This subsection covers each thing covered by an item in the table, except to the extent that:
- (a) it is reasonable to conclude that the thing was *not* attributable to value that is reflected in what would, if that last alteration

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- time had been a \*changeover time for the company, be a notional capital gain or notional revenue gain that the company had under section 165-115F at that changeover time in respect of a \*CGT asset; or
- (b) the thing has resulted in a reduction of the \*reduced cost base of the equity or debt.

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**Things that might expose an unrealised loss netted off by use of global method**

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**Item    Thing covered**

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|---|---|
| 1 | A *dividend that the company pays during the period referred to in subsection (6)   |
| 2 | A thing that is taken under this Act to be a dividend and that the company pays during the period referred to in subsection (6)   |
| 3 | A distribution of income or capital to a *member that the company makes during the period referred to in subsection (6) and is not covered by item 1 or 2   |
| 4 | An amount of income tax to which the company becomes liable at any time, to the extent that it is reasonably attributable to a realisation event that happens, during the period referred to in subsection (6), to a *CGT asset (in its character as a CGT asset, *trading stock or a *revenue asset) that the company owned at that last alteration time and *acquired for not less than \$10,000  |
| 5 | A loss or outgoing to which the company becomes liable at any time, to the extent that it is reasonably attributable to a realisation event of the kind referred to in item 4   |
| 6 | The difference between: <ul style="list-style-type: none"> <li>(a) the *capital proceeds (as worked out under subsection (7)) of a *CGT event:                     <ul style="list-style-type: none"> <li>(i) that happens, during the period referred to in subsection (6), to a *CGT asset that the company owned at that last alteration time and *acquired for not less than \$10,000; and</li> <li>(ii) as a result of which the asset is *acquired by an entity that is an *associate of the company at the time of the CGT event; and</li> </ul> </li> <li>(b) the *market value of the asset at the time of the CGT event;</li> </ul> but only if those capital proceeds are <i>less than</i> that market value |
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-115ZD

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- (6) The period starts at that last alteration time and ends at the earlier of:
- (a) the time of the \*realisation event referred to in paragraph (1)(a); or
  - (b) the time immediately before the earliest time when the equity or debt is no longer, or is no longer part of:
    - (i) if the company was a \*loss company at that last alteration time—a relevant equity interest, or a relevant debt interest, that an entity has in the company; or
    - (ii) otherwise—what would have been such an interest if the company had been a loss company at that last alteration time.
- (7) For the purposes of item 6 of the table in subsection (5), the \*capital proceeds of the \*CGT event are to be worked out:
- (a) under subsection 116-20(1) only; and
  - (b) disregarding subsection 103-10(1) and paragraph 103-10(2)(a) (about entitlement to receive money or property).

*Notices under section 165-115ZC not affected*

- (8) To avoid doubt:
- (a) a notice need not be given under section 165-115ZC because of this section; and
  - (b) this section does not affect the requirements that apply to a notice that otherwise must be given under that section.

*If equity or debt is a revenue asset*

- (9) If the equity or debt is a \*revenue asset at the time of the \*realisation event, subsection (4) applies on the basis that the realised loss is the total of:
- (a) the loss (if any) \*realised for income tax purposes by the realisation event happening to the equity or debt in its character as a \*CGT asset; and
  - (b) the loss (if any) realised for income tax purposes by the realisation event happening to the equity or debt in its character as a revenue asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 165-C—Deducting bad debts**

### **Guide to Subdivision 165-C**

#### **165-117 What this Subdivision is about**

A company cannot deduct a bad debt unless:

- (a) if the debt was incurred in an earlier income year—the company had the same owners and the same control throughout the period from the day on which the debt was incurred to the end of the income year in which it writes off the debt as bad; or
- (b) if the debt was incurred in the current year—the company had the same owners and the same control during the income year both before and after the debt was incurred;

or, if there has been a change of ownership or control, the company satisfies the same business test by carrying on the same business, entering into no new kinds of transactions and conducting no new kinds of business.

#### **Table of sections**

##### **Operative provisions**

165-119	Application of Subdivision
165-120	To deduct a bad debt
165-123	Company must maintain the same owners
165-126	Alternatively, the company must satisfy the same business test
165-129	Same people must control the voting power, or the company must satisfy the same business test
165-132	When tax losses resulting from bad debts cannot be deducted

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Operative provisions**

### **165-119 Application of Subdivision**

This Subdivision applies to a debt only to the extent (if any) to which Subdivision 165-CC does not apply in respect of the debt.

Note: Subdivision 165-CC applies to certain capital losses or tax losses of a company to the extent to which the capital loss or tax loss does not exceed the company's unrealised net loss.

### **165-120 To deduct a bad debt**

- (1) A company cannot deduct a debt (or part of a debt) that it writes off as bad in the \*current year unless:
  - (a) it meets the conditions in section 165-123 (which is about the company maintaining the same owners); or
  - (b) the Commissioner thinks it would be unreasonable to require the company to meet the conditions in that section, having regard to the entities that beneficially owned the shares in the company when (in the Commissioner's opinion) the debt (or part) became bad; or
  - (c) the company meets the condition in section 165-126 (which is about the company satisfying the same business test).

Note 1: In the case of a widely held or eligible Division 166 company, Subdivision 166-C modifies how this Subdivision applies, unless the company chooses otherwise.

Note 2: Normally bad debts are deductible under section 8-1 or 25-35.

Note 3: Subdivisions 709-D and 719-I modify how this Subdivision operates in relation to a company that used to be a member of a consolidated group or MEC group and that writes off as bad a debt that used to be owed to a member of the group.

- (2) The conditions in section 165-123 or 165-126 apply to different periods, depending on whether the debt was incurred in the \*current year or an earlier income year:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***Meaning of first continuity period and second continuity period***

<b>In this case:</b>	<b>the first continuity period:</b>	<b>and the second continuity period:</b>
the debt was incurred in an earlier income year	<ul style="list-style-type: none"> <li>• starts on the day when the debt was incurred; and</li> <li>• ends at the end of that income year</li> </ul>	is the *current year
the debt was incurred in the *current year (but not on the last day of it)	<ul style="list-style-type: none"> <li>• starts on the first day of the *current year; and</li> <li>• ends on the day when the debt was incurred</li> </ul>	<ul style="list-style-type: none"> <li>• starts on the day after the debt was incurred; and</li> <li>• ends on the last day of the *current year</li> </ul>

- (3) A company cannot deduct a debt (or part of a debt) that it writes off as bad on the last day of the \*current year if the debt was also incurred on that day.

**165-123 Company must maintain the same owners**

*Ownership test period*

- (1) In determining whether section 165-120 prevents a company from deducting a debt or a part of a debt, the ***ownership test period*** is the period from the start of the \*first continuity period to the end of the \*second continuity period.

Note: See section 165-255 for the rule about incomplete test periods.

*Voting power*

- (2) There must be persons who had \*more than 50% of the voting power in the company at all times during the \*ownership test period.

Note: See section 165-150 to work out who had more than 50% of the voting power.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-123

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*Rights to dividends*

- (3) There must be persons who had rights to \*more than 50% of the company's dividends at all times during the \*ownership test period.

Note: See section 165-155 to work out who had rights to more than 50% of the company's dividends.

*Rights to capital distributions*

- (4) There must be persons who had rights to \*more than 50% of the company's capital distributions at all times during the \*ownership test period.

Note: See section 165-160 to work out who had rights to more than 50% of the company's capital distributions.

*When to apply the primary test*

- (5) To work out whether a condition in this section was satisfied at all times during the \*ownership test period, apply the primary test for that condition unless subsection (6) requires the alternative test to be applied.

Note: For the primary test, see subsections 165-150(1), 165-155(1) and 165-160(1).

*When to apply the alternative test*

- (6) Apply the alternative test for that condition if one or more other companies beneficially owned \*shares or interests in shares in the company at any time during the \*ownership test period.

Note: For the alternative test, see subsections 165-150(2), 165-155(2) and 165-160(2).

*Conditions in subsections (2), (3) and (4) may be treated as having been satisfied in certain circumstances*

- (7) If any of the conditions in subsections (2), (3) and (4) have not been satisfied, those conditions are taken to have been satisfied if:
- (a) they would have been satisfied except for the operation of section 165-165; and
  - (b) the company has information from which it would be reasonable to conclude that less than 50% of the debt or of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the part of a debt has been reflected in deductions, capital losses, or reduced assessable income, that occurred, or could occur in future, because of the happening of any \*CGT event in relation to any \*direct equity interests or \*indirect equity interests in the company during the \*ownership test period.

(7A) If the company is:

- (a) a \*non-profit company; or
- (b) a \*mutual affiliate company; or
- (c) a \*mutual insurance company;

during the whole of the \*ownership test period, the conditions in subsections (3) and (4) are taken to have been satisfied by the company.

*Time of happening of CGT event*

- (8) The happening of any \*CGT event in relation to a \*direct equity interest or \*indirect equity interest in the company that results in the failure of the company to satisfy a condition in subsection (2), (3) or (4) is taken, for the purposes of paragraph (7)(b), to have occurred during the \*ownership test period.

### **165-126 Alternatively, the company must satisfy the same business test**

- (1) This section sets out the condition that a company must meet to be able to deduct a debt or part of a debt that it writes off as bad in the \*current year if:
- (a) either:
    - (i) the company fails to meet a condition in subsection 165-123(2), (3) or (4); or
    - (ii) it is not practicable to show that the company meets the conditions in those subsections; and
  - (b) paragraph 165-120(1)(b) (about the Commissioner thinking it is unreasonable to require the company to meet the conditions in section 165-123) does not apply.

Note Other provisions may treat the company as meeting, or failing to meet, the conditions in subsections 165-123(2), (3) and (4).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 165** Income tax consequences of changing ownership or control of a company

Section 165-129

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- (2) The company must satisfy the \*same business test for the \*second continuity period (the *same business test period*). Apply the test to the \*business the company carried on immediately before the time (the *test time*) shown in the relevant item of the table.

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<b>Test time</b>		
<b>Item</b>	<b>If:</b>	<b>The test time is:</b>
1	It is practicable to show there is a period that meets these conditions: (a) the period starts at the start of the *first continuity period; (b) the company would meet the conditions in subsections 165-123(2), (3) and (4) if the period were the *ownership test period for the purposes of this Act	The latest time that it is practicable to show is in the period
2	Item 1 does not apply and either: (a) the debt was incurred before the *current year; or (b) the company came into being during the current year	The end of the day on which the debt was incurred
3	All these conditions are met: (a) item 1 does not apply; (b) the debt was incurred in the *current year; (c) the company was in being throughout the current year	The start of the current year

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For the same business test: see Subdivision 165-E.

**165-129 Same people must control the voting power, or the company must satisfy the same business test**

- (1) Even if section 165-120 does not prevent a company from deducting a bad debt (or part of one), it cannot deduct the bad debt (or that part of it) if:
- (a) for some or all of the part of the \*ownership test period that started at the end of the \*first continuity period, a person controlled, or was able to control, the voting power in the company (whether directly, or indirectly through one or more interposed entities); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) for some or all of the \*first continuity period, that person did *not* control, and was not *able* to control, that voting power (directly, or indirectly in that way); and
- (c) that person began to control, or became able to control, that voting power (directly, or indirectly in that way) for the purpose of:
  - (i) getting some benefit or advantage in relation to how this Act applies; or
  - (ii) getting such a benefit or advantage for someone else; or for purposes including that purpose.

Note: A person can still control the voting power in a company that is in liquidation etc.: see section 165-250.

- (2) However, that person's control of the voting power, or ability to control it, does not prevent the company from deducting the bad debt (or that part of it) if the company satisfies the \*same business test for the \*second continuity period (the *same business test period*).
- (3) Apply the \*same business test to the \*business that the company carried on immediately before the time (the *test time*) when the person began to control that voting power, or became able to control it.

For the same business test: see Subdivision 165-E.

### **165-132 When tax losses resulting from bad debts cannot be deducted**

- (1) If:
  - (a) a company can deduct a debt (or part of a debt) that it wrote off as bad in an income year; and
  - (b) because the company failed to meet a condition in section 165-123 (about the company maintaining the same owners), it could not have deducted the debt (or part) apart from section 165-126 (about the company satisfying the same business test); and
  - (c) the company wrote off the debt *after* the \*test time worked out under section 165-126; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(d) because of the deduction, the company has a \*tax loss for that income year, or there was an increase in the amount of its \*tax loss for that income year; and

(e) the company carried on a \*business during that income year for the purpose, or for purposes including the purpose, of securing a deduction for the debt (or part) by relying on section 165-126;

the company cannot deduct the \*tax loss for a later income year, or cannot deduct it to the extent of the increase, unless it also satisfies the \*same business test for the later income year (the *same business test period*).

(2) Apply the test to the \*business that the company carried on immediately before the \*test time worked out for section 165-126.

For the same business test: see Subdivision 165-E.

### **Subdivision 165-D—Tests for finding out whether the company has maintained the same owners**

#### **Table of sections**

##### **The primary and alternative tests**

165-150	Who has more than 50% of the voting power in the company
165-155	Who has rights to more than 50% of the company's dividends
165-160	Who has rights to more than 50% of the company's capital distributions
165-165	Rules about tests for a condition or occurrence of a circumstance
165-175	Tests can be satisfied by a single person

##### **Rules affecting the operation of the tests**

165-180	Arrangements affecting beneficial ownership of shares
165-185	Shares treated as not having carried rights
165-190	Shares treated as always having carried rights
165-200	Rules do not affect totals of shares, units in unit trusts or rights carried by shares and units
165-202	Shares held by government entities and charities etc.
165-203	Companies where no shares have been issued
165-205	Death of beneficial owner
165-207	Trustees of family trusts
165-208	Companies in liquidation etc.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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165-209 Dual listed companies

## The primary and alternative tests

### 165-150 Who has more than 50% of the voting power in the company

#### *The primary test*

- (1) Applying the primary test: if there are persons who, at a particular time, beneficially own (between them) \*shares that carry (between them) the right to exercise more than 50% of the voting power in the company, those persons have **more than 50% of the voting power** in the company at that time.

#### *The alternative test*

- (2) Applying the alternative test: if it is the case, or it is reasonable to assume, that there are persons (none of them companies or \*trustees) who (between them) at a particular time control, or are able to control (whether directly, or indirectly through one or more interposed entities) the voting power in the company, those persons have **more than 50% of the voting power** in the company at that time.

### 165-155 Who has rights to more than 50% of the company's dividends

#### *The primary test*

- (1) Applying the primary test: if there are persons who, at a particular time, beneficially own (between them) \*shares that carry (between them) the right to receive more than 50% of any \*dividends that the company may pay, those persons have rights to **more than 50% of the company's dividends** at that time.

#### *The alternative test*

- (2) Applying the alternative test: if it is the case, or it is reasonable to assume, that there are persons (none of them companies) who (between them) at a particular time have the right to receive for

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-160

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their own benefit (whether directly or \*indirectly) more than 50% of any \*dividends that the company may pay, those persons have rights to *more than 50% of the company's dividends* at that time.

**165-160 Who has rights to more than 50% of the company's capital distributions**

*The primary test*

- (1) Applying the primary test: if there are persons who, at a particular time, beneficially own (between them) \*shares that carry (between them) the right to receive more than 50% of any distribution of capital of the company, those persons have rights to *more than 50% of the company's capital distributions* at that time.

*The alternative test*

- (2) Applying the alternative test: if it is the case, or it is reasonable to assume, that there are persons (none of them companies) who (between them) at a particular time have the right to receive for their own benefit (whether directly or \*indirectly) more than 50% of any distribution of capital of the company, those persons have rights to *more than 50% of the company's capital distributions* at that time.

**165-165 Rules about tests for a condition or occurrence of a circumstance**

*Exactly the same shares or interests must continue to be held*

- (1) For the purpose of determining whether a company has satisfied a condition or whether a time is a changeover time or an alteration time in respect of a company:
  - (a) a condition that has to be satisfied is not satisfied; or
  - (b) a time that, apart from this subsection, would not be a changeover time or alteration time is taken to be a changeover time or alteration time, as the case may be;unless, at all relevant times:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the only \*shares in the company that are taken into account are exactly the same shares and are held by the same persons; and
- (d) the only interests in any other entity (including shares in another company) that are taken into account are exactly the same interests and are beneficially owned by the same persons.

*What happens in case of share splitting*

- (2) If:
  - (a) a particular \*share (an **old share**) in a company of which a person is the beneficial owner at the start of a \*test period is divided into 2 or more new shares; and
  - (b) the person becomes the beneficial owner of each of the new shares immediately after the division takes place and remains the beneficial owner until the end of that period;the new shares are taken to be exactly the same shares as the old share.

*What happens in case of splitting of units in a unit trust*

- (3) If:
  - (a) a particular unit (the **old unit**) in a unit trust of which a person is the holder at the start of a \*test period is divided into 2 or more new units; and
  - (b) the person becomes the holder of each of the new units immediately after the division takes place and remains the holder until the end of that period;the new units are taken to be exactly the same units as the old unit.

*What happens in case of consolidation of shares*

- (4) If:
  - (a) a particular \*share (an **old share**) in a company of which a person is the beneficial owner at the start of a \*test period, and other shares (each of which also called an **old share**) in the company of which the person is the beneficial owner at the start of that period, are consolidated into a new share; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-165

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- (b) the person becomes the beneficial owner of the new share immediately after the consolidation takes place;  
the new share is taken to be exactly the same share as the old shares.

*What happens in case of consolidation of units in a unit trust*

- (5) If:
  - (a) a particular unit (an **old unit**) in a unit trust of which a person is the holder at the start of a \*test period and other units (each of which also called an **old unit**) in the trust of which the person is the holder at the start of that period are consolidated into a new unit; and
  - (b) the person becomes the holder of the new unit immediately after the consolidation takes place;  
the new unit is taken to be exactly the same unit as the old units.

*Test period*

- (6) A **test period** is:
  - (a) for the purpose of determining whether a condition in section 165-12 has been satisfied—the \*ownership test period; or
  - (b) for the purpose of determining whether a test time is a changeover time for the purposes of section 165-115C—the period between the reference time referred to in subsection 165-115A(2A) and the test time; or
  - (c) for the purpose of determining whether a test time is an alteration time for the purposes of section 165-115L—the period between the reference time referred to in subsection 165-115L(2) and the test time.

*Satisfaction by primary test by public company*

- (7) A \*public company is taken to satisfy the primary test if it is reasonable to assume that the test is satisfied.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **165-175 Tests can be satisfied by a single person**

To avoid doubt, a test for a condition can be satisfied by one person.

### **Rules affecting the operation of the tests**

#### **165-180 Arrangements affecting beneficial ownership of shares**

- (1) For the purposes of a test, the Commissioner may treat a person as not having beneficially owned particular \*shares at a particular time if the conditions in subsections (2) and (3) are met.  

Example: The Commissioner may treat a person as not having beneficially owned redeemable shares at a particular time if the conditions in subsections (2) and (3) are met in respect of those shares.
- (2) An \*arrangement must have been entered into at some time that in any way (directly or indirectly) related to, affected, or depended for its operation on:
  - (a) the beneficial interest in the \*shares, or the value of that beneficial interest; or
  - (b) a right carried by, or relating to, the shares; or
  - (c) the exercise of such a right.
- (3) The \*arrangement must also have been entered into for the purpose, or for purposes including the purpose, of eliminating or reducing a liability of an entity to pay income tax for a \*financial year.

#### **165-185 Shares treated as not having carried rights**

- (1) In applying a test for the purposes of this Division other than Subdivision 165-CC, \*shares are taken *not* to have carried particular rights during a part of the \*ownership test period if the Commissioner is satisfied that:
  - (a) the shares *stopped* carrying those rights after the ownership test period; or
  - (b) the shares will or may *stop* carrying those rights after the ownership test period;because of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-190

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- (c) the company's \*constitution as in force at some time *during* the ownership test period; or
  - (d) an \*arrangement entered into before or during the ownership test period.
- (2) In applying a test for the purposes of Subdivision 165-CC, \*shares are taken not to have carried particular rights after a particular time if the Commissioner is satisfied that:
- (a) the shares *stopped* carrying those rights after that time; or
  - (b) the shares will or may *stop* carrying those rights after that time;
- because of:
- (c) the company's \*constitution as in force at any time; or
  - (d) an \*arrangement entered into at any time.

**165-190 Shares treated as always having carried rights**

- (1) In applying a test for the purposes of this Division other than Subdivision 165-CC, \*shares are taken to have carried particular rights *at all times* during a part of the \*ownership test period if the Commissioner is satisfied that:
- (a) the shares *started* to carry those rights after the ownership test period; or
  - (b) the shares will or may *start* to carry those rights after the ownership test period;
- because of:
- (c) the company's \*constitution as in force at some time *during* the ownership test period; or
  - (d) an \*arrangement entered into before or during the ownership test period.
- (2) In applying a test for the purposes of Subdivision 165-CC, \*shares are taken to have carried particular rights after a particular time if the Commissioner is satisfied that:
- (a) the shares *started* to carry those rights after that time; or
  - (b) the shares will or may *start* to carry those rights after that time;
- because of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (c) the company's \*constitution as in force at any time; or
- (d) an \*arrangement entered into at any time.

**165-200 Rules do not affect totals of shares, units in unit trusts or rights carried by shares and units**

- (1) Sections 165-165, 165-180, 165-185 and 165-190 do not affect how \*shares, and rights carried by \*shares, are counted for the purposes of determining:
  - (a) the total voting power in the company; or
  - (b) the total \*dividends that the company may pay; or
  - (c) the total distributions of capital of the company.
- (2) Section 165-165 does not affect how units in a unit trust, or the rights carried by such units, are counted for the purposes of determining the total rights, or the total rights of a particular kind, in the trust of the holders of such units.

**165-202 Shares held by government entities and charities etc.**

- (1) For the purposes of a test, \*shares that are beneficially owned by each of the following entities are taken to be beneficially owned instead by a person (who is not a company):
  - (a) the Commonwealth, a State or a Territory;
  - (b) a municipal corporation;
  - (c) a local governing body;
  - (d) the government of a foreign country, or of part of a foreign country;
  - (e) a company, established under a law, in which no person has a \*membership interest;
  - (f) a \*non-profit company;
  - (g) a charitable institution, a charitable fund or any other kind of charitable body (other than such an institution, fund or body that is a trust).
- (2) For the purposes of a test, \*shares that are beneficially owned through a charitable institution, a charitable fund, or any other kind of charitable body, that is a trust are taken to be beneficially owned instead by a person (who is neither a company nor a trustee).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **165-203 Companies where no shares have been issued**

For the purposes of a test, if no \*shares have been issued in a company, each \*membership interest in the company is taken to be a share in the company.

### **165-205 Death of beneficial owner**

For the purposes of a test, after a person dies, \*shares that the person owned beneficially at the time of death are taken to continue to be owned beneficially by the person so long as:

- (a) they are owned by the trustee of the person's estate; or
- (b) they are owned beneficially by someone who received them as a beneficiary of the estate.

### **165-207 Trustees of family trusts**

- (1) This section applies if one or more trustees of a \*family trust:
  - (a) owns \*shares in a company; or
  - (b) controls, or is able to control, (whether directly, or indirectly through one or more interposed entities) voting power in a company; or
  - (c) has a right to receive (whether directly, or \*indirectly through one or more interposed entities) a percentage of a \*dividend or a distribution of capital of a company.

- (2) For the purposes of a primary test, a single notional entity that is a person (but is neither a company nor a trustee) is taken to own the \*shares beneficially.

Note: For a primary test, see subsections 165-150(1), 165-155(1) and 165-160(1).

- (3) For the purposes of an alternative test, a single notional entity that is a person (but is neither a company nor a trustee) is taken:
  - (a) to control, or have the ability to control, the voting power in the company; or
  - (b) to have the right to receive (whether directly or \*indirectly) the percentage of the \*dividend or distribution for the entity's own benefit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: For an alternative test, see subsections 165-150(2), 165-155(2) and 165-160(2).

- (4) If a trustee of the trust is subsequently replaced by another trustee of the trust, the same single notional entity is taken:
- (a) to own the \*shares beneficially; or
  - (b) to control, or have the ability to control, the voting power in the company; or
  - (c) to have the right to receive (whether directly or \*indirectly) the percentage of the \*dividend or distribution for the entity's own benefit.

### **165-208 Companies in liquidation etc.**

- (1) For the purposes of a primary test or an alternative test, an entity is not prevented from:
- (a) beneficially owning \*shares in a company; or
  - (b) having the right to exercise, controlling, or being able to control, voting power in a company; or
  - (c) having the right to receive any \*dividends that a company may pay; or
  - (d) having the right to receive any distribution of capital of a company;
- merely because:
- (e) the company is or becomes:
    - (i) an externally-administered body corporate within the meaning of the *Corporations Act 2001*; or
    - (ii) an entity with a similar status under a \*foreign law to an externally-administered body corporate; or
  - (f) either:
    - (i) a provisional liquidator is appointed to the company under section 472 of the *Corporations Act 2001*; or
    - (ii) a person with a similar status under a foreign law to a provisional liquidator is appointed to the company.

Note 1: For a primary test, see subsections 165-150(1), 165-155(1) and 165-160(1).

Note 2: For an alternative test, see subsections 165-150(2), 165-155(2) and 165-160(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 165-209

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- (2) For the purposes of a primary test or an alternative test, a company (the *stakeholding company*) is not prevented from:
- (a) beneficially owning \*shares in another company, or any other interest in another entity; or
  - (b) having the right to exercise, controlling, or being able to control, voting power in another company or any other entity; or
  - (c) having the right to receive any \*dividends that another company or any other entity may pay; or
  - (d) having the right to receive any distribution of capital of another company or of any other entity;
- merely because:
- (e) the stakeholding company is or becomes:
    - (i) an externally-administered body corporate within the meaning of the *Corporations Act 2001*; or
    - (ii) an entity with a similar status under a \*foreign law to an externally-administered body corporate; or
  - (f) either:
    - (i) a provisional liquidator is appointed to the stakeholding company under section 472 of the *Corporations Act 2001*; or
    - (ii) a person with a similar status under a foreign law to a provisional liquidator is appointed to the stakeholding company.

**165-209 Dual listed companies**

Section 165-150 does not apply to \*shares that are \*dual listed company voting shares.

**Subdivision 165-E—The same business test**

**165-210 The test**

- (1) A company satisfies the *same business test* if throughout the \*same business test period it carries on the same \*business as it carried on immediately before the \*test time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) However, the company does *not* satisfy the \*same business test if, at any time during the \*same business test period, it \*derives assessable income from:
  - (a) a \*business of a kind that it did not carry on before the \*test time; or
  - (b) a transaction of a kind that it had not entered into in the course of its business operations before the \*test time.
- (3) The company also does *not* satisfy the \*same business test if, before the \*test time, it:
  - (a) started to carry on a \*business it had not previously carried on; or
  - (b) in the course of its business operations, entered into a transaction of a kind that it had not previously entered into; and did so for the purpose, or for purposes including the purpose, of being taken to have carried on throughout the \*same business test period the same business as it carried on immediately before the test time.
- (4) So far as the \*same business test is applied for the purpose of Subdivision 165-B (which is about working out the taxable income and \*tax loss for the income year of change of ownership or control), the company also does *not* satisfy the test if, at any time during the \*same business test period, it incurs expenditure:
  - (a) in carrying on a \*business of a kind that it did not carry on before the \*test time; or
  - (b) as a result of a transaction of a kind that it had not entered into in the course of its business operations before the test time.

#### **165-212D Restructure of MDOs etc.**

- (1) An \*MDO does not fail to satisfy the \*same business test merely because, before 1 July 2003:
  - (a) the MDO restructured the way it \*provides medical indemnity cover; or
  - (b) the MDO ceased to provide medical indemnity cover; in order to comply with the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-212E

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- (2) A \*general insurance company which is an \*associate of an \*MDO does not fail to satisfy the \*same business test merely because, before 1 July 2003:
- (a) the MDO restructured the way it \*provides medical indemnity cover; or
  - (b) the MDO ceased to provide medical indemnity cover; in order to comply with the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

**165-212E Entry history rule does not apply for the purposes of the same business test**

For the purposes of the \*same business test, if an entity (the *joining entity*) becomes a \*subsidiary member of a \*consolidated group or a \*MEC group, section 701-5 (the entry history rule) does not operate to take the \*business of the \*head company of the group to include the business of the joining entity before it became a \*member of the group.

**Subdivision 165-F—Special provisions relating to ownership by non-fixed trusts**

**Table of sections**

165-215	Special alternative to change of ownership test for Subdivision 165-A
165-220	Special alternative to change of ownership test for Subdivision 165-B
165-225	Special way of dividing the income year under Subdivision 165-B
165-230	Special alternative to change of ownership test for Subdivision 165-C
165-235	Information about non-fixed trusts with interests in company
165-240	Notices where requirements of section 165-235 are met
165-245	Meaning of expressions

**165-215 Special alternative to change of ownership test for Subdivision 165-A**

- (1) If a company does not meet the conditions in section 165-12, it is nevertheless taken to meet the conditions if it meets the conditions in this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*First condition*

- (2) At all times during the \*ownership test period:
- (a) both:
    - (i) persons must have held fixed entitlements to all of the income and capital of the company; and
    - (ii) non-fixed trusts, other than \*family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the company; or
  - (b) both:
    - (i) a fixed trust or a company (which trust or company is the **holding entity**) must have held, directly or indirectly, fixed entitlements to all of the income and capital of the company; and
    - (ii) non-fixed trusts, other than \*family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the holding entity.

*Second condition*

- (3) The persons holding fixed entitlements to shares of the income, and the persons holding fixed entitlements to shares of the capital, of:
- (a) in a paragraph (2)(a) case—the company; or
  - (b) in a paragraph (2)(b) case—the holding entity;
- at the beginning of the \*loss year must have held those entitlements to those shares at all times during the \*ownership test period.

*Third condition*

- (4) At the beginning of the \*loss year:
- (a) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the income of the company; or
  - (b) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the capital of the company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 165-220

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*Fourth condition*

- (5) It must be the case that, for each non-fixed trust (other than an excepted trust) that, at any time during the \*ownership test period, held directly or indirectly a fixed entitlement to a share of the income or capital of the company, section 267-20 of Schedule 2F to the *Income Tax Assessment Act 1936* would not have prevented the non-fixed trust from deducting the \*tax loss concerned if it, rather than the company, had incurred the tax loss.

**165-220 Special alternative to change of ownership test for Subdivision 165-B**

- (1) If the company does not meet the condition in paragraph 165-35(a), it is nevertheless taken to meet the condition if it meets the conditions in this section.

*First condition*

- (2) At all times during the income year:
- (a) both:
- (i) persons must have held fixed entitlements to all of the income and capital of the company; and
  - (ii) non-fixed trusts, other than \*family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the company; or
- (b) both:
- (i) a fixed trust or a company (which trust or company is the **holding entity**) must have held, directly or indirectly, fixed entitlements to all of the income and capital of the company; and
  - (ii) non-fixed trusts, other than \*family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the holding entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Second condition*

- (3) The persons holding fixed entitlements to shares of the income, and the persons holding fixed entitlements to shares of the capital, of:
- (a) in a paragraph (2)(a) case—the company; or
  - (b) in a paragraph (2)(b) case—the holding entity;
- at the beginning of the income year must have held those entitlements to those shares at all times during the income year.

*Third condition*

- (4) At the beginning of the income year:
- (a) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the income of the company; or
  - (b) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the capital of the company.

*Fourth condition*

- (5) It must be the case that, for each non-fixed trust (other than an excepted trust) that, at any time in the income year, held directly or indirectly a fixed entitlement to a share of the income or capital of the company, section 267-60 of Schedule 2F to the *Income Tax Assessment Act 1936* does not require the non-fixed trust to work out its net income and \*tax loss for the income year under Division 268.

**165-225 Special way of dividing the income year under Subdivision 165-B**

If:

- (a) the company is required to calculate:
  - (i) its taxable income and \*tax loss for the income year under Subdivision 165-B; and
  - (ii) its \*net capital gain and \*net capital loss for the income year under Subdivision 165-CB; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the company meets the requirements of subsections 165-220(2) and (4);  
section 165-45 is replaced by the following section:

**165-45 First, divide the income year into periods**

- (1) Divide the income year into periods as follows.
- (2) The first period starts at the start of the income year. Each later period starts immediately after the end of the previous period.
- (3) The last period ends at the end of the income year. Each period (except the last) ends at the earliest of:
  - (a) the latest time that would result in the persons holding fixed entitlements to shares of the income or shares of the capital of:
    - (i) if the company meets the requirements of paragraph 165-220(2)(a)—the company; or
    - (ii) if the company meets the requirements of paragraph 165-220(2)(b)—the holding entity mentioned in that paragraph;  
and the percentages of the shares that they hold, remaining the same during the whole of the period; and
  - (b) the times that, for all of the non-fixed trusts, other than excepted trusts, holding directly or indirectly a fixed entitlement to a share of the income or capital of the company at any time during the income year, are the latest times that would result in individuals having more than a 50% stake in their income or capital; and
  - (c) the earliest time in the period when a group begins to control a non-fixed trust, other than an excepted trust, that holds directly or indirectly a fixed entitlement to a share of the income or capital of the company at any time during the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**165-230 Special alternative to change of ownership test for  
Subdivision 165-C**

- (1) If a company does not meet the conditions in section 165-123, it is nevertheless taken to meet the conditions if it meets the conditions in this section.

*First condition*

- (2) At all times during the \*ownership test period:
- (a) both:
    - (i) persons must have held fixed entitlements to all of the income and capital of the company; and
    - (ii) non-fixed trusts, other than \*family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the company; or
  - (b) both:
    - (i) a fixed trust or a company (which trust or company is the **holding entity**) must have held, directly or indirectly, fixed entitlements to all of the income and capital of the company; and
    - (ii) non-fixed trusts, other than \*family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the holding entity.

*Second condition*

- (3) The persons holding fixed entitlements to shares of the income, and the persons holding fixed entitlements to shares of the capital, of:
- (a) in a paragraph (2)(a) case—the company; or
  - (b) in a paragraph (2)(b) case—the holding entity;
- at the beginning of the \*first continuity period must have held those entitlements to those shares at all times during the \*ownership test period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Third condition*

- (4) At the beginning of the \*first continuity period:
- (a) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the income of the company; or
  - (b) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the capital of the company.

*Fourth condition*

- (5) It must be the case that, for each non-fixed trust (other than an excepted trust) that, at any time during the \*ownership test period, held directly or indirectly a fixed entitlement to a share of the income or capital of the company, section 267-25 of Schedule 2F to the *Income Tax Assessment Act 1936* would not have prevented the non-fixed trust from deducting the amount in respect of the debt if it, rather than the company, would otherwise be entitled to deduct the amount.

**165-235 Information about non-fixed trusts with interests in company**

*Notice about foreign resident non-fixed trust*

- (1) The Commissioner may give the company a notice in accordance with section 165-240 if the requirements of subsections (2) to (5) of this section are met.

*Tax detriment under Division 165*

- (2) In its \*income tax return for the income year:
- (a) the company must have deducted a \*tax loss from a \*loss year where it would not be allowed to deduct the tax loss unless it met the conditions in section 165-215; or
  - (b) the company must not have calculated:
    - (i) its taxable income and tax loss for the income year under Subdivision 165-B; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) its \*net capital gain and \*net capital loss for the income year under Subdivision 165-CB;  
where it would have been required to calculate them unless it met the conditions in section 165-220; or
- (c) the company must have applied a net capital loss for an earlier income year in working out its net capital gain where it would not have been allowed to apply the loss unless it met the conditions in section 165-215 as applied on the assumption mentioned in subsection 165-96(1); or
- (d) the company must have deducted a debt that it wrote off as bad in the income year where it would not be allowed to deduct the debt unless it met the conditions in section 165-230.

*Information about non-fixed trust*

- (3) In order to determine whether it meets the conditions concerned, the Commissioner must need information about a non-fixed trust mentioned in:
  - (a) if paragraph (2)(a) applies—subsection 165-215(5); or
  - (b) if paragraph (2)(b) applies—subsection 165-220(5); or
  - (c) if paragraph (2)(c) applies—subsection 165-215(5) as applied on the assumption mentioned in subsection 165-96(1); or
  - (d) if paragraph (2)(d) applies—subsection 165-230(5).

*Foreign resident trust*

- (4) When the Commissioner gives the notice:
  - (a) a trustee of the non-fixed trust must be a foreign resident; or
  - (b) the central management and control of the non-fixed trust must be outside Australia.

*When notice must be given*

- (5) The Commissioner must give the notice before the later of:
  - (a) 5 years after the income year; and
  - (b) the end of the period during which the company is required by section 262A of the *Income Tax Assessment Act 1936* to retain records in relation to that income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**165-240 Notices where requirements of section 165-235 are met**

*Information required*

- (1) The notice that the Commissioner may give if the requirements of subsections 165-235(2) to (5) are met must require the company to give the Commissioner specified information that is relevant in determining whether:
  - (a) if paragraph 165-235(2)(a) applies—the requirements of subsection 165-215(5); or
  - (b) if paragraph 165-235(2)(b) applies—the requirements of subsection 165-220(5); or
  - (c) if paragraph 165-235(2)(c) applies—the requirements of subsection 165-215(5) as applied on the assumption mentioned in subsection 165-96(1); or
  - (d) if paragraph 165-235(2)(d) applies—the requirements of subsection 165-230(5);are satisfied in relation to the non-fixed trust mentioned in subsections 165-235(3) and (4).

*Company knowledge*

- (2) The information need not be within the knowledge of the company at the time the notice is given.

*Period for giving information*

- (3) The notice must specify a period within which the company is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

*Consequence of not giving the information*

- (4) If the company does not give the information within the period or within such further period as the Commissioner allows, the company is taken not to meet, and never to have met, the conditions mentioned in whichever paragraph of subsection 165-235(2) is applicable.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Application of Subdivision 165-B*

- (5) If, because of subsection (4), the company is required to calculate under Subdivision 165-B its taxable income and \*tax loss for the income year concerned, that Subdivision is to be applied as if it required the income year to be divided into such periods as would result in the highest possible taxable income for the income year.

*Application of Subdivision 165-CB*

- (6) If, because of subsection (4), the company is required to calculate under Subdivision 165-CB its \*net capital gain and \*net capital loss for the income year concerned, that Subdivision is to be applied as if it required the income year to be divided into such periods as would result in the highest net capital gain for the income year.

### **165-245 Meaning of expressions**

The expressions *control a non-fixed trust, directly or indirectly, excepted trust, family trust, fixed entitlement, fixed trust, group, more than a 50% stake and non-fixed trust* have the same meanings as in Schedule 2F to the *Income Tax Assessment Act 1936*.

### **Subdivision 165-G—Other special provisions**

#### **Table of sections**

165-250	Control of companies in liquidation etc.
165-255	Incomplete periods

#### **165-250 Control of companies in liquidation etc.**

- (1) For the purposes of sections 165-15, 165-40, 165-115D, 165-115M and 165-129, a person is not prevented from controlling, or being or becoming able to control, voting power in a company merely because:
- (a) the company is or becomes:
    - (i) an externally-administered body corporate within the meaning of the *Corporations Act 2001*; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 165-255

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- (ii) an entity with a similar status under a \*foreign law to an externally-administered body corporate; or
  - (b) either:
    - (i) a provisional liquidator is appointed to the company under section 472 of the *Corporations Act 2001*; or
    - (ii) a person with a similar status under a foreign law to a provisional liquidator is appointed to the company.
- (2) For the purposes of sections 165-15, 165-40, 165-115D, 165-115M and 165-129, a company (the **stakeholding company**) is not prevented from controlling, or being or becoming able to control, voting power in another company merely because:
- (a) the stakeholding company is or becomes:
    - (i) an externally-administered body corporate within the meaning of the *Corporations Act 2001*; or
    - (ii) an entity with a similar status under a \*foreign law to an externally-administered body corporate; or
  - (b) either:
    - (i) a provisional liquidator is appointed to the stakeholding company under section 472 of the *Corporations Act 2001*; or
    - (ii) a person with a similar status under a foreign law to a provisional liquidator is appointed to the stakeholding company.

**165-255 Incomplete periods**

- (1) If:
  - (a) this Division or Division 166 requires a company to meet or satisfy a condition or test, or work out an amount, for a period; and
  - (b) the company is only in existence after the beginning of the period;then the period is taken to start on the first day that the company is in existence.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) If:
- (a) this Division or Division 166 requires a company to meet or satisfy a condition or test, or work out an amount, for a period; and
  - (b) the company ceases to be in existence before the end of the period;
- then the period is taken to end on the day the company ceases to be in existence.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 166—Income tax consequences of changing ownership or control of a widely held or eligible Division 166 company**

### **Table of Subdivisions**

#### Guide to Division 166

- 166-AA The object of this Division
- 166-A Deducting tax losses of earlier income years
- 166-B Working out the taxable income, tax loss, net capital gain and net capital loss for the income year of the change
- 166-C Deducting bad debts
- 166-CA Changeover times and alteration times
- 166-D Tests for finding out whether the widely held or eligible Division 166 company has maintained the same owners
- 166-E Concessional tracing rules

### **Guide to Division 166**

#### **166-1 What this Division is about**

This Division modifies the way the rules in Division 165 apply to a widely held or eligible Division 166 company by making it easier for the company to apply the rules.

If the company has maintained the same owners as between certain points of time, it does not need to prove it has maintained the same owners throughout the periods in between.

In certain cases, special concessional tracing rules deem entities to hold voting, dividend or capital stakes in the company so that the company does not have to trace through to the ultimate beneficial owners of the stakes.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 166-AA—The object of this Division**

### **166-3 The object of this Division**

- (1) The object of this Division is to make it easier for a \*widely held company, or an \*eligible Division 166 company, to apply the rules in Division 165 (because of the difficulty the company might have under that Division in actually tracing through to the ultimate beneficial owners of \*voting stakes, \*dividend stakes and \*capital stakes in the company).
- (2) This Division makes it easier to apply the rules in Division 165 by:
  - (a) making it unnecessary for the company to prove that it has maintained the same owners throughout a period, if the company had the same owners at certain test times; and
  - (b) making it unnecessary for the company to trace through to the ultimate beneficial owners of:
    - (i) \*voting stakes, \*dividend stakes and \*capital stakes in the company held by certain entities (whether directly, or \*indirectly through one or more interposed entities); and
    - (ii) small voting stakes, dividend stakes and capital stakes in the company.

## **Subdivision 166-A—Deducting tax losses of earlier income years**

### **Table of sections**

166-5	How Subdivision 165-A applies to a widely held or eligible Division 166 company
166-15	Companies can choose that this Subdivision is not to apply to them

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 166-5

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**166-5 How Subdivision 165-A applies to a widely held or eligible Division 166 company**

- (1) This Subdivision modifies the way Subdivision 165-A applies to a company that is:
- (a) a \*widely held company at all times during the income year; or
  - (b) an \*eligible Division 166 company at all times during the income year; or
  - (c) a widely held company for a part of the income year and an eligible Division 166 company for the rest of the income year.

Note 1: Subdivision 165-A is about the conditions a company must meet before it can deduct a tax loss for an earlier income year.

Note 2: A company can choose that this Subdivision is not to apply to it: see section 166-15.

Note 3: See section 165-255 for the rule about incomplete income years.

*Meaning of test period*

- (2) The company's *test period* is the period consisting of the \*loss year, the income year and any intervening period.

Note: See section 165-255 for the rule about incomplete test periods.

*Substantial continuity of ownership*

- (3) The company is taken to have met the conditions in section 165-12 (which is about the company maintaining the same owners) if there is \*substantial continuity of ownership of the company as between the start of the \*test period and:
- (a) the end of each income year in that period; and
  - (b) the \*end of each \*corporate change in that period.

Note: See sections 166-145 and 166-175 to work out whether there is substantial continuity of ownership and a corporate change.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*No substantial continuity of ownership*

- (4) The company is taken to have *failed* to meet the conditions in section 165-12 if there is *no* \*substantial continuity of ownership of the company as between the start of the \*test period and:
- (a) the end of an income year in that period; or
  - (b) the \*end of a \*corporate change in that period.

*Satisfies the same business test*

- (5) However, if the company satisfies the \*same business test for the income year (the *same business test period*), it is taken to have satisfied the condition in section 165-13.

Note 1: For the same business test, see Subdivision 165-E.

Note 2: See section 165-255 for the rule about incomplete test periods.

- (6) Apply the \*same business test to the \*business that the company carried on immediately before the earlier of the following times (the *test time*):
- (a) the end of the first income year;
  - (b) the first time in the test period that a \*corporate change in the company \*ends;
- for which there is no \*substantial continuity of ownership of the company as between the start of the \*test period and that time.

**166-15 Companies can choose that this Subdivision is not to apply to them**

- (1) The company can choose that Subdivision 165-A is to apply to it for the income year *without* the modifications made by this Subdivision.
- (2) The company must choose on or before the day it lodges its \*income tax return for the income year, or before a later day if the Commissioner allows.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a widely held or eligible Division 166 company

Section 166-20

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**Subdivision 166-B—Working out the taxable income, tax loss, net capital gain and net capital loss for the income year of the change**

**Table of sections**

166-20	How Subdivisions 165-B and 165-CB apply to a widely held or eligible Division 166 company
166-25	How to work out the taxable income, tax loss, net capital gain and net capital loss
166-35	Companies can choose that this Subdivision is not to apply to them

**166-20 How Subdivisions 165-B and 165-CB apply to a widely held or eligible Division 166 company**

- (1) This Subdivision modifies how Subdivisions 165-B and 165-CB apply to a company that is:
- (a) a \*widely held company at all times during the income year (the *test period*); or
  - (b) an \*eligible Division 166 company at all times during the income year (the *test period*); or
  - (c) a widely held company for a part of the income year and an eligible Division 166 company for the rest of the income year (the whole year being the *test period*).

Note 1: Subdivision 165-B is about when a company must calculate its taxable income and tax loss for the income year in a special way.  
Subdivision 165-CB is about when a company must calculate its net capital gain and net capital loss for the income year in a special way.

Note 2: A company can choose that this Subdivision is not to apply to it: see section 166-35.

Note 3: See section 165-255 for the rule about incomplete test periods.

*No corporate change etc.*

- (2) If:
- (a) *no* \*corporate change in the company \*ends at any time in the \*test period; or
  - (b) a corporate change in the company \*ends during the test period, but there is \*substantial continuity of ownership as

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

between the start of the test period and immediately after the corporate change ends;

the company is taken to have met the condition in paragraph 165-35(a) (which is about there being persons having \*more than a 50% stake in it during the whole of the income year).

Note: See sections 166-145 and 166-175 to work out whether there is substantial continuity of ownership and a corporate change.

*Corporate change*

(3) If:

- (a) a \*corporate change in the company \*ends at any time in the \*test period; and
- (b) there is no \*substantial continuity of ownership as between the start of the test period and immediately after the corporate change ends;

then the company is taken to have *failed* to meet the condition in paragraph 165-35(a).

*Satisfies the same business test*

(4) However, if the company satisfies the \*same business test for the rest of the income year (the *same business test period*) after the first time (the *test time*) in the \*test period that a \*corporate change in the company \*ended, the company is taken to have satisfied the condition in paragraph 165-35(b).

Note 1: For the same business test, see Subdivision 165-E.

Note 2: See section 165-255 for the rule about incomplete test periods.

(5) Apply the \*same business test to the \*business that the company carried on immediately before the \*test time.

**166-25 How to work out the taxable income, tax loss, net capital gain and net capital loss**

(1) If the company must calculate its taxable income and \*tax loss for the income year under Subdivision 165-B, and its \*net capital gain and \*net capital loss under Subdivision 165-CB, then, in dividing

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a widely held or eligible Division 166 company

Section 166-35

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the income year into periods, apply subsection (2) of this section instead of subsection 165-45(3).

- (2) The last period ends at the end of the income year. Each period (except the last) ends at the *earlier* of:
- (a) the *earliest* time when:
    - (i) a \*corporate change in the company \*ends; and
    - (ii) there is no \*substantial continuity of ownership of the company as between the start of the \*test period and that time; or
  - (b) the *earliest* time when a person begins to control, or becomes able to control, the voting power in the company (whether directly, or indirectly through one or more interposed entities) for the purpose, or for purposes including the purpose, of:
    - (i) getting some benefit or advantage to do with how this Act applies; or
    - (ii) getting such a benefit or advantage for someone else.

Note: See sections 166-145 and 166-175 to work out whether there is substantial continuity of ownership and a corporate change.

**166-35 Companies can choose that this Subdivision is not to apply to them**

- (1) The company can choose that Subdivisions 165-B and 165-CB are to apply to it for the income year *without* the modifications made by this Subdivision.
- (2) The company must choose on or before the day it lodges its \*income tax return for the income year, or before a later day if the Commissioner allows.

**Subdivision 166-C—Deducting bad debts**

**Table of sections**

166-40	How Subdivision 165-C applies to a widely held or eligible Division 166 company
166-50	Companies can choose that this Subdivision is not to apply to them

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**166-40 How Subdivision 165-C applies to a widely held or eligible  
Division 166 company**

- (1) This Subdivision modifies the way Subdivision 165-C applies to a company that is:
- (a) a \*widely held company at all times during the \*current year;  
or
  - (b) an \*eligible Division 166 company at all times during the current year; or
  - (c) a widely held company for a part of the current year and an eligible Division 166 company for the rest of the current year.

Note 1: Subdivision 165-C is about the conditions a company must meet before it can deduct a bad debt.

Note 2: A company can choose that this Subdivision is not to apply to it: see section 166-50.

Note 3: See section 165-255 for the rule about incomplete current years.

*Meaning of test period*

- (2) The company's *test period* is the period:
- (a) that begins at whichever of the following times the company chooses:
    - (i) the start of the income year in which the debt was incurred;
    - (ii) the start of the \*first continuity period; and
  - (b) that ends at the end of the \*second continuity period;
- and includes any intervening period.

Note: See section 165-255 for the rule about incomplete test periods.

*Substantial continuity of ownership*

- (3) The company is taken to have met the conditions in section 165-123 (about the company maintaining the same owners) if there is \*substantial continuity of ownership of the company as between the start of the \*test period and:
- (a) the end of each income year in that period; and
  - (b) the \*end of each \*corporate change in that period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a widely held or eligible Division 166 company

Section 166-50

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Note: See sections 166-145 and 166-175 to work out whether there is substantial continuity of ownership and a corporate change.

*No substantial continuity of ownership*

- (4) The company is taken to have *failed* to meet the conditions in section 165-123 if there is *no* \*substantial continuity of ownership of the company as between the start of the \*test period and:
- (a) the end of an income year in that period; or
  - (b) the \*end of a \*corporate change in that period.

*Satisfies the same business test*

- (5) However, if the company satisfies the \*same business test for the \*second continuity period (the *same business test period*), it is taken to have satisfied the condition in section 165-126.

Note 1: For the same business test, see Subdivision 165-E.

Note 2: See section 165-255 for the rule about incomplete test periods.

- (6) Apply the \*same business test to the \*business that the company carried on immediately before the earlier of the following times (the *test time*):
- (a) the end of the first income year;
  - (b) the first time in the test period that a \*corporate change in the company \*ends;
- for which there is no \*substantial continuity of ownership of the company as between the start of the \*test period and that time.

**166-50 Companies can choose that this Subdivision is not to apply to them**

- (1) The company can choose that Subdivision 165-C is to apply to it for the income year *without* the modifications made by this Subdivision.
- (2) The company must choose on or before the day it lodges its \*income tax return for the income year, or before a later day if the Commissioner allows.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 166-CA—Changeover times and alteration times**

### **Table of sections**

166-80	How Subdivision 165-CC or 165-CD applies to a widely held or eligible Division 166 company
166-90	Companies can choose that this Subdivision is not to apply to them

### **166-80 How Subdivision 165-CC or 165-CD applies to a widely held or eligible Division 166 company**

- (1) This Subdivision modifies the way in which:
- (a) Subdivision 165-CC applies in determining whether a changeover time (within the meaning of section 165-115C) has occurred; or
  - (b) Subdivision 165-CD applies in determining whether an alteration time (within the meaning of section 165-115L) has occurred;
- in relation to a company that is:
- (c) a \*widely held company at all times during the income year; or
  - (d) an \*eligible Division 166 company at all times during the income year; or
  - (e) a widely held company for a part of the income year and an eligible Division 166 company for the rest of the income year.

Note 1: Subdivision 165-CC is about the conditions a company that has an unrealised net loss must satisfy before it can have capital losses taken into account or deduct revenue losses. Subdivision 165-CD provides for reductions in cost bases and certain other reductions after alterations have occurred in the ownership or control of a loss company.

Note 2: A company can choose that this Subdivision is not to apply to it: see section 166-90.

Note 3: See section 165-255 for the rule about incomplete income years.

#### *Meaning of test period and test time*

- (2) The company's *test period* is the period starting at the time that is the reference time for the purposes of Subdivision 165-CC or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a widely held or eligible Division 166 company

Section 166-90

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section 165-115L, as the case may be, and ending at each of the following times (the *test time*):

- (a) the end of the income year in which the reference time occurred;
- (b) the end of a later income year;
- (c) the \*end of a \*corporate change in the company.

Note 1: See section 165-255 for the rule about incomplete test periods.

Note 2: See section 166-175 to work out whether there is a corporate change.

*Substantial continuity of ownership*

- (3) A changeover time or an alteration time is taken not to have occurred in respect of the company during the test period if there is \*substantial continuity of ownership of the company as between the start of the \*test period and the \*test time.

Note: See section 166-145 to work out whether there is substantial continuity of ownership.

*No substantial continuity of ownership*

- (4) Subsections (5) and (6) have effect if there is no \*substantial continuity of ownership of the company as between the start of the \*test period and the \*test time.
- (5) The \*test time is taken to have been a changeover time or an alteration time, as the case may be, in respect of the company.
- (6) No other time during the \*test period is a changeover time or an alteration time in respect of the company.

**166-90 Companies can choose that this Subdivision is not to apply to them**

- (1) The company can choose that Subdivision 165-CC or 165-CD is to apply to it in respect of a \*test period for the purposes of section 166-80 *without* the modifications made by this Subdivision.
- (2) The company must choose on or before the day it lodges its \*income tax return for the income year in which the \*test period begins, or before a later day if the Commissioner allows.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Subdivision 166-D—Tests for finding out whether the widely held or eligible Division 166 company has maintained the same owners**

**Guide to Subdivision 166-D**

**166-135 What this Subdivision is about**

This Subdivision has the tests to work out whether a widely held or eligible Division 166 company has maintained the same owners as between different times. (Subdivision 166-E has rules which make it easier for the company to satisfy these tests.)

This Subdivision also defines when there has been a corporate change in the company.

**Table of sections**

**The ownership tests: substantial continuity of ownership**

- 166-145 The ownership tests: substantial continuity of ownership  
166-165 Relationship with rules in Division 165

**Corporate change in a company**

- 166-175 Corporate change in a company

**The ownership tests: substantial continuity of ownership**

**166-145 The ownership tests: substantial continuity of ownership**

- (1) There is *substantial continuity of ownership* of the company as between the start of the \*test period and another time in the test period if (and only if) the conditions in this section are met.

Note: Section 166-165, and Subdivision 166-E, affect how this section is applied.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a widely held or eligible Division 166 company

Section 166-145

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*Voting power*

- (2) There must be persons (none of them companies or trustees) who had \*more than 50% of the voting power in the company at the start of the \*test period. Also, those persons must have had \*more than 50% of the voting power in the company immediately after the other time in the test period.

Note: To work out who had more than 50% of the voting power, see section 165-150.

*Rights to dividends*

- (3) There must be persons (none of them companies) who had rights to \*more than 50% of the company's dividends at the start of the \*test period. Also, those persons must have had rights to \*more than 50% of the company's dividends immediately after the other time in the test period.

Note: To work out who had rights to more than 50% of the company's dividends, see section 165-155.

*Rights to capital distributions*

- (4) There must be persons (none of them companies) who had rights to \*more than 50% of the company's capital distributions at the start of the \*test period. Also, those persons must have had rights to \*more than 50% of the company's capital distributions immediately after the other time in the test period.

Note: To work out who had rights to more than 50% of the company's capital distributions, see section 165-160.

*When to apply the test*

- (5) To work out whether a condition in this section was satisfied at a time (the ***ownership test time***), apply the alternative test for that condition.

Note: For the alternative test, see subsections 165-150(2), 165-155(2) and 165-160(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Conditions in subsections (3) and (4) satisfied by non-profit and mutual companies*

- (6) If the company is:
- (a) a \*non-profit company; or
  - (b) a \*mutual affiliate company; or
  - (c) a \*mutual insurance company;
- during the whole of the \*test period, the conditions in subsections (3) and (4) are taken to have been satisfied by the company.

### **166-165 Relationship with rules in Division 165**

- (1) The provisions of Subdivision 165-D (other than section 165-165) apply for the purposes of the tests in section 166-145.
- (2) The following provisions apply for the purposes of the tests in section 166-145 as if the reference to a particular time were a reference to the \*ownership test time:
  - (a) section 165-180 (which is about arrangements affecting beneficial ownership of shares);
  - (b) subsection 165-185(2) (which treats some shares as never having carried rights);
  - (c) subsection 165-190(2) (which treats some shares as always having carried rights).

### **Corporate change in a company**

#### **166-175 Corporate change in a company**

*Meaning of corporate change*

- (1) There is a **corporate change** in a company if:
  - (a) there is a \*takeover bid for \*shares in the company; or
  - (b) there is a scheme of arrangement, involving more than 50% of the company's shares, that has been approved by a court;or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a widely held or eligible Division 166 company

Section 166-175

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- (c) there is any other arrangement, involving the acquisition of more than 50% of the company's shares, that is regulated under the *Corporations Act 2001* or a \*foreign law; or
- (d) there is an issue of \*shares in the company that results in an increase of 20% or more in:
  - (i) the issued share capital of the company; or
  - (ii) the number of the company's shares on issue; or
- (e) there is a corporate change in another company which beneficially owns one or more of the following stakes in the first company:
  - (i) a \*voting stake that carries rights to more than 50% of the voting power of the first company;
  - (ii) a \*dividend stake that carries rights to receive more than 50% of any dividends the first company may pay;
  - (iii) a \*capital stake that carries rights to receive more than 50% of any distribution of capital of the first company;(whether the other company owns those stakes directly, or \*indirectly through one or more interposed entities).

*When a corporate change ends*

- (2) A \*corporate change *ends*:
  - (a) if paragraph (1)(a) applies (or paragraph (1)(e) applies because of paragraph (1)(a))—at the latest time when a \*bid period of the \*takeover bid ends; and
  - (b) if paragraph (1)(b) or (c) applies (or paragraph (1)(e) applies because of paragraph (1)(b) or (c))—when the scheme of arrangement or other arrangement ends; and
  - (c) if paragraph (1)(d) applies (or paragraph (1)(e) applies because of paragraph (1)(d))—when the offer period for the issue of \*shares ends.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 166-E—Concessional tracing rules**

### **Guide to Subdivision 166-E**

#### **166-215 What this Subdivision is about**

This Subdivision has rules which make it easier for a widely held or eligible Division 166 company to satisfy the ownership tests in Subdivision 166-D.

Special concessional tracing rules deem entities to hold the following stakes in the company so that the company does not have to trace through to the beneficial owners of the stakes:

- (a) stakes of less than 10% in the company;
- (b) stakes of between 10% and 50% that are held by widely held companies;
- (c) stakes that are held by complying superannuation funds, complying approved deposit funds, special companies and managed investment schemes;
- (d) stakes in interposed foreign listed companies that are held as bearer shares;
- (e) stakes in interposed foreign listed companies that are held by depository entities.

#### **Table of sections**

##### **Application of this Subdivision**

166-220 Application of this Subdivision

##### **Stakes of less than 10% in the tested company**

166-225 Direct stakes of less than 10% in the tested company

166-230 Indirect stakes of less than 10% in the tested company

166-235 Voting, dividend and capital stakes

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a widely held or eligible Division 166 company

Section 166-220

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**Stakes held directly and/or indirectly by widely held companies**

- 166-240 Stakes held directly and/or indirectly by widely held companies
- 166-245 Stakes held by other entities

**When identity of foreign stakeholders is not known**

- 166-255 Bearer shares in foreign listed companies
- 166-260 Depository entities holding stakes in foreign listed companies

**Other rules relating to voting power and rights**

- 166-265 Persons who actually control voting power or have rights are taken not to control power or have rights
- 166-270 Single notional entity stakeholders taken to have minimum voting control, dividend rights and capital rights
- 166-272 Same shares or interests to be held

**When the rules in this Subdivision do not apply**

- 166-275 Rules in this Subdivision intended to be concessional
- 166-280 Controlled test companies

**Application of this Subdivision**

**166-220 Application of this Subdivision**

This Subdivision applies to a company (the *tested company*) that is:

- (a) a \*widely held company at all times during the income year; or
- (b) an \*eligible Division 166 company at all times during the income year; or
- (c) a widely held company for a part of the income year and an eligible Division 166 company for the rest of the income year.

Note: See section 165-255 for the rule about incomplete income years.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Stakes of less than 10% in the tested company

### 166-225 Direct stakes of less than 10% in the tested company

- (1) This section modifies how the ownership tests in section 166-145 are applied to the tested company if:
- (a) a \*voting stake that carries rights to less than 10% of the voting power in the company is held directly in the company; or
  - (b) a \*dividend stake that carries the right to receive less than 10% of any dividends that the company may pay is held directly in the company; or
  - (c) a \*capital stake that carries the right to receive less than 10% of any distribution of capital of the company is held directly in the company.

Note: Other rules might affect this provision: see sections 166-270, 166-275 and 166-280.

#### *Notional shareholder*

- (2) The tests are applied to the tested company as if, at the \*ownership test time, a single notional entity:
- (a) directly controlled the voting power that is carried by each such \*voting stake; and
  - (b) had the right to receive, for its own benefit and directly:
    - (i) any \*dividends the tested company may pay in respect of each such \*dividend stake; and
    - (ii) any distributions of capital of the tested company in respect of each such \*capital stake; and
  - (c) were a person (other than a company).

Note: The persons who actually control the voting power and have rights to dividends and capital are taken not to control that power or have those rights: see section 166-265.

- (3) To avoid doubt, the single notional entity mentioned in subsection (2) is a different single notional entity from the one mentioned in section 165-207 and the one mentioned in section 166-255.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 166-230

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**166-230 Indirect stakes of less than 10% in the tested company**

- (1) This section modifies how the ownership tests in section 166-145 are applied to the tested company if it is the case, or it is reasonable to assume that:
- (a) an entity (the *stakeholder*) indirectly holds any of these stakes in the tested company:
    - (i) a \*voting stake that carries rights to less than 10% of the voting power in the company; or
    - (ii) a \*dividend stake that carries the right to receive less than 10% of any dividends that the company may pay; or
    - (iii) a \*capital stake that carries the right to receive less than 10% of any distribution of capital of the company; and
  - (b) either:
    - (i) the stakeholder indirectly holds the stake in the tested company by holding \*shares directly in a company (the *top interposed entity*) that is interposed between the stakeholder and the tested company; or
    - (ii) the stakeholder indirectly holds the stake in the tested company by holding another interest directly in an entity (the *top interposed entity*) that is not a company and that is interposed between the stakeholder and the tested company.

Note 1: There might also be other entities interposed between the top interposed entity and the tested company.

Note 2: Other rules might affect this provision: see subsection (3) and sections 166-272, 166-275 and 166-280.

*Top interposed entity deemed to hold stakes directly in the tested company*

- (2) The tests are applied to the tested company as if, at the \*ownership test time:
- (a) if the stake is a \*voting stake—the top interposed entity controls, or is able to control, the voting power in the tested company that is carried by that stake at that time; and
  - (b) if the stake is a \*dividend stake—the top interposed entity \*indirectly had the right to receive, for its own benefit, any

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

\*dividends the tested company may pay in respect of that stake at that time; and

- (c) if the stake is a \*capital stake—the top interposed entity indirectly had the right to receive, for its own benefit, any distributions of capital of the tested company in respect of that stake at that time; and
- (d) in any case—the top interposed entity were a person (other than a company).

Note: The persons who actually control the voting power and have rights to dividends and capital are taken not to control that power or have those rights: see section 166-265.

*Acquisition of top interposed entity by another entity*

- (3) If:
  - (a) a new entity (the ***new interposed entity***) acquires all the \*shares or other interests in the top interposed entity (the ***old interposed entity***); and
  - (b) the new interposed entity has the same classes of shares or other interests as the old interposed entity; and
  - (c) if the new interposed entity is a company—the shares are not \*redeemable shares; and
  - (d) in any case—each stakeholder holds the same proportion of the total \*voting stakes, \*dividend stakes or \*capital stakes in the new interposed entity immediately after the acquisition as the stakeholder held in the old interposed entity immediately before the acquisition;then, at all times that the old interposed entity held or is taken to have held a stake in the tested company, the new interposed entity is taken to have held that stake.
- (4) Except for the purposes of determining whether a time is an alteration time (within the meaning of section 165-115L), section 166-272 (which is about the same shares or interests) is to be disregarded when applying subsection (3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**166-235 Voting, dividend and capital stakes**

*Meaning of voting stake*

- (1) An entity holds a **voting stake** in a company if:
  - (a) the entity is the registered holder of \*shares in the company;  
and
  - (b) the shares carry rights to exercise voting power in the company.
- (2) An entity (the **stakeholder**) also holds a **voting stake** in a company if:
  - (a) one or more other entities are interposed between the company and the stakeholder; and
  - (b) the stakeholder controls, or is able to control, voting power in the company indirectly through the interposed entity or entities.

*Meaning of dividend stake*

- (3) An entity holds a **dividend stake** in a company if:
  - (a) the entity is the registered holder of \*shares in the company;  
and
  - (b) the shares carry rights to all or any \*dividends that the company may pay.
- (4) An entity (the **stakeholder**) also holds a **dividend stake** in a company if:
  - (a) one or more other entities are interposed between the company and the stakeholder; and
  - (b) the stakeholder has the right to receive, for its own benefit and \*indirectly through the interposed entity or entities, all or any \*dividends that the company may pay.

*Meaning of capital stake*

- (5) An entity holds a **capital stake** in a company if:
  - (a) the entity is the registered holder of \*shares in the company;  
and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the shares carry rights to all or any of a distribution of capital of the company.
- (6) An entity (the *stakeholder*) also holds a *capital stake* in a company if:
  - (a) one or more other entities are interposed between the company and the stakeholder; and
  - (b) the stakeholder has the right to receive, for its own benefit and \*indirectly through the interposed entity or entities, all or any of a distribution of capital of the company.

*Stakes held by nominees*

- (7) For the purposes of sections 166-225 and 166-230, if:
  - (a) an entity (the *nominee entity*) holds a \*voting stake, a \*dividend stake, or a \*capital stake, in a company; and
  - (b) the nominee entity is itself a company; and
  - (c) the nominee entity holds the stake as a nominee for more than one other entity;then, for each entity for whom a part of the stake is held by the nominee entity, that entity's part of the stake may be treated instead as a separate stake.

## **Stakes held directly and/or indirectly by widely held companies**

### **166-240 Stakes held directly and/or indirectly by widely held companies**

- (1) This section modifies how the ownership tests in section 166-145 are applied to the tested company if a \*widely held company directly or indirectly (through one or more interposed entities), or both directly and indirectly, holds any of the following:
  - (a) a \*voting stake that carries rights to between 10% and 50% (inclusive) of the voting power in the company;
  - (b) a \*dividend stake that carries the right to receive between 10% and 50% (inclusive) of any dividends that the company may pay;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a widely held or eligible Division 166 company

Section 166-240

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- (c) a \*capital stake that carries the right to receive between 10% and 50% (inclusive) of any distribution of capital of the company.

Note: Other rules might affect this provision: see subsections (3) and (4) and sections 166-272, 166-275 and 166-280.

- (2) The tests are applied to the tested company as if, at the \*ownership test time:

- (a) if the stake is a \*voting stake—the \*widely held company controls, or is able to control, the voting power in the tested company that is carried by that stake at that time; and
- (b) if the stake is a \*dividend stake—the widely held company had the right to receive (whether directly or \*indirectly), for its own benefit, any \*dividends the tested company may pay in respect of that stake at that time; and
- (c) if the stake is a \*capital stake—the widely held company had the right to receive (whether directly or indirectly), for its own benefit, any distributions of capital of the tested company in respect of that stake at that time; and
- (d) in any case—the widely held company were a person (other than a company).

Note: The persons who actually control the voting power and have rights to dividends and capital are taken not to control that power or have those rights: see section 166-265.

*Exception*

- (3) This section does not apply in respect of a \*widely held company if the company is not a widely held company for the whole income year in which the \*ownership test time occurs.

Note: See section 165-255 for the rule about incomplete periods.

*Acquisition of widely held company by another entity*

- (4) If:
  - (a) a new company acquires all the \*shares in the \*widely held company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) immediately before the acquisition, the shares in the widely held company were listed for quotation in the official list of an \*approved stock exchange; and
- (c) immediately after the acquisition, the shares in the new company are listed for quotation in the official list of an approved stock exchange; and
- (d) the new company has the same classes of shares (not being \*redeemable shares) as the widely held company; and
- (e) each entity that held stakes in the widely held company immediately before the acquisition holds the same proportion of the total \*voting stakes, \*dividend stakes or \*capital stakes in the new company immediately after the acquisition as the entity held in the widely held company immediately before the acquisition;

then, at all times that the widely held company held or is taken to have held a stake in the tested company, the new company is taken to have held that stake.

- (5) Except for the purposes of determining whether a time is an alteration time (within the meaning of section 165-115L), section 166-272 (which is about same shares or interests) is to be disregarded when applying subsection (4).

### **166-245 Stakes held by other entities**

- (1) This section modifies how the ownership tests in section 166-145 are applied to the tested company if:
  - (a) an entity mentioned in subsection (2) directly or indirectly (through one or more interposed entities) holds a \*voting stake, a \*dividend stake or a \*capital stake in the company; and
  - (b) neither the entity nor another entity has, under section 166-225, 166-230 or 166-240, been taken to control voting power or have rights in respect of the stake; and
  - (c) the entity mentioned in subsection (2) satisfies the condition in subsection (3).

Note: Other rules might affect this provision: see sections 166-272, 166-275 and 166-280.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a widely held or eligible Division 166 company

Section 166-245

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- (2) For the purposes of subsection (1), these are the entities:
- (a) a \*superannuation fund; and
  - (b) an \*approved deposit fund; and
  - (ba) an \*FHSA trust; and
  - (c) a \*special company; and
  - (d) a \*managed investment scheme; and
  - (e) any other entity, or entity of a kind, prescribed by the regulations.
- (3) For the purposes of paragraph (1)(c), an entity satisfies the condition in this subsection if at all times during the income year of the tested company in which the \*ownership test time occurs:
- (a) if the entity is a \*superannuation fund:
    - (i) the fund is a \*complying superannuation fund; or
    - (ii) the fund is a superannuation fund that is established in a foreign country and is regulated under a \*foreign law; or
  - (b) if the entity is an \*approved deposit fund—the fund is a \*complying approved deposit fund; or
  - (ba) if the entity is an \*FHSA trust—the entity is an FHSA trust; and
  - (c) if the entity is a \*special company—the company is a special company; or
  - (d) if the entity is a \*managed investment scheme:
    - (i) the scheme is registered under the *Corporations Act 2001*; or
    - (ii) the entity is recognised, under a \*foreign law relating to corporate regulation, as an entity with a similar status to a managed investment scheme; or
  - (e) if the entity is an entity, or an entity of a kind, prescribed by the regulations—the entity meets any conditions prescribed by the regulations.

Note: See section 165-255 for the rule about incomplete periods.

*If the entity has 10 members or fewer*

- (4) If the entity has 10 \*members or fewer, the tests are applied to the tested company as if, at the \*ownership test time:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) if the stake is a \*voting stake—each member controls, or is able to control, an equal proportion of the voting power in the tested company that is carried by that stake at that time; and
- (b) if the stake is a \*dividend stake—each member had the right to receive (whether directly or \*indirectly), for its own benefit, an equal proportion of any \*dividends the tested company may pay in respect of that stake at that time; and
- (c) if the stake is a \*capital stake—each member had the right to receive (whether directly or indirectly), for its own benefit, an equal proportion of any distributions of capital of the tested company in respect of that stake at that time; and
- (d) in any case—each member were a person (other than a company or a trustee).

Note 1: If each member's proportion of the voting power, the dividends or the distributions is less than 10%, then subsections (5) and (6) apply instead.

Note 2: The persons who actually control the voting power and have rights to dividends and capital are taken not to control that power or have those rights: see section 166-265.

*If the entity has more than 10 members etc.*

- (5) The ownership tests are applied as set out in subsection (6) if:
  - (a) the entity has more than 10 \*members; or
  - (b) under subsection (4):
    - (i) the proportion of the voting power in the company that each member controls, or is able to control, is less than 10% of the total voting power; or
    - (ii) the proportion of the \*dividends that the tested company may pay for the benefit of each member is less than 10% of the total dividends; or
    - (iii) the proportion of the distributions of capital that the tested company may pay for the benefit of each member is less than 10% of the total distributions.
- (6) The ownership tests are applied to the tested company as if, at the \*ownership test time:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a widely held or eligible Division 166 company

Section 166-255

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- (a) if the stake is a \*voting stake—the entity controls, or is able to control, the voting power in the tested company that is carried by that stake at that time; and
- (b) if the stake is a \*dividend stake—the entity had the right to receive (whether directly or \*indirectly), for its own benefit, any \*dividends the tested company may pay in respect of that stake at that time; and
- (c) if the stake is a \*capital stake—the entity had the right to receive (whether directly or indirectly), for its own benefit, any distributions of capital of the tested company in respect of that stake at that time; and
- (d) in any case—the entity were a person (other than a company or a trustee).

Note: The persons who actually control the voting power and have rights to dividends and capital are taken not to control that power or have those rights: see section 166-265.

**When identity of foreign stakeholders is not known**

**166-255 Bearer shares in foreign listed companies**

- (1) This section modifies how the ownership tests in section 166-145 are applied to the tested company if:
  - (a) at the \*ownership test time, it is the case, or it is reasonable to assume, that persons (none of them companies or trustees) hold a \*voting stake, a \*dividend stake or a \*capital stake in the tested company; and
  - (b) an entity has not, under section 166-225, 166-230, 166-240 or 166-245, been taken to control voting power or have rights in respect of the stake; and
  - (c) another company (the *foreign listed company*) is interposed, at that time, between those persons and the tested company; and
  - (d) at all times during the income year of the tested company in which the ownership test time occurs, the \*principal class of shares in the foreign listed company is listed for quotation in the official list of an \*approved stock exchange; and
  - (e) at the ownership test time:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) voting stakes that carry rights to 50% or more of the voting power in the foreign listed company; or
- (ii) dividend stakes that carry rights to receive 50% or more of any dividends that the foreign listed company may pay; or
- (iii) capital stakes that carry rights to receive 50% or more of any distribution of capital of the foreign listed company; as the case requires, are directly held by way of bearer shares; and
- (f) the beneficial owners of some or all of those bearer shares have not been disclosed to the foreign listed company.

Note 1: See section 165-255 for the rule about incomplete test periods.

Note 2: Other rules might affect this provision: see sections 166-270, 166-275 and 166-280.

- (2) The tests are applied to the tested company as if, at the \*ownership test time, for each of those bearer shares whose owners have not been disclosed:
  - (a) a single notional entity controls, or is able to control, the voting power in the tested company that is carried by those shares at that time; and
  - (b) the entity \*indirectly had the right to receive, for its own benefit:
    - (i) any \*dividends the tested company may pay in respect of those shares at that time; and
    - (ii) any distributions of capital of the tested company in respect of those shares at that time; and
  - (c) the entity were a person (other than a company).

Note: The persons who actually control the voting power and have rights to dividends and capital are taken not to control that power or have those rights: see section 166-265.

- (3) To avoid doubt, the single notional entity mentioned in subsection (2) is a different single notional entity from the one mentioned in section 165-207 and the one mentioned in section 166-225.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**166-260 Depository entities holding stakes in foreign listed companies**

- (1) This section modifies how the ownership tests in section 166-145 are applied to the tested company if:
- (a) at the \*ownership test time, it is the case, or it is reasonable to assume, that persons (none of them companies or trustees) have a \*voting stake, a \*dividend stake or a \*capital stake in the tested company; and
  - (b) an entity has not, under section 166-225, 166-230, 166-240, 166-245 or 166-255, been taken to control voting power or have rights in respect of the stake; and
  - (c) another company (the *foreign listed company*) is interposed, at that time, between those persons and the tested company; and
  - (d) at all times during the income year of the tested company in which the ownership test time occurs, the \*principal class of shares in the foreign listed company is listed for quotation in the official list of an \*approved stock exchange; and
  - (e) at the ownership test time:
    - (i) voting stakes that carry rights to 50% or more of the voting power in the foreign listed company; or
    - (ii) dividend stakes that carry rights to receive 50% or more of any dividends that the foreign listed company may pay; or
    - (iii) capital stakes that carry rights to receive 50% or more of any distribution of capital of the foreign listed company; as the case requires, are directly held by one or more \*depository entities (see subsection (3)); and
  - (f) a law of a foreign country, or a part of a foreign country, in which the approved stock exchange is located, prevents the disclosure of the beneficial owners of some or all of those shares that are held by the depository entities; and
  - (g) the beneficial owners of some or all of the shares held by the depository entities have not been disclosed to the foreign listed company.

Note 1: See section 165-255 for the rule about incomplete test periods.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 2: This rule might not apply in all circumstances: see sections 166-275 and 166-280.

- (2) The tests are applied to the tested company as if, at the \*ownership test time, for each of those \*shares held by a \*depository entity whose owners have not been disclosed, the depository entity:
- (a) controls, or is able to control, the voting power in the tested company that is carried by those shares at that time; and
  - (b) \*indirectly had the right to receive, for its own benefit:
    - (i) any \*dividends the tested company may pay in respect of those shares at that time; and
    - (ii) any distributions of capital of the tested company in respect of those shares at that time; and
  - (c) were a person (other than a company).

Note: The persons who actually control the voting power and have rights to dividends and capital are taken not to control that power or have those rights: see section 166-265.

- (3) If the effect of subsection (2) is that the \*depository entity is taken to hold:
- (a) a \*voting stake that carries rights to less than 10% of the voting power in the tested company; or
  - (b) a \*dividend stake that carries the right to receive less than 10% of any dividends that the tested company may pay; or
  - (c) a \*capital stake that carries the right to receive less than 10% of any distribution of capital of the tested company;
- then neither section 166-225 nor section 166-230 applies in respect of that stake.
- (4) If the \*depository entity (the *old depository entity*) is subsequently replaced by another depository entity (the *new depository entity*), then, at all times that the old depository entity held or is taken to have held a stake in the tested company, the new entity is taken to have held that stake.
- (5) A *depository entity* is an entity:
- (a) that is a central securities repository; and
  - (b) that provides custody of share certificates; and
  - (c) that provides services for the exchange of shares.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a widely held or eligible Division 166 company

Section 166-265

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**Other rules relating to voting power and rights**

**166-265 Persons who actually control voting power or have rights are taken not to control power or have rights**

If any of sections 166-225, 166-230, 166-240, 166-245, 166-255 or 166-260 apply, the ownership tests in section 166-145 are also applied to the tested company as if, at the \*ownership test time:

- (a) the persons who control, or are able to control, the voting power in the tested company (whether directly, or indirectly through one or more interposed entities) that is carried by each \*voting stake in the tested company mentioned in that section had *not* had that control; and
- (b) the persons who have the right to receive for their own benefit (whether directly, or \*indirectly through one or more interposed entities):
  - (i) any \*dividends that the tested company may pay in respect of each \*dividend stake in the tested company mentioned in that section; and
  - (ii) any distributions of capital of the tested company in respect of each \*capital stake in the tested company mentioned in that section;had *not* had that right.

**166-270 Single notional entity stakeholders taken to have minimum voting control, dividend rights and capital rights**

*Minimum control of voting power*

- (1) If:
  - (a) the \*ownership test time is after the start of the \*test period; and
  - (b) a single notional entity mentioned in section 166-225 or 166-255 has voting power in a company; and
  - (c) the voting power that the entity has at the ownership test time is greater than the voting power that the entity had at the start of the test period;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



then the entity is taken to have voting power in the company at the ownership test time only to the extent that it had it at the start of the test period.

*Minimum percentage of rights to dividends and capital*

(2) If:

- (a) the \*ownership test time is after the start of the \*test period; and
- (b) a single notional entity mentioned in section 166-225 or 166-255 has a percentage of rights to the \*dividends or distributions of capital of a company; and
- (c) the percentage that the entity has rights to at the ownership test time is greater than the percentage (the **lower percentage**) of the dividends or distributions of capital of the company that the entity had rights to at the start of the test period;

then the entity is taken to have rights to the lower percentage of the dividends or distributions of capital at the ownership test time.

### **166-272 Same shares or interests to be held**

*Application*

- (1) This section modifies how the ownership tests in section 166-145 are applied to a \*voting stake, a \*dividend stake or a \*capital stake in the tested company held by one of the following entities (the **stakeholder**):
  - (a) a top interposed entity mentioned in section 166-230 (which is about indirect stakes of less than 10%);
  - (b) a \*widely held company mentioned in section 166-240;
  - (c) an entity mentioned in subsection 166-245(2) (which is about stakes held by other entities);
  - (d) a \*depository entity mentioned in section 166-260;(whether directly, or \*indirectly through one or more interposed entities).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a widely held or eligible Division 166 company

Section 166-272

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*Exactly the same shares or interests must continue to be held*

- (2) For the purpose of determining whether the tested company has satisfied a condition or whether a time is a changeover time or an alteration time in respect of the tested company:
- (a) a condition that has to be satisfied is not satisfied; or
  - (b) a time that, apart from this subsection, would not be a changeover time or alteration time is taken to be a changeover time or alteration time, as the case may be;
- unless, at all relevant times:
- (c) the only \*shares in the tested company that are taken into account are exactly the same shares and are held by the same persons; and
  - (d) the only interests (including shares) in any other entity that is interposed between the stakeholder and the tested company that are taken into account are exactly the same interests and are held by the same persons.

*What happens in case of share splitting*

- (3) If:
- (a) a particular \*share (an **old share**) in a company of which the stakeholder, or an entity interposed between the stakeholder and the tested company, is the holder at the start of the \*test period is divided into 2 or more new shares during that period; and
  - (b) the stakeholder or entity becomes the holder of each of the new shares immediately after the division takes place and remains the holder until the end of that period;
- the new shares are taken to be exactly the same shares as the old share.

*What happens in case of splitting of units in a unit trust*

- (4) If:
- (a) a particular unit (an **old unit**) in a unit trust of which the stakeholder, or an entity interposed between the stakeholder and the tested company, is the holder at the start of the \*test

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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period is divided into 2 or more new units during that period;  
and

- (b) the stakeholder or entity becomes the holder of each of the new units immediately after the division takes place and remains the holder until the end of that period;

the new units are taken to be exactly the same units as the old unit.

*What happens in case of consolidation of shares*

(5) If:

- (a) a particular \*share (an **old share**) in a company of which the stakeholder, or an entity interposed between the stakeholder and the tested company, is the holder at the start of the \*test period, and other shares (each of which is also called an **old share**) in the company of which the stakeholder or entity is the holder at the start of that period, are consolidated into a new share during that period; and

- (b) the stakeholder or entity becomes the holder of the new share immediately after the consolidation takes place;

the new share is taken to be exactly the same share as the old shares.

*What happens in case of consolidation of units in a unit trust*

(6) If:

- (a) a particular unit (an **old unit**) in a unit trust of which the stakeholder, or an entity interposed between the stakeholder and the tested company, is the holder at the start of the \*test period and other units (each of which is also called an **old unit**) in the trust of which the stakeholder or entity is the holder at the start of that period are consolidated into a new unit during that period; and

- (b) the stakeholder or entity becomes the holder of the new unit immediately after the consolidation takes place;

the new unit is taken to be exactly the same unit as the old units.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a widely held or eligible Division 166 company

Section 166-272

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*Totals of shares or rights not affected*

- (7) This section does not affect how \*shares, and rights carried by shares, are counted for the purpose of determining:
- (a) the total voting power in the tested company; or
  - (b) the total dividends that the tested company may pay; or
  - (c) the total distributions of capital of the tested company.

*Conditions in section 166-145 may be treated as having been satisfied in certain circumstances*

- (8) If any of the conditions in section 166-145 have not been satisfied, those conditions are taken to have been satisfied if:
- (a) they would have been satisfied except for the operation of subsection (2) of this section; and
  - (b) the tested company has information from which it would be reasonable to conclude that less than 50% of:
    - (i) the \*tax loss; or
    - (ii) the \*notional loss; or
    - (iii) the bad debt; or
    - (iv) the unrealised net loss (within the meaning of section 165-115E);as the case requires, has been reflected in deductions, capital losses, or reduced assessable income, that occurred, or could occur in future, because of the happening of any \*CGT event in relation to any \*direct equity interests or \*indirect equity interests held in the tested company by the stakeholder, or an entity interposed between the stakeholder and the tested company, during the \*test period.

*Subsection (8) not to apply for purpose of determining whether an alteration time has occurred*

- (9) However, subsection (8) does not apply in relation to any of the conditions in section 166-145 in so far as those conditions have effect for the purpose of determining whether an alteration time (within the meaning of section 165-115L) has occurred.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Time of happening of CGT event*

- (10) The happening of any \*CGT event in relation to a \*direct equity interest or \*indirect equity interest in the tested company that results in the failure of the tested company to satisfy a condition in section 166-145 is taken, for the purposes of paragraph (8)(b), to have occurred during the \*test period.

### **When the rules in this Subdivision do not apply**

#### **166-275 Rules in this Subdivision intended to be concessional**

A company is taken to have met the conditions in section 165-12, paragraph 165-35(a) or section 165-123, or a changeover time or an alteration time is taken not to have occurred in respect of a company, (as the case requires), if:

- (a) a \*tracing rule modifies how the ownership tests in section 166-145 apply to the tested company in respect of a \*voting stake, a \*dividend stake or a \*capital stake; and
- (b) the company fails the tests (whether at the time of applying the tracing rule or at another time); and
- (c) the company believes, on reasonable grounds, that if the tracing rule did not modify how the tests apply to the company in respect of that stake, it would not fail the tests.

Example: 11 people own shareholdings of 9% in the listed company. Under section 166-225, one notional shareholder is deemed to hold all of those shareholdings. 2 of the people sell their shareholdings so that 9 of the original 11 people now own shareholdings of 11%. Without the rule in this section, the company would fail the ownership tests (as the rule in section 166-225 no longer applies).

#### **166-280 Controlled test companies**

- (1) A \*tracing rule does not modify how the ownership tests in section 166-145 apply to the tested company in respect of all or part of the voting power in the tested company, or all or some of the rights to \*dividends of, or capital in, the tested company, if:
- (a) either:
    - (i) an entity (the *controlling entity*) directly holds that power or has those rights; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a widely held or eligible Division 166 company

Section 166-280

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- (ii) an entity (the *controlling entity*) indirectly holds that power or has those rights through one or more interposed entities; and
- (b) the tested company is sufficiently influenced (within the meaning of paragraph 318(6)(b) of the *Income Tax Assessment Act 1936*) by the controlling entity.

Note: However, a tracing rule can modify how the ownership tests in section 166-145 apply to the tested company in respect of voting power or dividend or capital rights held by entities other than controlling entities.

- (2) A \*tracing rule does not modify how the ownership tests in section 166-145 apply to the tested company in respect of all or part of the voting power in the tested company if:
  - (a) the tested company is a \*widely held company; and
  - (b) that voting power:
    - (i) is more than 25% of the total voting power in the tested company and is controlled (whether directly, or indirectly through one or more interposed entities) by a natural person, together with his or her \*associates; or
    - (ii) is more than 50% of the total voting power in the tested company and is controlled (whether directly, or indirectly through one or more interposed entities) by a trustee or company, together with its associates.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 170—Treatment of certain company groups for income tax purposes**

### **Table of Subdivisions**

- 170-A Transfer of tax losses within certain wholly-owned groups of companies
- 170-B Transfer of net capital losses within certain wholly-owned groups of companies
- 170-C Provisions applying to both transfers of tax losses and transfers of net capital losses within wholly-owned groups of companies
- 170-D Transactions by a company that is a member of a linked group

### **Subdivision 170-A—Transfer of tax losses within certain wholly-owned groups of companies**

#### **Guide to Subdivision 170-A**

##### **170-1 What this Subdivision is about**

A company can transfer a surplus amount of its tax loss to another company so that the other company can deduct the amount in the income year of the transfer. One of the companies must be an Australian branch of a foreign bank, and both companies must be members of the same wholly-owned group.

#### **Table of sections**

- 170-5 Basic principles for transferring tax losses

##### **Effect of transferring a tax loss**

- 170-10 When a company can transfer a tax loss
- 170-15 Income company is taken to have incurred transferred loss
- 170-20 Who can deduct transferred loss
- 170-25 Tax treatment of consideration for transferred tax loss

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 170** Treatment of certain company groups for income tax purposes

Section 170-5

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**Conditions for transfer**

- 170-30 Companies must be in existence and members of the same wholly-owned group etc.
- 170-32 Tax loss incurred by the loss company because of a transfer under Subdivision 707-A
- 170-33 Alternative test of relations between the loss company and other companies
- 170-35 The loss company
- 170-40 The income company
- 170-42 If the income company has become the head company of a consolidated group or MEC group
- 170-45 Maximum amount that can be transferred
- 170-50 Transfer by written agreement
- 170-55 Losses must be transferred in order they are incurred
- 170-60 Income company cannot transfer transferred tax loss

**Effect of agreement to transfer more than can be transferred**

- 170-65 Agreement transfers as much as can be transferred
- 170-70 Amendment of assessments

**Australian permanent establishments of foreign financial entities**

- 170-75 Treatment like Australian branches of foreign banks

**170-5 Basic principles for transferring tax losses**

- (1) A company can transfer a tax loss to another company so that the other company can deduct it in the income year of the transfer.
- (2) Both companies must be members of the same wholly-owned group. There are other eligibility requirements that they must also satisfy.
- (2A) One of the companies must be an Australian branch of a foreign bank. The other company must be:
  - (a) the head company of a consolidated group or MEC group; or
  - (b) *not* a member of a consolidatable group.

Note: This Subdivision applies to Australian permanent establishments of foreign entities that are financial entities in the same way as it applies to Australian branches of foreign banks. See section 170-75.
- (3) The transferred loss must be “surplus” in the sense that the transferring company cannot use it because there is not enough

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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assessable income to offset it. The other company must have enough assessable income to offset the transferred tax loss.

- (4) Neither company must be prevented from deducting the loss by Division 165 or 175.

Note: Division 165 deals with the income tax consequences of changing ownership or control of a company. Division 175 deals with using a company's tax losses to avoid income tax.

- (5) The tax loss is transferred by an agreement between the 2 companies.

- (6) The tax loss can be transferred in the same year as it is incurred. In that case different rules apply.

Note: This Subdivision does not apply in some circumstances involving film licensed investment companies. These circumstances are set out in Subdivision 375-H.

## Effect of transferring a tax loss

### 170-10 When a company can transfer a tax loss

- (1) A company (the *loss company*) can transfer an amount of its \*tax loss for an income year (the *loss year*) to another company (the *income company*) if the conditions in this Subdivision are met.
- (2) The amount transferred can be the whole or part of the \*tax loss.

Note: A PDF cannot transfer a tax loss, except one for a period before it became a PDF: see section 195-10.

### 170-15 Income company is taken to have incurred transferred loss

- (1) If an amount of a \*tax loss is transferred, the amount is taken to be a tax loss incurred by the \*income company in the \*loss year.
- (2) However, if the \*loss year is the same as the income year of the transfer, the \*income company is taken to have incurred the \*tax loss in the income year before the loss year.

Note: This rule is needed because Division 36 allows a tax loss to be deducted only if it was incurred in an *earlier* income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 170-20

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- (3) Despite subsection (1), if the \*tax loss is transferred because the conditions in section 170-32 are met, the \*income company is taken to have incurred the tax loss for the income year for which the first prior transferor mentioned in that section incurred the tax loss.
- (4) Despite subsection (1), if the \*tax loss is transferred because the condition in subsection 170-42(4) is met, the \*income company is taken to have incurred the tax loss for the income year for which that subsection assumes the income company incurred the tax loss.

**170-20 Who can deduct transferred loss**

- (1) If an amount of a \*tax loss is transferred, the \*income company can deduct the amount in accordance with section 36-17 (which is about how to deduct a tax loss), but only for the income year of the income company for which the amount is transferred. That income year is called the *deduction year*.
- (2) The \*loss company can no longer deduct the transferred amount and is taken not to have incurred the \*tax loss to the extent of that amount.

**170-25 Tax treatment of consideration for transferred tax loss**

- (1) If the \*loss company receives any consideration from the \*income company for the amount of the \*tax loss:
  - (a) so much of the consideration as is given for the amount of the tax loss is neither assessable income nor exempt income of the loss company; and
  - (b) a \*capital gain does not accrue to the loss company because of the receipt of the consideration.

Note: However, the consideration may affect how section 170-210 modifies the cost base of direct and indirect interests in the loss company.

- (2) If the \*income company gives any consideration to the \*loss company for the amount of the \*tax loss:
  - (a) the income company cannot deduct the amount or value of the consideration; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the income company does not incur a \*capital loss because of the giving of the consideration.

Note: However, the consideration may affect how section 170-215 modifies the cost base of direct and indirect interests in the income company.

### Conditions for transfer

#### 170-30 Companies must be in existence and members of the same wholly-owned group etc.

- (1) Both companies must be in existence during at least part of each of the following income years:
- (a) the \*loss year; and
  - (b) the \*deduction year; and
  - (c) any intervening income year.

Note: In some cases, this condition may not apply, or may be taken to be met even if it is not actually met. See sections 170-32 and 170-33.

- (2) Also, both companies must be members of the same \*wholly-owned group during the whole or part of those income years when both companies were in existence.

Note: In some cases, this condition may not apply, or may be taken to be met even if it is not actually met. See sections 170-32 and 170-33.

- (3) One of the companies must be an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a \*foreign bank.

Note: The Australian branch can be taken to be a separate entity from the foreign bank for this Subdivision. See Part IIIB of the *Income Tax Assessment Act 1936*.

- (4) The other company must be covered by an item of this table.

<b>The other company</b>		
<b>Item</b>	<b>The other company must:</b>	<b>At this time:</b>
1	Be the *head company of a *consolidated group	The end of the *deduction year or, if the company ceases to be in existence during the deduction year, just before the cessation

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 170-32

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<b>The other company</b>		
<b>Item</b>	<b>The other company must:</b>	<b>At this time:</b>
2	Be the *head company of a *MEC group	The end of the *deduction year or, if the group ceases to exist during the deduction year because the company ceases to be in existence, just before the cessation
3	Not be a *member of a *consolidatable group	The end of the *deduction year or, if the company ceases to be in existence during the deduction year, just before the cessation

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**170-32 Tax loss incurred by the loss company because of a transfer under Subdivision 707-A**

*When the conditions in this section apply*

- (1) The conditions in this section apply instead of the conditions in subsections 170-30(1) and (2) if:
  - (a) the \*income company is an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a \*foreign bank; and
  - (b) the \*loss company incurred the \*tax loss because of one or more transfers of the tax loss under Subdivision 707-A.

*Conditions*

- (2) Each transferor (*prior transferor*) of the \*tax loss under Subdivision 707-A must have been a company.
- (3) It must have been possible to meet the conditions in subsections 170-30(1) and (2) in relation to the \*loss company and the \*income company assuming:
  - (a) the \*loss year were so much of the income year in which the \*tax loss was transferred to the loss company under Subdivision 707-A as occurred after the transfer; and
  - (b) so much (if any) of the \*deduction year as occurred before the transfer were disregarded.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4) The \*income company and each prior transferor must both be in existence during at least part of each of these periods:
- (a) the period consisting of:
    - (i) if the prior transferor incurred the \*tax loss apart from Subdivision 707-A—the \*loss year; or
    - (ii) if the prior transferor incurred the tax loss because of a transfer under Subdivision 707-A (other than a transfer from the prior transferor to itself)—so much of the income year in which the transfer occurred as was after the transfer (but before any later transfer of the loss from the prior transferor under that Subdivision);
  - (b) so much of the income year during which the tax loss was transferred under Subdivision 707-A from the prior transferor to another company as occurs before the transfer (but after the start of the period described in paragraph (a));
  - (c) any intervening income year.
- (5) The \*income company must be a member of the same \*wholly-owned group as each prior transferor during the whole or part of the periods described in subsection (4) for the prior transferor when both were in existence.

### **170-33 Alternative test of relations between the loss company and other companies**

- (1) The conditions in subsections 170-30(1) and (2) are taken to be met in relation to the \*loss company and the \*income company if:
- (a) the loss company is an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a \*foreign bank; and
  - (b) the income company is covered by item 1 or 2 of the table in subsection 170-30(4) (because the company is the \*head company of a \*consolidated group or \*MEC group at the time described in that item); and
  - (c) the relevant circumstances in this section exist.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Circumstances*

- (2) One circumstance is that there is another company (the *first link company*) in relation to which all these conditions are met:
- (a) the first link company became a \*subsidiary member of a \*consolidated group or \*MEC group after the start of the \*loss year but before the time described in the item of the table in subsection 170-30(4) that covers the \*income company;
  - (b) the \*tax loss could have been transferred from the \*loss company to the first link company under this Subdivision (apart from subsection 170-30(4) and this section) for a \*deduction year consisting of the \*trial year for the first link company becoming a subsidiary member of that group had:
    - (i) the first link company continued to be \*in existence as a separate entity (rather than being part of the head company of that group) when it was a subsidiary member of that group; and
    - (ii) the trial year not started before the start of the loss year; and
    - (iii) the first link company had enough assessable income for the trial year;
  - (c) the tax loss would have been incurred by the income company because of one or more transfers under Subdivision 707-A assuming the tax loss had been made by the first link company (apart from that Subdivision) for the loss year.
- (3) If the condition in paragraph (2)(c) could be met only if there had been a transfer described in that paragraph involving a company other than the first link company and the \*income company, another circumstance is that the other company and the \*loss company were \*in existence and members of the same \*wholly-owned group for the period:
- (a) starting when the \*tax loss would have been transferred under Subdivision 707-A to the other company as described in that paragraph; and
  - (b) ending when the tax loss would have been transferred under Subdivision 707-A from the other company as described in that paragraph.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4) It does not matter whether or not any of the transfers mentioned in subsection (3) would have involved the first link company or the \*income company as well as the other company.
- (5) Another circumstance is that the conditions in subsections 170-30(1) and (2) would have been met for the \*loss company and the \*income company assuming:
  - (a) the \*loss year consisted of the part of the income year in which the \*tax loss would have been transferred to the income company under Subdivision 707-A as described in paragraph (2)(c) occurring after the time the transfer would have occurred; and
  - (b) so much (if any) of the \*deduction year as occurred before the time the transfer would have occurred were disregarded.

### **170-35 The loss company**

- (1) The \*loss company:
  - (a) must be an Australian resident and not a \*prescribed dual resident; and
  - (b) must not be a \*dual resident investment company in either the \*loss year or the \*deduction year.
- (2) If the \*loss year and the \*deduction year are the same, it must be the case that the \*loss company was *not* required to calculate the \*tax loss:
  - (a) under section 165-70 (because of a change in ownership or control); or
  - (b) under section 175-35 (because of injected income or deductions).
- (3) Also, it must be the case that neither Subdivision 165-A nor Subdivision 175-A would have prevented the \*loss company from deducting the \*tax loss in the \*deduction year if it had had enough assessable income (including \*assessable film income) to offset the tax loss.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 170** Treatment of certain company groups for income tax purposes

Section 170-40

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Note 1: Subdivision 165-A deals with the deductibility of a company's tax loss for an earlier income year if there has been a change in the ownership or control of the company in the loss year or the income year. Subdivision 175-A is about the Commissioner preventing a company from getting certain tax benefits through its unused tax losses.

Note 2: Division 707 affects the operation of Subdivision 165-A if the loss company incurred the tax loss because of a transfer under Subdivision 707-A.

**170-40 The income company**

- (1) The \*income company must be an Australian resident and not a \*prescribed dual resident.
- (2) It must not be prevented by Division 165 or 175 from deducting the transferred amount in the \*deduction year. Those Divisions do not apply to the \*income company if the \*loss year and the \*deduction year are the same.

Note 1: Division 165 deals with the income tax consequences of changing ownership or control of a company. Division 175 deals with using a company's tax losses to avoid income tax.

Note 2: The condition in subsection (2) may not apply in some cases. See section 170-42.

**170-42 If the income company has become the head company of a consolidated group or MEC group**

- (1) The condition in subsection (2) of this section applies to the \*income company instead of the condition in subsection 170-40(2) if the conditions in subsections 170-30(1) and (2) are met in relation to the \*loss company and the income company apart from section 170-33 and either:
  - (a) both these circumstances exist:
    - (i) after the start of the \*loss year but before the relevant time described in subsection 170-30(4), the income company became the \*head company of a \*consolidated group or of a \*MEC group that came into existence after the start of the loss year;
    - (ii) the loss year and \*deduction year are not the same; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



(b) all these circumstances exist:

- (i) the income company is, at the relevant time described in subsection 170-30(4), the head company of a MEC group;
- (ii) before that time but after the end of the loss year, the MEC group was involved in an application event described in section 719-300 (but not covered by subsection 719-300(4) or (5));
- (iii) the income company would be taken under section 719-305 to have transferred losses to itself under Subdivision 707-A, assuming it had made losses while head company of the group or of a consolidated group involved in the event;
- (iv) the MEC group or consolidated group came into existence before the start of the \*loss year.

Note: An application event involves either expanding an existing MEC group by including extra eligible tier-1 companies of the top company for the group or creating a MEC group because more companies become eligible tier-1 companies of the top company of which the head company of a consolidated group is an eligible tier-1 company.

- (2) The \*income company must have been able to deduct the \*tax loss in the \*deduction year assuming that it had incurred the tax loss for the \*loss year.
- (3) The condition in subsection (4) of this section applies to the \*income company instead of the condition in subsection 170-40(2) if the conditions in subsections 170-30(1) and (2) are met in relation to the \*loss company and the income company because of section 170-33.
- (4) The \*income company must have been able to deduct the \*tax loss in the \*deduction year assuming that it had incurred the tax loss, for the income year in which the loss would have been transferred to it as described in paragraph 170-33(2)(c), because of one or more transfers under Subdivision 707-A described in that paragraph.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 170-45 Maximum amount that can be transferred

*Loss company can only transfer what it cannot use itself*

- (1) The amount transferred cannot exceed the amount of the \*loss company's \*tax loss that, apart from the transfer, the loss company would carry forward to the next income year after deducting in the \*deduction year the maximum amount of tax losses that the loss company can deduct under section 36-17.

*Transferred loss must not exceed what the income company can use*

- (2) The amount transferred also cannot exceed the amount worked out as follows:

*Method statement*

- Step 1. Add together the \*income company's assessable income and \*net exempt income (if any) for the \*deduction year.
- Step 2. Subtract the \*income company's deductions for the \*deduction year, except deductions for amounts of \*tax losses transferred to the income company (by the \*loss company or any other company).
- Step 3. Subtract the \*income company's deductions for the \*deduction year for amounts of \*tax losses transferred to the income company (by the \*loss company or any other company) by agreements made *before* the agreement by which the first amount is transferred.

Example: In the deduction year:

- the income company has assessable income of \$60,000, net exempt income of \$10,000 and deductions of \$25,000 (apart from the transferred loss); and
- another company, being a member of the same wholly-owned group as the income company, transferred a tax loss of \$15,000 to the income company; and
- the loss company incurred a tax loss of \$50,000.

Of the \$50,000 loss, the loss company can transfer no more than \$30,000 ( $\$60,000 + \$10,000 - \$25,000 - \$15,000$ ) to the income company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) Subsection (2) does not apply if the \*tax loss is a \*film loss. In that case, the amount transferred also cannot exceed the amount worked out as follows:

*Method statement*

- Step 1. Add together the \*income company's \*net assessable film income and \*net exempt film income (if any) for the \*deduction year.
- Step 2. Subtract the \*income company's deductions for the \*deduction year for amounts of \*film losses transferred to the income company (by the \*loss company or any other company) by agreements made *before* the agreement by which the first amount is transferred.

- (4) Subsections (2) and (3) do not apply if the transfer occurs because either or both of the conditions in subsections 170-42(2) and (4) are met. In that case, the amount transferred also cannot exceed the amount worked out as follows:

*Method statement*

- Step 1. Identify each \*bundle of losses that, on the assumption in subsection 170-42(2) or (4) (as appropriate), would have included the \*tax loss or \*film loss (as appropriate).

Note 1: There will be 2 or more bundles of losses identified if both of the conditions in subsections 170-42(2) and (4) are met.

Note 2: There will be more than 1 bundle of losses identified on the basis of the assumption in paragraph 170-42(4) if the conditions in subsections 170-30(1) and (2) are met in relation to the loss company and the income company because of multiple applications of section 170-33 each involving a different first link company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 170-50

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- Step 2. For each \*bundle identified, work out how much of the \*tax loss or \*film loss (as appropriate) the \*income company would have been able to deduct in the \*deduction year assuming that:
- (a) the loss could have been deducted in that year only after the deduction in that year of any other losses of that \*sort that would have been included in the bundle, other than losses (the *transferable losses*) that could be transferred from the \*loss company to the income company for that year; and
  - (b) if the bundle would have included 2 or more transferable losses of that sort—those losses could have been deducted only in the order in which the loss company incurred them.
- Note 1: If the assumption in subsection 170-42(2) is relevant to the bundle, it would have included losses incurred by the income company and transferred (or taken to be transferred) to the company (from itself) under Subdivision 707-A.
- Note 2: If the assumption in paragraph 170-42(4) is relevant to the bundle, it would have included losses actually incurred by the first link company and transferred (by one or more transfers under Subdivision 707-A) to the income company.
- Step 3. Total every result of step 2 for the \*tax loss or \*film loss (as appropriate).

**170-50 Transfer by written agreement**

- (1) The transfer must be made by a written agreement between the \*loss company and the \*income company.
- (2) The agreement must:
  - (a) specify the income year of the transfer (which may be earlier than the income year in which the agreement is made); and
  - (b) specify the amount of the \*tax loss being transferred; and
  - (c) be signed by the public officer of each company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) be made on or before the day of lodgement of the \*income company's \*income tax return for the \*deduction year, or within such further time as the Commissioner allows.

Note: The agreement will usually be made in the next income year *after* the one for which the income company will deduct the loss.

### **170-55 Losses must be transferred in order they are incurred**

- (1) If the \*loss company has 2 or more \*tax losses (other than \*film losses) that it can transfer in the \*deduction year, it can transfer them only in the order in which it incurred them.
- (2) If the \*loss company has 2 or more \*film losses that it can transfer in the \*deduction year, it can transfer them only in the order in which it incurred them.
- (3) If:
  - (a) the \*loss company has 2 or more \*tax losses, or 2 or more \*film losses, it can transfer for the \*deduction year; and
  - (b) it incurred at least one of those losses apart from Subdivision 707-A and at least one of those losses because of a transfer under that Subdivision;it can transfer under this Subdivision the losses it incurred because of a transfer under Subdivision 707-A only *after* transferring under this Subdivision the losses it incurred apart from that Subdivision.
- (4) For the purposes of subsection (3), treat a loss incurred by the company both apart from that Subdivision and because of a transfer under that Subdivision as a loss incurred because of a transfer under that Subdivision.
- (5) Subsections (1) and (2) have effect subject to subsection (3).

### **170-60 Income company cannot transfer transferred tax loss**

The \*income company cannot transfer an amount of a \*tax loss transferred to it, or any part of the amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Effect of agreement to transfer more than can be transferred

### 170-65 Agreement transfers as much as can be transferred

- (1) If the amount specified in an agreement exceeds the maximum amount that the \*loss company can transfer to the \*income company in the \*deduction year, only that maximum amount is taken to have been transferred.
- (2) One reason why an agreement might specify more than can be transferred is that an assessment has been amended since the agreement.

### 170-70 Amendment of assessments

The Commissioner may amend an assessment to disallow a deduction for a transferred amount of a \*tax loss:

- (a) if the agreement to transfer the tax loss is ineffective because the \*loss company did not actually incur the loss; or
- (b) to the extent that section 170-65 reduces the transferred amount of a tax loss because the loss company did not actually incur some of it.

The Commissioner may do so despite section 170 (Amendment of assessments) of the *Income Tax Assessment Act 1936*.

## Australian permanent establishments of foreign financial entities

### 170-75 Treatment like Australian branches of foreign banks

- (1) The object of this section is to let \*tax losses be transferred under this Subdivision to and from \*Australian permanent establishments of \*foreign entities that are \*financial entities in the same way as tax losses can be transferred to and from Australian branches of \*foreign banks.
- (2) This Subdivision (except this section) applies to an \*Australian permanent establishment of a \*foreign entity that is a \*financial entity in the same way as this Subdivision applies to an Australian

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a \*foreign bank.

## **Subdivision 170-B—Transfer of net capital losses within certain wholly-owned groups of companies**

### **Guide to Subdivision 170-B**

#### **170-101 What this Subdivision is about**

A company can transfer a surplus amount of its net capital loss to another company so that the other company can apply the amount in working out its net capital gain for the income year of the transfer. One of the companies must be an Australian branch of a foreign bank, and both companies must be members of the same wholly-owned group.

#### **Table of sections**

170-105 Basic principles for transferring a net capital loss

##### **Effect of transferring a net capital loss**

- 170-110 When a company can transfer a net capital loss
- 170-115 Who can apply transferred loss
- 170-120 Gain company is taken to have made transferred loss
- 170-125 Tax treatment of consideration for transferred tax loss

##### **Conditions for transfer**

- 170-130 Companies must be in existence and members of the same wholly-owned group etc.
- 170-132 Net capital loss made by the loss company because of a transfer under Subdivision 707-A
- 170-133 Alternative test of relations between the loss company and other companies
- 170-135 The loss company
- 170-140 The gain company
- 170-142 If the gain company has become the head company of a consolidated group or MEC group
- 170-145 Maximum amount that can be transferred
- 170-150 Transfer by written agreement

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 170** Treatment of certain company groups for income tax purposes

Section 170-105

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170-155 Losses must be transferred in order they are made

170-160 Gain company cannot transfer transferred net capital loss

**Effect of agreement to transfer more than can be transferred**

170-165 Agreement transfers as much as can be transferred

170-170 Amendment of assessments

**Australian permanent establishments of foreign financial entities**

170-174 Treatment like Australian branches of foreign banks

**170-105 Basic principles for transferring a net capital loss**

- (1) A company can transfer a net capital loss (except a net capital loss from collectables) to another company so that the other company can apply it in working out its net capital gain for the income year of the transfer.
  - (2) Both companies must be members of the same wholly-owned group. There are other eligibility requirements that they must also satisfy.
  - (2A) One of the companies must be an Australian branch of a foreign bank. The other company must be:
    - (a) the head company of a consolidated group or MEC group; or
    - (b) *not* a member of a consolidatable group.
- Note: This Subdivision applies to Australian permanent establishments of foreign entities that are financial entities in the same way as it applies to Australian branches of foreign banks. See section 170-174.
- (3) The transferred loss must be “surplus” in the sense that, for the income year of the transfer, the transferring company does not have enough capital gains against which to apply it. The other company must have enough capital gains against which to apply it.
  - (5) Neither company must be prevented by Subdivision 165-CA or 175-CA from applying the loss in working out its net capital gain for the income year of the transfer.

Note: Subdivision 165-CA deals with the consequences of changing ownership or control of a company. Subdivision 175-CA deals with using a company’s net capital losses to avoid income tax.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (6) The net capital loss is transferred by an agreement between the 2 companies.
- (7) The net capital loss can be transferred in the same year as it is made. In that case different rules apply.  

Note: This Subdivision does not apply in some circumstances involving film licensed investment companies. These circumstances are set out in Subdivision 375-H.
- (8) The provisions of Subdivision 170-C (so far as they relate to the transfer of net capital losses) are to be disregarded in applying the provisions of this Subdivision where the relevant agreement referred to in section 170-150 was made before 22 February 1999.

### **Effect of transferring a net capital loss**

#### **170-110 When a company can transfer a net capital loss**

- (1) A company (the *loss company*) can transfer an amount of its \*net capital loss for an income year (the *capital loss year*) to another company (the *gain company*) if the conditions in this Subdivision are met.
- (2) The amount transferred can be the whole or part of the \*net capital loss.

Note: A PDF cannot transfer a net capital loss, except one for a period before it became a PDF: see section 195-30 of the *Income Tax Assessment Act 1997*.

#### **170-115 Who can apply transferred loss**

- (1) If an amount of a \*net capital loss is transferred, the gain company can apply the amount in working out its \*net capital gain, but only for the income year of the gain company for which the amount is transferred. That income year is called the *application year*.  

Note: A company's net capital gain or net capital loss for an income year is usually worked out under section 102-5 or 102-10.
- (2) The loss company can no longer apply the transferred amount and is taken not to have made the \*net capital loss to the extent of that amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 170-120

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- (3) Despite subsection (1), if the \*net capital loss is transferred because the conditions in section 170-132 are met, the gain company is taken to have made the net capital loss for the income year for which the first prior transferor mentioned in that section made the net capital loss.
- (4) Despite subsection (1), if the \*net capital loss is transferred because the condition in subsection 170-142(4) is met, the gain company is taken to have made the net capital loss for the income year for which that subsection assumes the gain company made the net capital loss.

**170-120 Gain company is taken to have made transferred loss**

- (1) If an amount of a \*net capital loss is transferred, the amount is taken to be a \*net capital loss of the gain company for the capital loss year.
- (2) However, if the capital loss year is the same as the application year, the amount is taken to be a \*capital loss of the gain company for the application year.

**170-125 Tax treatment of consideration for transferred tax loss**

- (1) If the loss company receives consideration from the gain company for the transferred amount:
  - (a) the consideration is neither assessable income nor \*exempt income of the loss company; and
  - (b) the loss company does not make a \*capital gain because of receiving the consideration.

Note: However, the consideration may affect how section 170-220 modifies the cost base of direct and indirect interests in the loss company.

- (2) If the gain company gives consideration to the loss company for the transferred amount:
  - (a) the gain company cannot deduct the consideration; and
  - (b) the gain company does not make a \*capital loss because of giving the consideration.

Note: However, the consideration may affect how section 170-225 modifies the cost base of direct and indirect interests in the gain company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Conditions for transfer

### 170-130 Companies must be in existence and members of the same wholly-owned group etc.

- (1) Both companies must be in existence during at least part of each of the following income years:
- (a) the capital loss year; and
  - (b) the application year; and
  - (c) any intervening income year.

Note: In some cases, this condition may not apply, or may be taken to be met even if it is not actually met. See sections 170-132 and 170-133.

- (2) Also, both companies must be members of the same \*wholly-owned group at all times during those income years when both companies were in existence.

Note: In some cases, this condition may not apply, or may be taken to be met even if it is not actually met. See sections 170-132 and 170-133.

- (3) One of the companies must be an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a \*foreign bank.

Note: The Australian branch can be taken to be a separate entity from the foreign bank for this Subdivision. See Part IIIB of the *Income Tax Assessment Act 1936*.

- (4) The other company must be covered by an item of this table.

<b>The other company</b>		
<b>Item</b>	<b>The other company must:</b>	<b>At this time:</b>
1	Be the *head company of a *consolidated group	The end of the application year or, if the company ceases to be in existence during the application year, just before the cessation
2	Be the *head company of a *MEC group	The end of the application year or, if the group ceases to exist during the application year because the company ceases to be in existence, just before the cessation

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 170-132

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**The other company**

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<b>Item</b>	<b>The other company must:</b>	<b>At this time:</b>
3	Not be a *member of a *consolidatable group	The end of the application year or, if the company ceases to be in existence during the application year, just before the cessation

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**170-132 Net capital loss made by the loss company because of a transfer under Subdivision 707-A**

*When the conditions in this section apply*

- (1) The conditions in this section apply instead of the conditions in subsections 170-130(1) and (2) if:
  - (a) the gain company is an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a \*foreign bank; and
  - (b) the \*loss company made the \*net capital loss because of one or more transfers of the net capital loss under Subdivision 707-A.

*Conditions*

- (2) Each transferor (**prior transferor**) of the \*net capital loss under Subdivision 707-A must have been a company.
- (3) It must have been possible to meet the conditions in subsections 170-130(1) and (2) in relation to the \*loss company and the gain company assuming:
  - (a) the capital loss year were so much of the income year in which the \*net capital loss was transferred to the loss company under Subdivision 707-A as occurred after the transfer; and
  - (b) so much (if any) of the application year as occurred before the transfer were disregarded.
- (4) The gain company and each prior transferor must both be in existence during at least part of each of these periods:
  - (a) the period consisting of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) if the prior transferor made the \*net capital loss apart from Subdivision 707-A—the capital loss year; or
  - (ii) if the prior transferor made the net capital loss because of a transfer under Subdivision 707-A (other than a transfer from the prior transferor to itself)—so much of the income year in which the transfer occurred as was after the transfer (but before any later transfer of the loss from the prior transferor under that Subdivision);
  - (b) so much of the income year during which the net capital loss was transferred under Subdivision 707-A from the prior transferor to another company as occurs before the transfer (but after the start of the period described in paragraph (a));
  - (c) any intervening income year.
- (5) The gain company must be a member of the same \*wholly-owned group as each prior transferor during the whole or part of the periods described in subsection (4) for the prior transferor when both were in existence.

### **170-133 Alternative test of relations between the loss company and other companies**

- (1) The conditions in subsections 170-130(1) and (2) are taken to be met in relation to the \*loss company and the gain company if:
- (a) the loss company is an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a \*foreign bank; and
  - (b) the gain company is covered by item 1 or 2 of the table in subsection 170-130(4) (because the company is the \*head company of a \*consolidated group or \*MEC group at the time described in that item); and
  - (c) the relevant circumstances in this section exist.

#### *Circumstances*

- (2) One circumstance is that there is another company (the ***first link company***) in relation to which all these conditions are met:
- (a) the first link company became a \*subsidiary member of a \*consolidated group or \*MEC group after the start of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- capital loss year but before the time described in the item of the table in subsection 170-130(4) that covers the gain company;
- (b) the \*net capital loss could have been transferred from the \*loss company to the first link company under this Subdivision (apart from subsection 170-130(4) and this section) for an application year consisting of the \*trial year for the first link company becoming a subsidiary member of that group had:
- (i) the first link company continued to be in existence as a separate entity (rather than being part of the head company of that group) when it was a subsidiary member of that group; and
  - (ii) the trial year not started before the start of the capital loss year; and
  - (iii) the first link company had enough \*capital gains for the trial year;
- (c) the net capital loss would have been made by the gain company because of one or more transfers under Subdivision 707-A assuming the net capital loss had been made by the first link company (apart from that Subdivision) for the capital loss year.
- (3) If the condition in paragraph (2)(c) could be met only if there had been a transfer described in that paragraph involving a company other than the first link company and the gain company, another circumstance is that the other company and the \*loss company were in existence and members of the same \*wholly-owned group for the period:
- (a) starting when the \*net capital loss would have been transferred under Subdivision 707-A *to* the other company as described in that paragraph; and
  - (b) ending when the net capital loss would have been transferred under Subdivision 707-A *from* the other company as described in that paragraph.
- (4) It does not matter whether or not any of the transfers mentioned in subsection (3) would have involved the first link company or the gain company as well as the other company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (5) Another circumstance is that the conditions in subsection 170-130(1) and (2) would have been met for the \*loss company and the gain company assuming:
- (a) the capital loss year consisted of the part of the income year in which the \*net capital loss would have been transferred to the gain company under Subdivision 707-A as described in paragraph (2)(c) occurring after the time the transfer would have occurred; and
  - (b) so much (if any) of the application year as occurred before the time the transfer would have occurred were disregarded.

### **170-135 The loss company**

- (1) The loss company:
- (a) must be an Australian resident (but not a \*prescribed dual resident) throughout the capital loss year; and
  - (b) must not be a \*dual resident investment company in either the capital loss year or the application year.
- (2) It must be the case that the loss company was *not* required to calculate the \*net capital loss:
- (a) under section 165-114 (because of a change in ownership or control); or
  - (b) under section 175-75 (because of an injected capital gain or loss).
- (3) Also, it must be the case that neither Subdivision 165-CA nor Subdivision 175-CA would have prevented the loss company from applying the \*net capital loss in working out its \*net capital gain for the application year if it had made enough \*capital gains in that year.

Note 1: Subdivision 165-CA deals with the consequences of changing ownership or control of a company. Subdivision 175-CA deals with using a company's net capital losses to avoid income tax.

Note 2: Division 707 affects the operation of Subdivision 165-CA if the loss company made the net capital loss because of a transfer under Subdivision 707-A.

Note 3: A company's net capital gain or net capital loss for an income year is usually worked out under section 102-5 or 102-10.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**170-140 The gain company**

- (1) The gain company must be an Australian resident throughout the application year.
- (2) If the capital loss year and the application year are *not* the same, the gain company must not be prevented by Subdivision 165-CA or 175-CA from applying the transferred amount in working out its \*net capital gain for the application year.

Note 1: Subdivision 165-CA deals with the consequences of changing ownership or control of a company. Subdivision 175-CA deals with using a company's net capital losses to avoid income tax.

Note 2: A company's net capital gain or net capital loss for an income year is usually worked out under section 102-5 or 102-10.

Note 3: The condition in subsection (2) may not apply in some cases. See section 170-142.

- (3) If the capital loss year and the application year *are* the same, it must be the case that the gain company was *not* required to calculate its own \*net capital gain or \*net capital loss for the application year:
  - (a) under Subdivision 165-CB (because of a change in ownership or control); or
  - (b) under section 175-75 (because of an injected capital gain or loss).

Note: In deciding whether paragraph (b) applies, remember that the transferred amount is taken to be a capital loss of the gain company for the application year (because of subsection 170-120(2)).

**170-142 If the gain company has become the head company of a consolidated group or MEC group**

- (1) The condition in subsection (2) of this section applies to the gain company instead of the condition in subsection 170-140(2) if the conditions in subsections 170-130(1) and (2) are met in relation to the \*loss company and the gain company apart from section 170-133 and either:
  - (a) both these circumstances exist:
    - (i) after the start of the capital loss year but before the relevant time described in subsection 170-130(4), the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



gain company became the \*head company of a \*consolidated group or of a \*MEC group that came into existence after the start of the capital loss year;

- (ii) the capital loss year and application year are not the same; or
- (b) all these circumstances exist:
  - (i) the gain company is, at the relevant time described in subsection 170-130(4), the head company of a MEC group;
  - (ii) before that time but after the end of the capital loss year, the MEC group was involved in an application event described in section 719-300 (but not covered by subsection 719-300(4) or (5));
  - (iii) the gain company would be taken under section 719-305 to have transferred losses to itself under Subdivision 707-A, assuming it had made losses while head company of the group or of a consolidated group involved in the event;
  - (iv) the MEC group or consolidated group came into existence before the start of the capital loss year.

Note: An application event involves either expanding an existing MEC group by including extra eligible tier-1 companies of the top company for the group or creating a MEC group because more companies become eligible tier-1 companies of the top company of which the head company of a consolidated group is an eligible tier-1 company.

- (2) The gain company must have been able to apply the \*net capital loss in working out its \*net capital gain for the application year assuming that it had made the net capital loss for the capital loss year.
- (3) The condition in subsection (4) of this section applies to the gain company instead of the condition in subsection 170-140(2) if the conditions in subsections 170-130(1) and (2) are met in relation to the \*loss company and the gain company because of section 170-133.
- (4) The gain company must have been able to apply the \*net capital loss in working out its \*net capital gain for the application year assuming that it had made the net capital loss, for the income year

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

in which the loss would have been transferred to it as described in paragraph 170-133(2)(c), because of one or more transfers under Subdivision 707-A described in that paragraph.

### 170-145 Maximum amount that can be transferred

*Loss company can only transfer what it cannot use itself*

- (1) The amount transferred cannot exceed the amount of the loss company's \*net capital loss that, apart from the transfer, the loss company would carry forward to the next income year after the application year.

Note: If the capital loss year and the application year are the same, the loss company would carry forward the *whole* of the net capital loss, because section 102-5 does not allow a net capital loss to be applied in the income year in which it was made.

Example: In the application year the loss company has:

- a net capital loss from an earlier income year of \$25,000; and
- other capital losses totalling \$10,000; and
- capital gains totalling \$20,000;

Of the \$25,000 loss, the loss company can transfer to the gain company no more than:

$$\$25,000 - \left( \$20,000 - \$10,000 \right) = \$15,000$$

*Transferred loss must not exceed what the gain company can use*

- (5) No amount can be transferred if, apart from the operation of this section, the gain company would *not* have a \*net capital gain for the application year.
- (6) The amount transferred also cannot exceed the amount worked out as follows:

*Method statement*

Step 1. Work out what, apart from the operation of this section, would have been the gain company's \*net capital gain for the application year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Step 2. Subtract each amount that:

- (a) the gain company can apply under section 170-115 in working out its \*net capital gain for the application year; and
- (b) was transferred to the gain company (by the loss company or any other company) by an agreement made *before* the agreement by which the first amount is transferred.

Example: In the application year:

- the gain company has capital gains totalling \$60,000 and capital losses totalling \$25,000; and
- another company, being a member of the same wholly-owned group as the gain company, transferred a net capital loss of \$15,000 to the gain company; and
- the loss company incurred a net capital loss of \$50,000.

Of the \$50,000 loss, the loss company can transfer to the gain company no more than:

$$\$60,000 - \$25,000 - \$15,000 = \$20,000$$

- (7) Subsection (6) does not apply if the transfer occurs because either or both of the conditions in subsections 170-142(2) and (4) are met. In that case, the amount transferred also cannot exceed the amount worked out as follows:

*Method statement*

Step 1. Identify each \*bundle of losses that, on the assumption in subsection 170-142(2) or (4) (as appropriate), would have included the \*net capital loss.

Note 1: There will be 2 or more bundles of losses identified if both of the conditions in subsections 170-142(2) and (4) are met.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 170-150

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Note 2: There will be more than 1 bundle of losses identified on the basis of the assumption in paragraph 170-142(4) if the conditions in subsections 170-130(1) and (2) are met in relation to the loss company and the gain company because of multiple applications of section 170-133 each involving a different first link company.

Step 2. For each \*bundle identified, work out how much of the \*net capital loss the gain company would have been able to apply in working out its \*net capital gain for the application year assuming that:

- (a) the loss could have been applied in that year only after the application in that year of any other losses of that \*sort that would have been included in the bundle, other than losses (the *transferable losses*) that could be transferred from the \*loss company to the gain company for that year; and
- (b) if the bundle would have included 2 or more transferable losses of that sort—those losses could have been applied only in the order in which the loss company made them.

Note 1: If the assumption in subsection 170-142(2) is relevant to the bundle, it would have included losses made by the gain company and transferred (or taken to be transferred) to the company (from itself) under Subdivision 707-A.

Note 2: If the assumption in paragraph 170-142(4) is relevant to the bundle, it would have included losses actually made by the first link company and transferred (by one or more transfers under Subdivision 707-A) to the gain company.

Step 3. Total every result of step 2 for the \*net capital loss.

### 170-150 Transfer by written agreement

- (1) The transfer must be made by a written agreement between the loss company and the gain company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The agreement must:
- (a) specify the income year of the transfer (which may be earlier than the income year in which the agreement is made); and
  - (b) specify the amount of the \*net capital loss being transferred; and
  - (c) be signed by the public officer of each company; and
  - (d) be made on or before the day of lodgment of the gain company's \*income tax return for the application year, or within such further time as the Commissioner allows.

Note: The agreement will usually be made in the next income year *after* the one for which the gain company will apply the loss.

### **170-155 Losses must be transferred in order they are made**

- (1) If the loss company has 2 or more \*net capital losses that it can transfer in the application year, it can transfer them only in the order in which it made them.
- (2) If:
- (a) the \*loss company has 2 or more \*net capital losses it can transfer for the application year; and
  - (b) it made at least one of those losses apart from Subdivision 707-A and at least one of those losses because of a transfer under that Subdivision;
- it can transfer under this Subdivision the losses it made because of a transfer under Subdivision 707-A only *after* transferring under this Subdivision the losses it made apart from that Subdivision.
- (3) For the purposes of subsection (2), treat a loss made by the company both apart from Subdivision 707-A and because of a transfer under that Subdivision as a loss made because of a transfer under that Subdivision.
- (4) Subsection (1) has effect subject to subsection (2).

### **170-160 Gain company cannot transfer transferred net capital loss**

The gain company cannot transfer an amount of a \*net capital loss transferred to it, or any part of the amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Effect of agreement to transfer more than can be transferred

### 170-165 Agreement transfers as much as can be transferred

- (1) If the amount specified in an agreement exceeds the maximum amount that the loss company can transfer to the gain company in the application year, only that maximum amount is taken to have been transferred.
- (2) One reason why an agreement might specify more than can be transferred is that an assessment has been amended since the agreement.

### 170-170 Amendment of assessments

The Commissioner may amend an assessment to \*disallow a transferred amount of a \*net capital loss:

- (a) if the agreement to transfer the net capital loss is ineffective because the loss company did not actually make the loss; or
- (b) to the extent that section 170-165 reduces the transferred amount because the loss company did not actually make some of it.

The Commissioner may do so despite section 170 (Amendment of assessments) of the *Income Tax Assessment Act 1936*.

Note: This Subdivision is disregarded in calculating the attributable income of a CFC: see section 410 of the *Income Tax Assessment Act 1936*.

## Australian permanent establishments of foreign financial entities

### 170-174 Treatment like Australian branches of foreign banks

- (1) The object of this section is to let \*net capital losses be transferred under this Subdivision to and from \*Australian permanent establishments of \*foreign entities that are \*financial entities in the same way as net capital losses can be transferred to and from Australian branches of \*foreign banks.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) This Subdivision (except this section) applies to an \*Australian permanent establishment of a \*foreign entity that is a \*financial entity in the same way as this Subdivision applies to an Australian branch (as defined in Part IIIB of the *Income Tax Assessment Act 1936*) of a \*foreign bank.

### **Subdivision 170-C—Provisions applying to both transfers of tax losses and transfers of net capital losses within wholly-owned groups of companies**

#### **Guide to Subdivision 170-C**

##### **170-201 What this Subdivision is about**

If a tax loss or a net capital loss is transferred between companies in the same wholly-owned group, this Subdivision provides for adjustments to:

- (a) the cost base and reduced cost base of direct and indirect equity interests held by group companies in the loss company, or in the income company or gain company; and
- (b) the reduced cost base of direct and indirect debt interest held by group companies in the loss company; and
- (c) the cost base and reduced cost base of direct and indirect debt interests held by group companies in the income company or gain company.

#### **Table of sections**

##### **Operative provisions**

170-205	Object of Subdivision
170-210	Transfer of tax loss: direct and indirect interests in the loss company
170-215	Transfer of tax loss: direct and indirect interests in the income company
170-220	Transfer of net capital loss: direct and indirect interests in the loss company

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 170-205

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170-225 Transfer of net capital loss: direct and indirect interests in the gain company

**Operative provisions**

**170-205 Object of Subdivision**

*Interests in the loss company*

- (1) The main object of this Subdivision is to ensure that, if an amount of a \*tax loss or \*net capital loss is transferred by a company to another company in the same \*wholly-owned group, the loss transferred is not duplicated by a member of the group.
- (2) Duplication could occur by the making of a \*capital loss, or the reduction of a \*capital gain, from a \*CGT event that happens in relation to an equity interest held (directly or indirectly) in the loss company or by the making of a capital loss in relation to a debt interest held (directly or indirectly) in the loss company.

*Interests in the income company or gain company*

- (3) This Subdivision may also require an adjustment to the cost base and reduced cost base of an equity or debt interest held (directly or indirectly) by a group company in the income company or gain company.
- (4) This adjustment is to reflect an increase in the \*market value of the interest because of the transfer of the loss if the increase is still reflected in the market value of the interest when a \*CGT event happens in relation to the interest.

**170-210 Transfer of tax loss: direct and indirect interests in the loss company**

- (1) If:
  - (a) an amount of a \*tax loss is transferred by a company to another company; and
  - (b) Subdivision 170-A applies in respect of the transfer; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (c) a company (the **group company**) holds a \*share in the loss company or is owed a debt by the loss company in respect of a loan; and
  - (d) the group company \*acquired the share or debt on or after 20 September 1985; and
  - (e) throughout the deduction year, the group company is a member of the same \*wholly-owned group as the loss company (disregarding a period when either was not in existence); and
  - (f) a \*CGT event happens in relation to the share or debt on or after the commencement of this section; and
  - (g) the relevant agreement referred to in section 170-50 is made on or after that commencement;
- the \*cost base and \*reduced cost base of the share or the reduced cost base of the debt is reduced in accordance with subsection (3).

(2) If:

- (a) an amount of a \*tax loss is transferred by a company to another company; and
- (b) Subdivision 170-A applies in respect of the transfer; and
- (c) a company (the **group company**) holds a \*share in another company or is owed a debt by another company in respect of a loan; and
- (d) the group company \*acquired the share or debt on or after 20 September 1985; and
- (e) the money that the group company paid for the share, or the borrowed money, has been applied (directly, or indirectly through one or more interposed entities):
  - (i) in the other company or a third company acquiring shares in the loss company; or
  - (ii) in a \*borrowing by the loss company from the other company or from a third company; and
- (f) throughout the deduction year, the group company, the other company and the third company (if any) are all members of the same \*wholly-owned group as the loss company (disregarding, for a particular company, a period when it was not in existence); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 170** Treatment of certain company groups for income tax purposes

Section 170-210

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- (g) a \*CGT event happens in relation to the share or debt on or after the commencement of this section; and
  - (h) the relevant agreement referred to in section 170-50 is made on or after that commencement;
- the \*cost base and \*reduced cost base of the share or the reduced cost base of the debt is reduced in accordance with subsection (3).
- (3) The \*cost base and \*reduced cost base of the share or the reduced cost base of the debt is reduced by an amount that is appropriate having regard to:
    - (aa) the main object of this Subdivision and other matters mentioned in subsections 170-205(1) and (2); and
    - (a) the group company's direct or indirect interest in the loss company; and
    - (ba) any reduction in the reduced cost base made under Subdivision 165-CD; and
    - (b) the amount of the loss transferred; and
    - (c) the extent to which the loss reduced the \*market value of the share or debt; and
    - (d) any consideration received by the loss company for the loss transferred; and
    - (e) whether, because of a dividend or dividends paid by the loss company, the consideration is no longer reflected (wholly or partly) in the market value of the share or debt when a \*CGT event happens in relation to it.
  - (3A) To avoid doubt in applying paragraph (3)(c) in relation to a \*share or debt, if factors other than the loss altered the \*market value of the share or debt, the extent to which the loss reduced that market value is taken to be the extent to which that market value would have been reduced apart from those other factors.

Note: An example of a factor other than the loss is the unrealised value of assets (including assets in respect of which there is an unrealised gain) of the loss company, whether or not generated by outlays or economic losses reflected in the loss for income tax purposes.
  - (3B) This section applies to a \*tax loss only to the extent that the loss represents an outlay or loss of any of the economic resources of the \*loss company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: Where the income tax law allows, as all or part of a loss, an amount for the decline in value of a depreciating asset that exceeds the actual economic depreciation or depletion of the asset concerned, the excess is not to be regarded for the purposes of this subsection as representing an outlay or loss of economic resources of the company.

- (4) Any reduction is to be made immediately before a \*CGT event happens in relation to the share or debt and is to have effect from that time or the end of the deduction year, whichever is the earlier.

Note 1: For *deduction year* see subsection 170-20(1).

Note 2: Subsection (4) is relevant for indexing elements of a cost base (see sections 114-1 and 114-15).

### **170-215 Transfer of tax loss: direct and indirect interests in the income company**

- (1) If:

- (a) an amount of a \*tax loss is transferred by a company to another company; and
- (b) Subdivision 170-A applies in respect of the transfer; and
- (c) a company (the *group company*) holds a \*share in the income company or is owed a debt by the income company in respect of a loan; and
- (d) the group company \*acquired the share or debt on or after 20 September 1985; and
- (e) throughout the deduction year, the group company is a member of the same \*wholly-owned group as the income company (disregarding a period when either was not in existence); and
- (f) a \*CGT event happens in relation to the share or debt on or after the commencement of this section; and
- (g) the relevant agreement referred to in section 170-50 is made on or after that commencement; and
- (h) there are shares in, or debts owed by, the \*loss company the \*reduced cost base of at least one of which has been reduced by subsection 170-210(1) or (2);

the \*cost base and \*reduced cost base of the share or debt are increased in accordance with subsection (3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 170-215

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- (2) If:
- (a) an amount of a \*tax loss is transferred by a company to another company; and
  - (b) Subdivision 170-A applies in respect of the transfer; and
  - (c) a company (the *group company*) holds a \*share in another company or is owed a debt by another company in respect of a loan; and
  - (d) the group company \*acquired the share or debt on or after 20 September 1985; and
  - (e) the money that the group company paid for the share, or the borrowed money, has been applied (directly, or indirectly through one or more interposed entities):
    - (i) in the other company or a third company acquiring shares in the income company; or
    - (ii) in a \*borrowing by the income company from the other company or from a third company; and
  - (f) throughout the deduction year, the group company, the other company and the third company (if any) are all members of the same \*wholly-owned group as the income company (disregarding, for a particular company, a period when it was not in existence); and
  - (g) a \*CGT event happens in relation to the share or debt on or after the commencement of this section; and
  - (h) the relevant agreement referred to in section 170-50 is made on or after that commencement; and
  - (i) there are shares in, or debts owed by, the \*loss company the \*reduced cost base of at least one of which has been reduced by subsection 170-210(1) or (2);
- the \*cost base and \*reduced cost base of the share or debt are increased in accordance with subsection (3).
- (3) The \*cost base and \*reduced cost base are increased by an amount that is appropriate having regard to:
- (aa) the matters mentioned in subsections 170-205(3) and (4); and
  - (ab) the amounts of any reductions to the cost base and reduced cost base of \*shares, and to the reduced cost base of debts, under subsection 170-210(3); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the group company's direct or indirect interest in the income company; and
- (b) the amount of the loss transferred; and
- (c) any consideration given by the income company for the loss transferred.

Note: This is because the consideration may be less than the commercial value of the loss transferred.

- (4) However, the increase cannot exceed the increase in the \*market value of the \*share or debt that results from the transfer of the loss. (If no increase in that market value results, for example because the consideration paid for the transfer of the loss equals the commercial value of the loss transferred, then there is no increase in the \*cost base and \*reduced cost base.)
- (4A) No increase is to be made to the extent that the \*tax loss transferred does not represent an outlay or loss of any of the economic resources of the company that transferred the tax loss.

Note: Where the income tax law allows, as all or part of a loss, an amount for the decline in value of a depreciating asset that exceeds the actual economic depreciation or depletion of the asset concerned, the excess is not to be regarded for the purposes of this subsection as representing an outlay or loss of economic resources of the company.

- (5) Any increase is to be made immediately before a \*CGT event happens in relation to the share or debt and is to have effect from that time or the end of the deduction year, whichever is the earlier.

Note: This subsection is relevant for indexing elements of a cost base (see sections 114-1 and 114-15).

- (6) No increase is to be made to the \*cost base and \*reduced cost base of a share or debt to the extent to which, because of a dividend or dividends paid by the income company, the increase in the \*market value of the share or debt that resulted from the transfer of the loss is no longer in existence at the time when a \*CGT event happens in relation to the share or debt.

Note: For *deduction year* see subsection 170-20(1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**170-220 Transfer of net capital loss: direct and indirect interests in the loss company**

(1) If:

- (a) an amount of a \*net capital loss is transferred by a company to another company; and
- (b) Subdivision 170-B applies in respect of the transfer; and
- (c) a company (the *group company*) holds a \*share in the loss company or is owed a debt by the loss company in respect of a loan; and
- (d) the group company \*acquired the share or debt on or after 20 September 1985; and
- (e) throughout the application year, the group company is a member of the same \*wholly-owned group as the loss company (disregarding a period when either was not in existence); and
- (f) the relevant agreement referred to in section 170-150 is made on or after the commencement of this section;

the \*cost base and \*reduced cost base of the share or the reduced cost base of the debt is reduced in accordance with subsection (3).

(2) If:

- (a) an amount of a \*net capital loss is transferred by a company to another company; and
- (b) Subdivision 170-B applies in respect of the transfer; and
- (c) a company (the *group company*) holds a \*share in another company or is owed a debt by another company in respect of a loan; and
- (d) the group company \*acquired the share or debt on or after 20 September 1985; and
- (e) the money that the group company paid for the share, or the borrowed money, has been applied (directly, or indirectly through one or more interposed entities):
  - (i) in the other company or a third company acquiring shares in the loss company; or
  - (ii) in a \*borrowing by the loss company from the other company or from a third company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (f) throughout the application year, the group company, the other company and the third company (if any) are all members of the same \*wholly-owned group as the loss company (disregarding, for a particular company, a period when it was not in existence); and
  - (g) the relevant agreement referred to in section 170-150 is made on or after the commencement of this section;
- the \*cost base and \*reduced cost base of the share or the reduced cost base of the debt is reduced in accordance with subsection (3).
- (3) The \*cost base and \*reduced cost base of the share or the reduced cost base of the debt is reduced by an amount that is appropriate having regard to:
- (aa) the main object of this Subdivision and other matters mentioned in subsections 170-205(1) and (2); and
  - (a) the group company's direct or indirect interest in the loss company; and
  - (ba) any reduction in the reduced cost base made under Subdivision 165-CD; and
  - (b) the amount of the loss transferred; and
  - (c) the extent to which the loss reduced the \*market value of the share or debt; and
  - (d) any consideration received by the loss company for the loss transferred; and
  - (e) whether, because of a dividend or dividends paid by the loss company, the consideration is no longer reflected (wholly or partly) in the market value of the share or debt when a \*CGT event happens in relation to it.
- (3A) To avoid doubt in applying paragraph (3)(c) in relation to a \*share or debt, if factors other than the loss altered the \*market value of the share or debt, the extent to which the loss reduced that market value is taken to be the extent to which that market value would have been reduced apart from those other factors.

Note: An example of a factor other than the loss is the unrealised value of assets (including assets in respect of which there is an unrealised gain) of the loss company, whether or not generated by outlays or economic losses reflected in the loss for income tax purposes.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 170-225

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- (3B) This section applies to a \*net capital loss only to the extent that the loss represents an outlay or loss of any of the economic resources of the \*loss company.

Note: Where the income tax law allows, as all or part of a loss, an amount for the decline in value of a depreciating asset that exceeds the actual economic depreciation or depletion of the asset concerned, the excess is not to be regarded for the purposes of this subsection as representing an outlay or loss of economic resources of the company.

- (4) Any reduction is to be made immediately before a \*CGT event happens in relation to the share or debt and is to have effect from that time or the end of the application year, whichever is the earlier.

Note 1: Subsection (4) is relevant for indexing elements of a cost base (see sections 114-1 and 114-15).

Note 2: Reductions under former subsection 160ZP(13) of the *Income Tax Assessment Act 1936* are also relevant: see section 170-220 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 3: For *applicable year* see subsection 170-115(1).

**170-225 Transfer of net capital loss: direct and indirect interests in the gain company**

- (1) If:
- (a) an amount of a \*net capital loss is transferred by a company to another company; and
  - (b) Subdivision 170-B applies in respect of the transfer; and
  - (c) a company (the *group company*) holds a \*share in the gain company or is owed a debt by the gain company in respect of a loan; and
  - (d) the group company \*acquired the share or debt on or after 20 September 1985; and
  - (e) throughout the application year, the group company is a member of the same \*wholly-owned group as the gain company (disregarding a period when either was not in existence); and
  - (f) the relevant agreement referred to in section 170-150 is made on or after the commencement of this section; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (g) there are shares in, or debts owed by, the \*loss company the \*cost base and \*reduced cost base of at least one of which have been reduced by subsection 170-220(1) or (2);  
the \*cost base and \*reduced cost base of the share or debt are increased in accordance with subsection (3).
- (2) If:
- (a) an amount of a \*net capital loss is transferred by a company to another company; and
  - (b) Subdivision 170-B applies in respect of the transfer; and
  - (c) a company (the *group company*) holds a \*share in another company or is owed a debt by another company in respect of a loan; and
  - (d) the group company \*acquired the share or debt on or after 20 September 1985; and
  - (e) the money that the group company paid for the share, or the borrowed money, has been applied (directly, or indirectly through one or more interposed entities):
    - (i) in the other company or a third company acquiring shares in the gain company; or
    - (ii) in a \*borrowing by the gain company from the other company or from a third company; and
  - (f) throughout the application year, the group company, the other company and the third company (if any) are all members of the same \*wholly-owned group as the gain company (disregarding, for a particular company, a period when it was not in existence); and
  - (g) the relevant agreement referred to in section 170-150 is made on or after the commencement of this section; and
  - (h) there are shares in, or debts owed by, the \*loss company the \*cost base and \*reduced cost base of at least one of which have been reduced by subsection 170-220(1) or (2);  
the \*cost base and \*reduced cost base of the share or debt are increased in accordance with subsection (3).
- (3) The \*cost base and \*reduced cost base are increased by an amount that is appropriate having regard to:
- (aa) the matters mentioned in subsections 170-205(3) and (4); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 170** Treatment of certain company groups for income tax purposes

Section 170-225

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- (ab) the amounts of any reductions to the cost base and reduced cost base of \*shares, and to the reduced cost base of debts, under subsection 170-220(3); and
- (a) the group company's direct or indirect interest in the gain company; and
- (b) the amount of the loss transferred; and
- (c) any consideration given by the gain company for the loss transferred.

Note: This is because the consideration may be less than the commercial value of the loss transferred.

- (4) However, the increase cannot exceed the increase in the \*market value of the \*share or debt that results from the transfer of the loss. (If no increase in that market value results, for example because the consideration paid for the transfer of the loss equals the commercial value of the loss transferred, then there is no increase in the \*cost base and \*reduced cost base.)

- (4A) No increase is to be made to the extent that the \*net capital loss transferred does not represent an outlay or loss of any of the economic resources of the company that transferred the net capital loss.

Note: Where the income tax law allows, as all or part of a loss, an amount for the decline in value of a depreciating asset that exceeds the actual economic depreciation or depletion of the asset concerned, the excess is not to be regarded for the purposes of this subsection as representing an outlay or loss of economic resources of the company.

- (5) Any increase is to be made immediately before a \*CGT event happens in relation to the share or debt and is to have effect from that time or the end of the application year, whichever is the earlier.

Note: This subsection is relevant for indexing elements of a cost base (see sections 114-1 and 114-15).

- (6) No increase is to be made to the \*cost base and \*reduced cost base of a share or debt to the extent to which, because of a dividend or dividends paid by the gain company, the increase in the \*market value of the share or debt that resulted from the transfer of the loss is no longer in existence at the time when a \*CGT event happens in relation to the share or debt.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: Increases under former subsections 160ZP(14) and (15) of the *Income Tax Assessment Act 1936* are also relevant: see section 170-225 of the *Income Tax (Transitional Provisions) Act 1997*.

## **Subdivision 170-D—Transactions by a company that is a member of a linked group**

### **Guide to Subdivision 170-D**

#### **170-250 What this Subdivision is about**

This Subdivision provides that there is a deferral of a \*capital loss or deduction if a company (the *originating company*) that is a member of a \*linked group disposes of a \*CGT asset to, or creates a CGT asset in, another entity that:

- (a) is a company that is also a member of the linked group; or
- (b) is a connected entity of the originating company or an \*associate of such a connected entity;

and the disposal or creation of the asset would have resulted in the originating company making a capital loss or becoming entitled to a deduction.

#### **Table of sections**

##### **Operative provisions**

170-255	Application of Subdivision
170-260	Linked group
170-265	Connected entity
170-270	Immediate consequences for originating company
170-275	Subsequent consequences for originating company
170-280	What happens if certain events happen in respect of the asset

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### 170-255 Application of Subdivision

- (1) This Subdivision applies if:
- (a) an event (the *deferral event*) happens involving a company (the *originating company*) and another entity; and
  - (b) one or more of the following apply:
    - (i) the deferral event is a \*CGT event that would have resulted in the originating company making a \*capital loss (except a capital loss that would be disregarded under a provision of this Act other than this Subdivision);
    - (ii) the deferral event would have resulted in the originating company becoming entitled to a deduction in respect of the disposal of a CGT asset or of an interest in a CGT asset;
    - (iii) if the originating company is a partner in a partnership—the deferral event would have resulted in the partnership becoming entitled to a deduction in respect of the disposal of a CGT asset or of an interest in a CGT asset; and
  - (c) if subparagraph (b)(i) applies—the CGT event is one of the following:
    - (i) CGT events A1 and B1 (a *disposal case*);
    - (ii) CGT events D1, D2, D3 and F1 (a *creation case*); and

Note: The full list of CGT events is in section 104-5.
  - (d) one of the following applies:
    - (i) the originating company is an Australian resident at the time of the deferral event;
    - (ii) if the deferral event is a CGT event D1—the \*CGT asset that is the subject of the creation of the contractual or other rights is \*taxable Australian property;
    - (iii) if the deferral event is a CGT event A1, B1 or F1—the asset or the subject of the lease, as the case may be, was \*taxable Australian property immediately before the deferral event;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (iv) if the deferral event is a CGT event D2—the option was taxable Australian property immediately after the deferral event;
  - (v) if subparagraph (b)(ii) or (iii) applies—the originating company is a foreign resident at the time of the deferral event; and
- (e) at the time of the deferral event, the originating company is a member of a \*linked group and one of the following applies:
- (i) the other entity is a company that is not a connected entity of the originating company and is a member of that linked group;
  - (ii) the other entity is a connected entity of the originating company;
  - (iii) the other entity is an \*associate of such a connected entity.
- (2) Despite subsection (1):
- (a) this Subdivision does not apply because of \*CGT event B1 if title in the \*CGT asset does not pass to the other entity when the agreement ends; and
  - (b) this Subdivision does not apply if the deferral event involves the \*acquisition of a greater than 50% interest in a CGT asset by an entity other than an entity referred to in subparagraph (1)(e)(i), (ii) or (iii).

### **170-260 Linked group**

- (1) Companies that are linked to one another are a ***linked group***.
- (2) Two companies are ***linked*** to each other if:
  - (a) one of them has a controlling stake in the other; or
  - (b) the same entity has a controlling stake in each of them.
- (3) For the purposes of this section, an entity has a ***controlling stake in a company*** at a particular time if the entity, or the entity and the entity's \*associates between them:
  - (a) are able at that time to exercise, or control the exercise of, more than 50% of the voting power in the company (either

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 170-265

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- directly, or indirectly through one or more interposed entities); or
  - (b) have at that time the right to receive for their own benefit (either directly, or indirectly through one or more interposed entities) more than 50% of any dividends that the company may pay; or
  - (c) have at that time the right to receive for their own benefit (either directly, or indirectly through one or more interposed entities) more than 50% of any distribution of capital of the company.
- (4) If:
- (a) apart from this subsection, an interest that gives an entity and its \*associates (if any):
    - (i) the ability to exercise, or control the exercise of, any of the voting power in a company; or
    - (ii) the right to receive dividends that a company may pay; or
    - (iii) the right to receive a distribution of capital of a company;would, in the application of paragraph (3)(a), (b) or (c), be counted more than once; and
  - (b) the interest is both direct and indirect; only the direct interest is to be counted.

**170-265 Connected entity**

- (1) An entity is a **connected entity** of the originating company at a particular time if, at that time:
  - (a) the entity is a trustee of a trust and either:
    - (i) if the trust is a \*fixed trust—one or more companies that are members of the \*linked group of which the originating company is a member, or one or more of those companies and their \*associates, between them have the right to receive for their own benefit (either directly, or indirectly through one or more interposed entities) more than 50% of any distribution to

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- beneficiaries of the trust of income or corpus of the trust; or
- (ii) if the trust is not a fixed trust—any company that is a member of the linked group of which the originating company is a member or any associate of such a company benefits or is capable of benefiting under the trust; or
  - (b) the entity is an individual who has a controlling stake in the company.
- (2) For the purposes of paragraph (1)(b), an individual has a controlling stake in a company at a particular time if the individual, or the individual and his or her \*associates between them:
- (a) are able at that time to exercise, or control the exercise of, more than 50% of the voting power in the company (either directly, or indirectly through one or more interposed entities); or
  - (b) have at that time the right to receive for their own benefit (either directly, or indirectly through one or more interposed entities) more than 50% of any dividends that the company may pay; or
  - (c) have at that time the right to receive for their own benefit (either directly, or indirectly through one or more interposed entities) more than 50% of any distribution of capital of the company.
- (3) If:
- (a) apart from this subsection, an interest that gives an entity and its \*associates (if any):
    - (i) the ability to exercise, or control the exercise of, any of the voting power in a company; or
    - (ii) the right to receive dividends that a company may pay; or
    - (iii) the right to receive a distribution of capital of a company;would, in the application of paragraph (2)(a), (b) or (c), be counted more than once; and
  - (b) the interest is both direct and indirect;  
only the direct interest is to be counted.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 170-270 Immediate consequences for originating company

- (1) If, apart from this Subdivision:
  - (a) the originating company would have made a \*capital loss (except a capital loss that would be disregarded under a provision of this Act other than this Subdivision) as a result of the deferral event; or
  - (b) the originating company would have become entitled to a deduction in respect of the deferral event; or
  - (c) where the originating company is a partner in a partnership—the partnership would have become entitled to a deduction in respect of the deferral event;the capital loss, the deduction or the partner's share of the deduction, as the case may be, is disregarded.
- (2) To avoid doubt, the amount of the \*capital loss, deduction, or partnership deduction, referred to in this section is:
  - (a) the amount remaining after applying Division 723 or section 727-615; or
  - (b) nil, if none of the amount remains after applying that section or Division.

Note: Division 723 and section 727-615 reduce a loss realised for income tax purposes by a realisation event happening to a non-depreciating asset (in the case of Division 723) or an affected interest in a losing entity under an indirect value shift (in the case of section 727-615).

### 170-275 Subsequent consequences for originating company

- (1) If, at a time after the deferral event, any one or more of the following events (the *new events*) happens:
  - (a) the \*CGT asset \*acquired by the other entity referred to in paragraph 170-255(1)(a) (the *relevant CGT asset*), or a greater than 50% interest in it, ceases to exist;
  - (b) the relevant CGT asset, or a greater than 50% interest in it, is acquired by an entity that is none of the following:
    - (i) a member of the \*linked group of which the originating company is a member;
    - (ii) a connected entity of the originating company;
    - (iii) an \*associate of such a connected entity;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (c) if the relevant CGT asset is acquired by a company that is a member of that linked group—that company ceases to be a member of that linked group;
- (d) the originating company ceases to be a member of that linked group;
- (e) if the relevant CGT asset is acquired by an entity that is a connected entity of the originating company or is an associate of such a connected entity—that entity ceases to be such a connected entity or ceases to be an associate of such a connected entity, as the case may be;

the originating company is taken, immediately before the time of the happening of the new event or the earliest of the new events, as the case may be, to have made a \*capital loss equal to the amount of the capital loss referred to in section 170-270 or to have become entitled to a deduction equal to the deduction, or the share of the deduction, referred to in that section, as the case may be.

- (2) If the \*capital loss referred to in section 170-270 would have been made from a \*personal use asset or from a \*collectable, any corresponding capital loss that the originating company is taken by subsection (1) of this section to have made is taken to have been made from a personal use asset or from a collectable, as the case may be.

### **170-280 What happens if certain events happen in respect of the asset**

- (1) This section applies if, as a result of the occurrence of a new event in respect of a \*CGT asset, the originating company is taken by subsection 170-275(1) to have made a \*capital loss or to be entitled to a deduction and, within 4 years after the occurrence of the new event, one of the following events (*further events*) occurs:
  - (a) the asset or a greater than 50% interest in it is \*acquired by the originating company or by an entity that, at the time of the acquisition, is:
    - (i) a company that is a member of the \*linked group of which the originating company is a member; or
    - (ii) a connected entity of the originating company; or
    - (iii) an \*associate of such a connected entity;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 170-280

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- (b) a company that owns the asset or a greater than 50% interest in it becomes a member of the linked group of which the originating company is a member;
  - (c) the originating company becomes a member of a linked group another member of which owns the asset or a greater than 50% interest in it;
  - (d) an entity that owns the asset or a greater than 50% interest in it becomes:
    - (i) a connected entity of the originating company; or
    - (ii) an associate of such a connected entity.
- (1A) If the originating company has information from which it would be reasonable to conclude that, if the \*CGT asset involved were owned by the originating company immediately after the further event, \*majority underlying interests in the asset immediately after the further event would not have been had by \*ultimate owners who had majority underlying interests in the asset immediately before the deferral event, the further event is taken not to have occurred.
- (2) The company is taken not to have made the \*capital loss or not to have been entitled to the deduction, as the case may be.
- (3) If, at a time after the further event, any one or more of the following events (the *realisation events*) happens:
- (a) the \*CGT asset referred to in subsection (1) (the *relevant CGT asset*), or a greater than 50% interest in it, ceases to exist;
  - (b) the relevant CGT asset, or a greater than 50% interest in it, is \*acquired by an entity that is none of the following:
    - (i) a member of the linked group of which the originating company is a member;
    - (ii) a connected entity of the originating company;
    - (iii) an \*associate of such a connected entity;
  - (c) if the relevant CGT asset is acquired by a company that is a member of that linked group—that company ceases to be a member of that linked group;
  - (d) the originating company ceases to be a member of that linked group;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (e) if the relevant CGT asset is acquired by an entity that is a connected entity of the originating company or is an associate of such a connected entity—that entity ceases to be such a connected entity or ceases to be an associate of such a connected entity, as the case may be;
- the originating company is taken, immediately before the time of the happening of the realisation event or the earliest of the realisation events, as the case may be, to have made a \*capital loss equal to the amount of the capital loss referred to in subsection (2) or to have become entitled to a deduction equal to the deduction referred to in that subsection, as the case may be.
- (4) If the \*capital loss referred to in subsection (2) would have been made from a \*personal use asset or from a \*collectable, any corresponding capital loss that the originating company is taken by subsection (3) to have made is taken to have been made from a personal use asset or from a collectable, as the case may be.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 175—Use of a company's tax losses or deductions to avoid income tax**

### **Table of Subdivisions**

#### Guide to Division 175

- 175-A Tax benefits from unused tax losses
- 175-B Tax benefits from unused deductions
- 175-CA Tax benefits from unused net capital losses of earlier income years
- 175-CB Tax benefits from unused capital losses of the current year
- 175-C Tax benefits from unused bad debt deductions
- 175-D Common rules

### **Guide to Division 175**

#### **175-1 What this Division is about**

The Commissioner can reverse the effect of schemes that, in order to avoid tax, bring together in the same company:

- assessable income; and
- tax losses, current year deductions, or deductions for bad debts, that apart from the scheme would not be fully used.

#### **Subdivision 175-A—Tax benefits from unused tax losses**

##### **Table of sections**

- 175-5 When Commissioner can disallow deduction for tax loss
- 175-10 First case: income or capital gain injected into company because of available tax loss
- 175-15 Second case: someone else obtains a tax benefit because of tax loss available to company

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **175-5 When Commissioner can disallow deduction for tax loss**

- (1) This Subdivision sets out cases where the Commissioner may disallow some or all of a \*tax loss (or of part of a tax loss) (the *excluded loss*) as a deduction in calculating a company's taxable income of an income year after the \*loss year.
- (2) However, the Commissioner cannot disallow the \*excluded loss if the company:
  - (a) fails to meet a condition in section 165-12 (which is about the company maintaining the same owners) in respect of the \*loss year or the income year; but
  - (b) meets the condition in section 165-13 (which is about the company satisfying the same business test) in respect of the income year.

### **175-10 First case: income or capital gain injected into company because of available tax loss**

- (1) The Commissioner may disallow the \*excluded loss if, during the income year, the company \*derived assessable income, or a \*capital gain accrued to the company, some or all of which (the *injected amount*) would not have been derived, or would not have accrued, if the excluded loss had not been available to be taken into account for the purposes of:
  - Division 36 (which is about tax losses of earlier years);
  - Division 165 (which is about the income tax consequences of changing ownership or control of a company);
  - Subdivision 375-G (which is about film losses).
- (2) However, the Commissioner cannot disallow the \*excluded loss if the \*continuing shareholders will benefit from the derivation or accrual of the \*injected amount to an extent that the Commissioner thinks fair and reasonable having regard to their respective rights and interests in the company.

Note: Section 175-100 allows the Commissioner to disallow an excluded loss of an insolvent company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 175-15

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(3) The *continuing shareholders* are:

- (a) all of the persons who had \*more than 50% of the voting power in the company during the whole (or the relevant part) of the \*loss year and during the whole of the income year; and
- (b) all of the persons who had rights to \*more than 50% of the company's dividends during the whole (or the relevant part) of the loss year and during the whole of the income year; and
- (c) all of the persons who had rights to \*more than 50% of the company's capital distributions during the whole (or the relevant part) of the loss year and during the whole of the income year.

To find out who they were, apply whichever tests are applied in order to determine whether the company can deduct the \*tax loss (or the part of the tax loss) in the first place.

See section 165-12 (which is about the company maintaining the same owners).

**175-15 Second case: someone else obtains a tax benefit because of tax loss available to company**

(1) The Commissioner may disallow the \*excluded loss if:

- (a) a person has obtained or will obtain a tax benefit in connection with a \*scheme; and
- (b) the scheme would not have been entered into or carried out if the excluded loss had not been available to be taken into account for the purposes of:
  - Division 36 (which is about tax losses of earlier years);
  - Division 165 (which is about the income tax consequences of changing ownership or control of a company);
  - Subdivision 375-G (which is about film losses).

(2) However, the Commissioner cannot disallow the \*excluded loss if:

- (a) the person had a \*shareholding interest in the company at some time during the income year; and
- (b) the Commissioner considers the tax benefit to be fair and reasonable having regard to that shareholding interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: Section 175-100 allows the Commissioner to disallow an excluded loss of an insolvent company.

- (3) An expression means the same in this section as in Part IVA of the *Income Tax Assessment Act 1936*.

### **Subdivision 175-B—Tax benefits from unused deductions**

#### **Table of sections**

175-20	Income or capital gain injected into company because of available deductions
175-25	Deduction injected into company because of available income or capital gain
175-30	Someone else obtains a tax benefit because of a deduction, income or capital gain available to company
175-35	Tax loss resulting from disallowed deductions

#### **175-20 Income or capital gain injected into company because of available deductions**

- (1) The Commissioner may disallow deductions of a company (or parts of them) for an income year if:
- (a) the company has \*derived assessable income, or a \*capital gain accrued to the company, some or all of which (the *injected amount*) would not have been derived, or would not have accrued, if the company did not have those deductions; and
  - (b) the income was derived, or the capital gain accrued, in that income year.

The disallowed deductions and parts of deductions may exceed the \*injected amount.

Note: The disallowance may result in a tax loss for the income year. See section 175-35.

- (2) The Commissioner cannot disallow the deductions or parts of the deductions if the \*continuing shareholders will benefit from the derivation of the \*injected amount to an extent that the Commissioner thinks fair and reasonable having regard to their respective \*shareholding interests in the company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 175-25

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Note: Section 175-100 allows the Commissioner to disallow the whole or part of any deductions of an insolvent company.

- (3) The *continuing shareholders* are the individuals who had \*shareholding interests in the company both immediately before the \*injected amount was \*derived, and immediately afterwards.

**175-25 Deduction injected into company because of available income or capital gain**

- (1) The Commissioner may disallow a deduction of a company for an income year to the extent that the company would not have incurred the loss, outgoing or expenditure that the deduction is for if it had not \*derived some or all of the assessable income it derived in that income year, or had not made some or all of a \*capital gain it made in that income year.

Note: The disallowance may result in a tax loss for the income year. See section 175-35.

- (2) The Commissioner cannot disallow any of the deduction if:
- (a) the \*continuing shareholders will benefit from any profit or advantage that has arisen or might arise directly or indirectly from the loss, outgoing or expenditure being incurred; and
  - (b) the Commissioner thinks that the extent to which they will benefit is fair and reasonable having regard to their respective \*shareholding interests in the company.

Note: Section 175-100 allows the Commissioner to disallow a deduction of an insolvent company.

- (3) The *continuing shareholders* are the individuals who had \*shareholding interests in the company both immediately before the loss, outgoing or expenditure was incurred, and immediately afterwards.

**175-30 Someone else obtains a tax benefit because of a deduction, income or capital gain available to company**

- (1) The Commissioner may disallow a deduction of a company if:
- (a) a person (other than the company) has obtained or will obtain a tax benefit in connection with a \*scheme; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the scheme would not have been entered into or carried out if the company had not incurred some or all (the *available expense*) of the loss, outgoing or expenditure that the deduction is for.

However, the deduction may be disallowed only to the extent of the available expense.

- (2) The Commissioner may disallow deductions of a company (or parts of them) if:
  - (a) a person has obtained or will obtain a tax benefit in connection with a \*scheme; and
  - (b) the scheme would not have been entered into or carried out if some or all (the *available amount*) of the assessable income that the company \*derived or of a \*capital gain that accrued to the company:
    - (i) before it incurred the losses, outgoings or expenditure that the deductions were for; and
    - (ii) in the same income year as it incurred them;had not been derived or had not accrued, as the case may be.

The disallowed deductions and parts of deductions may exceed the available amount.

Note: The disallowance may result in a tax loss for the income year. See section 175-35.

- (3) An expression means the same in this section as in Part IVA of the *Income Tax Assessment Act 1936*.
- (4) The Commissioner cannot disallow under this section if:
  - (a) the person who has obtained or will obtain the tax benefit had a \*shareholding interest in the company at some time during the income year; and
  - (b) the Commissioner considers the tax benefit to be fair and reasonable having regard to that shareholding interest.

Note: Section 175-100 allows the Commissioner to disallow the whole or part of any deductions of an insolvent company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**175-35 Tax loss resulting from disallowed deductions**

- (1) If a company has a taxable income for an income year because the Commissioner disallows under this Subdivision deductions of the company for the income year (or parts of them), the company may also have a \*tax loss for the income year.
- (2) The company's *tax loss* for the income year is calculated as follows.
- (3) Total what the Commissioner has disallowed under this Subdivision.
- (4) If the company has \*exempt income for the income year, subtract its \*net exempt income.
- (5) Any amount remaining is the company's *tax loss* for the income year, which is called a *loss year*.

Note: The meanings of *tax loss* and *loss year* are modified by section 36-55 for a corporate tax entity that has an amount of excess franking offsets.

To find out *how much* of the tax loss can be deducted in later income years: see Subdivision 165-A.

To find out *how* to deduct it: see section 36-17.

**Subdivision 175-CA—Tax benefits from unused net capital losses of earlier income years**

**Table of sections**

175-40	When Commissioner can disallow net capital loss of earlier income year
175-45	First case: capital gain injected into company because of available net capital loss
175-50	Second case: someone else obtains a tax benefit because of net capital loss available to company

**175-40 When Commissioner can disallow net capital loss of earlier income year**

- (1) This Subdivision sets out cases where the Commissioner may prevent a company, in working out its \*net capital gain for an income year, from applying some or all of a \*net capital loss it has

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

for an earlier income year (or of part of one) (the *excluded loss*). This is called *disallowing* the excluded loss.

Note: A company's net capital gain for an income year is usually worked out under section 102-5.

- (2) However, the Commissioner cannot \*disallow the \*excluded loss if, in determining (under section 165-96) whether Subdivision 165-A would prevent the company from deducting the loss (or the part of the loss) for the income year if the loss were a \*tax loss of the company for that earlier income year, the company:
- (a) would fail to meet a condition in section 165-12 (which is about the company maintaining the same owners) in respect of the income year; but
  - (b) would meet the condition in section 165-13 (which is about the company satisfying the same business test) in respect of the income year.

Note: Subdivision 165-A deals with the deductibility of a company's tax loss for an earlier income year if there has been a change in the ownership or control of the company in the period from the start of the loss year to the end of the income year.

### **175-45 First case: capital gain injected into company because of available net capital loss**

- (1) The Commissioner may \*disallow the \*excluded loss if, during the income year, the company made a \*capital gain some or all of which (the *injected capital gain*) it would not have made if the excluded loss had not been available to be applied in working out the company's \*net capital gain for the income year (or for some other income year).
- (2) However, the Commissioner cannot \*disallow the \*excluded loss if the \*continuing shareholders will benefit from the making of the injected capital gain to an extent that the Commissioner thinks fair and reasonable having regard to their respective rights and interests in the company.

Note: Section 175-100 allows the Commissioner to disallow an excluded loss of an insolvent company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 175-50

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(3) The *continuing shareholders* are:

- (a) all of the persons who had \*more than 50% of the voting power in the company during the whole (or the relevant part) of the earlier income year and during the whole of the income year; and
- (b) all of the persons who had rights to \*more than 50% of the company's dividends during the whole (or the relevant part) of the earlier income year and during the whole of the income year; and
- (c) all of the persons who had rights to \*more than 50% of the company's capital distributions during the whole (or the relevant part) of the earlier income year and during the whole of the income year.

To find out who they were, apply whichever tests are applied in order to determine (under section 165-96) whether Subdivision 165-A would prevent the company from deducting the loss for the current year if it were a \*tax loss of the company for that earlier income year.

See section 165-12 (which is about the company maintaining the same owners).

**175-50 Second case: someone else obtains a tax benefit because of net capital loss available to company**

- (1) The Commissioner may \*disallow the \*excluded loss if:
  - (a) a person has obtained or will obtain a tax benefit in connection with a \*scheme; and
  - (b) the scheme would not have been entered into or carried out if the excluded loss had not been available to be applied in working out the company's \*net capital gain for the income year (or for some other income year).
- (2) However, the Commissioner cannot \*disallow the \*excluded loss if:
  - (a) the person had a \*shareholding interest in the company at some time during the income year; and
  - (b) the Commissioner considers the tax benefit to be fair and reasonable having regard to that shareholding interest.

Note: Section 175-100 allows the Commissioner to disallow an excluded loss of an insolvent company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) An expression means the same in this section as in Part IVA of the *Income Tax Assessment Act 1936*.

### **Subdivision 175-CB—Tax benefits from unused capital losses of the current year**

#### **Table of sections**

175-55	When Commissioner can disallow capital loss of current year
175-60	Capital gain injected into company because of available capital loss
175-65	Capital loss injected into company because of available capital gain
175-70	Someone else obtains a tax benefit because of capital loss or gain available to company
175-75	Net capital loss resulting from disallowed capital losses

#### **175-55 When Commissioner can disallow capital loss of current year**

This Subdivision sets out cases where the Commissioner may prevent a company, in working out its \*net capital gain or \*net capital loss for an income year, from applying all or part of a \*capital loss it made during the income year. This is called *disallowing* the capital loss or part.

#### **175-60 Capital gain injected into company because of available capital loss**

- (1) The Commissioner may \*disallow \*capital losses of a company (or parts of them) for an income year if:
- (a) the company has made a \*capital gain some or all of which (the *injected capital gain*) it would not have made if it did not have those capital losses; and
  - (b) the injected capital gain was made in that income year.

The disallowed capital losses and parts of capital losses may exceed the amount of the injected capital gain.

Note: The disallowance may result in a net capital loss for the income year: see section 175-75.

- (2) The Commissioner cannot \*disallow the \*capital losses or parts of the capital losses if the \*continuing shareholders will benefit from the making of the injected capital gain to an extent that the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 175-65

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Commissioner thinks fair and reasonable having regard to their respective \*shareholding interests in the company.

Note: Section 175-100 allows the Commissioner to disallow capital losses or parts of capital losses of an insolvent company.

- (3) The *continuing shareholders* are the individuals who had \*shareholding interests in the company both immediately before the \*injected capital gain was made, and immediately afterwards.

**175-65 Capital loss injected into company because of available capital gain**

- (1) The Commissioner may \*disallow a \*capital loss of a company for an income year to the extent that the company would not have made the loss if it had not also made some or all of a \*capital gain it made in that income year.

Note: The disallowance may result in a tax loss for the income year: see section 175-75.

- (2) The Commissioner cannot \*disallow any of the \*capital loss if:
- (a) the \*continuing shareholders will benefit from any profit or advantage that has arisen or might arise directly or indirectly from the loss being made; and
  - (b) the Commissioner thinks that the extent to which they will benefit is fair and reasonable having regard to their respective \*shareholding interests in the company.

Note: Section 175-100 allows the Commissioner to disallow a capital loss of an insolvent company.

- (3) The *continuing shareholders* are the individuals who had \*shareholding interests in the company both immediately before the \*capital loss was made, and immediately afterwards.

**175-70 Someone else obtains a tax benefit because of capital loss or gain available to company**

- (1) The Commissioner may \*disallow a \*capital loss of a company if:
- (a) a person (other than the company) has obtained or will obtain a tax benefit in connection with a \*scheme; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(b) the scheme would not have been entered into or carried out if the company had not made some or all (the *available capital loss*) of the capital loss.

However, the capital loss may be disallowed only to the extent of the available capital loss.

- (2) The Commissioner may \*disallow \*capital losses of a company (or parts of them) if:
- (a) a person has obtained or will obtain a tax benefit in connection with a \*scheme; and
  - (b) the scheme would not have been entered into or carried out if the company had not made some or all (the *available capital gains*) of the \*capital gains it made:
    - (i) before it made the capital losses; and
    - (ii) in the same income year as it made them.

The disallowed capital losses and parts of capital losses may exceed the amount of the available capital gains.

Note: The disallowance may result in a tax loss for the income year: see section 175-75.

- (3) An expression means the same in this section as in Part IVA of the *Income Tax Assessment Act 1936*.
- (4) The Commissioner cannot \*disallow under this section if:
- (a) the person who has obtained or will obtain the tax benefit had a \*shareholding interest in the company at some time during the income year; and
  - (b) the Commissioner considers the tax benefit to be fair and reasonable having regard to that shareholding interest.

Note: Section 175-100 allows the Commissioner to disallow the whole or part of any capital losses of an insolvent company.

### **175-75 Net capital loss resulting from disallowed capital losses**

If a company has a \*net capital gain for an income year because the Commissioner \*disallows under this Subdivision \*capital losses of the company for the income year (or parts of them), the company also has a *net capital loss* for the income year equal to the total of those losses and parts of losses.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 175** Use of a company's tax losses or deductions to avoid income tax

Section 175-80

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To find out *how much* of the net capital loss can be applied in later income years: see Subdivision 165-CA.

To find out *how* to apply it: see sections 102-5 and 102-15.

**Subdivision 175-C—Tax benefits from unused bad debt deductions**

**Table of sections**

175-80	When Commissioner can disallow deduction for bad debt
175-85	First case: income or capital gain injected into company because of available bad debt
175-90	Second case: someone else obtains a tax benefit because of bad debt deduction available to company

**175-80 When Commissioner can disallow deduction for bad debt**

- (1) This Subdivision sets out cases where the Commissioner may disallow some or all of a deduction for a debt (or part of a debt) that is owed to a company and is written off as bad in the income year.
- (2) However, the Commissioner cannot disallow any of the deduction if:
  - (a) the company fails to meet a condition in section 165-123 (about the company maintaining the same owners) in respect of the \*first continuity period or the \*second continuity period; but
  - (b) meets the condition in section 165-126 (about the company satisfying the same business test).

**175-85 First case: income or capital gain injected into company because of available bad debt**

- (1) The Commissioner may disallow some or all of the deduction if the company would not have had some or all (the *injected amount*) of its assessable income or \*capital gains for the income year if:
  - (a) the debt had not been incurred; and
  - (b) the debt (or the relevant part of the debt) had not been written off (or able to be written off) as bad.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (2) However, the Commissioner cannot disallow any of the deduction if the \*continuing shareholders will benefit from the company having the injected amount to an extent that the Commissioner thinks fair and reasonable having regard to their respective rights and interests in the company.

Note: Section 175-100 allows the Commissioner to disallow some or all of a deduction of an insolvent company.

- (3) The *continuing shareholders* are:
- (a) all of the persons who had \*more than 50% of the voting power in the company throughout the \*first continuity period and the \*second continuity period; and
  - (b) all of the persons who had rights to \*more than 50% of the company's dividends throughout the \*first continuity period and the \*second continuity period; and
  - (c) all of the persons who had rights to \*more than 50% of the company's capital distributions throughout the \*first continuity period and the \*second continuity period.

To find out who they were, apply whichever tests are applied in order to determine whether the company can deduct the debt (or the relevant part of the debt) in the first place.

See section 165-123 (about the company maintaining the same owners).

### **175-90 Second case: someone else obtains a tax benefit because of bad debt deduction available to company**

- (1) The Commissioner may disallow some or all of the deduction if:
- (a) a person has obtained or will obtain a tax benefit in connection with a \*scheme; and
  - (b) the scheme would not have been entered into or carried out if the debt had not been incurred and the debt (or the relevant part of the debt) had not been written off (or able to be written off) as bad.
- (2) However, the Commissioner cannot disallow any of the deduction if:
- (a) the person had a \*shareholding interest in the company at some time during the income year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 175** Use of a company's tax losses or deductions to avoid income tax

Section 175-95

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- (b) the Commissioner considers the tax benefit to be fair and reasonable having regard to that shareholding interest.

Note: Section 175-100 allows the Commissioner to disallow some or all of a deduction of an insolvent company.

- (3) An expression means the same in this section as in Part IVA of the *Income Tax Assessment Act 1936*.

**Subdivision 175-D—Common rules**

**Table of sections**

175-95	When a person has a shareholding interest in the company
175-100	Commissioner may disallow excluded losses etc. of insolvent companies

**175-95 When a person has a shareholding interest in the company**

- (1) A person has a *shareholding interest* in the company if the person is:
  - (a) the beneficial owner; or
  - (b) the trustee of a \*family trust who is the owner;of:
  - (c) \*shares in the company; or
  - (d) an interest in \*shares in the company.
- (2) A person also has a *shareholding interest* in the company if:
  - (a) the person has a shareholding interest in another company; and
  - (b) the other company has a shareholding interest in the company (including one resulting from any other application or applications of this subsection).

**175-100 Commissioner may disallow excluded losses etc. of insolvent companies**

Despite a subsection listed in column 1, the Commissioner may, under a subsection listed in column 2, disallow some or all of an \*excluded loss, deduction, or \*capital loss, of a company (as the case requires) if:

- (a) the company is or becomes:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (i) an externally-administered body corporate within the meaning of the *Corporations Act 2001*; or
- (ii) an entity with a similar status under a \*foreign law to an externally-administered body corporate; and
- (b) the company is insolvent (within the meaning of section 9 of the *Corporations Act 2001*) when the administration begins.

**Commissioner may disallow excluded losses etc. for insolvent companies**

Item	Column 1 Despite this subsection...	Column 2 the Commissioner may disallow under this subsection:
1	Subsection 175-10(2)	Subsection 175-10(1)
2	Subsection 175-15(2)	Subsection 175-15(1)
3	Subsection 175-20(2)	Subsection 175-20(1)
4	Subsection 175-25(2)	Subsection 175-25(1)
5	Subsection 175-30(4)	Subsection 175-30(1) or (2)
6	Subsection 175-45(2)	Subsection 175-45(1)
7	Subsection 175-50(2)	Subsection 175-50(1)
8	Subsection 175-60(2)	Subsection 175-60(1)
9	Subsection 175-65(2)	Subsection 175-65(1)
10	Subsection 175-70(4)	Subsection 175-70(1) or (2)
11	Subsection 175-85(2)	Subsection 175-85(1)
11	Subsection 175-90(2)	Subsection 175-90(1)

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Division 180—Information about family trusts with interests in companies**

### **Table of Subdivisions**

Guide to Division 180

180-A Information relevant to Division 165

180-B Information relevant to Division 175

### **Guide to Division 180**

#### **180-1 What this Division is about**

If a company would only avoid the tax consequences of Division 165 or 175 because of interests held by a foreign resident family trust, the Commissioner may require the company to give certain information about the family trust. If it is not given, the company does not avoid the tax consequences of that Division.

#### **Subdivision 180-A—Information relevant to Division 165**

##### **Table of sections**

180-5 Information about family trusts with interests in companies

180-10 Notice where requirements of section 180-5 are met

#### **180-5 Information about family trusts with interests in companies**

##### *Notice about company*

- (1) The Commissioner may give a company a notice in accordance with section 180-10 if the requirements of this section are met.

##### *Tax detriment under Division 165*

- (2) In its \*income tax return for an income year:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the company must have deducted a \*tax loss from a \*loss year where it would not be allowed to deduct the tax loss if it did not meet the conditions in section 165-12; or
- (b) the company must not have calculated:
  - (i) its taxable income and tax loss under Subdivision 165-B; and
  - (ii) its \*net capital gain and \*net capital loss under Subdivision 165-CB;where it would have been required to calculate them under that Subdivision if it did not satisfy the requirements of paragraph 165-35(a); or
- (c) the company must have applied a \*net capital loss from an earlier income year in working out its net capital gain where it would not have been allowed to apply the loss if it did not meet the condition in section 165-12 as applied on the assumption mentioned in subsection 165-96(1); or
- (d) the company must have deducted a debt that it wrote off as bad in the income year where it would not be allowed to deduct the debt if it did not satisfy the requirements of paragraph 165-120(1)(a) or (b).

*Role of family trust*

- (3) The Commissioner must be satisfied that the company:
  - (a) if paragraph (2)(a) applies—meets the conditions in section 165-12; or
  - (b) if paragraph (2)(b) applies—satisfies the requirements of paragraph 165-35(a); or
  - (c) if paragraph (2)(c) applies—meets the conditions in section 165-12 as applied on the assumption mentioned in subsection 165-96(1); or
  - (d) if paragraph (2)(d) applies—satisfies the requirements of paragraph 165-120(1)(a) or (b);but it would not do so unless one or more trusts were \*family trusts.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 180-10

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*Foreign resident trust*

- (4) When the Commissioner gives the notice, for at least one of the \*family trusts:
- (a) a trustee of the trust must be a foreign resident; or
  - (b) the central management and control of the trust must be outside Australia.

*When notice must be given*

- (5) The Commissioner must give the notice before the later of:
- (a) 5 years after the income year to which the return relates; and
  - (b) the end of the period during which the company is required by section 262A of the *Income Tax Assessment Act 1936* to retain records in relation to that income year.

**180-10 Notice where requirements of section 180-5 are met**

*Information required*

- (1) The notice that the Commissioner may give if the requirements of section 180-5 are met must require the company to give the Commissioner specified information about conferrals of present entitlements to, and distributions (within the meaning of Subdivision 272-B of Schedule 2F to the *Income Tax Assessment Act 1936*) of, income and capital, since the start of:
- (a) if paragraph 180-5(2)(a) applies—the \*loss year mentioned in that paragraph; or
  - (b) if paragraph 180-5(2)(b) applies—the income year for which that paragraph is being applied; or
  - (c) if paragraph 180-5(2)(c) applies—the earlier income year mentioned in that paragraph; or
  - (d) if paragraph 180-5(2)(d) applies:
    - (i) where the debt mentioned in that paragraph was incurred in an earlier income year—the day on which the debt was incurred; or
    - (ii) where the debt mentioned in that paragraph was incurred in the income year mentioned in that paragraph—that income year;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

by all of the \*family trusts meeting the requirements of paragraph 180-5(4)(a) or (b).

*Company knowledge*

- (2) The information need not be within the knowledge of the company at the time the notice is given.

*Period for giving information*

- (3) The notice must specify a period within which the company is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

*Consequence of not giving the information*

- (4) If the company does not give the information within the period or within such further period as the Commissioner allows:
- (a) if paragraph 180-5(2)(a) applies—the company is not entitled, and is taken never to have been entitled, to deduct the \*tax loss; or
  - (b) if paragraph 180-5(2)(b) applies—the company is required, and taken always to have been required:
    - (i) to calculate its taxable income and tax loss for the income year under Subdivision 165-B; and
    - (ii) to calculate its \*net capital gain and \*net capital loss for the income year under Subdivision 165-CB; or
  - (c) if paragraph 180-5(2)(c) applies—the company is not entitled, and is taken never to have been entitled, to apply the net capital loss; or
  - (d) if paragraph 180-5(2)(d) applies—the company is not entitled, and is taken never to have been entitled, to deduct the debt.
- (5) If, because of paragraph (4)(b), the company is required to calculate under Subdivision 165-B its taxable income and \*tax loss for the income year concerned, that Subdivision is to be applied as if it required the income year to be divided into such periods as would result in the highest possible taxable income for the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 180** Information about family trusts with interests in companies

Section 180-15

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- (6) If, because of paragraph (4)(b), the company is required to calculate under Subdivision 165-CB its \*net capital gain and \*net capital loss for the income year concerned, that Subdivision is to be applied as if it required the income year to be divided into such periods as would result in the highest net capital gain for the income year.

*No offences or penalties*

- (7) To avoid doubt, subsections (4) to (6) do not cause the company to commit any offence or be liable to any penalty under Part 4-25 in Schedule 1 to the *Taxation Administration Act 1953* for:
- (a) deducting the \*tax loss; or
  - (b) not calculating its taxable income and tax loss under Subdivision 165-B as it applies in accordance with subsection (5) of this section; or
  - (c) not calculating its \*net capital gain and \*net capital loss under Subdivision 165-CB as it applies in accordance with subsection (6) of this section; or
  - (d) applying the net capital loss; or
  - (e) deducting the debt;
- in the company's \*income tax return.

**Subdivision 180-B—Information relevant to Division 175**

**Table of sections**

180-15	Information about family trusts with interests in companies
180-20	Notice where requirements of section 180-15 are met

**180-15 Information about family trusts with interests in companies**

*Notice about company*

- (1) The Commissioner may give a company a notice in accordance with section 180-20 if the requirements of this section are met.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



*Tax detriment under Division 175*

- (2) The Commissioner:
- (a) must have been prevented by subsection 175-10(2) or 175-15(2) from disallowing, as a deduction for an income year, the whole or part of a \*tax loss from a \*loss year; or
  - (b) must have been prevented by subsection 175-20(2), 175-25(2) or 175-30(4) from disallowing the whole or part of a deduction for an income year; or
  - (c) must have been prevented by subsection 175-45(2) or 175-50(2) from disallowing, in working out the \*net capital gain or \*net capital loss for an income year, the whole or part of a \*net capital loss for an earlier income year (or a part of one); or
  - (d) must have been prevented by subsection 175-60(2), 175-65(2) or 175-70(4) from disallowing, in working out its net capital gain or net capital loss for an income year, the whole or part of a \*capital loss made during the income year; or
  - (e) must have been prevented by subsection 175-85(2) or 175-90(2) from disallowing, as a deduction for an income year, the whole or part of a debt.

*Role of family trust*

- (3) A \*family trust must have been:
- (a) one of the \*continuing shareholders mentioned in subsection 175-10(2), 175-20(2), 175-25(2), 175-45(2), 175-60(2), 175-65(2) or 175-85(2); or
  - (b) the person who had the \*shareholding interest mentioned in subsection 175-15(2), 175-30(4), 175-50(2), 175-70(4) or 175-90(2);
- as the case requires.

*Foreign resident trust*

- (4) When the Commissioner gives the notice:
- (a) a trustee of the \*family trust must be a foreign resident; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 180-20

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- (b) the central management and control of the \*family trust must be outside Australia.

*When notice must be given*

- (5) The Commissioner must give the notice before the later of:
  - (a) 5 years after the income year mentioned in subsection (2); and
  - (b) the end of the period during which the company is required by section 262A of the *Income Tax Assessment Act 1936* to retain records in relation to that income year.

**180-20 Notice where requirements of section 180-15 are met**

*Information required*

- (1) The notice that the Commissioner may give if the requirements of section 180-15 are met must require the company to give the Commissioner specified information about conferrals of present entitlements to, and distributions (within the meaning of Subdivision 272-B of Schedule 2F to the *Income Tax Assessment Act 1936*) of, income and capital by the \*family trust since the start of:
  - (a) the \*loss year mentioned in paragraph 180-15(2)(a); or
  - (b) the income year mentioned in paragraph 180-15(2)(b) or (d); or
  - (c) the earlier income year mentioned in paragraph 180-15(2)(c); or
  - (d) if the debt mentioned in paragraph 180-15(2)(e) was incurred in the income year mentioned in that paragraph—that income year; or
  - (e) if the debt mentioned in paragraph 180-15(2)(e) was incurred in an earlier income year than the one mentioned in that paragraph—the day on which the debt was incurred.

*Company knowledge*

- (2) The information need not be within the knowledge of the company at the time the notice is given.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Period for giving information*

- (3) The notice must specify a period within which the company is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

*Consequence of not giving the information*

- (4) If the company does not give the information within the period or within such further period as the Commissioner allows:
- (a) subsection 175-10(2), 175-15(2), 175-20(2), 175-25(2), 175-30(4), 175-85(2) or 175-90(2) does not prevent the Commissioner from disallowing the deduction; or
  - (b) subsection 175-45(2) or 175-50(2) does not prevent the Commissioner from \*disallowing the \*net capital loss; or
  - (c) subsection 175-60(2), 175-65(2) or 175-70(4) does not prevent the Commissioner from \*disallowing the \*capital loss;
- as the case requires.

*No offences or penalties*

- (5) To avoid doubt, subsection (4) does not cause the company to commit any offence or be liable to any penalty under Part 4-25 in Schedule 1 to the *Taxation Administration Act 1953* for claiming the deduction, or applying the \*net capital loss or \*capital loss, in the company's \*income tax return.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 195—Special types of company**

### **Table of Subdivisions**

- 195-A Pooled development funds (PDFs)
- 195-B Limited partnerships

### **Subdivision 195-A—Pooled development funds (PDFs)**

#### **Guide to Subdivision 195-A**

##### **195-1 What this Subdivision is about**

This Subdivision contains rules about the income tax treatment of:

- pooled development funds (PDFs)
- shares in PDFs.

### **Table of sections**

#### **Working out a PDF's taxable income and tax loss**

- 195-5 Deductibility of PDF tax losses
- 195-10 PDF cannot transfer tax loss
- 195-15 Tax loss for year in which company becomes a PDF

#### **Working out a PDF's net capital gain and net capital loss**

- 195-25 Applying a PDF's net capital losses
- 195-30 PDF cannot transfer net capital loss
- 195-35 Net capital loss for year in which company becomes a PDF

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Working out a PDF's taxable income and tax loss

### 195-5 Deductibility of PDF tax losses

If a company is a \*PDF at the end of an income year for which it has a \*tax loss, it can deduct the tax loss in a later income year only if it is a PDF throughout the later income year.

### 195-10 PDF cannot transfer tax loss

If a company is a \*PDF at the end of an income year for which it has a \*tax loss, it cannot transfer any amount of the tax loss under Subdivision 170-A (which is about the transfer of tax losses within certain wholly-owned groups of companies).

### 195-15 Tax loss for year in which company becomes a PDF

- (1) This section applies if a company becomes a \*PDF during an income year and is still a PDF at the end of it.
- (2) Divide the income year into periods as follows:
  - (a) the *non-PDF period* is the period beginning at the start of the income year and ending when the company becomes a \*PDF;
  - (b) the *PDF period* is the rest of the income year.
- (3) For each period, work out whether the company has a taxable income or a \*tax loss (or both), treating each period as if it were an income year.
- (4) If the company has:
  - (a) a taxable income for the non-PDF period; and
  - (b) a \*tax loss for the PDF period;that tax loss is a tax loss of the company for the income year.

Note: The company can only deduct the tax loss while it is a PDF: see section 195-5.
- (5) If the company has a \*tax loss for the non-PDF period:
  - (a) section 195-5 does *not* prevent the company from deducting its tax loss for the income year in a later income year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) section 195-10 does *not* prevent the company from transferring an amount of the tax loss under Subdivision 170-A (which is about the transfer of tax losses within certain wholly-owned groups of companies); to the extent that the tax loss does not exceed the tax loss for the non-PDF period.
- (6) These rules apply in addition to the other rules about how \*tax losses are applied or transferred.

The other rules start in Division 36 (which is about tax losses of earlier income years).

## **Working out a PDF's net capital gain and net capital loss**

### **195-25 Applying a PDF's net capital losses**

If a company is a \*PDF at the end of an income year for which it has a \*net capital loss, it can apply the loss in working out its \*net capital gain for a later income year only if it is a PDF throughout the last day of the later income year.

### **195-30 PDF cannot transfer net capital loss**

If a company is a \*PDF at the end of an income year for which it has a \*net capital loss, it cannot transfer any amount of the loss under Subdivision 170-B (which is about the transfer of net capital losses within certain wholly-owned groups of companies).

### **195-35 Net capital loss for year in which company becomes a PDF**

- (1) This section applies if a company becomes a \*PDF during an income year and is still a PDF at the end of it.
- (2) Divide the income year into periods according to subsection 195-15(2) (about working out the company's tax loss for the income year).
- (3) For each period, work out whether the company has a \*net capital gain or a \*net capital loss (or both), treating each period as if it were an income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4) If the company has:
- (a) a \*net capital gain for the non-PDF period; and
  - (b) a \*net capital loss for the PDF period;
- that loss is a net capital loss of the company for the income year.

Note: The company can only apply the loss while it is a PDF: see section 195-25.

- (5) If the company has a \*net capital loss for the non-PDF period:
- (a) section 195-25 does *not* prevent the company from applying its \*net capital loss for the income year in working out its \*net capital gain for a later income year; and
  - (b) section 195-30 does *not* prevent the company from transferring an amount of its net capital loss for the income year under Subdivision 170-B (which is about the transfer of net capital losses within certain wholly-owned groups of companies);
- to the extent that its net capital loss for the income year does not exceed its net capital loss for the non-PDF period.
- (6) These rules apply in addition to the other rules about how \*net capital losses are applied or transferred.

The other rules start in Division 102 (about net capital gains and losses).

## **Subdivision 195-B—Limited partnerships**

### **Guide to Subdivision 195-B**

#### **195-60 What this Subdivision is about**

This Subdivision contains rules about the income tax treatment of limited partnerships that become, or cease to be, venture capital limited partnerships, early stage venture capital limited partnerships, Australian venture capital funds of funds or venture capital management partnerships.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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It also allows the Commissioner to determine how to take account of limited partnerships having income years of less than 12 months when they become, or cease to be, venture capital limited partnerships, early stage venture capital limited partnerships, Australian venture capital funds of funds or venture capital management partnerships.

### Table of sections

#### Operative provisions

- |        |  |
|--------|--|
| 195-65 | Tax losses cannot be transferred to a VCLP, an ESVCLP, an AFOF or a VCMP                     |
| 195-70 | Previous tax losses can be deducted after ceasing to be a VCLP, an ESVCLP, an AFOF or a VCMP |
| 195-75 | Determinations to take account of income years of less than 12 months                        |

### Operative provisions

#### **195-65 Tax losses cannot be transferred to a VCLP, an ESVCLP, an AFOF or a VCMP**

A \*limited partnership's \*tax loss for a \*loss year cannot be deducted in a later income year during which the partnership is a \*VCLP, an \*ESVCLP, an \*AFOF or a \*VCMP.

#### **195-70 Previous tax losses can be deducted after ceasing to be a VCLP, an ESVCLP, an AFOF or a VCMP**

This Subdivision does not prevent a \*limited partnership that has ceased to be a \*VCLP, an \*ESVCLP, an \*AFOF or a \*VCMP from deducting, in an income year, a \*tax loss for a \*loss year that occurred before the partnership was a VCLP, ESVCLP, AFOF or VCMP.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**195-75 Determinations to take account of income years of less than 12 months**

- (1) The Commissioner may, by legislative instrument, make a determination modifying the operation of one or more provisions of this Act in relation to limited partnerships whose accounting periods commence or end under section 18A of the *Income Tax Assessment Act 1936*.
- (2) A determination can only be made in order to take account of the fact that such accounting periods are of less than 12 months' duration.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 197—Tainted share capital accounts

### Table of Subdivisions

#### Guide to Division 197

- 197-A What transfers into a company's share capital account does this Division apply to?
- 197-B Consequence of transfer: franking debit arises
- 197-C Consequence of transfer: tainting of share capital account

### Guide to Division 197

#### 197-1 What this Division is about

This Division:

- (a) applies to certain amounts transferred to a company's share capital account (see Subdivision 197-A); and
- (b) provides for a franking debit to arise if such an amount is transferred to the share capital account (see Subdivision 197-B); and
- (c) provides for the tainting of the share capital account if such an amount is transferred, for how the account may be untainted, and for consequences that flow from untainting the account (see Subdivision 197-C).

### Subdivision 197-A—What transfers into a company's share capital account does this Division apply to?

#### Table of sections

- 197-5 Division generally applies to an amount transferred to share capital account from another account

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- 197-10 Exclusion for amounts that could be identified as share capital
- 197-15 Exclusion for amounts transferred under debt/equity swaps
- 197-20 Exclusion for amounts transferred leading to there being no shares with a par value—non-Corporations Act companies
- 197-25 Exclusion for transfers from option premium reserves
- 197-30 Exclusion for transfers made in connection with demutualisations of non-insurance etc. companies
- 197-35 Exclusion for transfers made in connection with demutualisations of insurance etc. companies
- 197-37 Exclusion for transfers made in connection with demutualisations of private health insurers
- 197-40 Exclusion for post-demutualisation transfers relating to life insurance companies

### **197-5 Division generally applies to an amount transferred to share capital account from another account**

- (1) Subject to subsection (2), this Division applies to an amount (the *transferred amount*) that is transferred to a company's \*share capital account from another of the company's accounts, if the company was an Australian resident immediately before the time of the transfer.

Note: If a company has 2 or more share capital accounts, those accounts are taken to be a single account (see subsection 975-300(2)).

- (2) The other provisions of this Subdivision may stop this Division from applying to some or all of the transferred amount. If those other provisions stop this Division from applying to only some of the transferred amount, this Division (other than this Subdivision) applies to the balance of the transferred amount as if only that balance of the amount had been transferred to the company's \*share capital account.

### **197-10 Exclusion for amounts that could be identified as share capital**

This Division does not apply to the transferred amount if it could, at all times before the transfer, be identified in the books of the company as an amount of share capital.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**197-15 Exclusion for amounts transferred under debt/equity swaps**

- (1) Subject to subsection (2), this Division does not apply to the transferred amount if:
  - (a) the transfer is under an \*arrangement under which:
    - (i) a person discharges, releases or otherwise extinguishes the whole or a part of a debt that the company owes to the person; and
    - (ii) the discharge, release or extinguishment is in return for the company issuing \*shares (other than redeemable preference shares) in the company to the person; and
  - (b) the transfer is a credit to the \*share capital account that is made because of the issue of the shares in return for the discharge, release or extinguishment of the debt.
- (2) If the transferred amount exceeds the lesser of:
  - (a) the \*market value of the \*shares issued by the company; and
  - (b) so much of the debt as is discharged, released or extinguished in return for the shares;subsection (1) does not stop this Division from applying to the amount of the excess.

**197-20 Exclusion for amounts transferred leading to there being no shares with a par value—non-Corporations Act companies**

This Division does not apply to the transferred amount if:

- (a) immediately before the transfer of the amount, the company was not incorporated under the *Corporations Act 2001*; and
- (b) the transfer is under, or in accordance with, an \*Australian law that requires or allows either or both of the following to become part of the company's \*share capital account:
  - (i) the company's share premium account;
  - (ii) the company's capital redemption reserve; and
- (c) the transfer is made as part of a process that leads to there being no \*shares in the company that have a par value; and
- (d) the amount is transferred from the company's share premium account or capital redemption reserve.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **197-25 Exclusion for transfers from option premium reserves**

This Division does not apply to the transferred amount if:

- (a) it is transferred from an option premium reserve of the company; and
- (b) the transfer is because of the exercise of options to acquire \*shares in the company; and
- (c) premiums in respect of those options were credited to the option premium reserve.

### **197-30 Exclusion for transfers made in connection with demutualisations of non-insurance etc. companies**

- (1) Subject to subsection (2), this Division does not apply to the transferred amount if:
  - (a) the amount is transferred in connection with a demutualisation of the company; and
  - (b) Division 326 in Schedule 2H to the *Income Tax Assessment Act 1936* applies to the demutualisation; and
  - (c) the transfer occurs within the limitation period in relation to the demutualisation (see subsection 326-20(3) in that Schedule).
- (2) If the sum of:
  - (a) the transferred amount; and
  - (b) any other amounts that were previously transferred to the company's \*share capital account, from another account of the company, in connection with the demutualisation;exceeds the total capital contributions amount described in whichever of subsections (3) and (4) applies, subsection (1) does not stop this Division from applying to so much of the transferred amount as equals the lesser of the transferred amount and the amount of the excess.

Note: If there are several transfers of amounts to the company's share capital account in connection with the demutualisation, this section must be applied separately in relation to each transferred amount, in the order in which the transfers are made.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 197-35

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- (3) If the company was not formed by the merger of 2 or more mutual entities, the ***total capital contributions amount*** referred to in subsection (2) is the sum of all the capital amounts:
  - (a) that were contributed to the company by \*members of the company before its demutualisation; and
  - (b) in respect of which deductions are not allowable to the members; and
  - (c) that were not payments for goods or services provided by the company.
- (4) If the company was formed by the merger of 2 or more mutual entities, the ***total capital contributions amount*** referred to in subsection (2) is the sum of:
  - (a) all the capital amounts:
    - (i) that were contributed to the company, before its demutualisation, by persons who became \*members of the company at or after the time when the merger took place; and
    - (ii) in respect of which deductions are not allowable to those members; and
    - (iii) that were not payments for goods or services provided by the company; and
  - (b) the \*market values, at the time of the merger, of the entities that merged to form the company, as determined by a qualified valuer.

**197-35 Exclusion for transfers made in connection with demutualisations of insurance etc. companies**

- (1) Subject to subsection (2), this Division does not apply to the transferred amount if:
  - (a) the amount is transferred in connection with the demutualisation of a company; and
  - (b) the demutualisation is implemented in accordance with a demutualisation method specified in Division 9AA of Part III of the *Income Tax Assessment Act 1936*; and
  - (c) the transfer occurs within the listing period in relation to the demutualisation (see subsection 121AE(6) of that Act); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) the company (the *issuing company*) to whose \*share capital account the amount is transferred is:
  - (i) if the demutualisation method is the method specified in section 121AF or 121AG of the *Income Tax Assessment Act 1936*—the demutualising company; or
  - (ii) if the demutualisation method is the method specified in section 121AH, 121AI, 121AJ, 121AK or 121AL of the *Income Tax Assessment Act 1936*—the company issuing the ordinary shares referred to in that section.
- (2) If the sum of:
  - (a) the transferred amount; and
  - (b) all amounts that were previously transferred to the issuing company's \*share capital account, from another account of the company, in connection with the demutualisation; and
  - (c) all amounts that were previously transferred to the issuing company's retained profit account in connection with the demutualisation;

exceeds the listing day company valuation amount (see subsection (3)), subsection (1) does not stop this Division from applying to so much of the transferred amount as equals the lesser of the transferred amount and the amount of the excess.

Note: If there are several transfers of amounts to the issuing company's share capital account, this section must be applied separately in relation to each transferred amount, in the order in which the transfers are made.

- (3) The *listing day company valuation amount* has the same meaning as it has for the purposes of table 1 in section 121AS of the *Income Tax Assessment Act 1936*, as that table applies in relation to the demutualising company (see note 3 to that table).

### **197-37 Exclusion for transfers made in connection with demutualisations of private health insurers**

- (1) Subject to subsection (2), this Division does not apply to the transferred amount if:
  - (a) the amount is transferred in connection with a demutualisation of a company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 197-40

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- (b) Division 315 (about demutualisations of private health insurers) applies to the demutualisation; and
  - (c) the company (the *issuing company*) to whose \*share capital account the amount is transferred is either:
    - (i) the demutualising health insurer; or
    - (ii) the company mentioned in subparagraph 315-85(1)(a)(iii) issuing shares that are assets covered by section 315-85 (*demutualisation assets*).
- (2) Subsection (1) does not stop this Division from applying to so much, if any, of the transferred amount as exceeds the sum of the amounts worked out under subsection (3) for each demutualisation asset that is a share issued:
- (a) by the issuing company under the demutualisation; and
  - (b) to an entity that is either:
    - (i) covered by section 315-90 (about participating policy holders); or
    - (ii) the trustee of a trust covered by Subdivision 315-C (about the lost policy holders trust).
- (3) The amount worked out under this subsection for a share is:
- (a) the \*market value of the share on the day it is issued; or
  - (b) if the share is in a company covered by subparagraph 315-85(1)(a)(iii) that owns other assets in addition to the shares in the demutualising health insurer—worked out using the method stated in subsection 315-210(2).

**197-40 Exclusion for post-demutualisation transfers relating to life insurance companies**

- (1) Subject to subsection (2), this Division does not apply to the transferred amount if:
- (a) a \*life insurance company (the *demutualised company*) has demutualised; and
  - (b) the demutualisation was implemented in accordance with a demutualisation method specified in Division 9AA of Part III of the *Income Tax Assessment Act 1936*; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (c) the amount is transferred after the end of the listing period in relation to the demutualisation (see subsection 121AE(6) of that Act); and
  - (d) the company transferring the amount to its \*share capital account is either:
    - (i) the demutualised company (whichever demutualisation method was used); or
    - (ii) if the demutualisation method was the method specified in section 121AH, 121AI, 121AJ, 121AK or 121AL of the *Income Tax Assessment Act 1936*—the company (the **issuing company**) that issued the ordinary shares referred to in that section; and
  - (e) if subparagraph (d)(i) applies—the following conditions are satisfied in relation to the transferred amount:
    - (i) the amount is transferred from an account of the demutualised company consisting of shareholders' capital (within the meaning of the *Life Insurance Act 1995*) in relation to a statutory fund (within the meaning of that Act);
    - (ii) the amount was part of such an account at the time of the demutualisation; and
  - (f) if subparagraph (d)(ii) applies—the amount is transferred from a capital reserve created at the time of or in connection with the demutualisation.
- (2) If the sum of:
- (a) the transferred amount; and
  - (b) all amounts that were previously transferred to the demutualised company's \*share capital account, from another account of the demutualised company, as described in subsection (1); and
  - (c) if the demutualisation method was the method specified in section 121AH, 121AI, 121AJ, 121AK or 121AL of the *Income Tax Assessment Act 1936*—all amounts that were previously transferred to the issuing company's share capital account, from another account of the issuing company, as described in subsection (1); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 197-45

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(d) all amounts that were previously transferred, in connection with the demutualisation, to the share capital account of the issuing company (within the meaning of section 197-35) as described in subsection 197-35(1), or to its retained profit account as described in paragraph 197-35(2)(c);

exceeds the listing day company valuation amount (see subsection (3)), subsection (1) does not stop this Division from applying to so much of the transferred amount as equals the lesser of the transferred amount and the amount of the excess.

Note: If there are several transfers of amounts to the share capital account of the demutualised company or the issuing company, this section must be applied separately in relation to each transferred amount, in the order in which the transfers are made.

(3) The *listing day company valuation amount* has the same meaning as it has for the purposes of table 1 in section 121AS of the *Income Tax Assessment Act 1936*, as that table applies in relation to the demutualised company (see note 3 to that table).

**Subdivision 197-B—Consequence of transfer: franking debit arises**

**Table of sections**

197-45 A franking debit arises in relation to the transfer

**197-45 A franking debit arises in relation to the transfer**

- (1) A \*franking debit arises in a company's \*franking account if an amount (the *transferred amount*) to which this Division applies is transferred to the company's \*share capital account. The debit arises immediately before the end of the \*franking period in which the transfer of the amount occurs.
- (2) The amount of the \*franking debit is calculated in accordance with the formula:

$$\text{Transferred amount} \times \left( \frac{\text{*Corporate tax rate}}{100\% - \text{*Corporate tax rate}} \right) \times \text{Applicable franking percentage}$$

where:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*applicable franking percentage* means:

- (a) if, before the debit arises, the \*benchmark franking percentage for the \*franking period in which the transfer of the amount occurs has already been set by section 203-30— that percentage; or
- (b) otherwise—100%.

### **Subdivision 197-C—Consequence of transfer: tainting of share capital account**

#### **Table of sections**

197-50	The share capital account becomes tainted (if it is not already tainted)
197-55	Choosing to untaint a tainted share capital account
197-60	Choosing to untaint—liability to untainting tax
197-65	Choosing to untaint—further franking debits may arise
197-70	Due date for payment of untainting tax
197-75	General interest charge for late payment of untainting tax
197-80	Notice of liability to pay untainting tax
197-85	Evidentiary effect of notice of liability to pay untainting tax

#### **197-50 The share capital account becomes tainted (if it is not already tainted)**

- (1) A company's \*share capital account becomes *tainted* when an amount to which this Division applies is transferred to the account, if, at the time of the transfer, the account is not already tainted (because of the application of this section in relation to a previous transfer).

Note: If a company's share capital account is tainted, then a distribution from the account is taxed as a dividend in the hands of the shareholder. This is because a tainted share capital account does not count as a share capital account for the purposes of paragraph (d) of the definition of *dividend* in subsection 6(1) of the *Income Tax Assessment Act 1936* (see subsection 975-300(3) of this Act). However, although the distribution is taxed as a dividend, the company cannot pass on to the shareholder the benefit of the tax it has paid, because a distribution from a share capital account (whether or not tainted) is unfrankable (see paragraphs 202-45(e) and 975-300(3)(ba) of this Act).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 197-55

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- (2) The \*share capital account remains *tainted* until the company chooses to untaint the account (see section 197-55).

Note: If, after a choice to untaint is made, the company's share capital account becomes tainted again, the account remains tainted until a fresh choice to untaint is made.

- (3) The *tainting amount*, for a company's \*share capital account that is \*tainted at a particular time, means the sum of:

- (a) the amount transferred to the company's share capital account that most recently caused the account to become tainted; and
- (b) any other amounts to which this Division applies that have been transferred to the company's share capital account since the transfer referred to in paragraph (a) and before the particular time.

**197-55 Choosing to untaint a tainted share capital account**

- (1) A company with a \*share capital account that is \*tainted may make a choice in the \*approved form given to the Commissioner to untaint the account.

- (2) The choice can be made at any time, but cannot be revoked.

Note: The choice has no effect in relation to a subsequent tainting of the share capital account that occurs after the choice is made.

**197-60 Choosing to untaint—liability to untainting tax**

*Definitions*

- (1) For the purpose of this section:

- (a) a company whose \*share capital account is \*tainted is a *company with only lower tax members in relation to the tainting period* if, throughout the tainting period, all \*members of the company were covered by one, or a combination of 2 or more, of the following subparagraphs:
- (i) other companies;
- (ii) \*complying superannuation entities;
- (iii) foreign residents; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) a company whose share capital account is tainted is a ***company with higher tax members in relation to the tainting period*** if it is not a company with only lower tax members in relation to the tainting period.

For this purpose, the ***tainting period*** is the period beginning when the share capital account most recently became tainted and ending when the company chooses to untaint the account.

*Liability to untainting tax*

- (2) A company that chooses to untaint its \*share capital account is liable to pay tax, known as ***untainting tax***, equal to the amount calculated in accordance with the formula:

$$\text{Applicable tax amount} - \left( \begin{array}{c} \text{Section 197-45} \\ \text{franking debits} \end{array} + \begin{array}{c} \text{Section 197-65} \\ \text{franking debits} \end{array} \right)$$

where:

***applicable tax amount*** has the meaning given by subsection (3).

***section 197-45 franking debits*** means the total \*franking debits arising under section 197-45 because of the transfer of the amounts that made up the \*tainting amount at the time of the choice.

***section 197-65 franking debits*** means the total (if any) \*franking debits arising under section 197-65 because of the choice to untaint.

Note: The payment of untainting tax does not give rise to a franking credit.

- (3) In subsection (2), the ***applicable tax amount*** is the amount calculated in accordance with the formula:

$$\left( \begin{array}{c} \text{*Tainting amount} \\ \text{at time of choice} \\ \text{to untaint} \end{array} + \begin{array}{c} \text{Notional} \\ \text{franking amount} \end{array} \right) \times \text{Applicable tax rate}$$

where:

***applicable tax rate*** means:

- (a) for a company with only lower tax members in relation to the tainting period—the \*corporate tax rate; or

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 197-65

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- (b) for a company with higher tax members in relation to the tainting period—the sum of:
- (i) the maximum rate specified in column 2 of the table in Part I of Schedule 7 to the *Income Tax Rates Act 1986* that applies for the income year in which the choice is made; and
  - (ii) 2.5%.

Note: The 2.5% referred to in subparagraph (b)(ii) relates to rates of Medicare levy and surcharge.

**notional franking amount** has the meaning given by subsection (4).

- (4) In subsection (3), the **notional franking amount** is the amount calculated in accordance with the formula:

$$\begin{array}{l} \text{*Tainting amount} \\ \text{at time of choice} \\ \text{to untaint} \end{array} \times \left( \frac{\text{*Corporate tax rate}}{100\% - \text{*Corporate tax rate}} \right)$$

**197-65 Choosing to untaint—further franking debits may arise**

*When this section applies*

- (1) This section applies if:
- (a) a company chooses to untaint its \*share capital account; and
  - (b) the applicable franking percentage (within the meaning of subsection (3)) is higher than the percentage that was the \*benchmark franking percentage in relation to the \*franking period in which the transfer of an amount (the **transferred amount**) that is, or is part of, the \*tainting amount occurred.

Note: If paragraph (b) is satisfied in relation to 2 or more amounts, this section is to be applied separately in relation to each of those amounts (so a separate franking debit will arise in relation to each of those amounts).

*Franking debit arises in relation to making the choice*

- (2) A \*franking debit arises in the company's \*franking account in relation to the transferred amount. The debit arises immediately

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

before the end of the \*franking period in which the choice to untaint is made.

- (3) The amount of the \*franking debit is the amount by which the amount calculated in accordance with the following formula exceeds the amount of the franking debit that arose under section 197-45 in relation to the transferred amount:

$$\text{Transferred amount} \times \left( \frac{\text{*Corporate tax rate}}{100\% - \text{*Corporate tax rate}} \right) \times \text{Applicable franking percentage}$$

where:

*applicable franking percentage* means:

- (a) if, before the debit arises, the \*benchmark franking percentage for the \*franking period in which the choice to untaint is made has already been set by section 203-30—that percentage; or
- (b) otherwise—100%.

### **197-70 Due date for payment of untainting tax**

\*Untainting tax is due and payable at the end of 21 days after the end of the \*franking period in which the choice to untaint was made.

Note: For provisions about collection and recovery of untainting tax, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

### **197-75 General interest charge for late payment of untainting tax**

If any of the \*untainting tax that a company is liable to pay remains unpaid 60 days after the day by which it is due to be paid, the company is liable to pay the \*general interest charge on the unpaid amount for each day in the period that:

- (a) started at the beginning of the 60th day after the day by which the untainting tax was due to be paid; and
- (b) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:
  - (i) the untainting tax;
  - (ii) general interest charge on any of the untainting tax.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **197-80 Notice of liability to pay untainting tax**

- (1) The Commissioner may give a company, by post or otherwise, a notice specifying:
  - (a) the amount of any \*untainting tax that the Commissioner has ascertained is payable by the company; and
  - (b) the day on which that tax became or will become due and payable.

*Effect of notice on liability etc.*

- (2) Subject to section 197-85, the amount of the liability of a company to \*untainting tax, and the due date for payment of the tax, are not dependent on, or in any way affected by, the giving of a notice.

*Amendment of notice*

- (3) The Commissioner may at any time amend a notice. An amended notice is a notice for the purposes of this section.

*Inconsistency between notices*

- (4) If there is an inconsistency between notices that relate to the same subject matter, the later notice prevails to the extent of the inconsistency.

*Objections*

- (5) A company that is dissatisfied with a notice made in relation to the company may object against the notice in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

### **197-85 Evidentiary effect of notice of liability to pay untainting tax**

- (1) The production of:
  - (a) a notice given under section 197-80; or
  - (b) a document that is signed by the Commissioner and appears to be a copy of such a notice;is conclusive evidence that:
  - (c) the notice was duly given; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) the amount of \*untainting tax specified in the notice became due and payable by the company to which it was given on the day specified in the notice.
- (2) Subsection (1) does not apply in proceedings under Part IVC of the *Taxation Administration Act 1953* on a review or appeal relating to the review.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Part 3-6—The imputation system

### Division 200—Guide to Part 3-6

#### Guide to Division 200

##### 200-1 What this Division is about

This Division provides an overview of the imputation system.

##### Table of sections

200-5	The imputation system
200-10	Franking a distribution
200-15	The franking account
200-20	How a distribution is franked
200-25	A corporate tax entity must not give its members credit for more tax than the entity has paid
200-30	Benchmark rule
200-35	Effect of receiving a franked distribution
200-40	An Australian corporate tax entity can pass the benefit of having received a franked distribution on to its members
200-45	Special rules for franking by some entities

##### 200-5 The imputation system

The \*imputation system partially integrates the income tax liabilities of an Australian corporate tax entity and its members by:

- (a) allowing the entity, when distributing profits to its members, to pass to those members credit for income tax paid by the entity on those profits; and
- (b) allowing the entity's Australian members to claim a tax offset for that credit; and
- (c) allowing the entity's Australian members to claim a refund if they are unable to fully utilise the tax offset in reducing their income tax.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**200-10 Franking a distribution**

When an Australian corporate tax entity distributes profits to its members, the entity has the option of passing to those members credit for income tax paid by the entity on the profits. This is done by franking the distribution.

**200-15 The franking account**

- (1) A franking account is used to keep track of income tax paid by the entity, so that the entity can pass to its members the benefit of having paid that tax when a distribution is made.
- (2) Each corporate tax entity has a franking account.
- (3) Typically, a corporate tax entity receives a credit in the account if the entity pays income tax or receives a franked distribution. A credit in the franking account is called a franking credit.
- (4) Typically, a corporate tax entity receives a debit in the account if the entity receives a refund of tax or franks a distribution to its members. A debit in the franking account is called a franking debit.

**200-20 How a distribution is franked**

- (1) A corporate tax entity franks a distribution by allocating a franking credit to it.
- (2) The amount of the franking credit on the distribution is the amount specified in a statement that accompanies the distribution.
- (3) Only some kinds of distribution can be franked. These are called frankable distributions.

**200-25 A corporate tax entity must not give its members credit for more tax than the entity has paid**

- (1) A corporate tax entity must not frank a distribution from profits with a franking credit that exceeds the maximum amount of income tax that could have been paid by the entity on the profits distributed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 200-30

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- (2) If a distribution is franked in excess of this limit, the entity will be taken to have franked the distribution with the maximum franking credit for the distribution.

**200-30 Benchmark rule**

- (1) All frankable distributions made within a particular period must be franked to the same extent. This is the benchmark rule.
- (2) It is designed to ensure that one member of a corporate tax entity is not preferred over another by the manner in which distributions are franked.

**200-35 Effect of receiving a franked distribution**

- (1) Under Division 207, if an Australian member of a corporate tax entity receives a franked distribution, the member can usually offset, against the member's own income tax liability, income tax paid by the entity on the profits underlying the distribution.
- (2) The tax offset to which the member is entitled is equal to the franking credit on the distribution.

Note 1: A member may be entitled to a refund under Division 67 if the sum of the tax offset and certain other tax offsets exceeds the amount of income tax that the member would have to pay if the member had not got those tax offsets.

Note 2: If the member is not a resident, the tax effects of receiving a distribution will be dealt with under Division 11A of Part III of the *Income Tax Assessment Act 1936*, and Subdivision 207-D of this Part.

**200-40 An Australian corporate tax entity can pass the benefit of having received a franked distribution on to its members**

If an Australian corporate tax entity receives a franked distribution, it can pass the benefit of having received a franking credit on the distribution to its own members by franking distributions to those members.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **200-45 Special rules for franking by some entities**

There are special rules to deal with:

- (a) venture capital franking by a pooled development fund; and
- (b) franking by life insurance companies; and
- (c) franking by exempting companies and former exempting companies; and
- (d) franking by co-operative companies; and
- (e) franking by companies that are NZ residents or members of the same wholly-owned group as one or more companies that are NZ residents.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 201—Objects and application of Part 3-6

### Table of sections

201-1	Objects
201-5	Application of this Part

### 201-1 Objects

- (1) The main object of this Part is to allow certain \*corporate tax entities to pass to their \*members the benefit of having paid income tax on the profits underlying certain \*distributions.
- (2) The other objects of this Part are to ensure that:
  - (a) the imputation system is not used to give the benefit of income tax paid by a \*corporate tax entity to \*members who do not have a sufficient economic interest in the entity; and
  - (b) the imputation system is not used to prefer some members over others when passing on the benefits of having paid income tax; and
  - (c) the \*membership of a corporate tax entity is not manipulated to create either of the outcomes mentioned in paragraphs (a) and (b).

### 201-5 Application of this Part

Subject to the rules on the application of this Part set out in the *Income Tax (Transitional Provisions) Act 1997*, this Part applies to events that occur on or after 1 July 2002.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 202—Franking a distribution

### Table of Subdivisions

202-A	Franking a distribution
202-B	Who can frank a distribution?
202-C	Which distributions can be franked?
202-D	Amount of the franking credit on a distribution
202-E	Distribution statements

### Subdivision 202-A—Franking a distribution

#### Guide to Subdivision 202-A

##### 202-1 What this Subdivision is about

An entity can only frank a distribution if certain conditions are met. These conditions are set out in this Subdivision.

#### Table of sections

<b>Operative provisions</b>	
202-5	Franking a distribution

#### Operative provisions

##### 202-5 Franking a distribution

An entity *franks* a \*distribution if:

- (a) the entity is a \*franking entity that satisfies the \*residency requirement when the distribution is made; and
- (b) the distribution is a \*frankable distribution; and
- (c) the entity allocates a \*franking credit to the distribution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 202-10

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Note 1: Division 205 deals with a corporate tax entity's franking account and sets out when credits, known as franking credits, and debits, known as franking debits, arise in that account.

Note 2: The mechanism by which an entity allocates a franking credit to a distribution (for example, whether it is done by resolution or some other means) is determined by the entity.

**Subdivision 202-B—Who can frank a distribution?**

**Guide to Subdivision 202-B**

**202-10 What this Subdivision is about**

Generally, a corporate tax entity that is an Australian resident at the time a distribution is made, can frank the distribution.

There are some exceptions.

**Table of sections**

**Operative provisions**

- 202-15 Franking entities
- 202-20 Residency requirement when making a distribution

**Operative provisions**

**202-15 Franking entities**

An entity is a *franking entity* at a particular time if:

- (a) it is a \*corporate tax entity at that time; and
- (b) it is not a \*life insurance company that is a \*mutual insurance company at that time; and
- (c) in a case where the entity is a company that is a trustee of a trust—it is not acting in its capacity as trustee of the trust at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



## 202-20 Residency requirement when making a distribution

An entity satisfies the *residency requirement* when making a \*distribution if:

- (a) in the case of a company—the company is an Australian resident at that time; and
- (b) in the case of a \*corporate limited partnership—the corporate limited partnership is an Australian resident at that time; and
- (c) in the case of a \*corporate unit trust—the corporate unit trust is a \*resident unit trust for the income year in which that time occurs; and
- (d) in the case of a \*public trading trust—the public trading trust is a resident unit trust for the income year in which that time occurs.

## Subdivision 202-C—Which distributions can be franked?

### Guide to Subdivision 202-C

#### 202-25 What this Subdivision is about

Generally, distributions that are made out of realised profits can be franked.

Those distributions that are not frankable are identified.

#### Table of sections

202-30 Frankable distributions

##### Operative provisions

202-35 Object

202-40 Frankable distributions

202-45 Unfrankable distributions

202-47 Distributions of certain ADI profits following restructure

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 202-30 Frankable distributions

Distributions and non-share dividends are frankable unless it is specified that they are unfrankable.

### Operative provisions

#### 202-35 Object

The object of this Subdivision is to ensure that only distributions equivalent to realised taxed profits can be franked.

#### 202-40 Frankable distributions

- (1) A \*distribution is a *frankable distribution*, to the extent that it is not unfrankable under section 202-45.
- (2) A \*non-share dividend is a *frankable distribution*, to the extent that it is not unfrankable under section 202-45.

#### 202-45 Unfrankable distributions

The following are *unfrankable*:

- (b) a distribution to which paragraph 24J(2)(a) of the *Income Tax Assessment Act 1936* applies that is taken under section 24J of the *Income Tax Assessment Act 1936* to be \*derived from sources in a prescribed Territory, as defined in subsection 24B(1) of the *Income Tax Assessment Act 1936* (distributions by certain \*corporate tax entities from sources in Norfolk Island);
- (c) where the purchase price on the buy-back of a \*share by a \*company from one of its \*members is taken to be a dividend under section 159GZZZP of that Act—so much of that purchase price as exceeds what would be the market value (as normally understood) of the share at the time of the buy-back if the buy-back did not take place and were never proposed to take place;
- (d) a distribution in respect of a \*non-equity share;
- (e) a distribution that is sourced, directly or indirectly, from a company's \*share capital account;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (f) an amount that is taken to be an unfrankable distribution under section 215-10 or 215-15;
- (g) an amount that is taken to be a dividend for any purpose under any of the following provisions:
  - (i) unless subsection 109RB(6) or 109RC(2) applies in relation to the amount—Division 7A of Part III of that Act (distributions to entities connected with a \*private company);
  - (iii) section 109 of that Act (excessive payments to shareholders, directors and associates);
  - (iv) section 47A of that Act (distribution benefits—CFCs);
- (h) an amount that is taken to be an unfranked dividend for any purpose:
  - (i) under section 45 of that Act (streaming bonus shares and unfranked dividends);
  - (ii) because of a determination of the Commissioner under section 45C of that Act (streaming dividends and capital benefits);
- (i) a \*demerger dividend;
- (j) a distribution that section 152-125 or 220-105 says is unfrankable.

### **202-47 Distributions of certain ADI profits following restructure**

- (1) This section applies to an amount paid by a body corporate if:
  - (a) the body corporate is a non-operating holding company within the meaning of the *Financial Sector (Business Transfer and Group Restructure) Act 1999*; and
  - (b) a restructure instrument under Part 4A of that Act is in force in relation to the body; and
  - (c) because of the restructure to which the instrument relates, an \*ADI becomes a subsidiary (within the meaning of that Act) of the body; and
  - (d) the amount is sourced, directly or indirectly, from the profits of the ADI before the restructure instrument came into force; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 202-50

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- (e) the amount would have been a \*frankable distribution if it had been distributed by the ADI before the restructure instrument came into force.
- (2) The amount:
  - (a) is taken to be a *dividend* paid by the body, for the purposes of this Act (and so is a \*distribution by the body); and
  - (b) is not taken to be an \*unfrankable distribution by the body just because of paragraph 202-45(e) (which makes distributions from \*share capital accounts unfrankable).

**Subdivision 202-D—Amount of the franking credit on a distribution**

**Guide to Subdivision 202-D**

**202-50 What this Subdivision is about**

The amount of the franking credit on a distribution is that stated in the distribution statement, unless the amount stated exceeds the maximum franking credit for the distribution.

In that case, the amount of the franking credit on the distribution is taken to be the maximum franking credit for the distribution, worked out under this Subdivision.

**Table of sections**

202-55 What is the maximum franking credit for a frankable distribution?

**Operative provisions**

202-60 Amount of the franking credit on a distribution

202-65 Where the franking credit stated in the distribution statement exceeds the maximum franking credit for the distribution

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**202-55 What is the maximum franking credit for a frankable distribution?**

The maximum franking credit for a distribution is equivalent to the maximum amount of income tax that the entity making the distribution could have paid, at the current corporate tax rate, on the profits underlying the distribution.

**Operative provisions**

**202-60 Amount of the franking credit on a distribution**

- (1) The amount of the \*franking credit on a \*distribution is that stated in the \*distribution statement for the distribution, unless that amount exceeds the \*maximum franking credit for the distribution.
- (2) The *maximum franking credit* for a \*distribution is worked out using the formula:

$$\text{Amount of the *frankable distribution} \times \left( \frac{\text{*Corporate tax rate}}{100\% - \text{*Corporate tax rate}} \right)$$

**202-65 Where the franking credit stated in the distribution statement exceeds the maximum franking credit for the distribution**

If the amount of a \*franking credit stated in a \*distribution statement for a \*distribution exceeds the \*maximum franking credit for the distribution, the amount of the franking credit on the distribution is taken to be the amount of the maximum franking credit for the distribution, and not the amount stated in the distribution statement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 202-E—Distribution statements

### Guide to Subdivision 202-E

#### 202-70 What this Subdivision is about

An entity that makes a frankable distribution must give the recipient a statement setting out details of the distribution.

#### Table of sections

##### Operative provisions

202-75	Obligation to give a distribution statement
202-80	Distribution statement
202-85	Changing the franking credit on a distribution by amending the distribution statement

#### Operative provisions

##### 202-75 Obligation to give a distribution statement

- (1) An entity that makes a \*frankable distribution must give the recipient a \*distribution statement.
- (2) The statement must be given on or before the day on which the \*distribution is made, unless the entity is allowed to give the statement at a later time under subsection (3).
- (3) If the entity is a \*private company for the income year in which the \*distribution is made, the statement must be given:
  - (a) before the end of 4 months after the end of the income year in which the distribution is made; or
  - (b) before the time determined by the Commissioner under subsection (5);whichever is later.
- (4) However, the entity is not allowed to give the statement at a later time under subsection (3) if the statement indicates that a \*franking

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

credit has been allocated to the \*distribution and the franking credit would, either alone or when added to other franking credits allocated to other distributions made by the entity during the income year, result in the entity having a liability for \*franking deficit tax, or an increased liability for franking deficit tax, at the end of the income year.

Note: The combined effect of subsections (3) and (4) is that a private company can retrospectively frank a distribution, but not so as to create or increase a liability for franking deficit tax.

- (5) The Commissioner may determine in writing that a \*private company may give the statement before a time specified in the determination.

### **202-80 Distribution statement**

- (1) A *distribution statement* is a statement made in accordance with this section.
- (2) The statement must be in the \*approved form.
- (3) The statement must:
- (a) identify the entity making the distribution; and
  - (b) state the date on which the distribution is made; and
  - (c) state the amount of the distribution; and
  - (d) state that there is a \*franking credit of an amount specified on the distribution; and
  - (e) state the \*franking percentage for the distribution; and
  - (f) state the amount of any \*withholding tax that has been deducted from the distribution by the entity; and
  - (g) include any other information required by the \*approved form that is relevant to imputation generally or the distribution.

Note: Under the *Taxation Administration Act 1953* it is an offence to fail to give a statement required under this Subdivision, or make a misleading statement in connection with a distribution (whether franked or not).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **202-85 Changing the franking credit on a distribution by amending the distribution statement**

#### *Changing the franking credit on a specified distribution*

- (1) The Commissioner may, on application by an entity, determine in writing that the entity may change the \*franking credit on a specified \*distribution by amending the \*distribution statement for the distribution.
- (2) In deciding whether to make a determination under subsection (1), the Commissioner must have regard to:
  - (a) whether the date for lodgment of an \*income tax return by the recipient of the specified \*distribution for the income year in which the distribution was made has passed; and
  - (b) whether, if the \*franking credit on the specified distribution were changed in accordance with the entity's application, there would be any difference in the \*withholding tax liability of the recipient; and
  - (c) whether amending the distribution statement as requested by the entity would lead to a breach of the \*benchmark rule, or any of the rules in Division 204 (the anti-streaming rules); and
  - (d) whether amending the distribution statement as requested by the entity would lead to a new \*benchmark franking percentage being set for the entity for the \*franking period in which the distribution was made; and
  - (e) any other matters that the Commissioner considers relevant.

#### *Changing the franking credits on a specified class of distributions*

- (3) The Commissioner may, on application by an entity, determine in writing that the entity may change the \*franking credits on \*distributions of a specified class by amending the \*distribution statements for the distributions.
- (4) In deciding whether to make a determination under subsection (3), the Commissioner must have regard to:
  - (a) the number of recipients to whom an amended \*distribution statement would be made; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) whether the date for lodgment of \*income tax returns by recipients of \*distributions of the specified class for the income year in which the distributions were made has passed; and
- (c) whether, if the \*franking credit on the specified distributions were changed in accordance with the entity's application, there would be any difference in the \*withholding tax liability of the recipients; and
- (d) whether amending the distribution statements as requested by the entity would lead to a breach of the \*benchmark rule, or any of the rules in Division 204 (the anti-streaming rules); and
- (e) whether amending the distribution statements as requested by the entity would lead to a new \*benchmark franking percentage being set for the entity for the \*franking period in which the distributions were made; and
- (f) any other matters that the Commissioner considers relevant.

*Applying to the Commissioner*

- (5) The entity must:
  - (a) make its application under this section in writing; and
  - (b) include in the application all information relevant to the matters to which the Commissioner must have regard under:
    - (i) subsection (2), if the application relates to a \*distribution; or
    - (ii) subsection (4), if the application relates to a class of distributions.

*Review*

- (6) If the entity or a \*member of the entity is dissatisfied with a determination under subsection (3), the entity or member may object to it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 203—Benchmark rule

### Guide to Division 203

#### 203-1 What this Division is about

Distributions within a particular period must all be franked to the same extent.

#### Table of sections

203-5	Benchmark rule
203-10	Benchmark franking percentage

#### Operative provisions

203-15	Object
203-20	Application of the benchmark rule
203-25	Benchmark rule
203-30	Setting a benchmark franking percentage
203-35	Franking percentage
203-40	Franking periods—where the entity is not a private company
203-45	Franking period—private companies
203-50	Consequences of breaching the benchmark rule
203-55	Commissioner's powers to permit a departure from the benchmark rule

#### 203-5 Benchmark rule

- (1) A corporate tax entity must frank all frankable distributions made within a particular period at a franking percentage set as the benchmark for that period. This is the benchmark rule.
- (2) The benchmark rule does not apply to some corporate tax entities. Those entities are identified in section 203-20.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**203-10 Benchmark franking percentage**

- (1) The benchmark franking percentage for an entity is set by reference to the franking percentage for the first frankable distribution made by the entity during the relevant period.
- (2) An entity has a benchmark franking percentage, even if it is not subject to the benchmark rule.

**Operative provisions****203-15 Object**

The object of this Subdivision is to ensure that one \*member of a \*corporate tax entity is not preferred over another when the entity \*franks \*distributions.

**203-20 Application of the benchmark rule**

- (1) The \*benchmark rule does not apply to a company in a \*franking period if either:
  - (a) the company satisfies each of the following criteria:
    - (i) at all times during the franking period, the company is a \*listed public company;
    - (ii) the company cannot make a \*distribution on one \*membership interest during the franking period without making a distribution under the same resolution on all other membership interests;
    - (iii) the company cannot \*frank a distribution made on one membership interest during the franking period without franking distributions made on all other membership interests under the same resolution with a \*franking credit worked out using the same \*franking percentage; or
  - (b) the entity is a \*100% subsidiary of a company that satisfies the criteria set out in paragraph (a).
- (2) The following are examples of cases in which a company satisfies the criteria set out in paragraph (1)(a):

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 203-25

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- (a) the company is a \*listed public company with a single \*class of \*membership interest at all times during the relevant \*franking period;
- (b) the company is a listed public company that, under its constituent documents, must not:
  - (i) make a \*distribution on one membership interest during the relevant franking period without making a distribution under the same resolution on all other membership interests; or
  - (ii) \*frank a distribution made on one membership interest during the relevant franking period without franking distributions made on all other membership interests under the same resolution with a \*franking credit worked out using the same \*franking percentage;
- (c) the company is a listed public company with more than one class of membership interest, but the rights in relation to distributions and the franking of distributions are the same for each class of membership interest.

This is not an exhaustive list.

- (3) For the purposes of subsection (1), ignore \*membership interests that do not carry a right to receive \*distributions (other than distributions on the winding up of the company).

### 203-25 Benchmark rule

An entity must not make a \*frankable distribution whose \*franking percentage differs from the entity's \*benchmark franking percentage for the \*franking period in which the distribution is made. This is the **benchmark rule**.

Note: If a corporate tax entity franks a distribution in breach of this rule, the distribution will still be a franked distribution, although consequences will flow under section 203-50.

### 203-30 Setting a benchmark franking percentage

The **benchmark franking percentage** for an entity for a \*franking period is the same as the \*franking percentage for the first \*frankable distribution made by the entity within the period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: If no frankable distribution is made during the period, there is no benchmark franking percentage for the period.

### **203-35 Franking percentage**

- (1) Subject to subsection (2), the *franking percentage* for a \*frankable distribution is worked out using the formula:

$$\frac{\text{*Franking credit allocated to the *frankable distribution}}{\text{*Maximum franking credit for the distribution}} \times 100$$

- (2) If the \*franking percentage for a \*frankable distribution would exceed 100% if it were worked out under subsection (1), it is taken to be 100%.

### **203-40 Franking periods—where the entity is not a private company**

- (1) Use this section to work out the franking periods for an entity in an income year where the entity is not a \*private company for the income year.
- (2) If the entity's income year is a period of 12 months, each of the following is a *franking period* for the entity in that year:
- (a) the period of 6 months beginning at the start of the entity's income year;
  - (b) the remainder of the income year.
- (3) If the entity's income year is a period of 6 months or less, the *franking period* for the entity in that year is the same as the income year.
- (4) If the entity's income year is a period of more than 6 months and less than 12 months, each of the following is a *franking period* for the entity in that year:
- (a) the period of 6 months beginning at the start of the entity's income year;
  - (b) the remainder of the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 203-45

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- (5) If the entity's income year is a period of more than 12 months, each of the following is a *franking period* for the entity in that year:
- (a) the period of 6 months beginning at the start of the entity's income year (the *first franking period*);
  - (b) the period of 6 months beginning immediately after the end of the first franking period;
  - (c) the remainder of the income year.

**203-45 Franking period—private companies**

The *franking period* for an entity that is a \*private company for an income year is the same as the income year.

**203-50 Consequences of breaching the benchmark rule**

- (1) If an entity makes a \*frankable distribution in breach of the \*benchmark rule:
- (a) the entity is liable to pay over-franking tax imposed by the *New Business Tax System (Over-franking Tax) Act 2002* if the \*franking percentage for the \*distribution exceeds the entity's \*benchmark franking percentage for the \*franking period in which the distribution is made; and
  - (b) a \*franking debit arises in the entity's \*franking account if the franking percentage for the distribution is less than the entity's benchmark franking percentage for the franking period in which the distribution is made.
- (2) Use the following formula to work out:
- (a) in a case dealt with under paragraph (1)(a)—the amount of the \*over-franking tax; and
  - (b) in a case dealt with under paragraph (1)(b)—the amount of the \*franking debit:

$$\text{Franking \% differential} \times \text{Amount of the *frankable distribution} \times \frac{\text{*Corporate tax rate}}{100\% - \text{*Corporate tax rate}}$$

where:

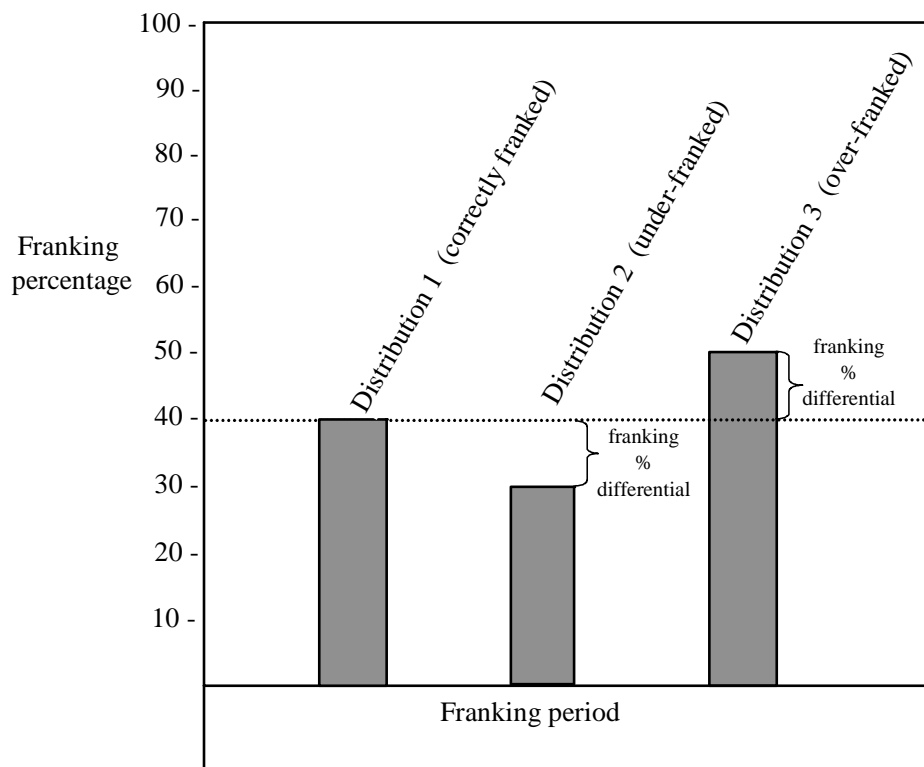
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**franking % differential** is the difference between:

- (a) the \*franking percentage for the \*frankable distribution; and
- (b) either:
  - (i) if subparagraph (ii) does not apply—the entity’s \*benchmark franking percentage for the \*franking period in which the \*distribution is made; or
  - (ii) if the Commissioner in the exercise of the Commissioner’s powers under subsection 203-55(1), permits the entity to frank the distribution at a different franking percentage—that percentage.

Example: An entity makes 3 successive frankable distributions in a franking period. Each of those distributions is represented in the following diagram. The franking percentage for the first distribution is 40%, and so the entity’s benchmark franking percentage for the period is 40%.



\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 203-55

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Note: Distribution 2 is under-franked to the extent of the franking % differential. This is used to work out the amount of the under-franking debit under subsection (2).

Distribution 3 is over-franked to the extent of the franking % differential. This is used to work out the amount of over-franking tax on the distribution under the *New Business Tax System (Over-franking Tax) Act 2002*. The amount of the tax is calculated using the same formula as that set out in subsection (2).

- (3) A \*franking debit arising under paragraph (1)(b) is in addition to any franking debit that would otherwise arise for the entity because of the \*distribution.
- (4) The \*franking debit arises on the day on which the \*frankable distribution is made.

### 203-55 Commissioner's powers to permit a departure from the benchmark rule

#### *Powers of the Commissioner*

- (1) The Commissioner may, on application by an entity, make a determination in writing permitting the entity to \*frank a \*distribution at a \*franking percentage that differs from the entity's \*benchmark franking percentage for the \*franking period in which the distribution is made.
- (2) Because the \*benchmark rule is an integral part of the imputation system, the Commissioner's powers under this section may only be exercised in extraordinary circumstances.

#### *Matters to which the Commissioner must have regard in exercising the power*

- (3) In deciding whether there are extraordinary circumstances justifying the exercise of the Commissioner's power to make a determination under subsection (1), the Commissioner must have regard to:
  - (a) the entity's reasons for departing, or proposing to depart, from the \*benchmark rule; and
  - (b) the extent of the departure, or proposed departure, from the benchmark rule; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (c) if the circumstances that give rise to the entity's application are within the entity's control, the extent to which the entity has sought the exercise of the Commissioner's powers under this section in the past; and
- (d) whether a \*member of the entity has been or will be disadvantaged as a result of the departure, or proposed departure, from the benchmark rule; and
- (e) whether a \*member of the entity will receive greater \*imputation benefits than another member of the entity because a distribution \*franked at a \*franking percentage that differs from the \*benchmark franking percentage for the \*franking period is made to one of them; and
- (f) any other matters that the Commissioner considers relevant.

*When may the powers be exercised?*

- (4) The Commissioner may make a determination under subsection (1) either before or after the \*frankable distribution is made.

*Consequence of the Commissioner exercising the power under this section*

- (5) An allocation of a \*franking credit at a percentage specified by the Commissioner in a determination under subsection (1) is taken to comply with the \*benchmark rule.

*Applying to the Commissioner*

- (6) The entity must:
  - (a) make its application under this section in writing; and
  - (b) include in the application all information relevant to the matters to which the Commissioner must have regard under subsection (3).

*Review*

- (7) If the entity or a \*member of the entity is dissatisfied with the determination under subsection (1), the entity or member may object to it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 204—Anti-streaming rules

### Table of Subdivisions

204-A	Objects and application
204-B	Linked distributions
204-C	Substituting tax-exempt bonus share for franked distributions
204-D	Streaming distributions
204-E	Disclosure requirements

### Subdivision 204-A—Objects and application

#### Table of sections

204-1	Objects
204-5	Application to non-share dividends

#### 204-1 Objects

The objects of this Division are to ensure that:

- (a) an entity and its \*members cannot avoid the effect of the \*benchmark rule by exploiting the \*benchmark franking percentage of another entity; and
- (b) an entity does not stream \*franked distributions and \*tax-exempt bonus shares; and
- (c) an entity does not stream \*distributions to members of the entity who \*derive a \*greater benefit from franking credits than other members.

#### 204-5 Application

- (1) The rules in this Division will apply to an entity even if it is not subject to the benchmark rule.
- (2) This Division applies to non-share dividends in the same way as it applies to distributions.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 204-B—Linked distributions

### Guide to Subdivision 204-B

#### 204-10 What this Subdivision is about

This Subdivision prevents the exploitation of a corporate tax entity's benchmark franking percentage by another corporate tax entity, or that other entity's members, by imposing a franking debit where there is exploitation.

#### Table of sections

##### Operative provisions

204-15 Linked distributions

### Operative provisions

#### 204-15 Linked distributions

*Franking debit arises where a distribution by one entity is substituted for a distribution by another*

- (1) This section gives rise to a \*franking debit if:
- (a) the exercise of a choice or selection by a \*member of an entity (the **first entity**); or
  - (b) the member's failure to exercise a choice or selection; has the effect of determining (to any extent) that another entity makes to one of its members a \*distribution (the **linked distribution**) that is:
    - (c) in substitution (in whole or in part) for a distribution by the first entity to that member or any other member of the first entity; and
    - (d) unfranked, or \*franked at a \*franking percentage that differs from the first entity's \*benchmark franking percentage for the \*franking period in which the linked distribution is made.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 204-15

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Note: Division 205 deals with a corporate tax entity's franking account and sets out when a debit, known as a franking debit, arises in that account.

*Franking account in which the debit arises*

- (2) The debit arises in the \*franking account of the entity with the higher \*benchmark franking percentage for the \*franking period in which the linked distribution is made.

*Amount of the debit*

- (3) The debit is equal to the one that would arise in that \*franking account if the entity had made a \*franked distribution, equal to the linked distribution, with a \*franking percentage equal to the \*benchmark franking percentage for that entity.

*When does the debit arise*

- (4) The debit arises on the day on which the linked distribution is made.

*Debit is in addition to any other franking debit arising because of the linked distribution*

- (5) The debit is in addition to any other debit that arises in an entity's \*franking account because of the linked distribution.

*Where an entity has no benchmark franking percentage*

- (6) If an entity has no \*benchmark franking percentage for the \*franking period in which the linked distribution is made, this section applies as if:
- (a) in a case where the linked distribution has a \*franking percentage of less than 50%—the entity had a benchmark franking percentage of 100% for that period; and
  - (b) in a case where the linked distribution has a franking percentage equal to or greater than 50%—the entity had a benchmark franking percentage of 0% for that period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 204-C—Substituting tax-exempt bonus share for franked distributions**

### **Guide to Subdivision 204-C**

#### **204-20 What this Subdivision is about**

This Subdivision prevents the substitution of a tax-exempt bonus share for a franked distribution by imposing a franking debit on the issue of the share as if it were a franked distribution.

#### **Table of sections**

##### **Operative provisions**

204-25 Substituting tax-exempt bonus shares for franked distributions

#### **Operative provisions**

##### **204-25 Substituting tax-exempt bonus shares for franked distributions**

*Franking debit arises if tax-exempt bonus shares are issued in substitution for a franked distribution*

- (1) This section gives rise to a \*franking debit in an entity's \*franking account if:
  - (a) the exercise of a choice or selection by a \*member of the entity; or
  - (b) the member's failure to exercise a choice or selection;has the effect of determining (to any extent) that the entity issues one or more \*tax-exempt bonus shares, to that member or another member of the entity, in substitution (in whole or in part) for one or more \*franked distributions by the entity to that member or another member.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Amount of the debit*

- (2) The debit is equal to the one that would arise in the entity's \*franking account if the entity made a \*distribution, equal to the \*franked distributions referred to in subsection (1), franked at the entity's \*benchmark franking percentage for the \*franking period in which the shares are issued.

*When does the debit arise*

- (3) The debit arises on the day when the shares are issued.

*Meaning of tax-exempt bonus share*

- (4) For a company whose \*shares have no par value, **tax-exempt bonus share** means a share issued by the company in the circumstances mentioned in subsection 6BA(6) of the *Income Tax Assessment Act 1936*.
- (5) For any other company, **tax-exempt bonus share** means a \*share issued by the company to a \*shareholder in the company where:
- (a) the amount or value of the share is debited against an amount standing to the credit of a share premium account of the company; and
  - (b) no part of the paid-up value of the share is a dividend; and
  - (c) the share is issued:
    - (i) as a bonus share; or
    - (ii) in the circumstances mentioned in subsection 6BA(1) of the *Income Tax Assessment Act 1936*, as in force immediately before 1 July 1998.

*Where a company has no benchmark franking percentage for the franking period*

- (6) If a company has no \*benchmark franking percentage for the \*franking period in which the \*tax-exempt bonus share is issued, this section applies as if the entity had a benchmark franking percentage of 100% for that period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 204-D—Streaming distributions

### Guide to Subdivision 204-D

#### 204-26 What this Subdivision is about

This Subdivision prevents the streaming of imputation benefits to one member of a corporate tax entity in preference to another by either imposing a franking debit or denying an imputation benefit where there is streaming.

#### Table of sections

##### Operative provisions

204-30	Streaming distributions
204-35	When does a franking debit arise if the Commissioner makes a determination under paragraph 204-30(3)(a)
204-40	Amount of the franking debit
204-41	Amount of the exempting debit
204-45	Effect of a determination about distributions to favoured members
204-50	Assessment and notice of determination
204-55	Right to review where a determination made

#### Operative provisions

##### 204-30 Streaming distributions

*Commissioner's power to make a determination when distributions or distributions and other benefits are streamed*

- (1) This section empowers the Commissioner to make determinations if an entity streams one or more \*distributions (or one or more distributions and the giving of other benefits), whether in a single \*franking period or in a number of franking periods, in such a way that:
- (a) an \*imputation benefit is, or apart from this section would be, received by a \*member of the entity as a result of the distribution or distributions; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 204-30

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- (b) the member would \*derive a \*greater benefit from franking credits than another member of the entity; and
- (c) the other member of the entity will receive lesser imputation benefits, or will not receive any imputation benefits, whether or not the other member receives other benefits.

The member that derives the greater benefit from franking credits is the *favoured member*. The member that receives the lesser imputation benefits is the *disadvantaged member*.

*Examples of other benefits*

- (2) These are examples of the giving of other benefits:
  - (a) issuing bonus \*shares;
  - (b) returning \*paid-up share capital;
  - (c) forgiving a debt;
  - (d) the entity or another entity making a payment of any kind, or giving any property, to a \*member or to another person on a member's behalf.

*Nature of the determination that the Commissioner may make*

- (3) The Commissioner may make one or more of these determinations:
  - (a) that a specified \*franking debit arises in the \*franking account of the entity, for a specified \*distribution or other benefit to a disadvantaged member;
  - (b) that a specified \*exempting debit arises in the \*exempting account of the entity, for a specified \*distribution or other benefit to a disadvantaged member;
  - (c) that no \*imputation benefit is to arise in respect of a distribution that is made to a favoured member and specified in the determination.

A determination must be in writing.

- (4) The Commissioner may:
  - (a) specify the \*franking debit under paragraph (3)(a) by specifying the \*franking percentage to be used in working out the amount of the debit; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) specify the \*exempting debit under paragraph (3)(b) by specifying the \*exempting percentage to be used in working out the amount of the debit.
- (5) The Commissioner may specify the \*distribution under paragraph (3)(a), (b) or (c) by specifying:
  - (a) the date on which the distribution was made, or the period during which the distribution was made; and
  - (b) the member, or class of members, to whom the distribution was made.

*What is an imputation benefit?*

- (6) A \*member of an entity receives an **imputation benefit** as a result of a distribution if:
  - (a) the member is entitled to a \*tax offset under Division 207 as a result of the distribution; or
  - (b) an amount would be included in the member's assessable income as a result of the distribution because of the operation of section 207-35; or
  - (c) a \*franking credit would arise in the \*franking account of the member as a result of the distribution; or
  - (d) an \*exempting credit would arise in the \*exempting account of the member as a result of the distribution; or
  - (e) the member would not be liable to pay \*withholding tax on the distribution, because of the operation of paragraph 128B(3)(ga) of the *Income Tax Assessment Act 1936*; or
  - (f) the member is entitled to a \*tax offset under section 210-170 as a result of the distribution.

*When does a favoured member derive greater benefit from franking credits?*

- (7) The following subsection lists some of the cases in which a \*member of an entity \*derives a **greater benefit from franking credits** than another member of the entity. It is not an exhaustive list.
- (8) A \*member of an entity \*derives a **greater benefit from franking credits** than another member of the entity if any of the following

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

circumstances exist in relation to the other member in the income year in which the distribution giving rise to the benefit is made, and not in relation to the first member:

- (a) the other member is a foreign resident;
  - (b) the other member would not be entitled to any \*tax offset under Division 207 because of the distribution;
  - (c) the amount of income tax that, apart from this Division, would be payable by the other member because of the distribution is less than the tax offset to which the other member would be entitled;
  - (d) the other member is a \*corporate tax entity at the time the distribution is made, but no \*franking credit arises for the entity as a result of the distribution;
  - (e) the other member is a \*corporate tax entity at the time the distribution is made, but cannot use \*franking credits received on the distribution to \*frank distributions to its own members because:
    - (i) it is not a \*franking entity; or
    - (ii) it is unable to make \*frankable distributions;
  - (f) the other member is an \*exempting entity.
- (9) A \*member of an entity \*derives a ***greater benefit from franking credits*** than another member of the entity if any of the following circumstances exist in relation to the first member in the income year in which the \*distribution giving rise to the benefit is made, and not in relation to the other member:
- (a) a \*franking credit arises for the first member under item 5, 6 or 7 of the table in section 208-130 (distributions by \*exempting entities to exempting entities);
  - (b) a franking credit or \*exempting credit arises for the first member because the distribution is \*franked with an exempting credit;
  - (c) the first member is entitled to a \*tax offset because:
    - (i) the distribution is a \*franked distribution made by an exempting entity; or
    - (ii) the distribution is \*franked with an exempting credit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (10) A \*member of an entity \*derives a ***greater benefit from franking credits*** than another member if the first member is entitled to a \*tax offset under section 210-170 as a result of the \*distribution, and the other member is not.

**204-35 When does a franking debit arise if the Commissioner makes a determination under paragraph 204-30(3)(a)**

- (1) If the Commissioner makes a determination giving rise to a \*franking debit in the \*franking account of an entity under paragraph 204-30(3)(a), the debit arises in the franking account of the entity on the day on which the notice of determination is given to the entity in accordance with section 204-50.
- (2) If the Commissioner makes a determination giving rise to an \*exempting debit in the \*exempting account of an entity under paragraph 204-30(3)(b), the debit arises in the exempting account of the entity on the day on which the notice of determination is given to the entity in accordance with section 204-50.

**204-40 Amount of the franking debit**

- (1) The amount of the \*franking debit arising because of a determination by the Commissioner under paragraph 204-30(3)(a) must not exceed:
- (a) if the specified \*distribution has been \*franked—the difference between the amount of the \*franking credit on the distribution and an amount worked out by multiplying the amount of the distribution by the highest \*franking percentage at which a distribution to a favoured member is franked; or
  - (b) if the specified distribution, although \*frankable, has not been franked—an amount worked out by multiplying the amount of the distribution by the highest franking percentage at which a distribution to a favoured member is franked; or
  - (c) if the specified distribution is \*unfrankable—an amount worked out by multiplying the amount of the distribution by the highest franking percentage at which a distribution to a favoured member is franked; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 204-41

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- (d) if the specified benefit is the issue of bonus shares from a share premium account—an amount worked out by multiplying the amount debited to the share premium account in respect of the bonus shares by the highest franking percentage at which a distribution to a favoured member is franked; or
  - (e) if some other benefit is specified—an amount worked out by multiplying the value of the benefit by the highest franking percentage at which a distribution to a favoured member is franked.
- (2) In specifying the \*franking debit, the Commissioner must have regard to:
- (a) any \*franking debit already arising in the \*franking account of the entity under paragraph 203-50(1)(b) because the entity franked the specified \*distribution in breach of the \*benchmark rule; and
  - (b) any franking debit already arising in the franking account of the entity, because of the specified distribution or benefit, under section 204-15 (about linked distributions) or section 204-25 (about substituting \*tax-exempt bonus shares for \*franked distributions).

### 204-41 Amount of the exempting debit

The amount of the \*exempting debit arising because of a determination by the Commissioner under paragraph 204-30(3)(b) must not exceed:

- (a) if the specified \*distribution has been \*franked with an exempting credit—the difference between the amount of the \*exempting credit on the distribution and an amount worked out by multiplying the amount of the distribution by the highest \*exempting percentage at which a distribution to a favoured member is franked; or
- (b) if the specified distribution, although \*frankable, has not been franked with an exempting credit—an amount worked out by multiplying the amount of the distribution by the highest exempting percentage at which a distribution to a favoured member is franked; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) if the specified distribution is \*unfrankable—an amount worked out by multiplying the amount of the distribution by the highest exempting percentage at which a distribution to a favoured member is franked; or
- (d) if the specified benefit is the issue of bonus shares from a share premium account—an amount worked out by multiplying the amount debited to the share premium account in respect of the bonus shares by the highest exempting percentage at which a distribution to a favoured member is franked; or
- (e) if some other benefit is specified—an amount worked out by multiplying the value of the benefit by the highest exempting percentage at which a distribution to a favoured member is franked.

#### **204-45 Effect of a determination about distributions to favoured members**

If the Commissioner makes a determination denying an \*imputation benefit under paragraph 204-30(3)(c) (about distributions to favoured members), the determination has effect according to its terms.

#### **204-50 Assessment and notice of determination**

- (1) A determination under subsection 204-30(3) does not form part of an assessment.
- (2) The Commissioner must give notice in writing of the determination:
  - (a) in a case where the Commissioner determines that a \*franking debit is to arise in the \*franking account of an entity under paragraph 204-30(3)(a)—to the entity; and
  - (b) in a case where the Commissioner determines that an \*exempting debit is to arise in the \*exempting account of an entity under paragraph 204-30(3)(b)—to the entity; and
  - (c) in a case where a favoured member is denied an \*imputation benefit under paragraph 204-30(3)(c)—to the favoured member.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 204-55

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- (3) If the Commissioner makes a determination denying an \*imputation benefit under paragraph 204-30(3)(c) on a \*distribution made by a \*listed public company, the Commissioner is taken to have served notice in writing of the determination on the favoured member if the Commissioner causes a notice to be published in a daily newspaper that circulates generally in each State, the Australian Capital Territory and the Northern Territory. The notice is taken to have been served on the day on which the publication takes place.
- (4) A notice under this section may be included in a notice of assessment.

**204-55 Right to review where a determination made**

If a taxpayer to whom a determination relates is dissatisfied with the determination, the taxpayer may object to it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

**Subdivision 204-E—Disclosure requirements**

**Guide to Subdivision 204-E**

**204-65 What this Subdivision is about**

This Subdivision requires an entity to notify the Commissioner where there is a significant difference in its benchmark franking percentage over time, so that the Commissioner can assess whether there is streaming.

**Table of sections**

**Operative provisions**

204-70	Application of this Subdivision
204-75	Notice to the Commissioner
204-80	Commissioner may require information where the Commissioner suspects streaming

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Operative provisions

### 204-70 Application of this Subdivision

This Subdivision does not apply to an entity to whom the benchmark rule does not apply.

Note: Section 203-20 identifies the entities to whom the benchmark rule does not apply.

### 204-75 Notice to the Commissioner

- (1) An entity must notify the Commissioner in writing if the \*benchmark franking percentage for the entity for a \*franking period (the *current franking period*) differs significantly from the benchmark franking percentage for the entity for the last franking period in which a \*frankable distribution was made (the *last relevant franking period*).
- (2) An entity's \*benchmark franking percentage for the current franking period *differs significantly* from its benchmark franking percentage for the last relevant franking period if it has increased or decreased by an amount that is greater than the amount worked out using the following formula:  
  
$$\begin{array}{l} \text{Number of *franking periods} \\ \text{starting immediately after} \\ \text{the last relevant franking period} \times 20 \text{ percentage points} \\ \text{and ending at the end of the} \\ \text{current franking period} \end{array}$$
- (3) The notice must also state:
  - (a) the \*benchmark franking percentage for the current franking period; and
  - (b) the benchmark franking percentage for the last relevant franking period.
- (4) The notice must be in the \*approved form and must be given to the Commissioner:
  - (a) if the entity is required to give the Commissioner a \*franking return for the income year in which the current franking period occurs—with that return; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 204-80

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- (b) otherwise—within one month after the end of the income year in which the current franking period occurs.

Note: See Subdivision 214-A for requirements to give the Commissioner franking returns.

**204-80 Commissioner may require information where the Commissioner suspects streaming**

- (1) If the \*benchmark franking percentage for an entity for a \*franking period (the *current franking period*) \*differs significantly from the benchmark franking percentage for the entity for the last franking period in which a \*frankable distribution was made (the *last relevant franking period*), the Commissioner may request the entity to give the Commissioner the following information:
  - (a) the entity's reasons for setting a benchmark franking percentage for the current franking period that differs significantly from the benchmark franking percentage for the last relevant franking period; and
  - (b) the \*franking percentages for all \*frankable distributions made in the current franking period and the last relevant franking period; and
  - (c) details of any other benefits given to the entity's \*members, either by the entity or an \*associate of the entity, during the period beginning at the beginning of the last relevant franking period and ending at the end of the current franking period; and
  - (d) whether any member of the entity has \*derived, or will derive, a \*greater benefit from franking credits than another member of the entity as a result of the variation in the benchmark franking percentage between the current franking period and the last relevant franking period; and
  - (e) any other information required by the \*approved form that is relevant in determining whether the entity is streaming \*distributions.
- (2) The entity must comply with the Commissioner's request.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



## **Division 205—Franking accounts, franking deficit tax liabilities and the related tax offset**

### **Guide to Division 205**

#### **205-1 What this Division is about**

This Division:

- creates a franking account for each entity that is, or has been, a corporate tax entity; and
- identifies when franking credits and debits arise in those accounts and the amount of those credits and debits; and
- identifies when there is a franking surplus or deficit in the account; and
- creates a liability to pay franking deficit tax if the account is in deficit at certain times; and
- creates a tax offset for that liability.

#### **Table of sections**

205-5 Franking accounts, franking deficit tax liabilities and the related tax offset

##### **Operative provisions**

205-10 Each entity that is or has been a corporate tax entity has a franking account

205-15 Franking credits

205-20 Paying a PAYG instalment or income tax

205-25 Residency requirement for an event giving rise to a franking credit or franking debit

205-30 Franking debits

205-35 Refund of income tax

205-40 Franking surplus and deficit

205-45 Franking deficit tax

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 205-5

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205-50 Deferring franking deficit

205-70 Tax offset arising from franking deficit tax liabilities

**205-5 Franking accounts, franking deficit tax liabilities and the related tax offset**

- (1) Each entity that is, or has ever been, a corporate tax entity has a franking account.
- (2) The payment of a PAYG instalment or income tax will generate a franking credit in that account. The amount of the credit is equal to the amount of tax paid. The receipt of a franked distribution by an entity from another corporate tax entity will also generate a franking credit. There are other circumstances in which a franking credit arises.
- (3) The receipt of a refund of income tax or the payment of a franked distribution by a corporate tax entity will generate a franking debit. There are, however, other cases where a franking debit arises. For example, a franking debit might arise under a determination by the Commissioner because distributions have been streamed.
- (4) An entity must be a franking entity at certain times and satisfy certain residency requirements before a franking credit or debit arises in its account.
- (5) Franking deficit tax is payable if the franking account of an entity is in deficit at the end of the entity's income year, or when the entity ceases to be a franking entity.
- (6) A tax offset is available to an entity that has incurred a liability to pay franking deficit tax.

**Operative provisions**

**205-10 Each entity that is or has been a corporate tax entity has a franking account**

There is a *franking account* for each entity that is, or has at any time been, a \*corporate tax entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: The balance in the franking account on 1 July 2002 will either be nil or, if the entity had a franking surplus or deficit immediately before 1 July 2002 under the imputation scheme existing at that time, an amount calculated under the *Income Tax (Transitional Provisions) Act 1997*.

### 205-15 Franking credits

- (1) The following table sets out when a credit arises in the \*franking account of an entity and the amount of the credit. The credit is called a *franking credit*.

<b>Credits in the franking account</b>			
<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
1	the entity *pays a PAYG instalment; and the entity satisfies the *residency requirement for the income year in relation to which the PAYG instalment is paid; and the entity is a *franking entity for the whole or part of the relevant *PAYG instalment period	that part of the payment that is attributable to the period during which the entity was a franking entity	on the day on which the payment is made
2	the entity *pays income tax; and the entity satisfies the *residency requirement for the income year for which the tax is paid; and the entity is a *franking entity for the whole or part of that income year	that part of the payment that is attributable to the period during which the entity was a franking entity	on the day on which the payment is made

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-6** The imputation system

**Division 205** Franking accounts, franking deficit tax liabilities and the related tax offset

Section 205-15

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<b>Credits in the franking account</b>			
<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
3	a *franked distribution is made to the entity; and the entity satisfies the *residency requirement for the income year in which the distribution is made; and the entity is a *franking entity when it receives the distribution; and the entity is entitled to a *tax offset because of the distribution under Division 207	the *franking credit on the distribution	on the day on which the distribution is made
4	a *franked distribution *flows indirectly to the entity through a partnership or the trustee of a trust; and the entity is a *franking entity when the franked distribution is made; and the entity is entitled to a *tax offset because of the distribution under Division 207	the entity's share of the *franking credit on the distribution	at the time specified in subsection (2)
5	the entity incurs a liability to pay *franking deficit tax under section 205-45 or 205-50	the amount of the liability	immediately after the liability is incurred

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(2) A \*franking credit covered by item 4 of the table arises at the end of the income year:

(a) that is an income year of the last partnership or trust interposed between:

(i) the entity; and

(ii) the \*corporate tax entity that made the distribution; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) during which the \*franked distribution \*flows indirectly to the entity.
- (3) Despite item 1 or 2 of the table in subsection (1), no credit arises on that part of the payment that is attributable to a payment of income tax in relation to either or both of the following:
  - (a) an \*FHSA component;
  - (b) an \*RSA component.

**205-20 Paying a PAYG instalment or income tax**

- (1) An entity *pays a PAYG instalment* if and only if:
  - (a) the entity has a liability to pay the instalment; and
  - (b) either:
    - (i) the entity makes a payment to satisfy the liability (in whole or in part); or
    - (ii) a credit, or an \*RBA surplus, is applied to discharge or reduce the liability.

Note: The requirement in paragraph (a) means that the entity cannot generate franking credits by making a “voluntary” payment of income tax (that is, paying an amount on account of income tax for which the entity is not liable at the time when the payment is made).

- (2) If an entity:
  - (a) is liable to pay a \*PAYG instalment; and
  - (b) has a \*PAYG instalment variation credit;the PAYG instalment variation credit must be fully applied to reduce the liability for the PAYG instalment before any other credit or payment can be applied to reduce that liability.

- (3) An entity *pays income tax* if and only if:
  - (a) the entity has a liability to pay the income tax; and
  - (b) either:
    - (i) the entity makes a payment to satisfy the liability (in whole or in part); or
    - (ii) a credit, or an \*RBA surplus, is applied to discharge or reduce the liability.

Note: The requirement in paragraph (a) means that the entity cannot generate franking credits by making a “voluntary” payment of income

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 205-25

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tax (that is, paying an amount on account of income tax for which the entity is not liable at the time when the payment is made).

- (4) Subparagraphs (1)(b)(ii) and (3)(b)(ii) do not apply to the application of a credit allowable under or by virtue of section 45-30 or 45-215 in Schedule 1 to the *Taxation Administration Act 1953* (these sections deal with credits for \*PAYG instalments payable and credit on using a varied rate in certain cases).
- (5) The amount of the \*PAYG instalment or income tax paid is equal to:
  - (a) the amount of the liability, if it is satisfied in full; or
  - (b) the amount by which the liability is reduced, if it is not satisfied in full.
- (6) If:
  - (a) a surplus in an \*RBA of an entity is applied to satisfy a liability of the entity to \*pay a PAYG instalment in respect of an income year; and
  - (b) a credit allowable under section 45-30 in Schedule 1 to the *Taxation Administration Act 1953* in respect of that income year is included in the RBA; and
  - (c) the RBA does not include the liability to pay the \*PAYG instalment; and
  - (d) the amount of the credit exceeds the income tax assessed to the entity in respect of that income year;the amount of the PAYG instalment paid by virtue of the application of the surplus is reduced by the amount of the excess mentioned in paragraph (d).

**205-25 Residency requirement for an event giving rise to a franking credit or franking debit**

- (1) An entity satisfies the *residency requirement* for an income year in which, or in relation to which, an event specified in a relevant table occurs if:
  - (a) the entity is a company, or a \*corporate limited partnership, to which at least one of the following subparagraphs applies:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) the entity is an Australian resident for more than one half of the 12 months immediately preceding the event if the event occurs before the end of the income year;
  - (ii) the entity is an Australian resident at all times during the income year when the entity exists if the event occurs at or after the end of the income year;
  - (iii) the entity is an Australian resident for more than one half of the income year (whether or not the event occurs before the end of the income year); or
  - (b) the entity is a \*corporate unit trust for the income year; or
  - (c) the entity is a \*public trading trust for the income year.
- (2) The tables in sections 205-15 and 205-30 are relevant for the purposes of subsection (1).

### 205-30 Franking debits

- (1) The following table sets out when a debit arises in the \*franking account of an entity and the amount of the debit. The debit is called a *franking debit*.

<b>Debits in the franking account</b>			
<b>Item</b>	<b>If:</b>	<b>A debit of:</b>	<b>Arises:</b>
1	the entity *franks a *distribution	the amount of the *franking credit on the distribution	on the day on which the distribution is made
2	the entity *receives a refund of income tax; and the entity satisfies the *residency requirement for the income year to which the refund relates; and the entity was a *franking entity during the whole or part of the income year to which the refund relates	that part of the refund that is attributable to the period during which the entity was a franking entity	on the day on which the refund is received

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules**Part 3-6** The imputation system**Division 205** Franking accounts, franking deficit tax liabilities and the related tax offset

## Section 205-30

<b>Debits in the franking account</b>			
<b>Item</b>	<b>If:</b>	<b>A debit of:</b>	<b>Arises:</b>
3	a *franking debit arises for the entity under paragraph 203-50(1)(b) (the entity *franks a *distribution in contravention of the *benchmark rule)	the franking debit worked out under paragraph 203-50(2)(b)	on the day specified in subsection 203-50(4)
4	the entity ceases to be a *franking entity; and the entity's *franking account is in *surplus immediately before ceasing to be a franking entity	the amount of the *franking surplus	on the day on which the entity ceases to be a franking entity
5	a *franking debit arises for the entity under section 204-15 (linked distributions)	the franking debit specified in subsection 204-15(3)	on the day specified in subsection 204-15(4)
6	a *franking debit arises under section 204-25 (debit for substituting *tax-exempt bonus shares for *franked distributions)	the amount of the debit specified in subsection 204-25(2)	on the day specified in subsection 204-25(3)
7	the Commissioner makes a determination under paragraph 204-30(3)(a) giving rise to a *franking debit for the entity (streaming distributions)	the amount of the debit specified in the determination	on the day specified in section 204-35
7A	a *franking debit arises under subsection 197-45(1) because an amount to which Division 197 applies is transferred to a company's *share capital account	the amount of the debit specified in subsection 197-45(2)	at the time provided by subsection 197-45(1)

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Debits in the franking account**

<b>Item</b>	<b>If:</b>	<b>A debit of:</b>	<b>Arises:</b>
7B	a *franking debit arises under subsection 197-65(2) because a company chooses to untaint its *share capital account	the amount of the debit specified in subsection 197-65(3)	at the time provided by subsection 197-65(2)
9	an *on-market buy-back by a company of a *membership interest in the company	an amount equal to the debit that would have arisen if: (a) the purchase of the interest were a *frankable distribution equal to the one that would have arisen if the company had purchased the interest *off-market; and (b) the distribution were *franked at the entity's *benchmark franking percentage for the *franking period in which the purchase was made or, if the entity does not have a benchmark franking percentage for the period, at a *franking percentage of 100%	on the day on which the interest is purchased

Note: For completeness, the table refers to some franking debits that arise under other sections of the Act. This does not mean that separate franking debits arise both under the relevant section and this table.

- (2) Despite item 2 of the table in subsection (1), no debit arises on that part of the refund that is attributable to a payment of income tax in relation to either or both of the following:
- an \*FHSA component;
  - an \*RSA component.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 205-35 Refund of income tax

- (1) An entity *receives a refund of income tax* if and only if:
  - (a) either:
    - (i) the entity receives an amount as a refund; or
    - (ii) the Commissioner applies a credit, or an \*RBA surplus, against a liability or liabilities of the entity; and
  - (b) the refund of the amount, or the application of the credit, represents in whole or in part a return to the entity of an amount paid or applied to satisfy the entity's liability to pay income tax.
- (2) The amount of the refund is so much of the amount refunded or applied as represents the return referred to in paragraph (1)(b).

### 205-40 Franking surplus and deficit

- (1) An entity's \*franking account is in *surplus* at a particular time if, at that time, the sum of the \*franking credits in the account exceeds the sum of the \*franking debits in the account. The amount of the *franking surplus* is the amount of the excess.
- (2) An entity's \*franking account is in *deficit* at a particular time if, at that time, the sum of the \*franking debits in the account exceeds the sum of the \*franking credits in the account. The amount of the *franking deficit* is the amount of the excess.

### 205-45 Franking deficit tax

#### *Object*

- (1) While recognising that an entity may anticipate \*franking credits when \*franking \*distributions, the object of this section is to prevent those credits from being anticipated indefinitely by requiring the entity to reconcile its \*franking account at certain times and levying tax if the account is in \*deficit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Franking deficit at end of income year*

- (2) An entity is liable to pay franking deficit tax imposed by the *New Business Tax System (Franking Deficit Tax) Act 2002* if its \*franking account is in \*deficit at the end of an income year.

*Corporate tax entity ceases to be a franking entity*

- (3) An entity is liable to pay \*franking deficit tax imposed by the *New Business Tax System (Franking Deficit Tax) Act 2002* if:
- (a) it ceases to be a \*franking entity; and
  - (b) immediately before it ceases to be a franking entity, its \*franking account is in \*deficit.

Note: The tax is imposed in the *New Business Tax System (Franking Deficit Tax) Act 2002* and the amount of the tax is set out in that Act.

**205-50 Deferring franking deficit***Object*

- (1) The object of this section is to ensure that an entity does not avoid \*franking deficit tax by deferring the time at which a \*franking debit occurs in its \*franking account.

*End of year deficit deferred*

- (2) An entity is taken to have \*received a refund of income tax for an income year immediately before the end of that year for the purposes of subsection 205-45(2) if:
- (a) the refund is paid within 3 months after the end of that year; and
  - (b) the \*franking account of the entity would have been in \*deficit, or in deficit to a greater extent, at the end of that year if the refund had been received in that year.

*Deficit on ceasing to be a franking entity deferred*

- (3) If an entity ceases to be a \*franking entity during an income year, the entity is taken to have \*received a refund of income tax

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 205-70

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immediately before it ceased to be a franking entity for the purposes of subsection 205-45(3) if:

- (a) the refund is attributable to a period in the year during which the entity was a franking entity; and
- (b) the refund is paid within 3 months after the entity ceases to be a franking entity; and
- (c) the \*franking account of the entity would have been in \*deficit, or in deficit to a greater extent, immediately before it ceased to be a franking entity if the refund had been received before it ceased to be a franking entity.

**205-70 Tax offset arising from franking deficit tax liabilities**

*When does the tax offset arise?*

- (1) A \*corporate tax entity is entitled to a \*tax offset for an income year for which it satisfies the \*residency requirement (the **relevant year**) if at least one of the following applies:
  - (a) the entity has incurred a liability to pay \*franking deficit tax in the relevant year;
  - (b) the entity incurred such a liability in a previous income year for which it did not satisfy the residency requirement, and that liability has not been taken into account in working out a tax offset under this section;
  - (c) when the entity was last entitled to a tax offset under this section for a previous income year, some of the offset remained after applying section 63-10 (tax offset priority rules).

*The amount of the tax offset*

- (2) Work out the amount of the \*tax offset for the relevant year as follows:

*Method statement*

Step 1. Work out the total amount of \*franking deficit tax that is covered by paragraph (1)(a).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Then, subject to subsections (5) and (6), reduce so much of it as is attributable to \*franking debits to which subsection (8) applies by 30% if that part exceeds 10% of the total amount of \*franking credits that arose in the entity's \*franking account for the relevant year.

Step 2. Work out the total amount of \*franking deficit tax that is covered by paragraph (1)(b) for a previous income year.

Then, subject to subsections (5) and (6), reduce so much of it as is attributable to \*franking debits to which subsection (8) applies by 30% if that part exceeds 10% of the total amount of \*franking credits that arose in the entity's \*franking account for that previous income year.

Step 3. Add up the results of step 2 for all the previous income years covered by paragraph (1)(b).

Step 4. Work out the remaining amount of a \*tax offset covered by paragraph (1)(c).

Step 5. Add up the results of steps 1, 3 and 4. The result is the \*tax offset to which the entity is entitled under this section for the relevant year.

Note: This method statement is modified for certain late balancing entities: see section 205-70 of the *Income Tax (Transitional Provisions) Act 1997*.

Example: The following apply to a corporate tax entity that satisfies the residency requirement for an income year:

- the entity's income tax liability for that year would be \$100,000 if its tax offsets were disregarded;
- for that year, the entity has a tax offset of \$60,000 under this section (the *franking deficit offset*) and a tax offset of \$80,000 in respect of foreign income tax paid by the entity (the *foreign income tax offset*).

Under section 63-10 (about tax offset priority rules), the foreign income tax offset must be applied before the franking deficit offset is applied. As a result, that offset and \$20,000 of the franking deficit offset combine to reduce the entity's income tax liability to nil. The remaining \$40,000 of the franking deficit offset will be included in a

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 205-70

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franking deficit offset for the next income year for which the entity satisfies the residency requirement.

*Residency requirement*

- (4) To determine whether the entity satisfies the \*residency requirement for the relevant year, section 205-25 has effect as if each of the following were an event specified in a relevant table for the purposes of that section:
- (a) the entity incurring a liability to pay \*franking deficit tax in the relevant year;
  - (b) the assessment of the entity's income tax liability for the relevant year that is made on the \*assessment day for that year.

*30% reduction will generally not apply to private company's first year of tax liability*

- (5) The 30% reductions in steps 1 and 2 of the method statement in subsection (2) do not apply in working out the amount of the \*tax offset to which the entity is entitled for the relevant year if:
- (a) the entity is a \*private company for the relevant year; and
  - (b) if the company did not have the tax offset (but had all its other tax offsets) it would have had an income tax liability for the relevant year; and
  - (c) the company has not had an income tax liability for any income year before the relevant year; and
  - (d) the amount of the liability referred to in paragraph (b) is at least 90% of the amount of the \*deficit in the company's \*franking account at the end of the relevant year.

*Commissioner's discretion*

- (6) The 30% reductions in steps 1 and 2 of the method statement in subsection (2) do not apply in working out the amount of the \*tax offset to which the entity is entitled for the relevant year if the Commissioner determines in writing, on application by the entity in the \*approved form, that the excess referred to in those steps was due to events outside the control of the entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (7) A determination under subsection (6) is not a legislative instrument.

*Applicable franking debits*

- (8) This subsection applies to \*franking debits in the \*franking account of an entity:
- (a) that arise under table item 1, 3, 5 or 6 in section 205-30 for an income year; and
  - (b) if the entity has franking debits covered by paragraph (a) for that income year—that arise under table item 2 in that section for that income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 207—Effect of receiving a franked distribution**

### **Table of Subdivisions**

	Guide to Division 207
207-A	Effect of receiving a franked distribution generally
207-B	Franked distribution received through certain partnerships and trustees
207-C	Residency requirements for the general rule
207-D	No gross-up or tax offset where distribution would not be taxed
207-E	Exceptions to the rules in Subdivision 207-D
207-F	No gross-up or tax offset where the imputation system has been manipulated

### **Guide to Division 207**

#### **Table of sections**

207-5	Overview
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#### **207-5 Overview**

- (1) If a corporate tax entity makes a franked distribution to one of its members, then, as a general rule:
  - (a) an amount equal to the franking credit on the distribution is included in the member's assessable income; and
  - (b) the member is entitled to a tax offset equal to the same amount.
- (2) In some cases a residency requirement must be satisfied for the general rule to apply.
- (3) If a franked distribution is made to a member that is a partnership or the trustee of a trust, an amount equal to the franking credit on the distribution is also included in the member's assessable income as mentioned in paragraph (1)(a).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (4) However, a tax offset in relation to that distribution is only available to an entity (who may be a partner, beneficiary or a trustee) if the distribution flows indirectly to it and does not flow indirectly through it to another entity. The tax offset is equal to its share of the franking credit on the distribution.

Note: That share is a notional amount and the entity can have that share without actually receiving any of that franking credit or distribution.

- (5) There are exceptions to both the general rule mentioned in subsection (1) and the special rule mentioned in subsection (4). Basically, these exceptions are created:
- (a) where the relevant entity would not have paid tax on the distribution or a share of the distribution (see Subdivisions 207-D and 207-E); and
  - (b) where there is a manipulation of the imputation system in a manner that is not permitted under the income tax law (see Subdivision 207-F).

### **Subdivision 207-A—Effect of receiving a franked distribution generally**

#### **Guide to Subdivision 207-A**

##### **207-10 What this Subdivision is about**

As a general rule, if a member of an entity receives a franked distribution:

- an amount equal to the franking credit on the distribution is included in the member's assessable income; and
- the member is entitled to a tax offset equal to the franking credit on the distribution.

#### **Table of sections**

##### **Operative provisions**

207-15 Applying the general rule

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 207-15

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207-20 General rule—gross-up and tax offset

### Operative provisions

#### 207-15 Applying the general rule

- (1) This Subdivision sets out, as a general rule, the tax effect of receiving a \*franked distribution.
- (2) This Subdivision does not apply to:
  - (a) a partnership or trustee to whom a \*franked distribution is made (except a partnership or trustee that is a \*corporate tax entity, or a trustee of a trust that is a \*complying superannuation entity or \*FHSA trust, when the distribution is made); or
  - (b) an entity to whom a franked distribution \*flows indirectly.

Note: Subject to the other provisions in this Division, Subdivision 207-B applies to an entity excluded from the application of this Subdivision because of this subsection.

- (3) This Subdivision applies subject to Subdivisions 207-C, 207-D, 207-E and 207-F.

Note 1: Subdivision 207-C sets out the residency requirements that must be satisfied by an individual or a corporate tax entity that receives a franked distribution.

Note 2: Subdivision 207-D sets out the cases in which the gross-up and tax offset rules in this Subdivision and Subdivision 207-B will not apply because the franked distribution (or a share of it) would not have been taxed in any case.

Note 3: Subdivision 207-E sets out the exceptions to the rules in Subdivision 207-D.

Note 4: Subdivision 207-F sets out the cases in which the gross-up and tax offset rules in this Subdivision and Subdivision 207-B will not apply because the imputation system has been manipulated in a way that is not permitted under the income tax law.

#### 207-20 General rule—gross-up and tax offset

- (1) If an entity makes a \*franked distribution to another entity, the assessable income of the receiving entity, for the income year in which the distribution is made, includes the amount of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

\*franking credit on the distribution. This is in addition to any other amount included in the receiving entity's assessable income in relation to the distribution under any other provision of this Act.

- (2) The receiving entity is entitled to a \*tax offset for the income year in which the distribution is made. The tax offset is equal to the \*franking credit on the distribution.

### **Subdivision 207-B—Franked distribution received through certain partnerships and trustees**

#### **Guide to Subdivision 207-B**

##### **207-25 What this Subdivision is about**

This Subdivision deals with an entity that receives a benefit of a franked distribution where:

- (a) the distribution is made to a partnership or the trustee of a trust; and
- (b) the benefit is received either directly or through other interposed partnerships or trusts.

The distribution is regarded as flowing indirectly to the entity under this Subdivision.

On the basis of a notional amount of the entity's share of the distribution, the entity may be entitled to have an amount included in its assessable income and/or a tax offset under this Subdivision.

#### **Table of sections**

##### **Gross-up and tax offset**

207-30	Applying this Subdivision
207-35	Gross-up—distribution made to, or flows indirectly through, a partnership or trustee
207-45	Tax offset—distribution flows indirectly to an entity

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Key concepts**

207-50 When a franked distribution flows indirectly to or through an entity

207-55 Share of a franked distribution

207-57 Share of the franking credit on a franked distribution

**Gross-up and tax offset**

**207-30 Applying this Subdivision**

This Subdivision applies subject to Subdivisions 207-D, 207-E and 207-F.

Note 1: Subdivision 207-D sets out the cases in which the gross-up and tax offset rules in this Subdivision and Subdivision 207-A will not apply because the franked distribution (or a share of it) would not have been taxed in any case.

Note 2: Subdivision 207-E sets out the exceptions to the rules in Subdivision 207-D.

Note 3: Subdivision 207-F sets out the cases in which the gross-up and tax offset rules in this Subdivision and Subdivision 207-A will not apply because the imputation system has been manipulated in a way that is not permitted under the income tax law.

**207-35 Gross-up—distribution made to, or flows indirectly through, a partnership or trustee**

*Additional amount of assessable income*

(1) If:

- (a) a \*franked distribution is made in an income year to an entity that is a partnership or the trustee of a trust; and
- (b) the entity is not a \*corporate tax entity when the distribution is made; and
- (c) if the entity is the trustee of a trust—the trust is not a \*complying superannuation entity or \*FHSA trust when the distribution is made;

the assessable income of the partnership or trust for that income year includes the amount of the \*franking credit on the distribution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The amount is in addition to any other amount included in that assessable income in relation to the distribution under any other provision of this Act.

Note: The amount will affect the income tax liability of a partner in the partnership, or a beneficiary or the trustee of the trust: see Divisions 5 and 6 of Part III of the *Income Tax Assessment Act 1936*.

*Allocation of the additional amount of assessable income*

- (3) Despite any provisions in Divisions 5 and 6 of Part III of the *Income Tax Assessment Act 1936*, if:
- (a) a \*franked distribution is made, or \*flows indirectly, to a partnership or the trustee of a trust in an income year; and
  - (b) the assessable income of the partnership or trust for that year includes an amount (the **franking credit amount**) that is all or a part of the additional amount of assessable income included under subsection (1) in relation to the distribution; and
  - (c) the distribution flows indirectly to an entity that is a partner in the partnership, or a beneficiary or that trustee of the trust; and
  - (d) the entity has an amount of assessable income for that year that is attributable to all or a part of the distribution;

then, the entity's assessable income for that year also includes so much of the franking credit amount as is equal to its \*share of the \*franking credit on the distribution.

Example: A franked distribution of \$70 is made to the trustee of a trust in an income year. The trust also has \$100 of assessable income from other sources. Under subsection (1), the trust's assessable income includes an additional amount of \$30 (which is the franking credit on the distribution). The trust has a net income of \$200 for that income year.

There are 2 beneficiaries of the trust, P and Q, who are presently entitled to the trust's income. Under the trust deed, P is entitled to all of the franked distribution and Q is entitled to all other income.

The distribution flows indirectly to P (as P is entitled to a share of that net income and has a 100% share of the distribution under section 207-55). P therefore has an amount of assessable income that is equal to its share of the distribution. Under this subsection, P's assessable income also includes the full amount of the franking credit (as P's share of the franking credit on the distribution is \$30 under section 207-57). Q's share of the net income therefore does not include any of the franking credit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**207-45 Tax offset—distribution flows indirectly to an entity**

An entity to whom a \*franked distribution \*flows indirectly in an income year is entitled to a \*tax offset for that income year that is equal to its \*share of the \*franking credit on the distribution, if it is:

- (a) an individual; or
- (b) a \*corporate tax entity when the distribution flows indirectly to it; or
- (c) the trustee of a trust that is liable to be assessed on a share of, or all or a part of, the trust's \*net income under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* for that income year; or
- (ca) the trustee of an \*FHSA trust; or
- (d) the trustee of a \*complying superannuation fund, a \*non-complying superannuation fund, a \*complying approved deposit fund, a \*non-complying approved deposit fund or a \*pooled superannuation trust in relation to that income year.

Note: The entities covered by this section are the ultimate recipients of the distribution because the distribution does not flow indirectly through them to other entities. As a result they are also the ultimate taxpayers in respect of the distribution and are given the tax offset to acknowledge the income tax that has already been paid on the profits underlying the distribution.

**Key concepts**

**207-50 When a franked distribution flows indirectly to or through an entity**

- (1) For the purposes of this Subdivision, this section sets out the only circumstances in which a \*franked distribution:
  - (a) *flows indirectly* to an entity (subsection (2), (3) or (4)); or
  - (b) *flows indirectly* through an entity (subsection (5)).

*Partners*

- (2) A \*franked distribution *flows indirectly* to a partner in a partnership in an income year if, and only if:
  - (a) during that income year, the distribution is made to the partnership, or \*flows indirectly to the partnership as a

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

beneficiary because of a previous application of subsection (3); and

- (b) the partner has an individual interest:
  - (i) in the partnership's \*net income for that income year that is covered by paragraph 92(1)(a) or (b) of the *Income Tax Assessment Act 1936*; or
  - (ii) in a \*partnership loss of the partnership for that income year that is covered by paragraph 92(2)(a) or (b) of that Act;(whether or not that individual interest becomes assessable income in the hands of the partner); and
- (c) the partner's \*share of the distribution under section 207-55 is a positive amount (whether or not the partner actually receives any of that share).

#### *Beneficiaries*

- (3) A \*franked distribution ***flows indirectly*** to a beneficiary of a trust in an income year if, and only if:
  - (a) during that income year, the distribution is made to the trustee of the trust, or \*flows indirectly to the trustee as a partner or beneficiary because of a previous application of subsection (2) or this subsection; and
  - (b) the beneficiary has this amount for that income year (the ***share amount***):
    - (i) a share of the trust's \*net income for that income year that is covered by paragraph 97(1)(a) of the *Income Tax Assessment Act 1936*; or
    - (ii) an individual interest in the trust's net income for that income year that is covered by section 98A or 100 of that Act;(whether or not the share amount becomes assessable income in the hands of the beneficiary); and
  - (c) the beneficiary's \*share of the distribution under section 207-55 is a positive amount (whether or not the beneficiary actually receives any of that share).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 207-50

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*Trustees*

- (4) A \*franked distribution *flows indirectly* to the trustee of a trust in an income year if, and only if:
- (a) during that income year, the distribution is made to the trustee, or \*flows indirectly to the trustee as a partner or beneficiary because of a previous application of subsection (2) or (3); and
  - (b) the trustee is liable or, but for another provision in this Act, would be liable, to be assessed in respect of an amount (the *share amount*) that is:
    - (i) a share of the trust's \*net income for that income year under section 98 of the *Income Tax Assessment Act 1936*; or
    - (ii) all or a part of the trust's net income for that income year under section 99 or 99A of that Act;(whether or not the share amount becomes assessable income in the hands of the trustee); and
  - (c) the trustee's \*share of the distribution under section 207-55 is a positive amount (whether or not the trustee actually receives any of that share).

Note: A trustee to whom a franked distribution flows indirectly under this subsection is entitled to a tax offset under section 207-45 and the distribution does not flow indirectly through the trustee to another entity.

- (5) A \*franked distribution *flows indirectly* through an entity (the *first entity*) to another entity if, and only if:
- (a) the other entity is the focal entity in an item of the table in section 207-55 in relation to the distribution; and
  - (b) that focal entity's \*share of the distribution is based on the first entity's share of the distribution as an intermediary entity in that or another item of the table.

Example: A franked distribution of \$140 is made to a partnership. An amount equal to the franking credit on the distribution (\$60) is included in the partnership's assessable income under section 207-35. Because the partnership has losses of \$300 from other sources, it has a partnership loss of \$100 for the income year.

The partnership has 2 equal partners. One partner is the trustee of a trust and the other partner is an individual. The distribution flows

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



indirectly to each partner under subsection (2). Each partner has a share of the partnership loss (\$50), a share of the distribution under sections 207-55 (\$70) and a share of the franking credit under section 207-57 (\$30).

The individual partner is allowed a tax offset of \$30 under section 207-45.

Because the trust has \$100 of income from other sources, it has a net income of \$50 for that income year (\$100 minus the share of the partnership loss of \$50).

The trust has one individual as a beneficiary, to whom the distribution flows indirectly under subsection (3). The beneficiary's share of the franked distribution is \$70 under sections 207-55 and its share of the franking credit is \$30 under section 207-57. The beneficiary is therefore allowed a tax offset of \$30 under section 207-45.

## 207-55 Share of a franked distribution

### *Object of section*

- (1) The object of this section is to ensure that:
  - (a) the amount of a \*franked distribution made to a partnership or the trustee of a trust is allocated notionally amongst entities who \*derive benefits from that distribution; and
  - (b) that allocation corresponds with the way in which those benefits were derived.
- (2) An entity's *share* of a \*franked distribution is an amount notionally allocated to the entity as its share of the distribution, whether or not the entity actually receives any of that distribution.
- (3) That amount is equal to the entity's *share* of the distribution as the focal entity in column 3 of an item of the table.

Note: An entity can derive a benefit from the distribution (and therefore has a share of the distribution) without actually receiving any of the distribution: see subsection (2) of this section and the example at the end of section 207-50.

Note: An entity's share of the distribution is based on the share of the distribution of each preceding intermediary entity through which the distribution flows, starting from the intermediary entity to whom the distribution is made.

This means that in some cases (see items 2 and 4), more than one item of the table will need to be applied to work out the share of the distribution of an ultimate recipient of the distribution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 207-55

<b>Share of a franked distribution</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>For this intermediary entity and this focal entity:</b>	<b>The intermediary entity's share of the franked distribution is:</b>	<b>The focal entity's share of the franked distribution is:</b>
1	a partnership is the <i>intermediary entity</i> and a partner in that partnership is the <i>focal entity</i> if: (a) a *franked distribution is made to the partnership; and (b) the partner has, in respect of the partnership, an individual interest mentioned in subsection 207-50(2)	the amount of the franked distribution	so much of the franked distribution as is taken into account in working out the amount of that individual interest
2	a partnership is the <i>intermediary entity</i> and a partner in that partnership is the <i>focal entity</i> if: (a) a *franked distribution *flows indirectly to the partnership as a beneficiary of a trust; and (b) the partner has, in respect of the partnership, an individual interest mentioned in subsection 207-50(2)	the amount worked out under column 3 of item 3 or 4 of this table where the partnership, as a beneficiary, is the focal entity in that item	so much of the amount worked out under column 2 of this item as is attributable to the partner, having regard to the partnership agreement and any other relevant circumstances

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Share of a franked distribution**

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<b>Item</b>	<b>Column 1</b> <b>For this intermediary entity and this focal entity:</b>	<b>Column 2</b> <b>The intermediary entity's share of the franked distribution is:</b>	<b>Column 3</b> <b>The focal entity's share of the franked distribution is:</b>
3	the trustee of a trust is the <i>intermediary entity</i> and the trustee or a beneficiary of the trust is the <i>focal entity</i> if: (a) a *franked distribution is made to the trustee; and (b) the trustee or beneficiary has, in respect of the trust, a share amount mentioned in subsection 207-50(3) or (4)	(a) if the trust has a positive amount of *net income for that year—the amount of the franked distribution; or (b) otherwise—nil	so much of the amount worked out under column 2 of this item as is taken into account in working out that share amount
4	the trustee of a trust is the <i>intermediary entity</i> and the trustee or a beneficiary of the trust is the <i>focal entity</i> if: (a) a *franked distribution *flows indirectly to the trustee as a partner in a partnership or as a beneficiary of another trust; and (b) the trustee or beneficiary has, in respect of the trust, a share amount mentioned in subsection 207-50(3) or (4)	the amount worked out under column 3 of: (a) item 1 or 2 of this table where the trustee, as a partner, is the focal entity in that item; or (b) item 3 or a previous application of this item where the trustee, as a beneficiary, is the focal entity in that item	so much of the amount worked out under column 2 of this item as is attributable to the focal entity in this item, having regard to the trust deed and any other relevant circumstances

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 207-57

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Note: In item 3 or 4, the trustee of a trust can be both the intermediary entity and the focal entity in the same item.

**207-57 Share of the franking credit on a franked distribution**

- (1) An entity's *share* of a \*franking credit on a \*franked distribution is an amount notionally allocated to the entity as its share of that credit, whether or not the entity actually receives any of that credit or distribution.
- (2) Work out that amount as follows:

$$\text{Amount of the *franking credit on the *franked distribution} \times \frac{\text{Entity's *share of the *franked distribution}}{\text{Amount of the *franked distribution}}$$

**Subdivision 207-C—Residency requirements for the general rule**

**Guide to Subdivision 207-C**

**207-60 What this Subdivision is about**

Some recipients of a franked distribution must satisfy a residency requirement if their assessable income is to include the franking credit on the distribution, and they are to be entitled to a tax offset, under the general rule.

**Table of sections**

207-65 Satisfying the residency requirement

**Operative provisions**

207-70 Gross-up and tax offset under section 207-20

207-75 Residency requirement

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **207-65 Satisfying the residency requirement**

- (1) This Subdivision sets out the residency requirements that must be satisfied by an individual or a corporate tax entity that receives a franked distribution, if the franking credit on the distribution is to be included in that entity's assessable income, or the entity is to be entitled to a tax offset, under the general rule.
- (2) It does not impose a residency requirement on other entities, because the significance of residency for those entities is dealt with elsewhere in this Act.
- (3) It does not impose a residency requirement where a distribution flows indirectly to an entity. This is also because the significance of residency is dealt with elsewhere, for the most part in Divisions 5 and 6 of Part III of the *Income Tax Assessment Act 1936*.

### **Operative provisions**

#### **207-70 Gross-up and tax offset under section 207-20**

If an entity makes a \*franked distribution to an individual or a \*corporate tax entity:

- (a) no amount is included in the receiving entity's assessable income under subsection 207-20(1); and
- (b) the receiving entity is not entitled to a \*tax offset under subsection 207-20(2);

unless the receiving entity satisfies the \*residency requirement at the time the distribution is made.

#### **207-75 Residency requirement**

- (1) An entity that receives a \*distribution satisfies the ***residency requirement*** at the time the distribution is made if:
  - (a) in the case of an individual—the individual is an Australian resident at that time; and
  - (b) in the case of a company—the company is an Australian resident at that time; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 207-80

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- (c) in the case of a \*corporate limited partnership—the corporate limited partnership is an Australian resident at that time; and
  - (d) in the case of a \*corporate unit trust—the corporate unit trust is a \*resident unit trust for the income year in which that time occurs; and
  - (e) in the case of a \*public trading trust—the public trading trust is a resident unit trust for the income year in which that time occurs.
- (2) An entity that receives a \*distribution also satisfies the **residency requirement** at the time the distribution is made if the entity at that time:
- (a) is a company or an individual; and
  - (b) is a foreign resident; and
  - (c) carries on business in Australia at or through a permanent establishment of the entity in Australia, being a permanent establishment within the meaning of:
    - (i) a double tax agreement (as defined in Part X of the *Income Tax Assessment Act 1936*) that relates to a foreign country and affects the entity; or
    - (ii) subsection 6(1) of that Act, if there is no such agreement;and the distribution is attributable to the permanent establishment.

**Subdivision 207-D—No gross-up or tax offset where distribution would not be taxed**

**Guide to Subdivision 207-D**

**207-80 What this Subdivision is about**

This Subdivision creates the appropriate adjustment to cancel the effect of the gross-up and tax offset rules where a franked distribution (or a share of it) is, or would be, exempt income or \*non-assessable non-exempt income in the relevant entity's hands (and therefore would not be taxed in any case).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Table of sections

### Operative provisions

207-85	Applying this Subdivision
207-90	Distribution that is made to an entity
207-95	Distribution that flows indirectly to an entity

## Operative provisions

### 207-85 Applying this Subdivision

This Subdivision applies subject to Subdivisions 207-E and 207-F.

Note 1: Subdivision 207-E sets out exceptions to the rules in this Subdivision.

Note 2: Where both this Subdivision and Subdivision 207-F apply to an entity, the application of this Subdivision is subject to the rules in Subdivision 207-F: see subsections 207-145(3) and 207-150(7) and (8).

### 207-90 Distribution that is made to an entity

#### *Whole of distribution not assessable*

- (1) If:
- (a) a \*franked distribution is made to an entity; and
  - (b) the distribution does not \*flow indirectly through the entity to another entity; and
  - (c) the distribution is \*exempt income or \*non-assessable non-exempt income in the hands of the entity;
- then, for the purposes of this Act:
- (d) the amount of the \*franking credit on the distribution is not included in the assessable income of the entity under section 207-20; and
  - (e) the entity is not entitled to a \*tax offset under this Division because of the distribution.

#### *Part of distribution not assessable*

- (2) If:
- (a) a \*franked distribution is made to an entity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 207-95

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- (b) the distribution does not \*flow indirectly through the entity to another entity; and
- (c) a part of the distribution (the *relevant part*) is \*exempt income or \*non-assessable non-exempt income in the hands of the entity;

then, for the purposes of this Act:

- (d) the amount of the distribution is taken to have been reduced by the relevant part; and
- (e) the amount of the \*franking credit on the distribution is to be worked out as follows:

$$\frac{\text{*Franked distribution apart from this section} - \text{Relevant part}}{\text{*Franked distribution apart from this section}} \times \frac{\text{*Franking credit}}{\text{*franked distribution apart from this section}}$$

**207-95 Distribution that flows indirectly to an entity**

*Whole of share of distribution not assessable*

- (1) If:
  - (a) a \*franked distribution \*flows indirectly to an entity in an income year; and
  - (b) the entity's \*share of the distribution would, in its hands, be \*exempt income or \*non-assessable non-exempt income (whether or not it had actually received that share);

then, for the purposes of this Act:

- (c) subsection (2), (3) or (4) (as appropriate) applies to the entity in relation to that income year; and
- (d) the entity is not entitled to a \*tax offset under this Division because of the distribution; and
- (e) if the distribution flows indirectly through the entity to another entity—subsection 207-35(3) and section 207-45 do not apply to that other entity.

Note: This section can therefore apply, for example, where the entity is a partner in a partnership that has a partnership loss and the entity does not actually receive any of the distribution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



*Partner*

- (2) If the \*franked distribution \*flows indirectly to the entity as a partner in a partnership under subsection 207-50(2), the entity can deduct an amount for that income year that is equal to its \*share of the \*franking credit on the distribution.

*Beneficiary*

- (3) If the \*franked distribution \*flows indirectly to the entity as a beneficiary of a trust under subsection 207-50(3), the entity can deduct an amount for that income year that is equal to the lesser of:
- (a) its share amount in relation to the distribution that is mentioned in that subsection; and
  - (b) its \*share of the \*franking credit on the distribution.

*Trustee*

- (4) If the \*franked distribution \*flows indirectly to the entity as the trustee of a trust under subsection 207-50(4), the entity's share amount in relation to the distribution that is mentioned in that subsection is to be reduced by the lesser of:
- (a) that share amount; and
  - (b) its \*share of the \*franking credit on the distribution.

Example: A franked distribution of \$70 is made to a partnership.

Under section 207-35, an additional amount of \$30 is included in the partnership's assessable income because of the distribution.

The partnership has 2 equal partners, X and Y. X is a foreign resident individual whose share of partnership's net income for the income year is \$50 (share of distribution of \$35 and share of franking credit of \$15). That share of distribution is not assessable income and not exempt income under section 128D of the *Income Tax Assessment Act 1936*.

X's assessable income of \$15 (share of franking credit) is reduced to nil because of the deduction of \$15 under subsection (2). Because of subsection (1), X is not entitled to a tax offset under section 207-45.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Part of share of distribution not assessable*

(5) If:

- (a) a \*franked distribution \*flows indirectly to an entity in an income year; and
- (b) a part of the entity's \*share of the distribution (the **relevant part**) would, in its hands, be \*exempt income or \*non-assessable non-exempt income (whether or not it had actually received that part);

then, subsection (2), (3) or (4) (as appropriate) applies to the entity on the basis that the amount of its \*share of the \*franking credit on the distribution is worked out as follows:

$$\frac{\text{Relevant part}}{\text{Entity's *share of the *franked distribution}} \times \frac{\text{Entity's *share of the *franking credit on the *franked distribution apart from this section}}$$

(6) In addition, the following apply to an entity covered by subsection (5):

- (a) if the distribution would otherwise \*flow indirectly through the entity—the entity's \*share of the distribution for the purposes of this Act (other than subsection (2), (3) or (4)) is to be reduced by the relevant part mentioned in subsection (5);
- (b) if the entity would otherwise be entitled to a \*tax offset under this Subdivision because of the distribution—the amount of the tax offset is to be worked out as follows:

$$\frac{\text{Entity's *share of the *franking credit on the *franked distribution apart from this section}}{\text{Amount worked out under subsection (5)}}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 207-E—Exceptions to the rules in Subdivision 207-D**

### **Guide to Subdivision 207-E**

#### **207-105 What this Subdivision is about**

Subdivision 207-D does not apply to certain exempt institutions, trusts and life insurance companies as set out in this Subdivision. Such an entity may be entitled to a tax offset under this Subdivision in relation to a franked distribution.

#### **Table of sections**

##### **Operative provisions**

207-110 Effect of non-assessable income on gross up and tax offset

##### **Exempt institutions**

207-115 Which exempt institutions are eligible for a refund?

207-117 Residency requirement

207-119 Entity not treated as exempt institution eligible for refund in certain circumstances

207-120 Entity may be ineligible because of a distribution event

207-122 Entity may be ineligible if distribution is in the form of property other than money

207-124 Entity may be ineligible if other money or property also acquired

207-126 Entity may be ineligible if distributions do not match trust share amounts

207-128 Reinvestment choice

207-130 Controller's liability

207-132 Treatment of benefits provided by an entity to a controller

207-134 Entity's present entitlement disregarded in certain circumstances

207-136 Review of certain decisions

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### 207-110 Effect of non-assessable income on gross up and tax offset

- (1) This section applies to an entity to whom a \*franked distribution is made, or \*flows indirectly, in any of the following circumstances:
  - (a) the entity is an \*exempt institution that is eligible for a refund and the distribution does not flow indirectly to the entity as a partner in a partnership under subsection 207-50(2);
  - (b) the distribution is, or the entity's \*share of the distribution would have been, this kind of income in its hands:
    - (i) \*exempt income under section 295-385 (about income from assets set aside to meet current pension liabilities), section 295-390 (about income from other assets used to meet current pension liabilities) or section 295-400 (about income of a PST attributable to current pension liabilities); or
    - (ii) \*non-assessable non-exempt income under paragraph 320-37(1)(a) (segregated exempt assets of a life insurance company) or paragraph 320-37(1)(d) (certain amounts received by a friendly society) of this Act.
- (2) The following have effect in relation to the entity:
  - (a) section 207-90 or 207-95 (as appropriate) does not apply to the entity;
  - (b) if the entity would, apart from section 207-90 or 207-95, be entitled to a \*tax offset under section 207-20 or 207-45 in relation to the distribution—the entity is entitled to that tax offset;
  - (c) if the entity would not be entitled to such a tax offset, the entity is entitled to a tax offset under this section that is equal to:
    - (i) if the distribution is made to the entity—the \*franking credit on the distribution; or
    - (ii) if the distribution \*flows indirectly to the entity—the entity's \*share of the franking credit on the distribution;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) if the distribution flows indirectly through the entity to another entity—subsection 207-35(3) and section 207-45 do not apply to that other entity.

Note: Paragraph (2)(c) only applies to an exempt institution that is eligible for a refund and that is not entitled to a tax offset under section 207-20 or 207-45. An entity covered by paragraph (1)(b) will, in all cases, be entitled to a tax offset under section 207-20 or 207-45.

## Exempt institutions

### 207-115 Which exempt institutions are eligible for a refund?

- (1) This section sets out the only circumstances in which an entity is an *exempt institution that is eligible for a refund*.

*Income tax exempt charitable or other institutions*

- (2) An entity is an *exempt institution that is eligible for a refund* if it:
- (a) is covered by item 1.1, 1.5, 1.5A or 1.5B of the table in section 50-5 or item 4.1 of the table in section 50-20; and
  - (b) is endorsed as exempt from income tax under Subdivision 50-B; and
  - (c) satisfies the \*residency requirement.

*Income tax exempt deductible gift recipients*

- (3) An entity is an *exempt institution that is eligible for a refund* if it:
- (a) is endorsed under paragraph 30-120(a); and
  - (b) satisfies the \*residency requirement.

*Income tax exempt specified deductible gift recipients*

- (4) An entity is an *exempt institution that is eligible for a refund* if:
- (a) the entity's name is specified in a table in a section in Subdivision 30-B; and
  - (b) it has an ABN; and
  - (c) it satisfies the \*residency requirement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 207-117

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*Income tax exempt relief funds*

- (5) An entity is an **exempt institution that is eligible for a refund** if:
- (a) a declaration by the Treasurer is in force in relation to the institution under subsection 30-85(2); and
  - (b) the regulations do not provide that the entity is not an exempt institution that is eligible for a refund.

*Prescribed income tax exempt entities*

- (6) An entity is an **exempt institution that is eligible for a refund** if the entity is prescribed as an exempt institution that is eligible for a refund by the regulations.
- (7) This section has effect subject to sections 207-119 to 207-136.

**207-117 Residency requirement**

An entity satisfies the **residency requirement** for the purposes of determining whether, at the time a \*franked distribution is made, the entity is an \*exempt institution that is eligible for a refund if:

- (a) the entity has a physical presence in Australia; and
- (b) to that extent, incurs its expenditure and pursues its objectives principally in Australia;

at all times during the income year in which the distribution is made.

**207-119 Entity not treated as exempt institution eligible for refund in certain circumstances**

For the purposes of this Act:

- (a) an entity must not be treated as an \*exempt institution that is eligible for a refund in relation to a \*franked distribution if section 207-120, 207-122 or 207-124 applies to the entity in relation to the distribution; and
- (b) a beneficiary of a trust must not be treated as an exempt institution that is eligible for a refund in relation to a franked distribution made in an income year if section 207-126 applies to the beneficiary in relation to that income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **207-120 Entity may be ineligible because of a distribution event**

- (1) This section applies to an entity (the *ineligible entity*) if:
  - (a) a \*franked distribution is made, or \*flows indirectly under subsection 207-50(3) or (4), to the entity; and
  - (b) subsection (2) of this section applies because of a \*distribution event in relation to the distribution.
  
- (2) Subject to subsection (3) and to section 207-128, this subsection applies if, because of a \*distribution event in relation to the \*franked distribution:
  - (a) the ineligible entity or another entity:
    - (i) makes, becomes liable to make, or may reasonably be expected to make or to become liable to make, a payment to any entity; or
    - (ii) transfers, becomes liable to transfer, or may reasonably be expected to transfer or to become liable to transfer, any property to any entity; or
    - (iii) incurs, becomes liable to incur, or may reasonably be expected to incur or to become liable to incur, any other detriment, disadvantage, liability or obligation; or
  - (b) if the distribution is made to the ineligible entity—the amount or value of the benefit \*derived by the ineligible entity from the distribution is, will be, or may reasonably be expected to be, less than the amount or value of the distribution as at the time the distribution is made; or
  - (c) if the distribution \*flows indirectly to the ineligible entity—the amount or value of the benefit derived by the ineligible entity from the ineligible entity's \*trust share amount in relation to the distribution is, will be, or may reasonably be expected to be, less than the amount or value of the ineligible entity's trust share amount in relation to the distribution as at the time when that amount arises; or
  - (d) any of the following entities has obtained, will obtain or may reasonably be expected to obtain, a benefit, advantage, right or privilege:
    - (i) the entity making the distribution;
    - (ii) an entity through which the distribution flows indirectly to the ineligible entity;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 207-122

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(iii) an \*associate of any of those entities.

Note: For when paragraph (d) is satisfied, see also subsection 207-132(2).

*Exception to paragraph (2)(b) or (c)*

- (3) Paragraph (2)(b) or (c) does not apply if:
- (a) that paragraph would otherwise apply only because of expenses the ineligible entity has incurred, will incur, or may reasonably be expected to incur, for the purpose of obtaining the \*franked distribution or \*trust share amount mentioned in that paragraph; and
  - (b) the Commissioner considers the expenses to be reasonable.

*Trust share amount*

- (4) An entity's **trust share amount** in relation to a \*franked distribution that \*flows indirectly to the entity under subsection 207-50(3) or (4) is the entity's share amount that is mentioned in that subsection.

*Distribution event*

- (5) A **distribution event** in relation to a \*franked distribution is an act, transaction or circumstance that has happened, will happen, or may reasonably be expected to happen, as part of, in relation to or as a result of:
- (a) the payment or receipt of the distribution; or
  - (b) if the distribution \*flows indirectly to an entity under subsection 207-50(3) or (4)—the arising of, or the distribution or receipt of, the entity's \*trust share amount in relation to the distribution; or
  - (c) an \*arrangement entered into in association with a matter mentioned in paragraph (a) or (b).

**207-122 Entity may be ineligible if distribution is in the form of property other than money**

This section applies to an entity (the **ineligible entity**) to whom a \*franked distribution is made, or \*flows indirectly under subsection 207-50(3) or (4), if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (a) one of the following is in the form of property other than money:
  - (i) if the distribution is made to the ineligible entity—all or part of the distribution;
  - (ii) if the distribution flows indirectly to the ineligible entity through the trustee of a trust under subsection 207-50(3) or (4)—all or a part of a distribution (the *trust distribution*) made by the trustee of the trust that relates to the ineligible entity's \*trust share amount in relation to the franked distribution; and
- (b) the terms and conditions on which the franked distribution or trust distribution is made are such that the ineligible entity:
  - (i) does not receive immediate custody and control of the property; or
  - (ii) does not have the unconditional right to retain custody and control of the property in perpetuity; or
  - (iii) does not obtain an immediate, indefeasible and unencumbered legal and equitable title to the property.

#### **207-124 Entity may be ineligible if other money or property also acquired**

Subject to section 207-128, this section applies to an entity (the *ineligible entity*) to whom a \*franked distribution is made, or \*flows indirectly under subsection 207-50(3) or (4), if:

- (a) the ineligible entity or another entity has entered into an \*arrangement as part of, or in association with:
  - (i) the distribution; or
  - (ii) if the distribution flows indirectly to the ineligible entity—the ineligible entity's \*trust share amount in relation to the distribution; and
- (b) because of the arrangement, the ineligible entity or another entity has acquired or will acquire (whether directly or indirectly) money or property, other than money or property comprising the distribution or the ineligible entity's trust share amount, from:
  - (i) the entity making the distribution; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 207-126

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- (ii) an entity through which the distribution flows indirectly to the ineligible entity; or
- (iii) an \*associate of any of those entities (other than the ineligible entity).

**207-126 Entity may be ineligible if distributions do not match trust share amounts**

- (1) This section applies to a beneficiary of a trust in relation to an income year if:
- (a) the sum of the distributions:
    - (i) made to the beneficiary during the income year by the trustee of the trust; and
    - (ii) that relate to the beneficiary's \*trust share amount in relation to a \*franked distribution made during the income year;
- is less than:
- (b) that trust share amount.

*Commissioner's power to treat trust share amount as having been distributed during the income year*

- (2) Subsection (1) does not apply if the Commissioner, having regard to all the circumstances, considers that it would be reasonable to treat the \*trust share amount as having been distributed to the beneficiary in the income year.

**207-128 Reinvestment choice**

- (1) If, apart from this section, paragraph 207-120(2)(a) or (d) or section 207-124 would apply to an entity (the *receiving entity*) to whom a \*franked distribution is made or \*flows indirectly, that paragraph or section is taken not to apply to the receiving entity if:
- (a) instead of receiving the distribution, or the \*trust share amount concerned, by a payment of money, the receiving entity chooses to be issued with:
    - (i) if the distribution is made to the receiving entity—  
\*shares in the \*corporate tax entity making the distribution; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) if the distribution flows indirectly to the receiving entity—a fixed interest in the trust in relation to which the trust share amount arises; and
- (b) the choice is genuine and furthers the purpose for which the entity was established; and
- (c) the choice is not made for the purpose, or purposes that include the purpose, of benefiting the corporate tax entity, trust or any of their \*associates (other than the receiving entity); and
- (d) any benefit \*derived by the corporate tax entity, trust or any of their associates (other than the receiving entity) because of that choice is one which is an ordinary incident of issuing the shares or interests to the receiving entity or of the receiving entity's holding of those shares or interests; and
- (e) the parties that were involved in the \*distribution event or \*arrangement concerned deal with one another on an arm's length basis in relation to the event or arrangement.

*A vested and indefeasible interest constitutes a fixed interest*

- (2) The receiving entity's interest in a trust is a fixed interest if the interest is a vested and indefeasible interest in the trust's capital.

*Special rule about whether interests in unit trusts are defeasible*

- (3) If:
  - (a) the trust is a unit trust and the receiving entity holds units in the unit trust; and
  - (b) the units are redeemable or further units are able to be issued; and
  - (c) the units held by the receiving entity will be redeemed, or any further units will be issued:
    - (i) if units in the unit trust are listed for quotation in the official list of an \*approved stock exchange—for the price at which other units of the same kind in the unit trust are offered for sale on the exchange at the time of the redemption or issue; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 207-130

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- (ii) if the units are not listed as mentioned in subparagraph (i)—for their \*market value at the time of the redemption or issue;

then the mere fact that the units are redeemable, or that the further units are able to be issued, does not mean that the receiving entity's interest, as a unit holder, in the trust's capital is defeasible.

*Commissioner's power to treat an interest in a trust as being a fixed interest*

- (4) If:
  - (a) the receiving entity has an interest in the trust's capital; and
  - (b) apart from this subsection, the interest would not be a vested or indefeasible interest; and
  - (c) the Commissioner considers that the interest should be treated as being vested and indefeasible, having regard to:
    - (i) the circumstances in which the interest is capable of not vesting, or the defeasance can happen; and
    - (ii) the likelihood of the interest not vesting or the defeasance happening; and
    - (iii) the nature of the trust; and
    - (iv) any other matter the Commissioner thinks relevant;the Commissioner may determine that the interest is to be taken to be vested and indefeasible.
- (5) A determination made under subsection (4) has effect according to its terms.

**207-130 Controller's liability**

- (1) A \*controller (for imputation purposes) of an entity (the **controlled entity**) is liable to pay an amount under this section in respect of a refund paid to the controlled entity under Division 67 if:
  - (a) the controlled entity claimed the refund wholly or partly on the basis that:
    - (i) the controlled entity was entitled to a \*tax offset under section 207-20, 207-45 or 207-110 in relation to a \*franked distribution; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) the controlled entity was an \*exempt institution that is eligible for a refund; and
- (b) because of the operation of section 207-120, 207-122, 207-124 or 207-126 in respect of a \*distribution event or an \*arrangement in relation to the distribution, the controlled entity is not entitled to the tax offset; and
- (c) the controller or an \*associate of the controller benefited from that event or arrangement; and
- (d) some or all of the amount that the controlled entity is liable to pay in respect of the refund remains unpaid after the day on which the amount becomes due and payable; and
- (e) the Commissioner gives the controller written notice:
  - (i) stating that the controller is liable to pay an amount under this section; and
  - (ii) specifying that amount.

Except as provided for in subsection (5), this subsection does not affect any liability the controlled entity has in relation to the refund.

Note 1: Section 207-134 also provides that the controlled entity's present entitlement to a trust share amount is disregarded for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*.

Note 2: For when paragraph (c) is satisfied, see also subsection 207-132(3).

- (2) The amount that the \*controller (for imputation purposes) is liable to pay under subsection (1):
  - (a) is the amount specified under subparagraph (1)(e)(ii); and
  - (b) becomes due and payable at the end of the period of 14 days that starts on the day on which the notice mentioned in paragraph (1)(e) is given.
- (3) The amount that the \*controller (for imputation purposes) is liable to pay under subsection (1) must not exceed the total amount or value of the benefit that the controller and its \*associates obtained from the \*distribution event or \*arrangement.
- (4) The total of:
  - (a) the amounts that the Commissioner recovers under subsection (1) in relation to the refund from all of the controlled entity's \*controllers (for imputation purposes); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) the amounts that the Commissioner recovers in relation to the refund from the controlled entity;

must not exceed the amount that the controlled entity was liable to pay as mentioned in paragraph (1)(d).

*Controller of a company*

- (5) An entity is a **controller (for imputation purposes)** of a company if the entity is a \*controller of the company (for CGT purposes).

*Controller of an entity other than a company—basic meaning*

- (6) Subject to subsections (7) and (8), an entity is a **controller (for imputation purposes)** of an entity other than a company (the **controlled entity**) if:
- (a) a group in relation to the entity has the power, by means of the exercise of a power of appointment or revocation or otherwise, to obtain beneficial enjoyment (directly or indirectly) of the capital or income of the controlled entity; or
  - (b) a group in relation to the entity is able (directly or indirectly) to control the application of the capital or income of the controlled entity; or
  - (c) a group in relation to the entity is capable, under a \*scheme, of gaining the beneficial enjoyment mentioned in paragraph (a) or the control mentioned in paragraph (b); or
  - (d) the controlled entity or, if the controlled entity is a trust, the trustee of the trust:
    - (i) is accustomed; or
    - (ii) is under an obligation; or
    - (iii) might reasonably be expected; to act in accordance with the directions, instructions or wishes of a group in relation to the entity; or
  - (e) if the controlled entity is a trust—a group in relation to the entity is able (directly or indirectly) to remove or appoint the trustee of the trust; or
  - (f) a group in relation to the entity has more than a 50% stake in the income or capital of the controlled entity; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (g) entities in a group in relation to the entity are the only entities that, under the terms of:
  - (i) the constitution of the controlled entity or the terms on which the controlled entity is established; or
  - (ii) if the controlled entity is a trust—the terms of the trust; can obtain the beneficial enjoyment of the income or capital of the controlled entity.

*Group in relation to an entity*

- (7) For the purposes of subsection (6), each of the following constitutes a **group** in relation to an entity:
  - (a) the entity acting alone;
  - (b) an \*associate of the entity acting alone;
  - (c) the entity and one or more associates of the entity acting together;
  - (d) 2 or more associates of the entity acting together.

*Commissioner's power to take an entity not to be a controller (for imputation purposes)*

- (8) If:
  - (a) at a particular time, an entity (the **first entity**) would, but for this subsection, be a \*controller (for imputation purposes) of an entity other than a company (the **second entity**); and
  - (b) the Commissioner, having regard to all relevant circumstances, considers that it is reasonable that the first entity be taken not to be such a controller of the second entity at the particular time;the first entity is taken *not* to be a controller (for imputation purposes) of the second entity at the particular time.
- (9) Without limiting paragraph (8)(b), if the second entity is a trust, the Commissioner may have regard under that paragraph to the identity of the beneficiaries of the trust at any time (whether before or after the first entity began to be a \*controller (for imputation purposes) of the second entity).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 207-132 Treatment of benefits provided by an entity to a controller

- (1) This section applies in relation to a benefit (the *relevant benefit*) given by an entity to a \*controller (for imputation purposes) of the entity, or to an \*associate of such a controller, if:
  - (a) the controller or associate:
    - (i) makes a \*franked distribution to the entity; or
    - (ii) is the trustee of the trust in relation to which a \*trust share amount of the entity arises in relation to a franked distribution that \*flows indirectly to the entity; and
  - (b) the benefit is, or was, given to the controller or associate at any time during the period that starts 3 years before, and ends 3 years after, the distribution is made or the trust share amount arises (as appropriate).
- (2) For the purposes of paragraph 207-120(2)(d), the controller or \*associate is taken to have obtained the relevant benefit because of a \*distribution event in relation to the \*franked distribution or \*trust share amount.
- (3) For the purposes of paragraph 207-130(1)(c), and at least to the extent of the relevant benefit, the controller or \*associate is taken to have benefited from a \*distribution event or \*arrangement that caused section 207-120 to apply in relation to the \*franked distribution or \*trust share amount.

*Commissioner's power not to apply subsection (2) or (3)*

- (4) Subsection (2) or (3) does not apply in relation to a benefit if the Commissioner is satisfied, having regard to all the circumstances, that it would be unreasonable to apply that subsection.

### 207-134 Entity's present entitlement disregarded in certain circumstances

The present entitlement of a beneficiary of a trust to a share of trust income is disregarded for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936* if:

- (a) the beneficiary has claimed a \*tax offset under section 207-45 or 207-110 of this Act on the basis that the beneficiary was

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



an \*exempt institution that was eligible for a refund in relation to a \*trust share amount that is that share of trust income; but

- (b) the beneficiary was not entitled to that tax offset because of the operation of section 207-120, 207-122, 207-124 or 207-126 in respect of a \*distribution event, or an \*arrangement, to which the trust share amount is related.

Note: This means that the trustee of the trust is liable to pay income tax on that share of the trust income.

### **207-136 Review of certain decisions**

An entity that is dissatisfied with a decision of the Commissioner under any of the following provisions may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*:

- (a) paragraph 207-120(3)(b);
- (b) subsection 207-126(2);
- (c) subsection 207-128(4);
- (d) paragraph 207-130(1)(e);
- (e) paragraph 207-130(8)(b);
- (f) subsection 207-132(4).

### **Subdivision 207-F—No gross-up or tax offset where the imputation system has been manipulated**

#### **Guide to Subdivision 207-F**

#### **207-140 What this Subdivision is about**

This Subdivision creates the appropriate adjustment to cancel the effect of the gross-up and tax offset rules where the entity concerned has manipulated the imputation system in a manner that is not permitted under the income tax law.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Table of sections

### Operative provisions

207-145	Distribution that is made to an entity
207-150	Distribution that flows indirectly to an entity
207-155	When is a distribution made as part of a dividend stripping operation?
207-160	Distribution that is treated as an interest payment

## Operative provisions

### 207-145 Distribution that is made to an entity

#### *Whole of distribution manipulated*

- (1) If a \*franked distribution is made to an entity in one or more of the following circumstances:
- (a) the entity is not a qualified person in relation to the distribution for the purposes of Division 1A of former Part IIIAA of the *Income Tax Assessment Act 1936*;
  - (b) the Commissioner has made a determination under paragraph 177EA(5)(b) of that Act that no imputation benefit (within the meaning of that section) is to arise in respect of the distribution for the entity;
  - (c) the Commissioner has made a determination under paragraph 204-30(3)(c) of this Act that no \*imputation benefit is to arise in respect of the distribution for the entity;
  - (d) the distribution is made as part of a \*dividend stripping operation;
- then, for the purposes of this Act:
- (e) the amount of the \*franking credit on the distribution is not included in the assessable income of the entity under section 207-20 or 207-35; and
  - (f) the entity is not entitled to a \*tax offset under this Subdivision because of the distribution; and
  - (g) if the distribution \*flows indirectly through the entity to another entity—subsection 207-35(3) and section 207-45 do not apply to that other entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Part of share of distribution manipulated*

- (2) If:
- (a) a \*franked distribution is made to an entity; and
  - (b) the Commissioner makes a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no imputation benefit (within the meaning of that section) is to arise in respect of a specified part of the distribution (the *specified part*) for the entity;

then, for the purposes of this Act:

- (c) the amount of the distribution is taken to have been reduced by the specified part; and
- (d) the amount of the \*franking credit on the distribution is to be worked out as follows:

$$\frac{\text{*Franked distribution apart from this section} - \text{Specified part}}{\text{*Franked distribution apart from this section}} \times \frac{\text{*Franking credit on the *franked distribution apart from this section}}{\text{*Franked distribution apart from this section}}$$

Example: A franked distribution of \$70 is made to the trustee of a trust. Apart from this section, the franking credit on the distribution (\$30) would be included in the assessable income of the trust under section 207-35.

The Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no imputation benefit (within the meaning of that section) is to arise for the trustee in respect of \$49 of the distribution.

Under this subsection, the amount included in the assessable income of the trust under section 207-35 because of the distribution is reduced from \$30 to \$9.

If there is a beneficiary of the trust that is presently entitled to the trust's income, the amount of the distribution that flows indirectly to the beneficiary is reduced from \$70 to \$21 under this subsection.

*What happens if both subsection 207-90(2) and subsection (2) of this section would apply*

- (3) If, apart from this subsection, both subsection 207-90(2) and subsection (2) of this section would apply to an entity in relation to a \*franked distribution, then:
- (a) apply subsection 207-90(2) first; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) apply subsection (2) of this section on the basis that the amount of the \*franked distribution had been reduced under subsection 207-90(2).

### **207-150 Distribution that flows indirectly to an entity**

#### *Whole of share of distribution manipulated*

- (1) If a \*franked distribution \*flows indirectly to an entity in an income year in one or more of the following circumstances:
  - (a) the entity is not a qualified person in relation to the distribution for the purposes of Division 1A of former Part IIIAA of the *Income Tax Assessment Act 1936*;
  - (b) the Commissioner has made a determination under paragraph 177EA(5)(b) of that Act that no imputation benefit (within the meaning of that section) is to arise in respect of the distribution for the entity;
  - (c) the Commissioner has made a determination under paragraph 204-30(3)(c) of this Act that no \*imputation benefit is to arise in respect of the distribution for the entity;
  - (d) the distribution is treated as an interest payment for the entity under section 207-160 of this Act;
  - (e) the distribution is made as part of a \*dividend stripping operation;then, for the purposes of this Act:
  - (f) subsection (2), (3) or (4) (as appropriate) applies to the entity in relation to that income year; and
  - (g) the entity is not entitled to a \*tax offset under this Subdivision because of the distribution; and
  - (h) if the distribution \*flows indirectly through the entity to another entity—subsection 207-35(3) and section 207-45 do not apply to that other entity.

#### *Partner*

- (2) If the \*franked distribution \*flows indirectly to the entity as a partner in a partnership under subsection 207-50(2), the entity can deduct an amount for that income year that is equal to its \*share of the \*franking credit on the distribution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Beneficiary*

- (3) If the \*franked distribution \*flows indirectly to the entity as a beneficiary of a trust under subsection 207-50(3), the entity can deduct an amount for that income year that is equal to the lesser of:
- (a) its share amount in relation to the distribution that is mentioned in that subsection; and
  - (b) its \*share of the \*franking credit on the distribution.

*Trustee*

- (4) If the \*franked distribution \*flows indirectly to the entity as the trustee of a trust under subsection 207-50(4), the entity's share amount in relation to the distribution that is mentioned in that subsection is to be reduced by the lesser of:
- (a) that share amount; and
  - (b) its \*share of the \*franking credit on the distribution.

*Part of share of distribution manipulated*

- (5) If:
- (a) a \*franked distribution \*flows indirectly to an entity in an income year; and
  - (b) the Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no imputation benefit (within the meaning of that section) is to arise in respect of a specified part of the distribution (the ***specified part***) for the entity;

then, subsection (2), (3) or (4) (as appropriate) applies to the entity on the basis that the amount of its \*share of the \*franking credit on the distribution is worked out as follows:

$$\frac{\text{Specified part}}{\text{Entity's *share of the *franked distribution}} \times \frac{\text{Entity's *share of the *franking credit on the *franked distribution}}{\text{apart from this section}}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 207-150

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- (6) In addition, the following apply to an entity covered by subsection (5):
- (a) if the distribution would otherwise \*flow indirectly through the entity—the entity's \*share of the distribution for the purposes of this Act (other than subsection (2), (3) or (4)) is to be reduced by the specified part mentioned in subsection (5);
  - (b) if the entity would otherwise be entitled to a \*tax offset under this Subdivision because of the distribution—the amount of the tax offset is to be worked out as follows:

$$\begin{array}{r} \text{Entity's *share of} \\ \text{the *franking credit on the} \\ \text{*franked distribution apart from this section} \end{array} - \begin{array}{r} \text{Amount worked out} \\ \text{under subsection (5)} \end{array}$$

Example: X is a partner in a partnership to which a franked distribution of \$140 is made. The franking credit on the distribution (\$60) is included in the assessable income of the partnership under section 207-35. X's share of the distribution is \$70 and its share of the franking credit on the distribution is \$30.

The Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no imputation benefit (within the meaning of that section) is to arise for X in respect of \$42 of the distribution.

Under subsection (5), X will be allowed a deduction of \$18.

X is the trustee of a trust and the distribution will flow indirectly through X to beneficiaries of the trust. For the purposes of working out a beneficiary's share of the distribution and its share of the franking credit, X's share of the franked distribution is reduced to \$28 under this subsection.

*What happens if both subsection 207-95(1) and subsection (1) of this section would apply*

- (7) If, apart from this subsection, both subsection 207-95(1) and subsection (1) of this section would apply to an entity in relation to a \*franked distribution, then:
- (a) subsection (1) of this section applies to the entity; but
  - (b) subsection 207-95(1) does not apply to the entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*What happens if both subsection 207-95(5) and subsection (5) of this section would apply*

- (8) If, apart from this subsection, both subsection 207-95(5) and subsection (5) of this section would apply to an entity in relation to a \*franked distribution, then:
- (a) apply subsections 207-95(5) and (6) first; and
  - (b) apply subsections (5) and (6) of this section on the basis that:
    - (i) the amount of the entity's \*share of the \*franking credit on the distribution had been reduced under subsection 207-95(5); and
    - (ii) the amount of the entity's \*share of the distribution had been reduced under subsection 207-95(6).

**207-155 When is a distribution made as part of a dividend stripping operation?**

A distribution made to a \*member of a \*corporate tax entity is taken to be made as part of a **dividend stripping operation** if, and only if, the making of the distribution arose out of, or was made in the course of, a \*scheme that:

- (a) was by way of, or in the nature of, dividend stripping; or
- (b) had substantially the effect of a scheme by way of, or in the nature of, dividend stripping.

**207-160 Distribution that is treated as an interest payment**

- (1) For the purposes of this Subdivision, a \*franked distribution is treated as an **interest payment** for an entity to whom the distribution \*flows indirectly if:
- (a) all or a part of the entity's individual interest or share amount in relation to the distribution that is mentioned in subsection 207-50(2), (3) or (4) could reasonably be regarded as the payment of interest on a loan, having regard to:
    - (i) the way in which that individual interest or share amount was calculated; and
    - (ii) the conditions applying to the payment or application of that individual interest or share amount; and
    - (iii) any other relevant matters; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 207-160

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- (b) the entity's interest in the last intermediary entity (see subsection (2)):
  - (i) was acquired, or was acquired for a period that was extended, at or after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997; or
  - (ii) was acquired as part of a \*financing arrangement for the entity (including an arrangement extending to an earlier arrangement) that was entered into at or after that time.
- (2) The entity's interest in the last intermediary entity is:
  - (a) if the distribution \*flows indirectly to the entity as a partner in a partnership under subsection 207-50(2)—the entity's interest in the partnership; or
  - (b) if the distribution flows indirectly to the entity as a beneficiary of a trust under subsection 207-50(3)—the entity's interest in the trust; or
  - (c) if the distribution flows indirectly to the entity as the trustee of a trust under subsection 207-50(4)—the entity's interest in the trust in respect of which the entity is liable to be assessed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 208—Exempting entities and former exempting entities**

### **Table of Subdivisions**

	Guide to Division 208
208-A	What are exempting entities and former exempting entities?
208-B	Franking with an exempting credit
208-C	Amount of the exempting credit on a distribution
208-D	Distribution statements
208-E	Distributions to be franked with exempting credits to the same extent
208-F	Exempting accounts and franking accounts of exempting entities and former exempting entities
208-G	Tax effects of distributions by exempting entities
208-H	Tax effect of a distribution franked with an exempting credit

### **Guide to Division 208**

#### **Table of sections**

208-5	What is an exempting entity?
208-10	Former exempting entities
208-15	Distributions by exempting entities and former exempting entities

#### **208-5 What is an exempting entity?**

- (1) An exempting entity is a corporate tax entity that is effectively owned by entities that, either because they are not Australian residents or because they receive distributions as exempt income or non-assessable non-exempt income, would not be able to fully utilise franking credits on distributions by the corporate tax entity.
- (2) In deciding whether a corporate tax entity is effectively owned by such entities, these rules:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 208-10

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- (a) look at the membership interests in the entity that involve the holder of the interest in bearing the risks and accruing the opportunities of ownership of the entity; and
- (b) ask whether at least 95% of those membership interests, and 95% of any interests in those membership interests, are held by Australian residents or entities that receive distributions as exempt income or non-assessable non-exempt income.

**208-10 Former exempting entities**

When an entity ceases to be an exempting entity, it becomes a former exempting entity.

**208-15 Distributions by exempting entities and former exempting entities**

To ensure that franking credits accumulated by an exempting entity are not the target of franking credit trading, these rules:

- (a) limit the circumstances in which a distribution franked with those credits can give rise to benefits under the imputation system; and
- (b) quarantine those credits by moving them into a separate account, called the exempting account, when the entity ceases to be an exempting entity; and
- (c) deny a recipient of a distribution franked with a credit from that account any benefit under the imputation system as a result of that distribution, unless the recipient was a member of the entity immediately before it became a former exempting entity.

**Subdivision 208-A—What are exempting entities and former exempting entities?**

**Table of sections**

208-20	Exempting entities
208-25	Effective ownership of entity by prescribed persons
208-30	Accountable membership interests
208-35	Accountable partial interests
208-40	Prescribed persons

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- 208-45 Persons who are taken to be prescribed persons  
208-50 Former exempting companies

### **208-20 Exempting entities**

A \*corporate tax entity is an *exempting entity* at a particular time if, at that time, the entity is effectively owned by prescribed persons.

Note: Prescribed persons are identified in sections 208-40 and 208-45.

### **208-25 Effective ownership of entity by prescribed persons**

- (1) An entity is *effectively owned by prescribed persons* at a particular time if:
- (a) at that time:
    - (i) not less than 95% of the \*accountable membership interests in the entity; or
    - (ii) not less than 95% of the \*accountable partial interests in the entity;are held by, or held indirectly for the benefit of, prescribed persons; or
  - (b) paragraph (a) does not apply but it would nevertheless be reasonable to conclude that, at that time, the risks involved in, and the opportunities resulting from, holding accountable membership interests, or accountable partial interests, in the entity that are not held by, or directly or indirectly for the benefit of, prescribed persons are substantially borne by, or substantially accrue to, prescribed persons.
- (2) In deciding whether it would be reasonable to conclude as mentioned in paragraph (1)(b):
- (a) have regard to any \*arrangement in respect of \*membership interests (including unissued membership interests), or in respect of \*partial interests, in the entity (including any derivatives held or issued in connection with those membership interests or partial interests) of which the entity is aware; but
  - (b) do not have regard to risks involved in the ownership of membership interests, or partial interests, in the entity that

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 208-30

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are substantially borne by any person in the person's capacity as a secured creditor.

- (3) An entity has a *partial interest* in a \*corporate tax entity if it has an interest in a \*membership interest in the corporate tax entity.

**208-30 Accountable membership interests**

- (1) The purpose of this section is to identify which \*membership interests in an entity are relevant in determining whether the entity is effectively owned by prescribed persons.
- (2) A \*membership interest in an entity is an *accountable membership interest* if it is not an excluded membership interest.
- (3) A \*membership interest in an entity is an *excluded membership interest* if, having regard to:
- (a) the purposes for which the membership interest was issued; and
  - (b) any special or limited rights connected with, arising from, or attached to:
    - (i) the membership interest; or
    - (ii) other membership interests in the entity held by the holder of the membership interest; or
    - (iii) membership interests in the entity held by persons other than the holder of the membership interest; or
    - (iv) interests in any of the above; including rights that are conferred or exercisable only if the holder of the membership interest or interests concerned is, or is not, a prescribed person; and
  - (c) the extent to which any such special or limited rights are similar to or differ from the rights that are normally attached to the ownership of \*ordinary membership interests in \*corporate tax entities; and
  - (d) the relationship between the value of the membership interest and the value of the entity; and
  - (e) any relationship or connection (whether of a personal or business nature) between holders of membership interests in the entity of which the entity is aware; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (f) any \*arrangement in respect of membership interests (including unissued membership interests) in the entity, or interests in membership interests in the entity, of which the entity is aware;

it would be reasonable to conclude that the membership interest is not relevant in determining whether the entity is effectively owned by prescribed persons because holding the membership interest does not involve the holder bearing the risks, or result in the accrual to the holder of the opportunities, of ownership of the entity that ordinarily arise from, or are ordinarily attached to, the holding of ordinary membership interests in an entity.

- (4) In applying subsection (3), the fact that a person is a trustee is to be disregarded.
- (5) Without limiting subsection (3), a \*membership interest in an entity held by a person who is not a prescribed person is an ***excluded membership interest*** if:
- (a) it is a finance membership interest; or
  - (b) it is a distribution access membership interest; or
  - (c) it does not carry the right to receive distributions; or
  - (d) it was issued, transferred or acquired for a purpose (other than an incidental purpose) of ensuring that the entity is not effectively owned by prescribed persons.
- (6) A \*membership interest is a ***finance membership interest*** if:
- (a) the membership interest is a \*non-equity share in the entity; or
  - or
  - (b) having regard to the rights attached to the membership interest and to any \*arrangement with respect to the membership interest of which the entity is aware, the membership interest is equivalent to a debt owed by the entity to the holder of the membership interest.
- (7) A \*membership interest to which subsection (6) does not apply is a ***finance membership interest*** if:
- (a) the manner in which the \*distributions payable in respect of the membership interest are calculated, and the conditions applying to the payment of such distributions, indicate that the distributions paid are equivalent to the receipt by the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 208-30

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person to whom they are paid of interest or an amount in the nature of or similar to interest; or

- (b) the capital invested by the holder of the membership interest will be redeemed or, because of an \*arrangement between the holder and the entity or an \*associate of the entity, it is reasonable for the holder to expect that the capital will be redeemed, for an amount that is not less than, or for property (including other membership interests in the entity) the value of which is not less than, the amount paid for the membership interest; or
  - (c) the membership interest is redeemable by the entity by payment of a lump sum or by the transfer of property, or the membership interest has a preferred right to a repayment of capital on a winding up, where the amount of the lump sum or the value of the property, or the amount of the capital to be repaid, as the case may be, is to be calculated by reference to an implicit interest rate.
- (8) A \*membership interest in an entity is a ***distribution access membership interest*** if, having regard to:
- (a) the terms of the issue of the membership interest, including any guarantee of payment of distributions; and
  - (b) the amounts of the \*distributions paid on the membership interest relative to the issue price of the membership interest; and
  - (c) whether there is any guaranteed rate at which \*franked distributions are to be paid on the membership interest; and
  - (d) the duration of the period within which the membership interest was issued; and
  - (e) the rights attached to other membership interests in the entity; and
  - (f) any other relevant matters;

it could be concluded that the membership interest was issued only for the purpose of paying distributions to the holder of the membership interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **208-35 Accountable partial interests**

- (1) The purpose of this section is to identify which \*partial interests in an entity are relevant in determining whether the entity is effectively owned by prescribed persons.
- (2) A \*partial interest in an entity is an *accountable partial interest* if it is not an excluded partial interest.
- (3) A \*partial interest in an entity is an *excluded partial interest* if, having regard to:
  - (a) the purposes for which the interest was granted; and
  - (b) the nature of the interest; and
  - (c) any special or limited rights connected with or arising from:
    - (i) the interest; or
    - (ii) other \*membership interests, or partial interests, in the entity held by the holder of the interest; or
    - (iii) membership interests, or partial interests, in the entity held by persons other than the holder of the interest; including rights that are conferred or exercisable only if the holder of the membership interests or partial interests concerned is, or is not, a prescribed person; and
  - (d) the extent to which the interest is similar to or differs from beneficial ownership; and
  - (e) the relationship between the value of the interest and the value of the entity; and
  - (f) any relationship or connection (whether of a personal or business nature) between holders of partial interests in the entity, and the holders of membership interests in the entity, of which the entity is aware; and
  - (g) any \*arrangement in respect of membership interests (including unissued membership interests) in the entity, or partial interests in the entity, of which the entity is aware;it would be reasonable to conclude that the partial interest is not relevant in determining whether the entity is effectively owned by prescribed persons because holding the membership interest to which the partial interest relates does not involve the holder bearing the risks, or result in the accrual to the holder of the opportunities, of ownership of the entity that ordinarily arise from,

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 208-40

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or are ordinarily attached to, the holding of \*ordinary membership interests in an entity.

- (4) In applying subsection (3), the fact that a person is a trustee is to be disregarded.
- (5) Without limiting subsection (3), a \*partial interest in an entity is also an *excluded partial interest* if it was granted or otherwise created, or was transferred or acquired, for a purpose (other than an incidental purpose) of ensuring that the entity is not effectively owned by prescribed persons.

**208-40 Prescribed persons**

- (1) A company is a *prescribed person* in relation to another \*corporate tax entity if:
  - (a) the company is a foreign resident; or
  - (b) were the company to receive a \*distribution made by the other corporate tax entity, the distribution would be \*exempt income or \*non-assessable non-exempt income of the company.
- (2) A trustee is a *prescribed person* in relation to a \*corporate tax entity if:
  - (a) all the beneficiaries in the trust are prescribed persons under other provisions of this section; or
  - (b) were the trustee to receive a \*distribution made by the corporate tax entity, the distribution would be \*exempt income or \*non-assessable non-exempt income of the trust estate.
- (3) A partnership is a *prescribed person* in relation to a \*corporate tax entity if:
  - (a) all the partners are prescribed persons under other provisions of this section; or
  - (b) were the partnership to receive a \*distribution made by the corporate tax entity, the distribution would be \*exempt income or \*non-assessable non-exempt income of the partnership.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4) An individual (other than a trustee) is a prescribed person in relation to a \*corporate tax entity if:
  - (a) he or she is a foreign resident; or
  - (b) were he or she to receive a \*distribution made by the corporate tax entity, the distribution would be \*exempt income or \*non-assessable non-exempt income of the individual.
- (5) The Commonwealth, each of the States, the Australian Capital Territory, the Northern Territory and Norfolk Island are prescribed persons in relation to any \*corporate tax entity.
- (6) An \*exempt institution that is eligible for a refund cannot be a **prescribed person** in relation to a \*corporate tax entity under this section.

### **208-45 Persons who are taken to be prescribed persons**

- (1) This section applies to a person that:
  - (a) is a company, a trustee, or a partnership, that holds \*membership interests (whether \*accountable membership interests or excluded membership interests), or \*partial interests (whether \*accountable partial interests or excluded partial interests), in a \*corporate tax entity (the **relevant entity**); and
  - (b) is not a prescribed person under section 208-40.
- (2) A company that holds \*membership interests, or \*partial interests, in the relevant entity is taken to be a **prescribed person** in relation to the relevant entity if the risks involved in, and the opportunities resulting from, holding the membership interests or partial interests are substantially borne by, or substantially accrue to, as the case may be, one or more prescribed persons.
- (3) A trustee of a trust who holds \*membership interests, or \*partial interests, in the relevant entity is taken to be a **prescribed person** in relation to the relevant entity if the risks involved in, and the opportunities resulting from, holding the membership interests or partial interests are substantially borne by, or substantially accrue to, as the case may be, one or more prescribed persons.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 208-45

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- (4) A trustee of a trust who holds \*membership interests, or \*partial interests, in the relevant entity is taken to be a *prescribed person* in relation to the relevant entity if:
- (a) unless subsection (7) applies, the trust is controlled by one or more persons who are prescribed persons; or
  - (b) all the beneficiaries who are presently entitled to, or during the relevant income year become presently entitled to, income from the trust are prescribed persons.
- (5) In determining whether subsection (3) or (4) applies in respect of a trust that is controlled by a person, have regard to the way in which the person, or any \*associate of the person, exercises powers in relation to the trust.
- (6) A person *controls a trust* if:
- (a) the person has the power, either directly, or indirectly through one or more interposed entities, to control the application of the income, or the distribution of the property, of the trust; or
  - (b) the person has the power, either directly, or indirectly through one or more entities, to appoint or remove the trustee of the trust; or
  - (c) the person has the power, either directly, or indirectly through one or more entities, to appoint or remove beneficiaries of the trust; or
  - (d) the trustee of the trust is accustomed or under an obligation, whether formal or informal, to act according to the directions, instructions or wishes of the person or of an \*associate of the person.
- (7) Paragraph (4)(a) does not apply in relation to a trust if some of the beneficiaries receiving income from the trust are not prescribed persons and the Commissioner considers that it is reasonable to conclude that the risks involved in, and the opportunities resulting from, holding the \*membership interests or \*partial interests in the relevant entity are substantially borne by, or substantially accrue to, as the case may be, one or more persons who are not prescribed persons.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (8) A partnership that holds \*membership interests, or \*partial interests, in the relevant entity is taken to be a *prescribed person* in relation to the relevant entity if the risks involved in, and the opportunities resulting from, holding the membership interests or partial interests are substantially borne by, or substantially accrue to, as the case may be, one or more prescribed persons.
- (9) If any of the prescribed persons referred to in subsection (2), (3), (4) or (8) is a \*corporate tax entity, that subsection applies even if the risks involved in, and the opportunities resulting from, holding any of the \*membership interests, or \*partial interests, in that entity are substantially borne by, or substantially accrue to, as the case may be, one or more persons who are not prescribed persons.
- (10) An \*exempt institution that is eligible for a refund cannot be taken to be a *prescribed person* in relation to a \*corporate tax entity under this section.

### **208-50 Former exempting companies**

- (1) Subject to subsection (2), a \*corporate tax entity is a *former exempting entity* if it has, at any time, ceased to be an \*exempting entity and is not again an exempting entity.
- (2) If an entity that, at any time, becomes effectively owned by prescribed persons ceases to be so effectively owned within 12 months after that time, the entity is not taken, by so ceasing, to become a former exempting entity.

### **Subdivision 208-B—Franking with an exempting credit**

#### **Guide to Subdivision 208-B**

#### **208-55 What this Subdivision is about**

If a former exempting entity makes a distribution in circumstances where it could be franked, the entity can frank the distribution with an exempting credit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Table of sections

### Operative provisions

208-60 Franking with an exempting credit

## Operative provisions

### 208-60 Franking with an exempting credit

An entity franks a \*distribution with an exempting credit if:

- (a) the entity is a \*former exempting entity when the distribution is made; and
- (b) the entity is a \*franking entity that satisfies the \*residency requirement when the distribution is made; and
- (c) the distribution is a \*frankable distribution; and
- (d) the entity allocates an \*exempting credit to the distribution.

Note: The residency requirement for an entity making a distribution is set out in section 202-20.

### Subdivision 208-C—Amount of the exempting credit on a distribution

## Guide to Subdivision 208-C

### 208-65 What this Subdivision is about

The amount of the exempting credit on a distribution is that stated in the distribution statement, unless the amount stated exceeds the maximum franking credit for the distribution. In that case, it is nil.

## Table of sections

### Operative provisions

208-70 Amount of the exempting credit on a distribution

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Operative provisions

### 208-70 Amount of the exempting credit on a distribution

- (1) Subject to subsection (2), the amount of the \*exempting credit on a \*distribution is that stated in the \*distribution statement for the distribution.
- (2) If the sum of the \*franking credit and the \*exempting credit stated in the \*distribution statement for a \*distribution exceeds the \*maximum franking credit for the distribution, the amount of the exempting credit on the distribution is taken to be nil.

Note: If the franking credit stated in the distribution statement exceeds the maximum franking credit for the distribution, the amount of the franking credit on the distribution is taken to equal that maximum under section 202-65.

### Subdivision 208-D—Distribution statements

#### Guide to Subdivision 208-D

#### 208-75 Guide to Subdivision 208-D

Former exempting entities and exempting entities that make certain distributions must provide additional information in the distribution statement given to the recipient.

#### Table of sections

##### Operative provisions

- |        |  |
|--------|--|
| 208-80 | Additional information to be included by a former exempting entity or exempting entity |
|--------|--|

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### 208-80 Additional information to be included by a former exempting entity or exempting entity

- (1) A \*former exempting entity that makes a \*distribution \*franked with an exempting credit must include in the \*distribution statement given to the recipient, a statement that there is an \*exempting credit of a specified amount on the distribution.
- (2) An \*exempting entity that makes a \*frankable distribution to a \*member must include in the \*distribution statement given to the member, a statement to the effect that members who are Australian residents are not entitled to a \*tax offset or \*franking credit as a result of the distribution, except for certain \*corporate tax entities, and employees who receive the distribution in connection with certain \*employee share schemes.
- (3) If, under subsection (1) or (2), a statement must be included in a \*distribution statement, the distribution statement is taken not to have been given unless the statement is included.

### Subdivision 208-E—Distributions to be franked with exempting credits to the same extent

#### Guide to Subdivision 208-E

#### 208-85 What this Subdivision is about

All frankable distributions made within a franking period must be franked to the same extent with an exempting credit.

#### Table of sections

##### Operative provisions

- |        |   |
|--------|---|
| 208-90 | All frankable distributions made within a franking period must be franked to the same extent with an exempting credit |
| 208-95 | Exempting percentage  |

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

208-100 Consequences of breaching the rule in section 208-90

## Operative provisions

### **208-90 All frankable distributions made within a franking period must be franked to the same extent with an exempting credit**

- (1) If an entity \*franks a \*distribution with an exempting credit, it must frank each other \*frankable distribution made within the same \*franking period with an exempting credit worked out at the same \*exempting percentage.
- (2) If an entity is not a \*former exempting entity for the whole of a \*franking period (the *longer period*), then, for the purposes of subsection (1), each period within that longer period during which the entity is a former exempting entity is taken to be a *franking period*.

### **208-95 Exempting percentage**

The *exempting percentage* for a \*frankable distribution is worked out using the formula:

$$\frac{\text{Amount of the} \\ \text{*exempting credit} \\ \text{on the distribution}}{\text{*Maximum franking credit} \\ \text{for the distribution}} \times 100$$

### **208-100 Consequences of breaching the rule in section 208-90**

If an entity \*franks a \*distribution with an exempting credit in breach of section 208-90:

- (a) that distribution is taken not to have been franked with an exempting credit; and
- (b) each other \*frankable distribution made by the entity within the relevant \*franking period is taken not to have been franked with an exempting credit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 208-F—Exempting accounts and franking accounts of exempting entities and former exempting entities**

### **Guide to Subdivision 208-F**

#### **208-105 What this Subdivision is about**

This Subdivision:

- creates an exempting account for each former exempting entity; and
- identifies when exempting credits and debits arise in those accounts and the amount of those credits and debits; and
- identifies when there is an exempting surplus or deficit in the account; and
- identifies when franking credits and debits arise in the franking account of an entity because it is an exempting entity, or former exempting entity.

#### **Table of sections**

##### **Operative provisions**

208-110	Exempting account
208-115	Exempting credits
208-120	Exempting debits
208-125	Exempting surplus and deficit
208-130	Franking credits arising because of status as exempting entity or former exempting entity
208-135	Relationships that will give rise to a franking credit under item 5 of the table in section 208-130
208-140	Membership of the same effectively wholly-owned group
208-145	Franking debits arising because of status as exempting entity or former exempting entity
208-150	Residency requirement
208-155	Eligible continuing substantial member
208-160	Distributions that are affected by a manipulation of the imputation system

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- 208-165 Amount of the exempting credit or franking credit arising because of a distribution franked with an exempting credit
- 208-170 Where a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* affects part of the distribution
- 208-175 When does a distribution franked with an exempting credit flow indirectly to an entity?
- 208-180 What is an entity's share of the exempting credit on a distribution?
- 208-185 Minister may convert exempting surplus to franking credit of former exempting entity previously owned by the Commonwealth

## Operative provisions\*

### 208-110 Exempting account

Each \*former exempting entity has an *exempting account*.

### 208-115 Exempting credits

The following table sets out when a credit arises in the \*exempting account of a \*former exempting entity. A credit in the former exempting entity's account is called an *exempting credit*.

<b>Exempting Credits</b>			
<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
1	the entity had a *franking surplus at the time it became a *former exempting entity (at the time of its <i>transition</i> )	an amount equal to: (a) in a case not covered by paragraph (b)—the franking surplus; or (b) if the entity has been a former exempting entity at any time within a period of 12 months before its transition—so much of the franking surplus as would have been the entity's *exempting surplus had it remained a former exempting entity throughout the period	immediately after its transition

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 208-115

<b>Exempting Credits</b>			
<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
2	the entity receives a *distribution *franked with an exempting credit; and the entity satisfies the *residency requirement for the income year in which the distribution is made and at the time the distribution is made; and some part of the distribution is neither *exempt income nor *non-assessable non-exempt income of the entity; and the entity is an *eligible continuing substantial member in relation to the distribution; and the distribution is not affected by a manipulation of the imputation system mentioned in section 208-160	an amount worked out under subsection 208-165(1)	on the day on which the distribution is made

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Exempting Credits**

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Item	If:	A credit of:	Arises:
3	the entity receives a *distribution *franked with an exempting credit; and the entity satisfies the *residency requirement for the income year in which the distribution is made and at the time the distribution is made; and some part of the distribution is neither *exempt income nor *non-assessable non-exempt income of the entity; and the entity is an *eligible continuing substantial member in relation to the distribution; and the Commissioner has made a determination under paragraph 177EA(5)(b) of the <i>Income Tax Assessment                      Act 1936</i> that no franking credit benefit (within the meaning of that section) is to arise in respect of a specified part of the distribution	an amount worked out under subsection 208-170(1)	on the day on which the distribution is made

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-6** The imputation system

**Division 208** Exempting entities and former exempting entities

Section 208-115

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<b>Exempting Credits</b>			
<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
4	a *distribution *franked with an exempting credit *flows indirectly to the entity (the <i>ultimate recipient</i> ); and the recipient of the distribution is an *eligible continuing substantial member in relation to the distribution; and except for the fact that the ultimate recipient is not an eligible continuing substantial member in relation to the distribution, it would have been entitled to an *exempting credit because of the distribution had the distribution been made to the ultimate recipient	an amount equal to the exempting credit that would have arisen for the ultimate recipient if: (a) the ultimate recipient had been an eligible continuing substantial member in relation to the distribution; and (b) the distribution had been made to the ultimate recipient; and (c) the distribution had been franked with an exempting credit equal to the ultimate recipient's *share of the actual exempting credit	on the day on which the distribution is made
5	the entity *pays a *PAYG instalment; and the entity satisfies the *residency requirement for the income year in relation to which the PAYG instalment is paid; and the entity was an *exempting entity for the whole or part of the relevant *PAYG instalment period	an amount equal to that part of the payment that is attributable to the period during which the entity was an exempting entity	on the day on which the payment is made

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Exempting Credits</b>			
<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
6	the entity *pays income tax; and the entity satisfies the *residency requirement for the income year for which the tax is paid; and the entity was an *exempting entity for the whole or part of that income year	an amount equal to that part of the payment that is attributable to the period during which the entity was an exempting entity	on the day on which the payment is made
7	the *exempting account of the entity would, apart from this item, be in *deficit immediately before the end of an income year	an amount equal to the deficit	immediately before the end of the income year
8	the entity becomes an *exempting entity; and the entity has an *exempting deficit at the time it becomes an exempting entity	an amount equal to the exempting deficit	immediately after the entity becomes an exempting entity

### 208-120 Exempting debits

The following table sets out when a debit arises in the \*exempting account of the \*former exempting entity. A debit in the \*former exempting entity's exempting account is called an *exempting debit*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 3 Specialist liability rules

Part 3-6 The imputation system

Division 208 Exempting entities and former exempting entities

Section 208-120

<b>Exempting debits</b>			
<b>Item</b>	<b>If:</b>	<b>A debit of:</b>	<b>Arises:</b>
1	the entity had a *franking deficit at the time it became a *former exempting entity (at the time of its <i>transition</i> )	an amount equal to: (a) in a case not covered by paragraph (b)—the franking deficit; or (b) if the entity has been a former exempting entity at any time within a period of 12 months before its transition—so much of the franking deficit as would have been the entity's *exempting deficit had it remained a former exempting entity throughout the period	immediately after its transition
2	the entity makes a *distribution *franked with an exempting credit	an amount equal to the *exempting credit on the distribution	on the day on which the distribution is made
3	the entity *receives a refund of income tax; and the entity was an *exempting entity during all or part of the income year to which the refund relates; and the entity satisfies the *residency requirement for the income year to which the refund relates	an amount equal to that part of the refund that is attributable to the period during which the entity is an exempting entity	on the day on which the refund is received
4	the Commissioner makes a determination under paragraph 204-30(3)(b) giving rise to an *exempting debit for the entity (streaming distributions)	the amount specified in the determination	on the day specified in section 204-35

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Exempting debits</b>			
<b>Item</b>	<b>If:</b>	<b>A debit of:</b>	<b>Arises:</b>
5	a *franking debit arises for the entity under section 204-15 (linked distributions), 204-25 (substituting tax-exempt bonus shares for franked distributions) or a determination made under paragraph 204-30(3)(a) (streaming distributions); and  the entity was an *exempting entity for the whole or part of the period to which the franking debit relates	an amount equal to that part of the franking debit that relates to the period during which the entity was an exempting entity	when the franking debit arises
6	the Minister makes a determination under paragraph 208-185(4)(a) giving rise to an *exempting debit for the entity	the amount specified in the determination	on the day specified in the determination
7	the entity becomes an *exempting entity; and  the entity has an *exempting surplus at the time it becomes an exempting entity	an amount equal to the exempting surplus	immediately after the entity becomes an exempting entity

### 208-125 Exempting surplus and deficit

- (1) An entity's \*exempting account is in *surplus* at a particular time if, at that time, the sum of the \*exempting credits in the account exceeds the sum of the \*exempting debits in the account. The amount of the *exempting surplus* is the amount of the excess.
- (2) An entity's \*exempting account is in *deficit* at a particular time if, at that time, the sum of the \*exempting debits in the account

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 208-130

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exceeds the sum of the \*exempting credits in the account. The amount of the *exempting deficit* is the amount of the excess.

**208-130 Franking credits arising because of status as exempting entity or former exempting entity**

The following table sets out when a credit arises in the \*franking account of an entity because of its status as an \*exempting entity or \*former exempting entity.

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**Franking credits arising because of status as an exempting entity or former exempting entity**

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<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
1	an entity becomes a *former exempting entity; and the entity has a *franking deficit at the time it becomes a former exempting entity	an amount equal to the franking deficit	immediately after the entity becomes a former exempting entity

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Franking credits arising because of status as an exempting entity or former exempting entity**

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<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
2	an entity receives a *distribution *franked with an exempting credit; and the entity is an *exempting entity at the time the distribution is made; and the entity satisfies the *residency requirement for the income year in which the distribution is made and at the time the distribution is made; and some part of the distribution is neither *exempt income nor *non-assessable non-exempt income of the entity; and the entity is an *eligible continuing substantial member in relation to the distribution; and the distribution is not affected by a manipulation of the imputation system mentioned in section 208-160	an amount worked out under subsection 208-165(1)	on the day on which the distribution is made

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Franking credits arising because of status as an exempting entity or former exempting entity**

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<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
3	the entity receives a *distribution *franked with an exempting credit; and the entity is an *exempting entity at the time the distribution is made; and the entity satisfies the *residency requirement for the income year in which the distribution is made and at the time the distribution is made; and some part of the distribution is neither *exempt income nor *non-assessable non-exempt income of the entity; and the entity is an *eligible continuing substantial member in relation to the distribution; and the Commissioner has made a determination under paragraph 177EA(5)(b) of the <i>Income Tax Assessment                      Act 1936</i> that no franking credit benefit (within the meaning of that section) is to arise in respect of a specified part of the distribution	an amount worked out under subsection 208-170(1)	on the day on which the distribution is made

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Franking credits arising because of status as an exempting entity or former exempting entity**

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Item	If:	A credit of:	Arises:
4	<p>a *distribution *franked with an exempting credit *flows indirectly to the entity (the <i>ultimate recipient</i>); and the recipient of the distribution is an *eligible continuing substantial member in relation to the distribution; and except for the fact that the ultimate recipient is not an eligible continuing substantial member in relation to the distribution, it would have been entitled to a *franking credit because of the distribution had the distribution been made to the ultimate recipient</p>	<p>an amount equal to the franking credit that would have arisen for the ultimate recipient if:</p> <p>(a) the ultimate recipient had been an eligible continuing substantial member in relation to the distribution; and</p> <p>(b) the distribution had been made to the ultimate recipient; and</p> <p>(c) the distribution had been franked with a franking credit equal to the ultimate recipient's *share of the actual franking credit</p>	<p>on the day on which the distribution is made</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Franking credits arising because of status as an exempting entity or former exempting entity**

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<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
5	an *exempting entity makes a *franked distribution to the entity (the <i>recipient</i> ); and at the time the distribution is made: <ul style="list-style-type: none"> <li>(a) the recipient is an exempting entity; and</li> <li>(b) the recipient satisfies the *residency requirement; and</li> <li>(c) the relationship between the entities is of the type mentioned in section 208-135; and the recipient satisfies the residency requirement for the income year in which the distribution is made; and some part of the distribution is neither *exempt income nor *non-assessable non-exempt income of the recipient; and the distribution is not affected by a manipulation of the imputation system mentioned in section 208-160</li> </ul>	an amount worked out using the formula in subsection 208-165(2)	on the day on which the distribution is made

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Franking credits arising because of status as an exempting entity or former exempting entity**

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<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
6	an *exempting entity makes a *franked distribution to the entity (the <i>recipient</i> ); and at the time the distribution is made: <ul style="list-style-type: none"> <li>(a) the recipient is an exempting entity; and</li> <li>(b) the recipient satisfies the *residency requirement; and</li> <li>(c) the relationship between the entities is of the type mentioned in section 208-135; and</li> </ul> the recipient satisfies the residency requirement for the income year in which the distribution is made; and some part of the distribution is neither *exempt income nor *non-assessable non-exempt income of the recipient; and the Commissioner has made a determination under paragraph 177EA(5)(b) of the <i>Income Tax Assessment Act 1936</i> that no franking credit benefit (within the meaning of that section) is to arise in respect of a specified part of the distribution	an amount worked out using the formula in subsection 208-170(2)	on the day on which the distribution is made

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 208-130

**Franking credits arising because of status as an exempting entity or former exempting entity**

<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
7	a *distribution made by an *exempting entity *flows indirectly to the entity (the <i>ultimate recipient</i> ); and the recipient of the distribution is an *eligible continuing substantial member in relation to the distribution; and except for the fact that the ultimate recipient is not an eligible continuing substantial member in relation to the distribution, it would have been entitled to a *franking credit because of the distribution had the distribution been made to the ultimate recipient	an amount equal to the franking credit that would have arisen for the ultimate recipient if: (a) the ultimate recipient had been an eligible continuing substantial member in relation to the distribution; and (b) the distribution had been made to the ultimate recipient; and (c) the distribution had been franked with a franking credit equal to the ultimate recipient's *share of the actual franking credit	on the day on which the distribution is made
8	the Minister makes a determination under paragraph 208-185(4)(b) giving rise to a *franking credit for the entity	the amount of the credit specified in the determination	on the day specified in the determination
9	an *exempting debit arises for the entity under item 3 or 5 of the table in section 208-120	an amount equal to the exempting debit	when the exempting debit arises

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Franking credits arising because of status as an exempting entity or former exempting entity**

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Item	If:	A credit of:	Arises:
10	a *former exempting entity becomes an *exempting entity; and  the entity has an *exempting surplus at the time it becomes an *exempting entity	an amount equal to the *exempting surplus	immediately after it becomes an exempting entity

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Note: Item 9 is designed to reverse out franking debits that arise in relation to a period during which the entity is an exempting entity. The entity will receive an exempting debit instead.

**208-135 Relationships that will give rise to a franking credit under item 5 of the table in section 208-130**

- (1) A relationship between an entity making a \*franked distribution and the recipient of the distribution is of a type that gives rise to a \*franking credit under item 5 or 6 of the table in section 208-130 if either:
  - (a) both entities are members of the same effectively wholly-owned group; or
  - (b) the recipient holds more than 5% of the \*membership interests in the entity making the distribution (other than finance membership interests or distribution access membership interests within the meaning of section 208-30 or membership interests that do not carry the right to receive distributions) and it would be reasonable to conclude that the risks involved in, and the opportunities resulting from, holding those membership interests are substantially borne by, or substantially accrue to, the recipient.
  
- (2) In deciding whether it would be reasonable to make the conclusion mentioned in paragraph (1)(b):
  - (a) have regard to any \*arrangement in respect of the \*membership interests (including unissued membership interests) in the entity making the distribution (including

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

derivatives held or issued in connection with those membership interests); and

- (b) do not have regard to risks involved in the ownership of membership interests in the entity making the distribution that are substantially borne by any person in the person's capacity as a secured creditor.

### **208-140 Membership of the same effectively wholly-owned group**

- (1) Two \*corporate tax entities are members of the *same effectively wholly-owned group of entities* on a particular day if:
  - (a) throughout that day, not less than 95% of the \*accountable membership interests in each of the entities, and not less than 95% of the \*accountable partial interests in each of the entities, are held by, or are held indirectly for the benefit of, the same persons; or
  - (b) paragraph (a) does not apply but it would nevertheless be reasonable to conclude, having regard to the matters mentioned in subsection (2), that, throughout that day, the risks involved in, and the opportunities resulting from, holding accountable membership interests, or accountable partial interests, in each of the entities are substantially borne by, or substantially accrue to, the same persons.
- (2) The matters to which regard is to be had as mentioned in paragraph (1)(b) are:
  - (a) any special or limited rights attaching to \*accountable membership interests, or \*accountable partial interests, in each of the entities held by persons other than the persons mentioned in paragraph (1)(b) or their \*associates; and
  - (b) any special rights attaching only to accountable membership interests, or accountable partial interests, in each of the entities held by the persons mentioned in paragraph (1)(b) or their associates; and
  - (c) the respective proportions:
    - (i) that accountable membership interests in each of the entities held by the persons mentioned in paragraph (1)(b) or their associates, and other accountable membership interests in the entity

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- concerned, bear to all the accountable membership interests in that entity; and
- (ii) that accountable partial interests in each of the entities held by the persons mentioned in paragraph (1)(b) or their associates, and other accountable partial interests in the entity concerned, bear to all the accountable partial interests in that entity; and
- (d) the respective proportions that:
- (i) the total value of accountable membership interests in each of the entities held by the persons mentioned in paragraph (1)(b) or their associates, and the total value of other accountable membership interests in the entity concerned, bear to the total value of all the accountable membership interests in that entity; and
  - (ii) the total value of accountable partial interests in each of the entities held by the persons mentioned in paragraph (1)(b) or their associates, and the total value of other accountable partial interests in the entity concerned, bear to the total value of all the accountable partial interests in that entity; and
- (e) the purposes for which accountable membership interests, or accountable partial interests, in each of the entities were issued or granted to persons other than the persons mentioned in paragraph (1)(b) or their associates; and
- (f) any \*arrangement in respect of accountable membership interests, or accountable partial interests, in each of the entities held by persons other than the persons mentioned in paragraph (1)(b) or their associates (including any derivatives held or issued in connection with those membership interests or interests) of which the entity concerned is aware.

### **208-145 Franking debits arising because of status as exempting entity or former exempting entity**

The following table sets out when a debit arises in the \*franking account of an entity because of its status as an \*exempting entity or \*former exempting entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-6** The imputation system

**Division 208** Exempting entities and former exempting entities

Section 208-145

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**Franking debits arising because of status as an exempting entity or former exempting entity**

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<b>Item</b>	<b>If:</b>	<b>A debit of:</b>	<b>Arises:</b>
1	an entity becomes a *former exempting entity; and the entity has a *franking surplus at the time it becomes a former exempting entity	the amount of the franking surplus	immediately after the entity becomes a former exempting entity
2	the *exempting account of a *former exempting entity would, apart from item 7 of the table in section 208-115, be in *deficit immediately before the end of an income year	an amount equal to the deficit	immediately before the end of the income year
3	an *exempting credit arises in the *exempting account of the entity under item 5 or 6 of the table in section 208-115	an amount equal to the exempting credit	when the exempting credit arises
4	a *former exempting entity becomes an *exempting entity; and the entity has an *exempting deficit at the time it becomes an *exempting entity	an amount equal to the exempting deficit	immediately after it becomes an exempting entity

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Franking debits arising because of status as an exempting entity or former exempting entity**

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Item	If:	A debit of:	Arises:
5	a *franking credit arises in the *franking account of an entity under item 3 or 4 of the table in section 205-15 because a *distribution is made by an *exempting entity to the entity, or a distribution made by an exempting entity *flows indirectly to the entity	an amount equal to the amount of the franking credit	when the franking credit arises

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Note 1: Item 3 of the table is designed to reverse out franking credits that arise in relation to a period during which the entity is an exempting entity. The entity will receive an exempting credit instead.

Note 2: Item 5 of the table is designed to reverse out franking credits that arise under the core rules because an entity receives a franked distribution from an exempting entity. Only a recipient who is itself an exempting entity is entitled to a franking credit in these circumstances.

### 208-150 Residency requirement

The tables in sections 208-115, 208-120, 208-130 and 208-145 are relevant for the purposes of subsection 205-25(1).

Note 1: Subsection 205-25(1) sets out the residency requirement for an income year in which, or in relation to which, an event specified in one of the tables occurs.

Note 2: Section 207-75 sets out the residency requirement that must be satisfied by the entity receiving a distribution when the distribution is made.

### 208-155 Eligible continuing substantial member

- (1) A \*member of a \*former exempting entity is an ***eligible continuing substantial member*** in relation to a \*distribution made by the entity if the following provisions apply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) At both the time when the \*distribution was made, and the time immediately before the entity ceased to be an \*exempting entity, the \*member was entitled to not less than 5% of:
- (a) where the entity is a company:
    - (i) if the voting shares (as defined in the *Corporations Act 2001*) in the relevant former exempting entity are not divided into classes—those voting shares; or
    - (ii) if the voting shares (as so defined) in the relevant former exempting entity are divided into 2 or more classes—the shares in one of those classes; and
  - (b) where the entity is a \*corporate unit trust or \*public trading trust—the units in the trust; and
  - (c) where the entity is a \*corporate limited partnership—the income of the partnership.
- (3) At both the time when the \*distribution was made, and the time immediately before the entity ceased to be an \*exempting entity, the \*member was a person referred to in one or more of the following paragraphs:
- (a) a person who is a foreign resident;
  - (b) a \*life insurance company;
  - (c) an exempting entity;
  - (d) a \*former exempting entity;
  - (e) a trustee of a trust in which an interest was held by a person referred to in any of paragraphs (a) to (d);
  - (f) a partnership in which an interest was held by a person referred to in any of paragraphs (a) to (d).
- (4) If the assumptions set out in subsection (5) are made:
- (a) if the \*member was a person referred to in any of paragraphs (3)(a) to (d)—the member; or
  - (b) if the member was a trustee of a trust or a partnership, being a trust or partnership in which a person referred to in any of those paragraphs held an interest—the holder of the interest; would (if a foreign resident) be exempt from \*withholding tax on the distribution or (if an Australian resident) be entitled to a \*franking credit or a \*tax offset in respect of the distribution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (5) The assumptions referred to in subsection (4) are that:
- (a) the relevant former exempting entity was an \*exempting entity at the time it made the \*distribution; and
  - (b) the distribution was a \*franked distribution made to the member; and
  - (c) if the \*member was a \*former exempting entity—the member was an exempting entity; and
  - (d) if the member was a trustee of a trust or partnership in which a former exempting entity had an interest—the former exempting entity was an exempting entity.
- (6) A person is taken to hold an interest in a trust, for the purposes of paragraph (3)(e), if:
- (a) the person is a beneficiary under the trust; or
  - (b) the person \*derives, or will derive, income indirectly, through interposed trusts or partnerships, from \*distributions received by the trustee.
- (7) A person is taken to hold an interest in a partnership, for the purposes of paragraph (3)(f), if:
- (a) the person is a partner in the partnership; or
  - (b) the person \*derives, or will derive, income indirectly, through interposed trusts or partnerships, from \*distributions received by the partnership.

### **208-160 Distributions that are affected by a manipulation of the imputation system**

For the purposes of item 2 of the table in section 208-115 and items 2 and 5 of the table in section 208-130, a \*distribution to an entity is affected by a manipulation of the imputation system if:

- (a) the Commissioner has made a determination under paragraph 204-30(3)(c) that no \*imputation benefit is to arise for the entity in respect of the distribution; or
- (b) the Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no franking credit benefit (within the meaning of that section) is to arise in respect of the distribution to the entity; or
- (c) the distribution is part of a \*dividend stripping operation.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**208-165 Amount of the exempting credit or franking credit arising because of a distribution franked with an exempting credit**

- (1) Use the following formula to work out:
- (a) the amount of an \*exempting credit arising under item 2 of the table in section 208-115 because a \*former exempting entity receives a \*distribution \*franked with an exempting credit; or
  - (b) the amount of a \*franking credit arising under item 2 of the table in section 208-130 because an \*exempting entity receives a distribution franked with an exempting credit;

$$\text{*Exempting credit on the *distribution} \times \frac{\text{Amount of the distribution that is not *exempt income of the recipient}}{\text{Amount of the distribution}}$$

- (2) Use the following formula to work out the amount of a \*franking credit arising under item 5 of the table in section 208-130 because an \*exempting entity receives a \*distribution \*franked with an exempting credit:

$$\text{*Franking credit on the *distribution} \times \frac{\text{Amount of the distribution that is not *exempt income of the recipient}}{\text{Amount of the distribution}}$$

**208-170 Where a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* affects part of the distribution**

- (1) Use the following formula to work out:
- (a) the amount of an \*exempting credit arising under item 3 of the table in section 208-115 because a \*former exempting entity receives a \*distribution \*franked with an exempting credit; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the amount of a \*franking credit arising under item 3 of the table in section 208-130 because an \*exempting entity receives a distribution franked with an exempting credit;

$$\begin{array}{r}
 \text{*Exempting} \\
 \text{credit on} \\
 \text{the} \\
 \text{*distribution}
 \end{array}
 \times
 \frac{\begin{array}{r}
 \text{Amount of} \\
 \text{the distribution} \\
 \text{that is not} \\
 \text{*exempt income} \\
 \text{of the recipient}
 \end{array}}{\begin{array}{r}
 \text{Amount of} \\
 \text{the} \\
 \text{distribution}
 \end{array}}
 \times
 \frac{\begin{array}{r}
 \text{Amount of} \\
 \text{the} \\
 \text{distribution}
 \end{array}
 -
 \begin{array}{r}
 \text{Specified part} \\
 \text{of the} \\
 \text{distribution}
 \end{array}}{\begin{array}{r}
 \text{Amount of} \\
 \text{the} \\
 \text{distribution}
 \end{array}}$$

- (2) Use the following formula to work out the amount of a \*franking credit arising under item 6 of the table in section 208-130 because an \*exempting entity receives \*a distribution \*franked with an exempting credit:

$$\begin{array}{r}
 \text{*Franking} \\
 \text{credit on} \\
 \text{the} \\
 \text{*distribution}
 \end{array}
 \times
 \frac{\begin{array}{r}
 \text{Amount of} \\
 \text{the distribution} \\
 \text{that is not} \\
 \text{*exempt income} \\
 \text{of the recipient}
 \end{array}}{\begin{array}{r}
 \text{Amount of} \\
 \text{the} \\
 \text{distribution}
 \end{array}}
 \times
 \frac{\begin{array}{r}
 \text{Amount of} \\
 \text{the} \\
 \text{distribution}
 \end{array}
 -
 \begin{array}{r}
 \text{Specified part} \\
 \text{of the} \\
 \text{distribution}
 \end{array}}{\begin{array}{r}
 \text{Amount of} \\
 \text{the} \\
 \text{distribution}
 \end{array}}$$

**208-175 When does a distribution franked with an exempting credit flow indirectly to an entity?**

A \*distribution \*franked with an exempting credit is taken to *flow indirectly* to an entity if, had it been a \*franked distribution, it would have been taken to have flowed indirectly to the entity under section 207-50.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**208-180 What is an entity's share of the exempting credit on a distribution?**

To work out an entity's *share* of the \*exempting credit on a \*distribution \*franked with that credit, use sections 207-55 and 207-57 to work out what the entity's share of the credit would be if it were a \*franking credit on a \*franked distribution. The entity's share of the exempting credit is equal to that amount.

**208-185 Minister may convert exempting surplus to franking credit of former exempting entity previously owned by the Commonwealth**

- (1) The Minister may make a determination or determinations under this section if:
  - (a) at a particular time, a \*corporate tax entity is an \*exempting entity; and
  - (b) at that time all of the \*membership interests in the entity are owned by the Commonwealth; and
  - (c) the Commonwealth has offered for sale or sold, or proposes to offer for sale, some or all of the membership interests; and
  - (d) the Minister is satisfied, having regard to the matters mentioned in subsection (2), that it is desirable to make a determination or determinations under this section in relation to the entity.
- (2) The matters to which the Minister must have regard under paragraph (1)(d) are:
  - (a) whether the making of the determination or determinations is necessary to enable the entity to make \*distributions \*franked at a \*franking percentage of 100% after the sale; and
  - (b) the extent to which the success of the sale or proposed sale depended or will depend upon the ability of the entity to make \*franked distributions; and
  - (c) the extent to which the reduction in receipts of income tax resulting from the making of the determination or determinations would be offset by the receipt of increased proceeds from the sale; and
  - (d) any other matters that the Minister thinks relevant.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (3) The following provisions of this section apply after the \*exempting entity becomes a \*former exempting entity.
- (4) If the \*former exempting entity would, apart from this section, have an \*exempting surplus at the end of an income year, the Minister may, in writing, determine that:
  - (a) an \*exempting debit of the entity (not exceeding the exempting surplus) specified in the determination is taken to have arisen immediately before the end of that income year; and
  - (b) a \*franking credit of the entity equal to the amount of the exempting debit is taken to have arisen immediately before the end of that income year.
- (5) A determination under this section may be expressed to be subject to compliance by the \*former exempting entity with such conditions as are specified in the determination.
- (6) If a condition specified in a determination is not complied with, the Minister may revoke the determination and, if the Minister thinks it appropriate, make a further determination under subsection (4).
- (7) A determination, unless it is revoked, has effect according to its terms.

### **Subdivision 208-G—Tax effects of distributions by exempting entities**

#### **Guide to Subdivision 208-G**

##### **208-190 What this Subdivision is about**

Generally, a franked distribution from an exempting entity will only generate a tax effect for the recipient under Division 207 if the recipient is also an exempting entity.

A concession is made to employees of the entity who receive a franked distribution because they hold shares under an eligible employee share scheme.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Table of sections

### Operative provisions

208-195	Division 207 does not generally apply
208-200	Distributions to exempting entities
208-205	Distributions to employees acquiring shares under an eligible employee share scheme
208-210	Subsidiaries
208-215	Eligible employee share scheme

## Operative provisions

### 208-195 Division 207 does not generally apply

Division 207 does not apply to a \*distribution by an \*exempting entity, unless expressly applied under this Subdivision.

### 208-200 Distributions to exempting entities

- (1) Division 207 applies to a \*franked distribution made by an \*exempting entity to another exempting entity if the distribution gives rise to a \*franking credit for the other exempting entity under item 5 or 6 of the table in section 208-130.
- (2) Division 207 applies to a \*franked distribution that is made by an \*exempting entity and \*flows indirectly to another exempting entity if the distribution gives rise to a \*franking credit for that other entity under item 7 of the table in section 208-130.

### 208-205 Distributions to employees acquiring shares under an eligible employee share scheme

Division 207 also applies to a \*franked distribution made by an \*exempting entity if:

- (a) the distribution is made to a person who is an employee of the exempting entity, or of a company that is a \*subsidiary of the exempting entity, at the time the distribution is made; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the recipient acquired the \*share on which the distribution is made under an \*employee share scheme in circumstances specified as relevant in section 208-215; and
- (c) the recipient does not hold that share as a trustee.

### **208-210 Subsidiaries**

The question whether a company is a *subsidiary* of another company is to be determined in the same way as the question whether a corporation is a subsidiary of another corporation is determined under the *Corporations Act 2001*.

### **208-215 Eligible employee share scheme**

- (1) A \*share in a company is acquired by a person under an \*employee share scheme in circumstances that are relevant for the purposes of paragraph 208-205(b) and 208-235(b) if:
  - (a) the share is acquired by the person in respect of, or for or in relation directly or indirectly to, any employment of the person by the entity or by an entity that is a \*subsidiary of the company; and
  - (b) all the shares available for acquisition under the scheme are ordinary shares or are preference shares to which are attached substantially the same rights as are attached to ordinary shares; and
  - (c) immediately after the acquisition of the shares:
    - (i) the person does not hold a legal or beneficial interest in more than 5% of the shares in the company; and
    - (ii) the person is not in a position to control, or control the casting of, more than 5% of the maximum number of votes that might be cast at a general meeting of the company; and
  - (d) the share is not a \*non-equity share.
- (2) A \*share in a company is acquired by a person under an \*employee share scheme in circumstances that are relevant for the purposes of paragraph 208-205(b) and 208-235(b) if the share is part of a stapled security (within the meaning of Division 13A of Part III of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-6** The imputation system

**Division 208** Exempting entities and former exempting entities

Section 208-220

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the *Income Tax Assessment Act 1936*) that is treated as a  
\*qualifying share because of Subdivision DB of that Division.

**Subdivision 208-H—Tax effect of a distribution franked with  
an exempting credit**

**Guide to Subdivision 208-H**

**208-220 What this Subdivision is about**

Generally, a distribution franked with an exempting credit will only generate a tax effect for the recipient under Division 207 if a tax effect would have been generated for the recipient had the recipient received a franked distribution when the distributing entity was an exempting entity.

**Table of sections**

**Operative provisions**

- 208-225 Division 207 does not generally apply
- 208-230 Distributions to exempting entities and former exempting entities
- 208-235 Distributions to employees acquiring shares under an eligible employee share scheme
- 208-240 Distributions to certain individuals

**Operative provisions**

**208-225 Division 207 does not generally apply**

Division 207 does not apply to a \*distribution \*franked with an exempting credit, unless the Division is expressly applied to the distribution under this Subdivision.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **208-230 Distributions to exempting entities and former exempting entities**

Division 207 applies to a \*distribution \*franked with an exempting credit by a \*former exempting entity as if it were a \*franked distribution if:

- (a) the recipient of the distribution is a former exempting entity and the distribution gives rise to an \*exempting credit for the recipient; or
- (b) the recipient of the distribution is an \*exempting entity and the distribution gives rise to a \*franking credit for the recipient; or
- (c) the distribution \*flows indirectly to a former exempting entity and gives rise to an exempting credit for that entity; or
- (d) the distribution flows indirectly to an exempting entity and gives rise to a franking credit for that entity.

### **208-235 Distributions to employees acquiring shares under an eligible employee share scheme**

Division 207 also applies to a \*distribution \*franked with an exempting credit made by a \*former exempting entity as if it were a \*franked distribution if:

- (a) the distribution is made to a person who is an employee of the former exempting entity, or of a company that is a \*subsidiary of the former exempting entity, at the time the distribution is made; and
- (b) the recipient acquired the \*share on which the distribution is made under an \*employee share scheme in circumstances specified as relevant in section 208-215; and
- (c) the recipient does not hold that share as a trustee.

### **208-240 Distributions to certain individuals**

Division 207 also applies to a \*distribution \*franked with an exempting credit made by a \*former exempting entity as if it were a \*franked distribution if:

- (a) a \*corporate tax entity other than a former exempting entity became an \*exempting entity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 208-240

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- (b) immediately before the entity became an exempting entity all the accountable membership interests and accountable partial interests were beneficially owned (whether directly or indirectly) by natural persons who were Australian residents; and
- (c) the entity became an exempting entity because some or all of the persons mentioned in paragraph (b) ceased to be Australian residents; and
- (d) the entity becomes a former exempting entity because all of the persons mentioned in paragraph (b) are or have become Australian residents; and
- (e) an amount attributable to a distribution \*franked with an exempting credit made by the entity is included in the assessable income of such a person; and
- (f) all the accountable membership interests or accountable partial interests in the entity were, throughout the period beginning when the entity became an exempting entity and ending when the amount was received by the person, beneficially owned (directly or indirectly) by the person mentioned in paragraph (b); and
- (g) the person is an eligible continuing substantial member in relation to the distribution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 210—Venture capital franking**

### **Table of Subdivisions**

	Guide to Division 210
210-A	Franking a distribution with a venture capital credit
210-B	Participating PDFs
210-C	Distributions that are frankable with a venture capital credit
210-D	Amount of the venture capital credit on a distribution
210-E	Distribution statements
210-F	Rules affecting the allocation of venture capital credits
210-G	Venture capital sub-account
210-H	Effect of receiving a distribution franked with a venture capital credit

### **Guide to Division 210**

#### **Table of sections**

210-1	Purpose of venture capital franking
210-5	How is this achieved?
210-10	What is a venture capital credit?
210-15	What does the PDF have to do to distribute the credits?
210-20	Limits on venture capital franking

#### **210-1 Purpose of venture capital franking**

The purpose of these rules is to encourage venture capital investment by superannuation funds and other entities that deal with superannuation.

#### **210-5 How is this achieved?**

This is done by giving tax benefits to those entities when they invest in PDFs, which are the vehicles for venture capital investment. If the PDF makes a distribution franked with a venture

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 210-10

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capital credit, the relevant venture capital investor receives a certain part of a distribution from the PDF as exempt income and, in addition, is entitled to a tax offset equal to the venture capital credit.

**210-10 What is a venture capital credit?**

- (1) There is a venture capital franking sub-account in the franking account of each PDF.
- (2) Venture capital credits arise in the sub-account if the PDF pays income tax that is reasonably attributable to capital gains from venture capital investments.

**210-15 What does the PDF have to do to distribute the credits?**

Only a participating PDF can distribute venture capital credits. A PDF elects to participate by keeping a record of its venture capital sub-account.

**210-20 Limits on venture capital franking**

- (1) The venture capital credit on a distribution cannot exceed the franking credit on the distribution. It is, in this sense, a species of franking credit.
- (2) A PDF can only distribute venture capital credits if it does it so that all members of the PDF receive venture capital credits in proportion to their holdings.
- (3) If a PDF has a venture capital surplus when it makes a distribution, it must frank the distribution with venture capital credits.
- (4) There are measures to ensure that a PDF does not maintain a venture capital deficit over a prolonged period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 210-A—Franking a distribution with a venture capital credit**

### **Guide to Subdivision 210-A**

#### **210-25 What this Subdivision is about**

A PDF can only frank a distribution with a venture capital credit if certain conditions are met. These conditions are set out in this Subdivision.

#### **Table of sections**

##### **Operative provisions**

210-30 Franking a distribution with a venture capital credit

### **Operative provisions**

#### **210-30 Franking a distribution with a venture capital credit**

An entity *franks* a \*distribution *with a venture capital credit* if:

- (a) the entity is a \*participating PDF at the time the distribution is made; and
- (b) the distribution is \*frankable with a venture capital credit; and
- (c) the entity allocates a \*venture capital credit to the distribution.

## **Subdivision 210-B—Participating PDFs**

### **Guide to Subdivision 210-B**

#### **210-35 What this Subdivision is about**

A PDF may participate if it elects to keep a record of its venture capital sub-account.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Table of sections

### Operative provisions

210-40 What is a participating PDF

## Operative provisions

### 210-40 What is a participating PDF

A \*PDF is a *participating PDF* at a particular time if it keeps a record of its \*venture capital sub-account at that time.

### Subdivision 210-C—Distributions that are frankable with a venture capital credit

## Guide to Subdivision 210-C

### 210-45 What this Subdivision is about

A distribution can only be franked with a venture capital credit if all members of the PDF receive distributions in proportion to their holdings.

## Table of sections

### Operative provisions

210-50 Which distributions can be franked with a venture capital credit?

## Operative provisions

### 210-50 Which distributions can be franked with a venture capital credit?

A \*distribution by a \*participating PDF is *frankable with a venture capital credit* if:

- (a) the distribution is a \*franked distribution; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the distribution is made under a resolution under which:
  - (i) distributions are made to all members of the PDF; and
  - (ii) the amount of the distribution per \*membership interest is the same for each of those distributions.

### **Subdivision 210-D—Amount of the venture capital credit on a distribution**

#### **Guide to Subdivision 210-D**

#### **210-55 What this Subdivision is about**

The amount of the venture capital credit on a distribution is that stated in the distribution statement, unless the amount exceeds the franking credit on the distribution.

In that case, the amount of the venture capital credit on the distribution is taken to be the same as the franking credit.

#### **Table of sections**

##### **Operative provisions**

210-60 Amount of the venture capital credit on a distribution

#### **Operative provisions**

#### **210-60 Amount of the venture capital credit on a distribution**

- (1) The amount of the \*venture capital credit on a \*distribution is that stated in the \*distribution statement for the distribution, unless that amount exceeds the \*franking credit on the distribution.
- (2) If the amount of the \*venture capital credit stated in the \*distribution statement for a \*distribution exceeds the \*franking credit on the distribution, the amount of the venture capital credit is taken to be the same as the amount of the franking credit, and not the amount stated in the distribution statement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 210-E—Distribution statements

### Guide to Subdivision 210-E

#### 210-65 What this Subdivision is about

A participating PDF that makes a distribution franked with a venture capital credit must provide additional information in the distribution statement given to the recipient.

#### Table of sections

##### Operative provisions

210-70 Additional information to be included when a distribution is franked with a venture capital credit

#### Operative provisions

##### 210-70 Additional information to be included when a distribution is franked with a venture capital credit

- (1) A \*participating PDF that makes a \*distribution \*franked with a venture capital credit must include in the \*distribution statement given to the recipient:
  - (a) a statement that there is a \*venture capital credit of a specified amount on the distribution; and
  - (b) a statement to the effect that the venture capital credit is only relevant for a taxpayer who is:
    - (i) the trustee of a fund that is a \*complying superannuation fund in relation to the income year in which the distribution is made and is not a self managed superannuation fund (within the meaning of the *Superannuation Industry Supervision Act 1993*); or
    - (ii) the trustee of a fund that is a \*complying approved deposit fund in relation to the income year in which the distribution is made and is not a self managed

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

superannuation fund (within the meaning of the *Superannuation Industry Supervision Act 1993*); or

- (iii) the trustee of a unit trust that is a \*pooled superannuation trust in relation to the income year in which the distribution is made; or
- (iv) a \*life insurance company.

- (2) If, under subsection (1), a statement must be included in a \*distribution statement, the distribution statement is taken not to have been given unless the statement is included.

## **Subdivision 210-F—Rules affecting the allocation of venture capital credits**

### **Guide to Subdivision 210-F**

#### **210-75 What this Subdivision is about**

If a PDF has a venture capital surplus when it makes a distribution frankable with venture capital credits, it must frank the distribution with venture capital credits.

#### **Table of sections**

##### **Operative provisions**

- 210-80 Draining the venture capital surplus when a distribution frankable with venture capital credits is made
- 210-81 Distributions to be franked with venture capital credits to the same extent
- 210-82 Consequences of breaching the rule in section 210-81

#### **Operative provisions**

##### **210-80 Draining the venture capital surplus when a distribution frankable with venture capital credits is made**

- (1) If a \*participating PDF would otherwise have a \*venture capital surplus at the time a \*distribution that is \*frankable with a venture capital credit is made, the PDF must either:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 210-81

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- (a) allocate a \*venture capital credit to the distribution that is equal to the \*franking credit on the distribution; or
  - (b) allocate a venture capital credit to the distribution that either alone or when added to venture capital credits allocated to other distributions made under the resolution of the PDF under which the distribution in question is made, reduces the surplus to nil, or creates a \*venture capital deficit.
- (2) A \*venture capital debit arises for a \*participating PDF when a \*distribution is made if the PDF does not allocate a \*venture capital credit in accordance with subsection (1). The amount of the debit is:

Subsection (1) franked amount – Actual franked amount

where:

**actual franked amount** is the amount of the \*venture capital credit that is allocated to the \*distribution by the PDF (this may be nil).

**subsection (1) franked amount** is the amount of the \*venture capital credit that would have been allocated to the \*distribution if the PDF had made the smallest allocation needed to satisfy subsection (1).

**210-81 Distributions to be franked with venture capital credits to the same extent**

- (1) If a \*PDF \*franks a \*distribution with a venture capital credit, it must frank each other distribution made under the same resolution with a venture capital credit worked out using the same venture capital percentage.
- (2) The **venture capital percentage** for a \*distribution is worked out using the formula:

$$\frac{\text{Amount of the *venture capital credit on the distribution}}{\text{Maximum franking credit for the distribution}} \times 100$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **210-82 Consequences of breaching the rule in section 210-81**

If a \*PDF \*franks a \*distribution with a venture capital credit in breach of section 210-81:

- (a) the distribution is taken not to have been franked with a venture capital credit; and
- (b) each other distribution made under the same resolution is taken not to have been franked with a venture capital credit.

## **Subdivision 210-G—Venture capital sub-account**

### **Guide to Subdivision 210-G**

#### **210-85 What this Subdivision is about**

This Subdivision:

- creates a venture capital sub-account for each PDF; and
- identifies when venture capital credits and debits arise in the sub-account and the amount of those credits and debits; and
- identifies when there is a venture capital surplus or deficit in the sub-account; and
- creates a liability to pay venture capital deficit tax if the account is in deficit at certain times.

#### **Table of sections**

210-90	The venture capital sub-account
210-95	Venture capital deficit tax

#### **Operative provisions**

210-100	Venture capital sub-account
210-105	Venture capital credits
210-110	Determining the extent to which a franking credit is reasonably attributable to a particular payment of tax

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 210-90

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- 210-115 Participating PDF may elect to have venture capital credits arise on its assessment day
- 210-120 Venture capital debits
- 210-125 Venture capital debit where CGT limit is exceeded
- 210-130 Venture capital surplus and deficit
- 210-135 Venture capital deficit tax
- 210-140 Effect of a liability to pay venture capital deficit tax on franking deficit tax
- 210-145 Effect of a liability to pay venture capital deficit tax on the franking account
- 210-150 Deferring venture capital deficit

**210-90 The venture capital sub-account**

- (1) Each PDF has a venture capital sub-account in its franking account. The sub-account exists even if the PDF does not elect to become a participating PDF by keeping a record of it.
- (2) To the extent that income tax is reasonably attributable to capital gains from venture capital investments, it generates a venture capital credit in the sub-account. There are other circumstances in which a venture capital credit arises.
- (3) If a PDF receives a refund of that tax, a venture capital debit will arise for the PDF. There are other circumstances in which a venture capital debit will arise, such as on the payment of a distribution franked with a venture capital credit.

**210-95 Venture capital deficit tax**

- (1) Venture capital deficit tax is payable if a PDF's venture capital sub-account is in deficit at the end of the PDF's income year, or immediately before it ceases to be a PDF.
- (2) A PDF's venture capital sub-account may be in deficit, even if its franking account is not. This can happen because only income tax on income of a particular kind (capital gains on venture capital investments) gives rise to venture capital credits. This means that when a PDF anticipates a venture capital credit, it is not only anticipating that income tax will be paid, but that income tax on income of that kind will be paid. Although income tax may, in fact, later be paid, it will not necessarily be income of the kind that would give rise to a venture capital credit. This results in franking

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



credits arising even while the venture capital sub-account remains in deficit.

- (3) The discrepancy between the franking account balance and the venture capital sub-account balance can also arise because venture capital credits do not necessarily arise at the same time as the relevant franking credits and debits (see item 1 of the table in section 210-105 and item 2 of the table in section 210-120).

## Operative provisions

### 210-100 Venture capital sub-account

Each \*PDF has a *venture capital sub-account* within its \*franking account.

Note: The balance in the venture capital sub-account on 1 July 2002 will be either nil or, if the entity has a venture capital surplus or deficit immediately before 1 July 2002 under the imputation scheme existing at that time, an amount calculated under the *Income Tax (Transitional Provisions) Act 1997*.

### 210-105 Venture capital credits

The table sets out when a credit arises in the \*venture capital sub-account of a \*PDF. A credit in a PDF's venture capital sub-account is called a *venture capital credit*.

<b>Credits in the venture capital sub-account</b>			
<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises on:</b>
1	the *PDF has a *franking credit because it has *paid a PAYG instalment; and the whole or part of the instalment is reasonably attributable to a *CGT event in relation to a *qualifying SME investment of the PDF	that part of the franking credit that is reasonably attributable to the CGT event	the day on which the franking credit arises; or if the PDF elects to have the *venture capital credit arise on the assessment day under section 210-115—on that day

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Credits in the venture capital sub-account</b>			
<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises on:</b>
2	the *PDF has a *franking credit because it has *paid income tax; and the whole or part of the payment is reasonably attributable to a *CGT event in relation to a *qualifying SME investment of the PDF	that part of the franking credit that is reasonably attributable to the CGT event	the day on which the franking credit arises; or if the PDF elects to have the *venture capital credit arise on the assessment day under section 210-115—on that day
3	the *PDF incurs a liability to pay *venture capital deficit tax	the amount of the liability	immediately after the liability is incurred

**210-110 Determining the extent to which a franking credit is reasonably attributable to a particular payment of tax**

In determining the extent to which a \*franking credit is reasonably attributable to a \*CGT event in relation to a \*qualifying SME investment of the \*PDF, have regard to:

- (a) the extent to which the credit can reasonably be attributed to the \*payment of a PAYG instalment or the payment of income tax by the PDF in relation to its \*section 124ZZB SME assessable income for an income year; and
- (b) the extent to which the section 124ZZB SME assessable income can reasonably be attributed to the CGT event.

**210-115 Participating PDF may elect to have venture capital credits arise on its assessment day**

- (1) Before a \*PDF's assessment day for an income year, the PDF may elect to have the \*venture capital credits that arise because of the \*payment of PAYG instalments and income tax during that income year arise on the assessment day.
- (2) The \*PDF's *assessment day* for an income year is the earlier of:
  - (a) the day on which the PDF furnishes its \*income tax return for the income year; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the day on which the Commissioner makes an assessment of the amount of the PDF's taxable income for that year under section 166 of the *Income Tax Assessment Act 1936*.

### 210-120 Venture capital debits

The table sets out when a debit arises in the \*venture capital sub-account of a \*PDF. A debit in a PDF's venture capital sub-account is called a *venture capital debit*.

<b>Debits in the venture capital sub-account</b>			
<b>Item</b>	<b>If:</b>	<b>A debit of:</b>	<b>Arises on:</b>
1	the *PDF makes a *distribution *franked with a venture capital credit	the amount of the *venture capital credit	the day on which the distribution is made
2	the *PDF receives a *franking debit as a result of *receiving a refund of income tax; and all or part of the refund is attributable to a *payment of a PAYG instalment or a payment of income tax that gave rise to a *venture capital credit of the PDF	that part of the refund that is attributable to a payment of a PAYG instalment or a payment of income tax that gave rise to a venture capital credit of the PDF	the day on which the franking debit arises; or if the venture capital credit did not arise until a later day—that later day
3	a *venture capital debit arises for the *PDF under subsection 210-80(2)	the amount of the venture capital debit arising under that subsection	the day on which the *distribution giving rise to the venture capital debit is made

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 210-125

<b>Debits in the venture capital sub-account</b>			
<b>Item</b>	<b>If:</b>	<b>A debit of:</b>	<b>Arises on:</b>
4	the Commissioner makes a determination under paragraph 204-30(3)(a) giving rise to a *franking debit for the *PDF (streaming distributions); and the *imputation benefit underlying the determination is a *tax offset under section 210-170	the amount of the tax offset	on the day on which the franking debit arises
5	a *venture capital debit arises for the *PDF under section 210-125 because its net venture capital credits for an income year exceed certain limits	the amount of the excess	the last day of the income year

**210-125 Venture capital debit where CGT limit is exceeded**

- (1) A \*venture capital debit arises for a \*PDF where the PDF's net venture capital credits for the income year exceed whichever is the lesser of:
- the PDF's CGT limit for that income year; and
  - the tax paid by the PDF on its \*SME income component for that income year.

*Net venture capital credits*

- (2) The \*PDF's *net venture capital credits* for the income year is:  
 Venture capital credits – Venture capital debits  
 where:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**venture capital credits** is the total \*venture capital credits of the \*PDF that relate to tax in relation to taxable income of that income year.

**venture capital debits** is the total \*venture capital debits of the \*PDF that relate to tax in relation to taxable income of that income year.

**CGT limit**

- (3) The \*PDF's **CGT limit** for the income year is worked out using the formula:

$$\frac{\text{Ordinary capital gains from venture capital CGT events}}{\text{Ordinary capital gains from all SME CGT events}} \times \frac{\text{*Section 124ZZB SME assessable income}}{\text{SME tax rate}}$$

where:

**ordinary capital gains from all SME CGT events** means the total of the \*ordinary capital gains for the income year for \*CGT events in relation to \*SME investments of the \*PDF.

**ordinary capital gains from venture capital CGT events** means the total of \*ordinary capital gains for the income year for \*CGT events in relation to shares in companies that are \*qualifying SME investments.

**SME tax rate** is the tax rate applicable to the \*SME income component of the \*PDF for the income year.

**Tax paid by the PDF on its SME income component**

- (4) The **tax paid by the PDF on its SME income component** for the income year is the tax paid by the \*PDF on its \*SME income component after allowing \*tax offsets referred to in section 4-10.

### 210-130 Venture capital surplus and deficit

- (1) A \*PDF's \*venture capital sub-account is in **surplus** at a particular time if, at that time, the sum of the \*venture capital credits in the account exceeds the sum of the \*venture capital debits in the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 210-135

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account. The amount of the *venture capital surplus* is the amount of the excess.

- (2) A \*PDF's \*venture capital sub-account is in *deficit* at a particular time if, at that time, the sum of the \*venture capital debits in the account exceeds the sum of the \*venture capital credits in the account. The amount of the *venture capital deficit* is the amount of the excess.
- (3) A \*PDF's \*venture capital sub-account may be in \*deficit even though its \*franking account as a whole is in \*surplus. Similarly, a PDF's venture capital sub-account may be in surplus even though its franking account as a whole is in deficit.

**210-135 Venture capital deficit tax**

- (1) While recognising that an entity may anticipate \*venture capital credits when \*franking \*distributions, the object of this section is to prevent those credits from being anticipated indefinitely by requiring the entity to reconcile its \*venture capital sub-account at certain times and levying tax if the account is in \*deficit.
- (2) An entity is liable to pay \*venture capital deficit tax imposed by the *New Business Tax System (Venture Capital Deficit Tax) Act 2003* if its \*venture capital sub-account is in \*deficit at the end of an income year.
- (3) An entity is liable to pay \*venture capital deficit tax imposed by the *New Business Tax System (Venture Capital Deficit Tax) Act 2003* if:
  - (a) it ceases to be a \*PDF; and
  - (b) immediately before it ceases to be a PDF, its \*venture capital sub-account is in \*deficit.

**210-140 Effect of a liability to pay venture capital deficit tax on franking deficit tax**

- (1) If an entity is liable to pay \*venture capital deficit tax under subsection 210-135(2) because its \*venture capital sub-account is in \*deficit at the end of an income year, the amount (if any) of \*franking deficit tax that the entity would otherwise be liable to pay

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

under subsection 205-45(2) because its \*franking account is in \*deficit at that time is reduced by the amount of the liability for venture capital deficit tax.

- (2) If an entity is liable to pay \*venture capital deficit tax under subsection 210-135(3) because it ceases to be a \*PDF during an income year, the amount (if any) of \*franking deficit tax that the entity would otherwise be liable to pay under subsection 205-45(3) because it ceases to be a \*franking entity at that time is reduced by the amount of the liability for \*venture capital deficit tax.

### **210-145 Effect of a liability to pay venture capital deficit tax on the franking account**

- (1) If an entity incurs a liability to pay \*venture capital deficit tax, a \*franking credit arises for the entity immediately after the liability arises (the *relevant day*).
- (2) The amount of the \*franking credit is equal to:
  - (a) if no liability to pay \*franking deficit tax arises on the relevant day—the amount of the \*venture capital deficit tax; or
  - (b) if a liability to pay franking deficit tax also arises on the relevant day—the amount of the venture capital deficit tax reduced by the amount of the franking deficit tax.

### **210-150 Deferring venture capital deficit**

- (1) The object of this section is to ensure that an entity does not avoid \*venture capital deficit tax by deferring the time at which a \*venture capital debit occurs.
- (2) An entity is taken to have \*received a refund of income tax for an income year immediately before the end of that year for the purposes of subsection 210-135(2) if:
  - (a) the refund is paid within 3 months after the end of that year; and
  - (b) the entity's \*venture capital sub-account would have been in \*deficit, or in deficit to a greater extent, at the end of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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previous income year if the refund had been received in the previous income year.

- (3) If an entity ceases to be a \*PDF during an income year, it is taken to have \*received a refund of income tax immediately before it ceased to be a PDF for the purposes of subsection 210-135(3) if:
- (a) the refund is attributable to a period in the year during which the entity was a PDF; and
  - (b) the refund is paid within 3 months after the entity ceases to be a PDF; and
  - (c) the \*venture capital sub-account of the entity would have been in \*deficit, or in deficit to a greater extent, immediately before it ceased to be a PDF if the refund had been received before it ceased to be a PDF.

### **Subdivision 210-H—Effect of receiving a distribution franked with a venture capital credit**

#### **Guide to Subdivision 210-H**

#### **210-155 What this Subdivision is about**

A superannuation fund or other entity that deals with superannuation that receives a distribution franked with a venture capital credit is entitled to a tax offset equal to the credit.

#### **Table of sections**

- 210-160 The significance of a venture capital credit  
210-165 Recipients for whom the venture capital credit is not significant

#### **Operative provisions**

- 210-170 Tax offset for certain recipients of distributions franked with venture capital credits  
210-175 Amount of the tax offset  
210-180 Application of Division 207 where the recipient is entitled to a tax offset under section 210-170

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



### **210-160 The significance of a venture capital credit**

- (1) The venture capital credit on a distribution is only significant in the hands of a relevant venture capital investor (basically a superannuation fund or other entity that deals with superannuation).
- (2) That investor receives a tax offset. In most cases, this will be equal to the venture capital credit.
- (3) Under section 124ZM of the *Income Tax Assessment Act 1936*, that part of the distribution that is franked with a venture capital credit is also treated as exempt income in the hands of the entity.

### **210-165 Recipients for whom the venture capital credit is not significant**

- (1) For other entities, the fact that all or part of the franking credit on a distribution is also a venture capital credit can be ignored.
- (2) The franking credit will either generate a gross-up of the entity's assessable income and a corresponding tax offset under Division 207 or, if the right to make an election under section 124ZM of the *Income Tax Assessment Act 1936* is exercised, the franked part of the distribution will be treated as exempt income.
- (3) The unfranked part of the distribution is treated as exempt income under section 124ZM of the *Income Tax Assessment Act 1936*.

## **Operative provisions**

### **210-170 Tax offset for certain recipients of distributions franked with venture capital credits**

- (1) The recipient of a \*distribution \*franked with a venture capital credit is entitled to a \*tax offset for the income year in which the distribution is made if:
  - (a) the recipient is a relevant venture capital investor; and
  - (b) the recipient is not:
    - (i) a partnership; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) a trustee (other than the trustee of a \*complying superannuation fund, a \*non-complying superannuation fund, a \*complying approved deposit fund, a \*non-complying approved deposit fund or a \*pooled superannuation trust); and
- (c) the recipient satisfies the \*residency requirement for an entity receiving a distribution; and
- (d) the distribution is not \*exempt income of the recipient (ignoring section 124ZM of the *Income Tax Assessment Act 1936*); and
- (e) the recipient is a qualified person in relation to the distribution for the purposes of Division 1A of former Part IIIAA of the *Income Tax Assessment Act 1936*; and
- (f) the distribution is not part of a \*dividend stripping operation; and
- (g) the Commissioner has not made a determination under paragraph 204-30(3)(c) that no \*imputation benefit is to arise for the receiving entity in respect of the distribution; and
- (h) the Commissioner has not made a determination under paragraph 177EA(5)(b) that no imputation benefit is to arise in respect of the distribution to the recipient.

*Relevant venture capital investors*

- (2) The following entities are ***relevant venture capital investors***:
  - (a) the trustee of a fund that is a \*complying superannuation fund in relation to the income year in which the \*distribution is made and is not a self managed superannuation fund (within the meaning of the *Superannuation Industry Supervision Act 1993*);
  - (b) the trustee of a fund that is a \*complying approved deposit fund in relation to the income year in which the distribution is made and is not a self managed superannuation fund (within the meaning of the *Superannuation Industry Supervision Act 1993*);
  - (c) the trustee of a unit trust that is a \*pooled superannuation trust in relation to the income year in which the distribution is made;
  - (d) a \*life insurance company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **210-175 Amount of the tax offset**

*Where the recipient is not a life insurance company*

- (1) If the entity receiving the \*distribution is not a \*life insurance company, the \*tax offset is equal to the \*venture capital credit on the distribution.

*Where the recipient is a life insurance company*

- (2) If the entity receiving the \*distribution is a \*life insurance company, the \*tax offset is worked out using the formula:

$$\text{Tax offset to which the entity would otherwise be entitled} \times \frac{\text{*Complying superannuation class of taxable income}}{\text{Total income}}$$

where:

*complying superannuation/FHSA class of taxable income* means the \*complying superannuation/FHSA class of taxable income of the company for the income year in which the \*distribution is made.

*tax offset to which the entity would otherwise be entitled* is the \*tax offset that the company would be entitled to under subsection (1) if the entity were not a life insurance company.

*total income* is the company's assessable income for the income year.

### **210-180 Application of Division 207 where the recipient is entitled to a tax offset under section 210-170**

If the recipient of a \*distribution \*franked with a venture capital credit is entitled to a \*tax offset under section 210-170, Division 207 does not apply to that \*part of the distribution that is venture capital franked.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 214—Administering the imputation system**

### **Table of Subdivisions**

	Guide to Division 214
214-A	Franking returns
214-B	Franking assessments
214-C	Amending franking assessments
214-D	Collection and recovery
214-E	Records, information and tax agents

### **Guide to Division 214**

#### **Table of sections**

214-1	Purpose of the system
214-5	Key features

#### **214-1 Purpose of the system**

These provisions:

- (a) allow the Commissioner to gather sufficient information to determine whether tax is payable by a corporate tax entity under the imputation system; and
- (b) provide for the Commissioner to assess the amount of tax that is payable; and
- (c) specify when the tax is payable; and
- (d) establish systems to support the assessment and collection of the tax.

#### **214-5 Key features**

- (1) Initial information about a corporate tax entity's franking activities is provided by means of a return, called a franking return, given by the entity to the Commissioner.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The Commissioner is able to require corporate tax entities to give a franking return for an income year by publishing a notice in the *Gazette*.
- (3) The Commissioner is also able to require a particular corporate tax entity to give a franking return for one or more income years. The Commissioner might do this, for example, if the Commissioner wishes to audit the corporate tax entity's franking activities over a number of years.
- (4) The Commissioner may assess whether tax is payable under the imputation system and the amount of that tax.
- (5) In most cases, this is done by treating the first franking return of a corporate tax entity for an income year as an assessment by the Commissioner. To this extent, there is self-assessment.
- (6) An assessment by the Commissioner is conclusive evidence of a corporate tax entity's tax liabilities under the imputation system, except for the purposes of objection, review and appeal processes under Part IVC of the *Tax Administration Act 1953* (see section 177 of the *Income Tax Assessment Act 1936* and sections 214-50 and 214-85 of this Act).
- (7) Assessments can be amended by the Commissioner within certain time limits.

## **Subdivision 214-A—Franking returns**

### **Guide to Subdivision 214-A**

#### **214-10 What this Subdivision is about**

A franking return for an income year provides the Commissioner with information about a corporate tax entity's franking activities during that year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Table of sections

### Operative provisions

214-15	Notice to give a franking return—general notice
214-20	Notice to a specific corporate tax entity
214-25	Content and form of a franking return
214-30	Franking account balance
214-35	Venture capital sub-account balance
214-40	Meaning of <i>franking tax</i>
214-45	Effect of a refund on franking returns
214-50	Evidence

## Operative provisions

### 214-15 Notice to give a franking return—general notice

- (1) The Commissioner may publish a notice in the *Gazette* requiring each \*corporate tax entity to which the notice applies to give the Commissioner a \*franking return for an income year specified in the notice.
- (2) An entity to which the notice applies must comply with the requirement within the time specified in the notice, or within any further time allowed by the Commissioner.

### 214-20 Notice to a specific corporate tax entity

- (1) The Commissioner may give a \*corporate tax entity a written notice requiring the entity to give the Commissioner a \*franking return for an income year specified in the notice.
- (2) The entity must comply with the requirement within the time specified in the notice, or within any further time allowed by the Commissioner.
- (3) The entity must comply with the requirement regardless of whether the entity has given, or has been required to give, the Commissioner a \*franking return.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **214-25 Content and form of a franking return**

- (1) A \*corporate tax entity must include the following information in its \*franking return for an income year:
  - (a) if the entity is a \*franking entity at the end of the income year—its \*franking account balance at the end of the income year; and
  - (b) if the entity ceased to be a franking entity during the income year—its franking account balance immediately before it ceased to be a franking entity; and
  - (c) if the entity is a \*PDF at the end of the income year—its \*venture capital sub-account balance at the end of the income year; and
  - (d) if the entity ceased to be a PDF during the income year—its venture capital sub-account balance immediately before it ceased to be a PDF; and
  - (e) the amounts (if any) of \*franking tax which the entity is liable to pay because of events that have occurred, or are taken to have occurred, during the income year; and
  - (f) any other information required by the Commissioner for the purposes of administering this Part.
- (2) The return must be in the \*approved form.

### **214-30 Franking account balance**

A \*corporate tax entity's *franking account balance* at a particular time is:

- (a) if the entity has a \*franking surplus or a \*franking deficit at that time—the amount of the surplus or deficit; or
- (b) if the entity does not have a franking surplus or a franking deficit at that time—nil.

### **214-35 Venture capital sub-account balance**

A \*PDF's *venture capital sub-account balance* at a particular time is:

- (a) if the PDF has a \*venture capital surplus or a \*venture capital deficit at that time—the amount of the surplus or deficit; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 214-40

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- (b) if the entity does not have a venture capital surplus or a venture capital deficit at that time—nil.

**214-40 Meaning of *franking tax***

Each of the following is a *franking tax*:

- (a) \*franking deficit tax;
- (b) \*over-franking tax;
- (c) \*venture capital deficit tax.

**214-45 Effect of a refund on franking returns**

*If no franking return is outstanding*

- (1) If:
  - (a) a \*corporate tax entity \*receives a refund of income tax; and
  - (b) the receipt of the refund gives rise to a liability, or an increased liability, to pay \*franking deficit tax because of the operation of subsection 205-50(2) or (3); and
  - (c) when the refund is received, the entity does not have a \*franking return that is \*outstanding for the income year in which the liability arose;

the entity must give the Commissioner a franking return for the income year within 14 days after the refund is received.

*Refund received within 14 days before an outstanding franking return is due*

- (2) If:
  - (a) an entity \*receives a refund of income tax; and
  - (b) the receipt of the refund gives rise to a liability, or an increased liability, to pay \*franking deficit tax because of the operation of subsection 205-50(2) or (3); and
  - (c) when the refund is received, the entity has a \*franking return that is \*outstanding for the income year in which the liability arose; and
  - (d) the entity receives the refund within the period of 14 days ending on the day by which the outstanding return must be given to the Commissioner;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



the entity may, instead of accounting for the liability, or increased liability, in the outstanding return, account for it in a further return given to the Commissioner within 14 days after the refund is received.

*Meaning of outstanding*

- (3) A \*franking return for an income year is **outstanding** at a particular time if each of the following is true at that time:
- (a) the \*corporate tax entity has been required to give a \*franking return for the income year;
  - (b) the time within which the franking return must be given has not yet passed;
  - (c) the franking return has not yet been given.

**214-50 Evidence**

Section 177 of the *Income Tax Assessment Act 1936* applies as if a reference in that section to a return included a reference to a \*franking return.

**Subdivision 214-B—Franking assessments**

**Guide to Subdivision 214-B**

**214-55 What this Subdivision is about**

The Commissioner may make an assessment of a corporate tax entity's liability to pay franking tax, and the franking account balance and the venture capital sub-account balance on which that liability is based. An entity's first franking return for an income year is treated as an assessment by the Commissioner. To this extent, there is self-assessment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Table of sections

### Operative provisions

214-60	Commissioner may make a franking assessment
214-65	Commissioner taken to have made a franking assessment on first return
214-70	Part-year assessment
214-75	Validity of assessment
214-80	Objections
214-85	Evidence

## Operative provisions

### 214-60 Commissioner may make a franking assessment

- (1) The Commissioner may make an assessment of:
- (a) if a \*corporate tax entity is a \*franking entity at the end of the income year—its \*franking account balance at the end of the income year; and
  - (b) if a corporate tax entity ceased to be a franking entity during the income year—its franking account balance immediately before it ceased to be a franking entity; and
  - (c) if a corporate tax entity is a \*PDF at the end of the income year—its \*venture capital sub-account balance at the end of the income year; and
  - (d) if a corporate tax entity ceased to be a PDF during the income year—its venture capital sub-account balance immediately before it ceased to be a PDF; and
  - (e) the amounts (if any) of \*franking tax which the entity is liable to pay because of events that have occurred, or are taken to have occurred, during the income year.

This is a *franking assessment* for the entity for the income year.

- (1A) However, the Commissioner must not make an assessment under subsection (1) for an entity for an income year if:
- (a) the entity is not required under Subdivision 214-A to give the Commissioner a \*franking return for the income year; and
  - (b) the entity is not required under Division 214 of the *Income Tax (Transitional Provisions) Act 1997* to give the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- Commissioner a franking return for the balancing period ending within the income year; and
- (c) the entity was required to lodge an \*income tax return for the income year by a particular time; and
  - (d) the entity has lodged that income tax return; and
  - (e) 3 years have passed since the later of the following:
    - (i) the time mentioned in paragraph (c);
    - (ii) the time when the entity lodged that income tax return.
- (2) The Commissioner must give the entity notice of the assessment as soon as practicable after making the assessment.
- (3) The notice may be included in a notice of any other assessment under this Act.

**214-65 Commissioner taken to have made a franking assessment on first return**

- (1) If:
- (a) a \*corporate tax entity gives the Commissioner a \*franking return for an income year on a particular day (the *return day*); and
  - (b) the return is the first franking return given by the entity for the year; and
  - (c) the Commissioner has not already made a \*franking assessment for the entity for the year;
- the Commissioner is taken to have made a franking assessment for the entity for the year on the return day, and to have assessed:
- (d) the entity's \*franking account balance at a particular time as that stated in the return as the balance at that time; and
  - (e) the entity's \*venture capital sub-account balance (if any) at a particular time as that stated in the return as the balance at that time; and
  - (f) the amounts (if any) of \*franking tax payable by the entity because of events that have occurred, or are taken to have occurred, during that income year as those stated in the return.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 214-70

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- (2) The return is taken to be notice of the assessment signed by the Commissioner and given to the entity on the return day.

**214-70 Part-year assessment**

- (1) The Commissioner may, at any time during an income year, make a \*franking assessment for a \*corporate tax entity for a particular period within that year as if the beginning and end of that period were the beginning and end of an income year.
- (2) This Part applies, for the purposes of that assessment, as if the beginning and end of the period were the beginning and end of an income year.

**214-75 Validity of assessment**

The validity of a \*franking assessment is not affected because any of the provisions of this Act have not been complied with.

**214-80 Objections**

If a \*corporate tax entity is dissatisfied with a \*franking assessment made in relation to the entity, the entity may object against the assessment in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

**214-85 Evidence**

Section 177 of the *Income Tax Assessment Act 1936* applies as if a reference in that section to an assessment or a notice of assessment included a reference to a \*franking assessment or a notice of a franking assessment, as required.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 214-C—Amending franking assessments

### Guide to Subdivision 214-C

#### 214-90 What this Subdivision is about

The Commissioner may amend franking assessments within certain time limits.

#### Table of sections

##### Operative provisions

214-95	Amendments within 3 years of the original assessment
214-100	Amended assessments are treated as franking assessments
214-105	Further return as a result of a refund affecting a franking deficit tax liability
214-110	Later amendments—on request
214-115	Later amendments—failure to make proper disclosure
214-120	Later amendments—fraud or evasion
214-125	Further amendment of an amended particular
214-130	Other later amendments
214-135	Amendment on review etc.
214-140	Notice of amendments

#### Operative provisions

##### 214-95 Amendments within 3 years of the original assessment

- (1) The Commissioner may amend a \*franking assessment for a \*corporate tax entity for an income year at any time during the period of 3 years after the \*original franking assessment day for the entity for that year.
- (2) The *original franking assessment day* for a \*corporate tax entity for an income year is the day on which the first \*franking assessment for the entity for the income year is made.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **214-100 Amended assessments are treated as franking assessments**

Once an amended \*franking assessment for a corporate tax entity for an income year is made, it is taken to be a *franking assessment* for the entity for the year.

### **214-105 Further return as a result of a refund affecting a franking deficit tax liability**

(1) If:

- (a) a \*franking assessment for a \*corporate tax entity for an income year has been made; and
- (b) on a particular day (the *further return day*) the entity gives the Commissioner a further \*franking return for the income year under subsection 214-45(1) (because the entity has \*received a refund of income tax that affects its liability to pay \*franking deficit tax);

the Commissioner is taken to have amended the entity's franking assessment on the further return day, and to have assessed:

- (c) the entity's \*franking account balance at a particular time as that stated in the further return as the balance at that time; and
  - (d) the entity's \*venture capital sub-account balance (if any) at a particular time as that stated in the further return as the balance at that time; and
  - (e) the amounts (if any) of \*franking tax payable by the entity because of events that have occurred, or are taken to have occurred, during that income year as those stated in the further return.
- (2) The further return is taken to be notice of the amended assessment signed by the Commissioner and given to the entity on the further return day.

### **214-110 Later amendments—on request**

The Commissioner may amend a \*franking assessment for a \*corporate tax entity for an income year after the end of the period

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

of 3 years after the \*original franking assessment day for the entity for the year if, within that 3 year period:

- (a) the entity applies for the amendment; and
- (b) the entity gives the Commissioner all the information necessary for making the amendment.

### **214-115 Later amendments—failure to make proper disclosure**

(1) If:

- (a) a \*corporate tax entity does not make a full and true disclosure to the Commissioner of the information necessary for a \*franking assessment for the entity for an income year; and
- (b) in making the assessment, the Commissioner makes an \*under-assessment; and
- (c) the Commissioner is not of the opinion that the under-assessment is due to fraud or evasion;

the Commissioner may amend the assessment at any time during the period of 6 years after the \*original franking assessment day for the entity for the year.

- (2) The Commissioner makes an *under-assessment* in a \*franking assessment (the *earlier assessment*) if, in amending the earlier assessment, the Commissioner would have to do one or more of the following for the amended assessment to be correct:
  - (a) reduce the \*franking surplus (including to a nil balance);
  - (b) increase the \*franking deficit (including from a nil balance);
  - (c) increase \*franking tax payable.

### **214-120 Later amendments—fraud or evasion**

If:

- (a) a \*corporate tax entity does not make a full and true disclosure to the Commissioner of the information necessary for a \*franking assessment for the entity for an income year; and
- (b) in making the assessment, the Commissioner makes an \*under-assessment; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 214-125

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- (c) the Commissioner is of the opinion that the under-assessment is due to fraud or evasion;  
the Commissioner may amend the assessment at any time.

**214-125 Further amendment of an amended particular**

- (1) If:
- (a) a \*franking assessment has been amended (the *first amendment*) in any particular; and
  - (b) the Commissioner is of the opinion that it would be just to further amend the assessment in that particular so as to \*reduce the assessment;
- the Commissioner may do so within a period of 3 years after the first amendment.
- (2) The Commissioner *reduces a franking assessment* if the Commissioner amends the assessment by doing one or more of the following:
- (a) increasing the \*franking surplus (including from a nil balance);
  - (b) decreasing the \*franking deficit (including to a nil balance);
  - (c) decreasing \*franking tax payable.

**214-130 Other later amendments**

In a case not covered by section 214-110, 214-115, 214-120 or 214-125, the Commissioner may amend the \*franking assessment for a \*corporate tax entity for an income year after the period of 3 years after the \*original assessment day has expired, but not so as to \*reduce the assessment.

**214-135 Amendment on review etc.**

Nothing in this Subdivision prevents the amendment of a \*franking assessment:

- (a) to give effect to a decision on a review or appeal; or
- (b) to \*reduce the assessment as a result of an objection made under this Act or pending an appeal or review.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **214-140 Notice of amendments**

- (1) If the Commissioner amends an entity's \*franking assessment, the Commissioner must give the entity notice of the amendment as soon as practicable after making the amendment.
- (2) The notice may be included in a notice of any other assessment under this Act.

## **Subdivision 214-D—Collection and recovery**

### **Guide to Subdivision 214-D**

#### **214-145 What this Subdivision is about**

Franking tax is due and payable at certain times and the general interest charge applies to unpaid amounts.

#### **Table of sections**

##### **Operative provisions**

- 214-150 Due date for payment of franking tax
- 214-155 General interest charge
- 214-160 Refunds of amounts overpaid
- 214-165 Security for payment of tax

#### **Operative provisions**

#### **214-150 Due date for payment of franking tax**

##### *General rule*

- (1) Unless this section provides otherwise, \*franking tax assessed for a \*corporate tax entity because of events that have occurred, or are taken to have occurred, during an income year is due and payable on the last day of the month immediately following the end of the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 214-150

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*Part-year assessments*

- (2) \*Franking tax payable because of an assessment under section 214-70 (a part-year assessment) is due and payable on the day specified in the notice of assessment as the day on which it is due and payable.

*Amended assessments—other than because of deficit deferral*

- (3) If:
- (a) the Commissioner amends a \*franking assessment (the *earlier assessment*) other than because of the operation of section 214-105 (an amendment because of a refund of tax that affects \*franking deficit tax liability); and
  - (b) the amount of \*franking tax of a particular type payable under the amended assessment exceeds the amount of franking tax of that type payable under the earlier assessment;
- the excess amount is due and payable one month after the day on which the assessment was amended.

*Tax payable because of deficit deferral*

- (4) If:
- (a) a \*corporate tax entity \*receives a refund of income tax; and
  - (b) the receipt of the refund gives rise to a liability, or an increased liability, to pay \*franking deficit tax because of the operation of subsection 205-50(2) or (3);
- the franking deficit tax or, if there is an increase in an existing liability to pay franking deficit tax, the difference between the original liability and the increased liability, is due and payable on:
- (c) if the entity accounts for the liability, or increased liability, in a \*franking return that is \*outstanding for the income year in which the liability arose—the day on which the outstanding return is required to be given to the Commissioner; or
  - (d) in any other case—14 days after the day on which the refund was received.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **214-155 General interest charge**

If:

- (a) \*franking tax of a particular type payable by a \*corporate tax entity remains unpaid after the time by which it is due and payable; and
- (b) the Commissioner has not allocated the unpaid amount to an \*RBA;

the entity is liable to pay the \*general interest charge on the unpaid amount for each day in the period that:

- (c) starts at the beginning of the day on which the franking tax was due to be paid; and
- (d) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:
  - (i) the franking tax;
  - (ii) general interest charge on any of the franking tax.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

### **214-160 Refunds of amounts overpaid**

Section 172 of the *Income Tax Assessment Act 1936* applies for the purposes of this Part as if references in that section to tax included references to \*franking tax.

### **214-165 Security for payment of tax**

In section 213 of the *Income Tax Assessment Act 1936* (under which the Commissioner may require security for the payment of income tax), a reference to income tax includes a reference to \*franking tax.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 214-E—Records, information and tax agents

### Guide to Subdivision 214-E

#### 214-170 What this Subdivision is about

Generally applicable provisions to do with record keeping, information gathering and tax agents apply for the purposes of the imputation system.

#### Table of sections

##### Operative provisions

214-175	Record keeping
214-180	Power of Commissioner to obtain information
214-185	Tax agents

#### Operative provisions

##### 214-175 Record keeping

- (1) Section 262A of the *Income Tax Assessment Act 1936* applies for the purposes of this Part as if:
  - (a) the reference in that section to a person carrying on a business were a reference to a \*corporate tax entity; and
  - (b) the reference in paragraph (2)(a) of that section to the person's income and expenditure were a reference to:
    - (i) the entity's \*franking account balance; and
    - (ii) the entity's liability to pay \*franking tax; and
  - (c) paragraph (5)(a) of that section were omitted.
- (2) A \*PDF does not need to maintain records under section 262A of the *Income Tax Assessment Act 1936* in relation to a \*venture capital sub-account if the \*PDF does not elect to be a \*participating PDF.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **214-180 Power of Commissioner to obtain information**

Section 264 of the *Income Tax Assessment Act 1936* applies for the purposes of this Part as if the reference in paragraph (1)(b) of that section to a person's income or assessment were a reference to a matter relevant to the administration or operation of this Part.

### **214-185 Tax agents**

Part VIIA of the *Income Tax Assessment Act 1936* applies in relation to a \*franking return given, or objection made, for the purposes of this Part as it applies to an \*income tax return or objection.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 215—Consequences of the debt/equity rules**

### **Subdivision 215-A—Application of the imputation system to non-share equity interests**

#### **215-1 Application of the imputation system to non-share equity interests**

- (1) The \*imputation system applies to a \*non-share equity interest in the same way as it applies to a \*membership interest.
- (2) The \*imputation system applies to an equity holder in an entity who is not a member of the entity in the same way as it applies to a member of the entity.

### **Subdivision 215-B—Non-share dividends that are unfrankable to some extent**

#### **Guide to Subdivision 215-B**

##### **215-5 What this Subdivision is about**

While non-share dividends are, as a general rule, frankable, all or part of some non-share dividends are taken to be unfrankable by virtue of these rules.

#### **Table of sections**

215-10	Certain non-share dividends by ADIs unfrankable
215-15	Non-share dividends are unfrankable if profits are unavailable
215-20	Working out the available frankable profits
215-25	Anticipating available frankable profits

#### **215-10 Certain non-share dividends by ADIs unfrankable**

- (1) A \*non-share dividend paid by an ADI (an authorised deposit-taking institution) for the purposes of the *Banking Act 1959* is **unfrankable** if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the ADI is an Australian resident; and
  - (b) the non-share dividend is paid in respect of a \*non-share equity interest that:
    - (i) by itself; or
    - (ii) in combination with one or more \*schemes that are \*related schemes to the scheme under which the interest arises;  
forms part of the ADI's Tier 1 capital either on a solo or consolidated basis (within the meaning of the \*prudential standards); and
  - (c) the non-share equity interest is issued at or through a \*permanent establishment of the ADI in a \*listed country; and
  - (d) the funds from the issue of the non-share equity interest are raised and applied solely for one or more purposes permitted under subsection (2) in relation to the non-share equity interest.
- (2) The permitted purposes in relation to the \*non-share equity interest (the *relevant interest*) are the following:
- (a) the purpose of the business of the ADI carried on at or through the permanent establishment other than the transfer of funds directly or indirectly to:
    - (i) the Australian head office of the permanent establishment; or
    - (ii) any \*connected entity of the ADI that is an Australian resident; or
    - (iii) a permanent establishment of the ADI, or of a connected entity of the ADI, located in Australia;
  - (b) the purpose of redeeming:
    - (i) a \*debt interest; or
    - (ii) a non-share equity interest;  
that is issued, before the relevant interest is issued, at or through the permanent establishment and is held by a connected entity of the ADI that is an Australian resident;
  - (c) the purpose of returning funds to:
    - (i) the Australian head office of the permanent establishment; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 215-15

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- (ii) a permanent establishment of the ADI or of a connected entity of the ADI, located in Australia;  
if the funds are contributed, before the relevant interest is issued, for use in the business of the ADI carried on at or through the permanent establishment.

**215-15 Non-share dividends are unfrankable if profits are unavailable**

(1) If:

- (a) a \*corporate tax entity pays a \*non-share dividend; and
  - (b) immediately before the payment, the amount of the \*available frankable profits of the entity is nil, or less than nil;
- the non-share dividend is *unfrankable*.

(2) If:

- (a) a \*corporate tax entity pays a \*non-share dividend that is not one of a number of non-share dividends paid at the same time; and
- (b) immediately before the payment, the amount of the \*available frankable profits of the entity, although greater than nil, are less than the amount of the non-share dividend;

the entity is taken to have made a *frankable distribution* equal to the amount of the available frankable profits. The remainder of the dividend is taken to be an *unfrankable* distribution.

(3) If:

- (a) a \*corporate tax entity pays a \*non-share dividend that is one of a number paid at the same time; and
- (b) immediately before the payment, the amount of the \*available frankable profits of the entity, although greater than nil are less than the sum of the amounts of the non-share dividends;

the entity is taken to have made a *frankable distribution* equal to the amount worked out using the formula:

$$\frac{\text{Amount of the *non-share dividend}}{\text{Sum of the amounts of all the non-share dividends}} \times \text{*Available frankable profits}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



The remainder of the dividend is taken to be an *unfrankable* distribution.

### 215-20 Working out the available frankable profits

- (1) Use the following formula to work out the amount of a \*corporate tax entity's *available frankable profits* at a particular time:

$$\text{Maximum frankable amount} - \left[ \begin{array}{l} \text{Committed share} \\ \text{dividends} \end{array} + \begin{array}{l} \text{Undebited non-share} \\ \text{dividends} \end{array} \right]$$

where:

*committed share dividends* means the sum of:

- (a) the amounts of any \*distributions that are not \*non-share dividends and are paid by the entity at that time; and
- (b) if the entity has announced that it will pay distributions that are not non-share dividends at a later time, or is committed or has resolved (formally or informally) to paying such distributions at a later time—the amounts of those distributions.

*maximum frankable amount* means the maximum amount of \*frankable \*distributions (other than \*non-share dividends) that the \*corporate tax entity could pay at that time having regard to its available profits at that time.

*undebited non-share dividends* means the sum of the amounts of the franked parts of the \*non-share dividends (worked out under subsection (2)) that:

- (a) were not debited to available profits; and
  - (b) were paid within the preceding 2 income years or were paid under the same \*scheme under which the entity pays the non-share dividend.
- (2) The amount of the *franked part* of a \*non-share dividend is worked out using the following formula:

$$\text{*Franking credit on the dividend} \times \left( \frac{1 - \text{*Corporate tax rate}}{\text{Corporate tax rate}} \right)$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 215-25 Anticipating available frankable profits

- (1) A \*corporate tax entity that pays a \*non-share dividend may anticipate \*available frankable profits if:
- (a) the entity:
    - (i) has announced the payment of; or
    - (ii) is committed or has resolved (formally or informally) to pay;  
\*distributions other than non-share dividends (the ***committed distributions***) after payment of the non-share dividend; and
  - (b) but for this subsection, section 215-15 would apply to the non-share dividend; and
  - (c) the entity's available frankable profits would be greater than nil at the relevant time if the committed distributions were ignored; and
  - (d) it is reasonable to expect that available profits will arise after payment of the non-share dividend and before payment of the committed distributions; and
  - (e) it is reasonable to expect that, having regard to the available profits mentioned in paragraph (d), the amount of the entity's \*adjusted available frankable profits immediately after each of the committed distributions is paid will be greater than nil.  
The ***available frankable profits*** immediately before the entity pays the non-share dividend is then the smallest of the amounts of the adjusted available frankable profits mentioned in paragraph (e).
- (2) The entity's ***adjusted available frankable profits*** immediately after a committed distribution is paid is the amount that would be its \*available frankable profits at that time if all committed distributions to be paid after that time, and the \*non-share dividend, were ignored.
- (3) A \*franking debit arises for the entity if:
- (a) the entity anticipates \*available frankable profits under subsection (1); and
  - (b) the available frankable profits of the entity are less than nil:
    - (i) immediately after the last of the committed distributions is made; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) immediately before the end of the income year following the income year in which the \*non-share dividend is paid;
- whichever is earlier.
- (4) The \*franking debit is equal to the lesser of:
  - (a) the amount by which the \*available frankable profits is below nil; and
  - (b) the amount of the franked part of the \*non-share dividend (worked out using subsection 215-20(2)) or, if more than one non-share dividend is made at the relevant time, the sum of the amounts of the franked parts of those non-share dividends.
- (5) In working out the entity's \*available frankable profits for the purposes of subsection (3) or (4), disregard:
  - (a) any \*distributions that:
    - (i) the entity announces, or becomes committed to or resolves (formally or informally) to pay after the payment of the \*non-share dividend; and
    - (ii) have not been paid; and
  - (b) any estimate made by the entity under subsection (1) after the non-share dividend is paid.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 216—Cum dividend sales and securities lending arrangements**

### **Table of Subdivisions**

- 216-A Circumstances where a distribution to a member of a corporate tax entity is treated as having been made to someone else
- 216-B Statements to be made where there is a cum dividend sale or securities lending arrangement

### **Subdivision 216-A—Circumstances where a distribution to a member of a corporate tax entity is treated as having been made to someone else**

#### **Table of sections**

- 216-1 When a distribution made to a member of a corporate tax entity is treated as having been made to someone else
- 216-5 First situation (cum dividend sales)
- 216-10 Second situation (securities lending arrangements)
- 216-15 Distribution closing time

### **216-1 When a distribution made to a member of a corporate tax entity is treated as having been made to someone else**

There are 2 situations in which a \*franked distribution, or a distribution \*franked with an exempting credit, that is made to a \*member of a \*corporate tax entity is taken to have been made to another entity.

### **216-5 First situation (cum dividend sales)**

- (1) The first situation is one in which:
  - (a) the \*corporate tax entity makes a \*franked distribution, or a \*distribution franked with an exempting credit, to a \*member

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- of the entity in respect of a \*membership interest in the entity; and
- (b) at the \*distribution closing time, the member is under an obligation to transfer the membership interest to another person under a contract for the sale of the membership interest; and
  - (c) the contract:
    - (i) requires that the distribution be paid on to the other person; and
    - (ii) is entered into in the ordinary course of trading on an \*approved stock exchange in Australia or elsewhere.
- (2) The \*distribution is taken to have been made to the other person as a \*member of the entity (and not to the member).
- Note: As the other person is the entity receiving the distribution, there may be tax effects for the other person under Division 207 or 208.
- (3) The \*distribution referred to in paragraph (1)(a) includes a distribution that is taken to be made as a result of one or more previous applications of this section or section 216-10.

### **216-10 Second situation (securities lending arrangements)**

- (1) The second situation is one in which:
- (a) the \*corporate tax entity makes a \*franked distribution, or a \*distribution franked with an exempting credit, to a \*member of the entity in respect of a \*membership interest in the entity; and
  - (b) at the time the distribution was made, the member was under an obligation to pay the distribution to another person under a \*securities lending arrangement; and
  - (c) the obligation was incurred in the member's capacity as the borrower under the securities lending arrangement; and
  - (d) the \*distribution closing time occurred during the borrowing period.
- (2) The \*distribution is taken to have been made to the other person as a \*member of the entity (and not to the member).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-6** The imputation system

**Division 216** Cum dividend sales and securities lending arrangements

Section 216-15

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Note: As the other person is the entity receiving the distribution, there may be tax effects for the other person under Division 207 or 208.

- (3) The distribution referred to in paragraph (1)(a) includes a distribution that is taken to be made as a result of one or more previous applications of this section or section 216-5.

**216-15 Distribution closing time**

If \*distributions by a \*corporate tax entity are made to those \*members who were members as at a particular time at or before the distribution is made, that time is the *distribution closing time* in relation to those distributions.

**Subdivision 216-B—Statements to be made where there is a cum dividend sale or securities lending arrangement**

**Table of sections**

216-20	Cum dividend sale—statement by securities dealer
216-25	Cum dividend sale—statement by party
216-30	Securities lending arrangements—statement by borrower

**216-20 Cum dividend sale—statement by securities dealer**

If:

- (a) section 216-5 applies in relation to a \*franked distribution or a \*distribution franked with an exempting credit (cum dividend sales); and
- (b) a \*securities dealer has acted for a particular party to the contract concerned;

the securities dealer must, as soon as practicable after the making of the distribution, give to the other party to the contract a statement in the \*approved form setting out such information in relation to the distribution as is required by the approved form.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**216-25 Cum dividend sale—statement by party**

If:

- (a) section 216-5 applies in relation to a \*franked distribution or a \*distribution franked with an exempting credit (cum dividend sales); and
- (b) a particular party to the contract concerned has not had a \*securities dealer acting for him or her;

that party must, as soon as practicable after the making of the distribution, give to the other party to the contract a statement in the \*approved form setting out such information in relation to the distribution as is required by the approved form.

**216-30 Securities lending arrangements—statement by borrower**

If section 216-10 (\*securities lending arrangements) applies in relation to a \*franked distribution, or a \*distribution franked with an exempting credit, the borrower must, as soon as practicable after the making of the distribution, give to the lender a statement in the \*approved form setting out such information in relation to the distribution as is required by the approved form.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 218—Application of imputation rules to co-operative companies**

### **218-5 Application of imputation rules to co-operative companies**

- (1) The \*imputation system applies to a \*co-operative company in the same way as it applies to any other company but with the modifications set out in this section.
- (2) Each reference to a \*distribution is taken to include a reference to an amount distributed as mentioned in paragraph 120(1)(a) or (b) of the *Income Tax Assessment Act 1936*.
- (3) Despite subsection 202-75(1) (about giving distribution statements), a \*co-operative company does not have to give the recipient of a \*frankable distribution a \*distribution statement unless the \*franking percentage for the distribution is greater than zero.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 219—Imputation for life insurance companies**

### **Table of Subdivisions**

	Guide to Division 219
219-A	Application of imputation rules to life insurance companies
219-B	Franking accounts of life insurance companies

### **Guide to Division 219**

#### **219-1 What this Division is about**

This Division sets out how the imputation rules are applied to a life insurance company.

### **Subdivision 219-A—Application of imputation rules to life insurance companies**

#### **Table of sections**

219-10	Application of imputation rules to life insurance companies
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#### **219-10 Application of imputation rules to life insurance companies**

- (1) This Part (except this Division) applies to a \*life insurance company in the same way as it applies to any other company.
- (2) However, that application is subject to the modifications set out in this Division.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **Subdivision 219-B—Franking accounts of life insurance companies**

#### **Table of sections**

219-15	Franking credits
219-30	Franking debits
219-40	Residency requirement
219-45	Assessment day
219-50	Amount attributable to shareholders' share of income tax liability
219-55	Adjustment resulting from an amended assessment
219-70	Tax offset under section 205-70
219-75	Working out franking credits and franking debits where a tax offset under section 205-70 is applied

#### **219-15 Franking credits**

- (1) The table in section 205-15 does not apply to a \*life insurance company.
- (2) The following table sets out when a \*franking credit arises under this section in the \*franking account of a \*life insurance company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Franking credits in the franking account**

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<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
1	<p>the company *pays a PAYG instalment; and</p> <p>the company satisfies the *residency requirement for the income year in relation to which the PAYG instalment is paid; and</p> <p>the payment is made before the company's *assessment day for that income year; and</p> <p>the company is a *franking entity for the whole or part of the relevant *PAYG instalment period</p>	<p>that part of the payment that:</p> <p>(a) the company estimates will be attributable to the *shareholders' share of the income tax liability of the company for that income year; and</p> <p>(b) is attributable to the period during which the company was a franking entity</p>	<p>on the day on which the payment is made (see note 1 to this subsection)</p>
2	<p>the company *paid a PAYG instalment; and</p> <p>the company satisfied the *residency requirement for the income year in relation to which the PAYG instalment was paid; and</p> <p>the payment was made before the company's *assessment day for that income year; and</p> <p>the company was a *franking entity for the whole or part of the relevant *PAYG instalment period</p>	<p>that part of the payment that is attributable to:</p> <p>(a) the *shareholders' share of the income tax liability of the company for that income year; and</p> <p>(b) the period during which the company was a franking entity</p>	<p>on the company's assessment day for that income year (see note 1 to this subsection)</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-6** The imputation system

**Division 219** Imputation for life insurance companies

Section 219-15

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**Franking credits in the franking account**

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<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
3	the company *pays a PAYG instalment; and the company satisfies the *residency requirement for the income year in relation to which the PAYG instalment is paid; and the payment is made on or after the company's *assessment day for that income year; and the company is a *franking entity for the whole or part of the relevant *PAYG instalment period	that part of the payment that is attributable to: (a) the *shareholders' share of the income tax liability of the company for that income year; and (b) the period during which the company was a franking entity	on the day on which the payment is made
4	the company *pays income tax; and the company satisfies the *residency requirement for the income year for which the tax is paid; and the company is a *franking entity for the whole or part of that income year	that part of the payment that is attributable to: (a) the *shareholders' share of the income tax liability of the company for that income year; and (b) the period during which the company was a franking entity	on the day on which the payment is made

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Franking credits in the franking account**

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Item	If:	A credit of:	Arises:
5	a *franked distribution is made to the company; and the company satisfies the *residency requirement for the income year in which the distribution is made; and the company is a *franking entity when it receives the distribution; and the company is entitled to a *tax offset under Division 207 because of the distribution; and the tax offset is not subject to the refundable tax offset rules (see Division 67)	the amount of the tax offset	on the day on which the distribution is made
6	a *franked distribution *flows indirectly to the company through a partnership or the trustee of a trust; and the company is a *franking entity when the franked distribution is made; and the company is entitled to a *tax offset under Division 207 because of the distribution; and the tax offset is not subject to the refundable tax offset rules (see Division 67)	the amount of the tax offset	at the time specified in subsection (3)
7	the company incurs a liability to pay *franking deficit tax under section 205-45 or 205-50	the amount of the liability	immediately after the liability is incurred

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-6** The imputation system

**Division 219** Imputation for life insurance companies

Section 219-30

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Note 1: On the assessment day, a franking credit that arose under item 1 of the table:

- is reversed by a franking debit that arises under item 1 of the table in section 219-30; and
- is replaced with a franking credit that arises under item 2 of the table in this section.

Note 2: Section 219-50 tells you how to work out the part of an amount that is attributable to the shareholders' share of the income tax liability of the company for the income year.

Note 3: To find out whether a tax offset under Division 207 is subject to the refundable tax offset rules: see section 67-25.

- (3) A \*franking credit covered by item 6 of the table arises at the end of the income year:
- (a) that is an income year of the last partnership or trust interposed between:
    - (i) the \*life insurance company; and
    - (ii) the \*corporate tax entity that made the distribution; and
  - (b) during which the \*franked distribution \*flows indirectly to the life insurance company.

**219-30 Franking debits**

- (1) The table in section 205-30 (except item 2) applies to a \*life insurance company in the same way as it applies to any other company.
- (2) The following table sets out when a \*franking debit arises under this section in the \*franking account of a \*life insurance company.

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**Franking debits in the franking account**

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<b>Item</b>	<b>If:</b>	<b>A debit of:</b>	<b>Arises:</b>
1	a *franking credit arises for the company under item 1 of the table in section 219-15 (*payment of a PAYG instalment)	the amount of the franking credit	on the company's *assessment day for the income year mentioned in that item

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Franking debits in the franking account**

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Item	If:	A debit of:	Arises:
2	the company *receives a refund of income tax; and  the company satisfies the *residency requirement for the income year to which the refund relates; and  the company was a *franking entity for the whole or part of that income year	that part of the refund that is attributable to:  (a) the *shareholders' share of the income tax liability of the company for that income year; and  (b) the period during which the company was a franking entity	on the day on which the refund is received

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Note 1: On the assessment day, a franking debit that arises under item 1 of this table reverses the effect of a franking credit that arose under item 1 of the table in section 219-15.

Note 2: Section 219-50 tells you how to work out the part of an amount that is attributable to the shareholders' share of the income tax liability of the company for the income year.

### 219-40 Residency requirement

The tables in sections 219-15 and 219-30 are relevant for the purposes of subsection 205-25(1) (about the residency requirement).

### 219-45 Assessment day

A \*life insurance company's **assessment day** for an income year is the earlier of:

- (a) the day on which the company furnishes its \*income tax return for that income year; or
- (b) the day on which the Commissioner makes an assessment of the amount of the company's taxable income for that income year under section 166 of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**219-50 Amount attributable to shareholders' share of income tax liability**

- (1) Subsection (2) applies to a \*life insurance company in relation to the payment or refund mentioned in an item of a table in this Subdivision (except item 1 of the table in section 219-15).

Note: The operation of this section is affected by section 219-75 if a tax offset under section 205-70 is applied to work out the company's income tax liability.

- (2) For the purposes of this Part, the part of the payment or refund that is attributable to the \*shareholders' share of the income tax liability of the company for an income year must be worked out as follows:

*Method statement*

Step 1. Work out the part of the company's total income tax liability for the income year that is attributable to the company's shareholders.

The result of this step is the *shareholders' share* of the income tax liability of the company for the income year.

Step 2. Divide the step 1 result by that total income tax liability.

The result of this step is the *shareholders' ratio* for the income year.

Step 3. Multiply the amount of the payment or refund by the \*shareholders' ratio.

The result of this step is the part of the payment or refund that is attributable to the \*shareholders' share of the income tax liability of the company for the income year.

- (3) For the purposes of this Part, the estimate mentioned in item 1 of the table in section 219-15 (the part of a payment estimated to be attributable to the \*shareholders' share of a company's income tax liability for an income year) must be worked out on the basis of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (a) subject to paragraph (b), the method statement in subsection (2); and
  - (b) the company's reasonable estimate of the amounts that, on the company's \*assessment day for the income year, will be:
    - (i) its total income tax liability for the income year; and
    - (ii) the part of that total income tax liability that is attributable to its shareholders.
- (4) In working out the part of the income tax liability of a \*life insurance company that is attributable to the shareholders of the company for the purposes of this section, regard is to be had to the accounting records of the company.

### **219-55 Adjustment resulting from an amended assessment**

- (1) This section applies in relation to the \*franking account of a \*life insurance company if:
- (a) the assessment of the company's income tax liability for an income year is amended on a particular day (the *adjustment day*); and
  - (b) the \*shareholders' ratio (the *new ratio*) based on the amended assessment is different from the shareholders' ratio used previously in relation to that income year to work out a \*franking credit or \*franking debit for the company; and
  - (c) the franking account would have a different balance on the adjustment day if the new ratio had been used to work out all the franking credits and franking debits covered by paragraph (b).

Note: The operation of this section is affected by section 219-75 if a tax offset under section 205-70 is, or has been, applied to work out the company's income tax liability.

- (2) On the adjustment day, a \*franking credit or \*franking debit (as appropriate) of the amount worked out under subsection (3) arises in the \*franking account.
- (3) The amount is an adjustment that will bring the \*franking account to the balance that it would have on the adjustment day if the new ratio had been used to work out all the \*franking credits and \*franking debits covered by paragraph (1)(b).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 219-70

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Example: On the basis of a shareholders' ratio of 60% for the income year, franking credits of the amounts of \$6,000, \$6,000, \$6,000 and \$6,000 arose under item 2 of the table in section 219-15 for Company X.

An amended assessment results in a new shareholders' ratio of 70%. Under this section, a franking credit of \$4,000 arises on the day of the amended assessment to bring the balance of the franking account from \$24,000 to \$28,000, which would be the account's balance if the new shareholders' ratio had been used.

**219-70 Tax offset under section 205-70**

- (1) In applying section 205-70 to a \*life insurance company, that section has effect as if:
  - (a) the reference in paragraph 205-70(1)(c) to the amount that would have been an entity's income tax liability for a previous income year were a reference to the part of such an amount in respect of the company that is attributable to its shareholders; and
  - (b) the reference in subsection 205-70(3) to the amount that would have been an entity's income tax liability for the relevant year were a reference to the part of such an amount in respect of the company that is attributable to its shareholders.
- (2) In working out the part of an amount that is attributable to the company's shareholders for the purposes of this section, regard is to be had to the accounting records of the company.

Example: The following apply to a life insurance company that satisfies the residency requirement for an income year:

- the company has a tax offset of \$60,000 under section 205-70 (the *franking deficit offset*) for that year;
- the company's income tax liability for that year would be \$100,000 if the franking deficit offset were disregarded;
- 20% of the \$100,000 is attributable to the company's shareholders (the *shareholders' part*).

As a result of applying \$20,000 of the franking deficit offset to reduce the shareholders' part to nil, the company's income tax liability becomes \$80,000. The remaining \$40,000 of the offset will be included in a franking deficit tax offset for the next income year for which the company satisfies the residency requirement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**219-75 Working out franking credits and franking debits where a tax offset under section 205-70 is applied**

*Revised shareholders' ratio—modification of section 219-50*

- (1) Subsection (2) applies to a \*life insurance company if a \*tax offset under section 205-70 is applied to work out the company's income tax liability for an income year.

Note: This means subsection (2) applies if the tax offset is applied to reduce the part of the amount mentioned in paragraph 219-70(1)(b) in relation to the income year.

- (2) For the purposes of working out the amount of a \*franking credit or \*franking debit for the company in relation to the income year (other than a franking credit covered by item 1 of the table in section 219-15), section 219-50 has effect as if:
- (a) steps 1 and 2 of the method statement in section 219-50 were omitted; and
  - (b) the reference in step 3 of that method statement to the \*shareholders' ratio were a reference to the **revised shareholders' ratio** worked out as follows:

*Method statement*

- Step 1. Work out the remainder (if any) of the part of the amount mentioned in paragraph 219-70(1)(b) after the \*tax offset is applied to reduce that part.

Note: The part mentioned in paragraph 219-70(1)(b) is the part of an amount of the company's income tax liability for the income year that is attributable to its shareholders.

- Step 2. Divide the step 1 result by the company's total income tax liability for the income year (after applying the \*tax offset).

The result (which can be nil) is the company's **revised shareholders' ratio** for the income year.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-6** The imputation system

**Division 219** Imputation for life insurance companies

Section 219-75

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Example: For the 2002-2003 income year X Co (which is a life insurance company) has a tax offset of \$68,000 under section 205-70. Its income tax liability for that year would have been \$400,000 on the assessment day (1 February 2004) if the tax offset were disregarded. Of that liability, \$80,000 is attributable to the shareholders. The step 1 result is therefore \$12,000 (\$80,000 minus \$68,000).

X Co's income tax liability after applying the tax offset is \$332,000 (\$400,000 minus \$68,000). The revised shareholders' ratio is therefore 3/83 (\$12,000 divided by \$332,000).

For that income year, the company paid \$249,000 of PAYG instalments before the assessment day and \$83,000 of income tax one month after that day.

On the assessment day, a franking credit of \$9,000 arises under item 2 of the table in section 219-15 (\$249,000 multiplied by 3/83). On the day the additional amount of tax is paid, another franking credit of \$3,000 arises under item 4 of that table (\$83,000 multiplied by 3/83).

*Adjustment resulting from amended assessment—modification of section 219-55*

- (3) Subsection (4) applies to a \*life insurance company if:
- (a) the assessment of the company's income tax liability for an income year (the *previous assessment*) is amended; and
  - (b) at least one of the following applies:
    - (i) a \*tax offset under section 205-70 is applied in making that amended assessment;
    - (ii) a tax offset under section 205-70 was applied in making the previous assessment.
- (4) Section 219-55 has effect in relation to the company as if:
- (a) if subparagraph (3)(b)(i) of this section applies—a reference in that section to the new ratio were a reference to the revised shareholders' ratio that is based on the amended assessment; and
  - (b) if subparagraph (3)(b)(ii) of this section applies—the reference in paragraph (1)(b) of that section to the \*shareholders' ratio used previously were a reference to the revised shareholders' ratio that is based on the previous assessment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Example: Continuing the example in subsection (2), the assessment of X Co for the 2002-2003 income year is amended on 31 March 2004. Under the amended assessment, X Co's income tax liability would be \$300,000 if the tax offset were disregarded.

Of that liability, \$60,000 is attributable to the shareholders. That amount is reduced by the tax offset of \$68,000 to nil.

X Co's liability to pay income tax is therefore reduced to \$240,000 (\$300,000 minus \$60,000) and it will receive a refund of \$92,000 (\$332,000 minus \$240,000). As the revised shareholders' ratio has become nil, no franking debit arises from the refund.

The franking credits that previously arose from the payments of PAYG instalments and income tax would not have arisen if the new revised shareholders' ratio had been used. Section 219-55 (as applied by subsection (4) of this section) therefore operates to create an adjustment to cancel those franking credits. The adjustment is a franking debit of \$12,000 that arises on the day of the amendment of the assessment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 220—Imputation for NZ resident companies and related companies

### Table of Subdivisions

	Guide to Division 220
220-A	Objects of this Division
220-B	NZ company treated as Australian resident for imputation system if company chooses
220-C	Modifications of other Divisions of this Part

### Guide to Division 220

#### 220-1 What this Division is about

A company resident in New Zealand may choose that the imputation system apply in relation to it. If it does, the rest of this Part applies in relation to it as if it were an Australian resident company, but with modifications. Some of the modifications also affect:

- (a) other companies that are members of the same wholly-owned group; or
- (b) entities that receive distributions from the company resident in New Zealand.

### Subdivision 220-A—Objects of this Division

#### Table of sections

220-15	Objects
220-20	What is an <i>NZ resident</i> ?

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **220-15 Objects**

- (1) The main objects of this Division are:
  - (a) to allow a company that is an \*NZ resident to choose that the \*imputation system apply in relation to it; and
  - (b) if the company makes that choice, to apply the rest of this Part in relation to the company generally as if it were an Australian resident.
  
- (2) Another object of this Division is to prevent the benefits of the \*imputation system from being inappropriately made available to or through a \*member of a company that is a foreign resident, by modifying the way in which the rest of this Part applies to:
  - (a) a company that has chosen that the system apply in relation to it; and
  - (b) other companies that are members of the same \*wholly-owned group as that company; and
  - (c) other entities that receive (directly or indirectly) \*distributions from that company.

### **220-20 What is an *NZ resident*?**

#### *Company*

- (1) A company is an ***NZ resident*** if:
  - (a) the company is incorporated in New Zealand; or
  - (b) the company is not incorporated in New Zealand but carries on business there and either:
    - (i) has its central management and control there; or
    - (ii) has its voting power controlled by \*members who are NZ residents.

#### *Natural person*

- (2) A natural person is an ***NZ resident*** if he or she resides in New Zealand.
  
- (3) A natural person is also an ***NZ resident*** if his or her domicile is in New Zealand, unless the Commissioner is satisfied that the person's permanent place of abode is outside New Zealand.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 220-25

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- (4) A natural person is also an *NZ resident* if he or she has actually been in New Zealand, continuously or intermittently, during more than half of the income year, unless the Commissioner is satisfied that:
- (a) the person's usual place of abode is outside New Zealand; and
  - (b) the person does not intend to take up residence in New Zealand.

*Not an NZ resident if an Australian resident*

- (5) A person is *not* an *NZ resident* if the person is an Australian resident. This has effect despite subsections (1), (2), (3) and (4).

**Subdivision 220-B—NZ company treated as Australian resident for imputation system if company chooses**

**Table of sections**

220-25	Application of provisions of Part 3-6 outside this Division
220-30	What is an <i>NZ franking company</i> ?
220-35	Making an NZ franking choice
220-40	When is an NZ franking choice in force?
220-45	Revoking an NZ franking choice
220-50	Cancelling an NZ franking choice

**220-25 Application of provisions of Part 3-6 outside this Division**

- (1) The provisions of Part 3-6 outside this Division apply in relation to a company that is an \*NZ franking company at a time as if it were an Australian resident at that time.
- (2) They apply with the modifications made by the other sections of this Division.

**220-30 What is an *NZ franking company*?**

A company is an *NZ franking company* at a time if, at the time, the company is an \*NZ resident and has an \*NZ franking choice in force.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **220-35 Making an NZ franking choice**

A company that is an \*NZ resident may, by notice in the \*approved form given to the Commissioner, choose that the \*imputation system is to apply in relation to the company. The choice is an *NZ franking choice*.

### **220-40 When is an NZ franking choice in force?**

- (1) A company's \*NZ franking choice comes into force:
  - (a) at the start of the company's income year in which the notice was given to the Commissioner; or
  - (b) at the start of a later income year specified in the notice.
- (2) The \*NZ franking choice continues in force until it is revoked by the company or cancelled by the Commissioner.

### **220-45 Revoking an NZ franking choice**

- (1) A company may revoke its \*NZ franking choice by notice in the \*approved form given to the Commissioner.
- (2) To avoid doubt, the revocation takes effect when the notice is given to the Commissioner.

### **220-50 Cancelling an NZ franking choice**

- (1) The Commissioner may cancel a company's \*NZ franking choice by written notice given to the company, but only if the Commissioner is satisfied that either:
  - (a) the company was liable to pay \*franking deficit tax or \*over-franking tax (whether or not because of section 220-800 (about joint and several liability for the tax)) and the company did not pay the tax by the day on which it was due and payable; or
  - (b) the company has not complied with subsection 214-15(2) or 214-20(2) (about giving the Commissioner a \*franking return).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 220-50

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- (2) To avoid doubt, the cancellation takes effect when the notice is given to the company.

*Review of cancellation*

- (3) If the company is dissatisfied with the cancellation of the choice, it may object against the cancellation in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Note: That Part provides for review of the cancellation objected against.

*Effect of cancelling a choice on making another choice in future*

- (4) If the company makes another \*NZ franking choice, it does not come into force unless the Commissioner consents in writing to the choice coming into force.
- (5) In consenting, the Commissioner may specify when the choice is to come into force. The consent has effect according to its terms, despite section 220-40.
- (6) The Commissioner must give a copy of the consent to the company.

**Subdivision 220-C—Modifications of other Divisions of this Part**

**Table of sections**

**Franking NZ franking companies' distributions**

- 220-100 Residency requirement for franking  
220-105 Unfrankable distributions by NZ franking companies  
220-110 Maximum franking credit under section 202-60

**NZ franking companies' franking accounts etc.**

- 220-205 Franking credit for payment of NZ franking company's withholding tax liability  
220-210 Effect of franked distribution to NZ franking company or flowing indirectly to NZ franking company  
220-215 Effect on franking account if NZ franking choice ceases to be in force

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Franking accounts of NZ franking company and some of its 100% subsidiaries**

220-300 NZ franking company's franking account affected by franking accounts of some of its 100% subsidiaries

**Effect of NZ franking company making distribution that is non-assessable and non-exempt**

220-350 Providing for a franking credit to arise

**Effects of supplementary dividend from NZ franking company**

220-400 Gross-up and tax offset for distribution from NZ franking company reduced by supplementary dividend

220-405 Franked distribution and supplementary dividend flowing indirectly

220-410 Franking credit reduced if tax offset reduced

**Rules about exempting entities**

220-500 Publicly listed post-choice NZ franking company and its 100% subsidiaries are not exempting entities

220-505 Post-choice NZ franking company is not automatically prescribed person

220-510 Parent company's status as prescribed person sets status of all other members of same wholly-owned group

**NZ franking companies' exempting accounts**

220-605 Effect on exempting account if NZ franking choice ceases to be in force

**Tax effect of distribution franked by NZ franking company with an exempting credit**

220-700 Tax effect of distribution franked by NZ franking company with an exempting credit

**Joint and several liability for NZ resident company's unmet franking liabilities**

220-800 Joint and several liability for NZ resident company's franking tax etc.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Franking NZ franking companies' distributions

### 220-100 Residency requirement for franking

- (1) An \*NZ franking company satisfies the *residency requirement* when making a \*distribution only if the distribution is made at least one month after the notice constituting the company's \*NZ franking choice was given to the Commissioner.

Note: This section is relevant to both section 202-5 and section 208-60, which let a company frank a distribution, or frank a distribution with an exempting credit, only if the company satisfies the residency requirement when making the distribution.

- (2) Section 202-20, as applying because of section 220-25, has effect subject to this section.

Note: Section 202-20 sets out how a company satisfies the residency requirement when making a distribution.

### 220-105 Unfrankable distributions by NZ franking companies

- (1) These \*distributions by an \*NZ franking company are \*unfrankable:
- (a) a conduit tax relief additional dividend (as defined in section OB1 of the Income Tax Act 1994 of New Zealand);
  - (b) a supplementary dividend (as defined in that section).
- (2) This section does not limit section 202-45 (about \*unfrankable distributions).

### 220-110 Maximum franking credit under section 202-60

For the purposes of working out the \*maximum franking credit for a \*frankable distribution made by an \*NZ franking company in a \*foreign currency, translate the amount of the distribution into Australian currency at the exchange rate applicable at the time of the decision to make the \*distribution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **NZ franking companies' franking accounts etc.**

### **220-205 Franking credit for payment of NZ franking company's withholding tax liability**

- (1) A \*franking credit arises in the \*franking account of a company on the day a payment is made of \*withholding tax that the company is liable under section 128B of the *Income Tax Assessment Act 1936* to pay, if:
- (a) because of section 220-25, the company satisfies the \*residency requirement for the income year in which it \*derived the income on which it was liable to pay the withholding tax; and
  - (b) the company is a \*franking entity for the whole or part of that income year.

The amount of the credit equals the amount of the payment.

- (2) For the purposes of determining whether the company satisfies the \*residency requirement for the income year described in paragraph (1)(a), section 205-25 has effect as if the derivation of the income described in that paragraph were an event specified in a relevant table for the purposes of that section.

### **220-210 Effect of franked distribution to NZ franking company or flowing indirectly to NZ franking company**

*No tax offset for NZ franking company*

- (1) An \*NZ franking company to which a \*franked distribution is made or \*flows indirectly is not entitled under Division 207 to a \*tax offset for the \*distribution. That Division has effect subject to this section.

*Denial of tax offset does not stop franking credit or debit arising*

- (2) However, subsection (1) does not prevent a \*franking credit or \*franking debit from arising in the \*NZ franking company's \*franking account under Division 205 or 208. To avoid doubt, the amount of the credit or debit, and the time at which it arises, are the same as they would be apart from subsection (1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 220-215

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Note: This has the effect that the amount and timing of the credit or debit are worked out as if the NZ franking company had been entitled to the tax offset that subsection (1) prevents the company from being entitled to.

**220-215 Effect on franking account if NZ franking choice ceases to be in force**

- (1) This section has effect if:
- (a) a company has made an \*NZ franking choice; and
  - (b) the choice is revoked or cancelled at a time (the *end time*); and
  - (c) immediately before the end time the company is a foreign resident.

*Franking debit if franking surplus just before end time*

- (2) A \*franking debit arises in the company's \*franking account on the day during which the end time occurs if the account was in \*surplus immediately before that time. The amount of the debit equals the \*franking surplus.

*Franking deficit tax if franking deficit just before end time*

- (3) If the company's \*franking account was in \*deficit immediately before the end time, subsection 205-45(3) applies in relation to the company as if it ceased to be a \*franking entity at the end time.

Note: Subsection 205-45(3) makes an entity liable to pay franking deficit tax if the entity ceases to be a franking entity and had a franking deficit immediately before ceasing to be a franking entity.

- (4) Subsection (3) does not limit the effect of subsection 205-45(3).

*Take account of franking debit arising under section 220-605*

- (5) Take account of any \*franking debit arising under section 220-605 because of the revocation or cancellation in working out for the purposes of this section whether the company's \*franking account is in \*surplus or \*deficit immediately before the end time.

Note: Section 220-605 provides for a franking debit to arise in the company's franking account immediately before the end time if, immediately before the end time, the company was a former exempting entity and its exempting account was in deficit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Franking accounts of NZ franking company and some of its 100% subsidiaries**

### **220-300 NZ franking company's franking account affected by franking accounts of some of its 100% subsidiaries**

- (1) This section has effect if all these conditions are met in relation to a company (the *franking donor company*) at a time:
  - (a) the franking donor company is at the time:
    - (i) an Australian resident or a \*post-choice NZ franking company; and
    - (ii) a \*100% subsidiary of a post-choice NZ franking company (the *parent company*) that is not a 100% subsidiary of another company that is a member of the same \*wholly-owned group as the parent company;
  - (b) the franking donor company is at the time a 100% subsidiary of a post-choice NZ franking company (the *NZ recipient company*) in relation to which these requirements are met:
    - (i) there must be no companies that are \*NZ residents and 100% subsidiaries of the NZ recipient company interposed between it and the franking donor company;
    - (ii) the NZ recipient company must be either the parent company or a 100% subsidiary of the parent company;
  - (c) there are interposed between the NZ recipient company and the franking donor company at the time one or more companies, each of which:
    - (i) is a 100% subsidiary of the NZ recipient company; and
    - (ii) is neither an Australian resident nor an NZ resident.

#### *What is a post-choice NZ franking company?*

- (2) A company is a *post-choice NZ franking company* at a time if:
  - (a) at the time, the company is an \*NZ franking company; and
  - (b) the notice constituting the \*NZ franking choice that makes the company an NZ franking company at the time was given to the Commissioner at or before the time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Franking donor company's franking surplus when conditions met*

- (3) If the franking donor company's \*franking account is in \*surplus at the first time all the conditions in subsection (1) are met:
- (a) a \*franking debit equal to the surplus arises in the franking donor company's franking account immediately after that time; and
  - (b) a \*franking credit equal to the surplus arises in the NZ recipient company's franking account immediately after that time.

*Franking donor company's franking deficit when conditions met*

- (4) If the franking donor company's \*franking account is in \*deficit at the first time all the conditions in subsection (1) are met, subsection 205-45(3) applies in relation to the franking donor company as if:
- (a) it ceased to be a \*franking entity at that time; and
  - (b) its franking account had been in deficit to the same extent immediately before that cessation.

Note: Subsection 205-45(3) makes an entity liable to pay franking deficit tax if the entity ceases to be a franking entity and had a franking deficit immediately before ceasing to be a franking entity.

*NZ recipient company's franking account after conditions are met*

- (5) If, apart from paragraph (a), a \*franking credit or \*franking debit would arise in the franking donor company's \*franking account at a time (the **accounting time**) that is a time when all the conditions in subsection (1) are met but after the first time at which all those conditions are met in relation to the franking donor company:
- (a) the credit or debit does not arise in the franking donor company's franking account; and
  - (b) a credit or debit of the same amount arises at the accounting time in the NZ recipient company's franking account instead.
- (6) However, subsection (5) does not apply in relation to:
- (a) a \*franking debit arising in the franking donor company's \*franking account under subsection (3); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) a \*franking credit arising in that account because of item 5 of the table in section 205-15 in conjunction with subsection (4) of this section; or
- (c) a franking debit arising in that account under paragraph 220-605(3)(a).

Note 1: Item 5 of the table in section 205-15 gives rise to a franking credit immediately after a liability to franking deficit tax arises. Subsection (4) of this section causes such a liability to arise under section 205-45.

Note 2: Paragraph 220-605(3)(a) gives rise to a franking debit if the NZ franking choice of a company that is a former exempting entity is revoked or cancelled and the company's exempting account is in deficit immediately before the revocation or cancellation.

*Franking donor company's benchmark franking percentage*

- (7) Subsection (5) does not affect the franking donor company's \*benchmark franking percentage.

*Special rules if franking donor company is former exempting entity*

- (8) If the franking donor company becomes a \*former exempting entity at the first time all the conditions in subsection (1) are met:
  - (a) subsections (3) and (4) do not apply; and
  - (b) subsection (5) does not apply in relation to:
    - (i) a \*franking credit arising in the franking donor company's \*franking account under item 1 of the table in section 208-130 immediately after that time; or
    - (ii) a \*franking debit arising in the franking donor company's franking account under item 1 of the table in section 208-145 immediately after that time.

Note: Subsection (8) ensures that the franking donor company's franking account has a nil balance immediately after the company becomes a former exempting entity and that there is an appropriate balance in the company's exempting account that is not made available for use by the NZ recipient company in franking distributions.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Effect of NZ franking company making distribution that is non-assessable and non-exempt

### 220-350 Providing for a franking credit to arise

- (1) This section has effect if:
- (a) an \*NZ franking company makes a \*franked distribution to a company (the *receiving company*); and
  - (b) the distribution does not \*flow indirectly through the receiving company to another entity; and
  - (c) because of section 23AI, 23AJ or 23AK of the *Income Tax Assessment Act 1936*:
    - (i) all of the distribution is \*exempt income, or is \*non-assessable non-exempt income, in the hands of the receiving company; or
    - (ii) part of the distribution is exempt income, or is non-assessable non-exempt income, in the hands of the receiving company.

- (2) A \*franking credit arises in the receiving company's \*franking account on the day on which the distribution is made.

Note: If only part of the distribution is exempt income or non-assessable non-exempt income:

- (a) a franking credit in relation to the distribution will arise under this section in relation to the part of the distribution that is exempt income, or that is non-assessable non-exempt income; and
  - (b) another franking credit in relation to the distribution will arise under item 3 of the table in subsection 205-15(1) in relation to the part of the distribution that is not exempt income, or that is not non-assessable non-exempt income (see also subsection 207-90(2)).
- (3) The amount of the \*franking credit that so arises is:
- (a) if subparagraph (1)(c)(i) applies—the amount of the franking credit on the distribution made by the \*NZ franking company; or
  - (b) if subparagraph (1)(c)(ii) applies—so much of the franking credit on the distribution made by the NZ franking company

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

as is attributable to the part of the distribution referred to in that subparagraph.

- (4) The table in subsection 205-15(1) has effect subject to this section.

### **Effects of supplementary dividend from NZ franking company**

#### **220-400 Gross-up and tax offset for distribution from NZ franking company reduced by supplementary dividend**

- (1) This section has effect if:
- (a) an \*NZ franking company:
    - (i) makes a \*franked distribution to an entity (the *recipient*) in an income year; and
    - (ii) pays a supplementary dividend (as defined in section OB1 of the Income Tax Act 1994 of New Zealand) to the recipient in connection with the franked distribution; and
  - (b) an amount is included in the recipient's assessable income for the income year under section 207-20, and the recipient is entitled to a \*tax offset for the income year under that section or section 207-110; and
  - (c) the recipient is entitled to a tax offset under Division 770 because of the inclusion of the \*distribution in the recipient's assessable income for the income year.

#### *Reduced gross-up*

- (2) The amount included in the recipient's assessable income under section 207-20 is reduced by the amount of the supplementary dividend (but not below zero).

#### *Reduced tax offset*

- (3) The amount of the \*tax offset under section 207-20 is reduced by the amount of the supplementary dividend (but not below zero).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 220-405

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*What happens if certain provisions apply*

- (4) Subsections (2) and (3) do not apply to the recipient in relation to the \*franked distribution if one or more of the following provisions also apply to the recipient in relation to the distribution:
  - (a) subsection 207-90(1);
  - (b) subsection 207-90(2);
  - (c) subsection 207-145(1);
  - (d) subsection 207-145(2).
- (5) If subsection 207-90(2) or 207-145(2) would also apply to the recipient in relation to the \*franked distribution, apply that subsection on the basis that:
  - (a) the amount of the \*franking credit on the distribution; had been reduced by:
  - (b) so much of the supplementary dividend as does not exceed that amount of the franking credit.

*Relationship with sections 207-20, 207-90 and 207-145*

- (6) Sections 207-20, 207-90 and 207-145 have effect subject to this section.

**220-405 Franked distribution and supplementary dividend flowing indirectly**

- (1) This section has effect if:
  - (a) an \*NZ franking company:
    - (i) makes a \*franked distribution; and
    - (ii) pays a supplementary dividend (as defined in section OB1 of the Income Tax Act 1994 of New Zealand) in connection with the franked distribution; and
  - (b) the franked distribution and the supplementary dividend \*flow indirectly to an entity (the *recipient*) in an income year because the recipient is a partner in a partnership or a beneficiary or trustee of a trust; and
  - (c) the recipient is entitled under section 207-45 to a \*tax offset in connection with the \*distribution; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) the recipient is entitled to a tax offset under Division 770 for the income year because of the distribution.

*Recipient that is a partner or beneficiary*

- (2) If the \*franked distribution \*flows indirectly to the recipient under subsection 207-50(2) or (3), then:
  - (a) the recipient can deduct an amount for the income year that is equal to so much of its share of the supplementary dividend as does not exceed:
    - (i) if the distribution flows indirectly to the recipient under subsection 207-50(2)—the recipient's individual interest in relation to the distribution that is mentioned in that subsection; or
    - (ii) if the distribution flows indirectly to the recipient under subsection 207-50(3)—the recipient's share amount in relation to the distribution that is mentioned in that subsection; and
  - (b) the recipient's \*tax offset under section 207-45 is reduced by so much of the deduction under paragraph (a) as does not exceed its \*share of the \*franking credit on the distribution.

*Recipient that is a trustee*

- (3) If the \*franked distribution \*flows indirectly to the recipient under subsection 207-50(4), then:
  - (a) the share amount mentioned in that subsection in relation to the distribution is reduced by so much of the recipient's share of the supplementary dividend as does not exceed that share amount; and
  - (b) the recipient's \*tax offset under section 207-45 is reduced by so much of the reduction under paragraph (a) as does not exceed its \*share of the \*franking credit on the distribution.

*What happens if certain provisions apply*

- (4) Subsection (2) or (3) (as appropriate) does not apply to the recipient in relation to the \*franked distribution if one or more of the following provisions also apply to the recipient in relation to the distribution:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 220-405

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- (a) subsection 207-95(1);
  - (b) subsection 207-95(5);
  - (c) subsection 207-150(1);
  - (d) subsection 207-150(5).
- (5) If subsection 207-90(5) or 207-150(5) would also apply to the recipient in relation to the \*franked distribution, apply that subsection on the basis that:
- (a) the amount of the recipient's \*share of the \*franking credit on the distribution;  
had been reduced by:
  - (b) so much of the recipient's share of the supplementary dividend as does not exceed the amount of that share of the franking credit.

*When does a supplementary dividend flow to an entity?*

- (6) A supplementary dividend **flows indirectly** to an entity if it would have \*flowed indirectly to the entity under subsection 207-50(2), (3) or (4), if:
- (a) the dividend had been a \*franked distribution; and
  - (b) a reference in that subsection to the entity's \*share of the franked distribution had been a reference to the entity's share of the supplementary dividend.

*Share of supplementary dividend*

- (7) The entity's **share of the supplementary dividend** is worked out as follows:

$$\text{Amount of the supplementary dividend} \times \frac{\text{Entity's *share of the *franked distribution}}{\text{Amount of the *franked distribution}}$$

- (8) Nothing in this section has the effect of including in the entity's assessable income its share of the supplementary dividend.

*Relationship with Subdivisions 207-B, 207-D, 207-E and 207-F*

- (9) Subdivisions 207-B, 207-D, 207-E and 207-F have effect subject to this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **220-410 Franking credit reduced if tax offset reduced**

- (1) If, under section 220-400 or 220-405, a \*corporate tax entity's \*tax offset (the *reduced tax offset*) for the \*franked distribution described in that section is less than it would be apart from that section, the \*franking credit arising in that entity's \*franking account because of the \*distribution is equal to the reduced tax offset.
- (2) The following provisions have effect subject to this section:
  - (a) items 3 and 4 of the table in section 205-15;
  - (b) items 5 and 6 of the table in section 219-15.

Note: Each of those items gives rise to a franking credit for a franked distribution if the recipient is entitled under Division 207 to a tax offset for the distribution. Those items provide that the amount of the credit equals the amount of that offset.

### **Rules about exempting entities**

#### **220-500 Publicly listed post-choice NZ franking company and its 100% subsidiaries are not exempting entities**

- (1) A company is not an \*exempting entity at a particular time if:
  - (a) it is a \*post-choice NZ franking company at the time; and
  - (b) the company is a \*listed public company at the time.
- (2) A company (the *non-exempting company*) is not an \*exempting entity at a particular time if at the time:
  - (a) the non-exempting company is a \*100% subsidiary of a company (the *listed company*) that is not an exempting entity because of subsection (1); and
  - (b) the non-exempting company is an Australian resident or a \*post-choice NZ franking company; and
  - (c) if:
    - (i) there are one or more companies interposed between the non-exempting company and the listed company; and
    - (ii) one or more of the interposed companies are \*NZ residents;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 220-505

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all of the interposed companies that are NZ residents are post-choice NZ franking companies.

- (3) This section has effect despite section 208-20 (about an entity being an \*exempting entity).

**220-505 Post-choice NZ franking company is not automatically prescribed person**

- (1) A \*post-choice NZ franking company is not a prescribed person under section 208-40 for the purposes of working out whether another \*corporate tax entity is an \*exempting entity at a particular time because it is effectively owned by prescribed persons within the meaning of section 208-25.
- (2) However, this section does not prevent the company from being taken under section 208-45 to be a prescribed person for those purposes.

**220-510 Parent company's status as prescribed person sets status of all other members of same wholly-owned group**

- (1) This section has effect for the purposes of working out whether a company is an \*exempting entity at a particular time because it is effectively owned by prescribed persons within the meaning of section 208-25, if:
- (a) at the time the company is a \*100% subsidiary of another company (the *parent company*) that is not a 100% subsidiary of another member of the same \*wholly-owned group; and
  - (b) at the time the parent company is a \*post-choice NZ franking company; and
  - (c) there is at least one company (the *non-Tasman company*) that meets all these conditions:
    - (i) the non-Tasman company is neither an Australian resident nor an \*NZ resident at the time;
    - (ii) the non-Tasman company is a member of the same wholly-owned group at the time;
    - (iii) the non-Tasman company is interposed between the parent company and a company that, at the time, is an

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Australian resident or a post-choice NZ franking company.

- (2) At the time, each company that is a \*100% subsidiary of the parent company is a prescribed person if the parent company is a prescribed person at the time for those purposes because of section 208-40 or 208-45 (taking account of section 220-505, if relevant).
- (3) At the time, each company that is a \*100% subsidiary of the parent company is *not* a prescribed person if the parent company is *not* a prescribed person for those purposes because of section 208-40 or 208-45 (taking account of section 220-505, if relevant).
- (4) This section has effect despite sections 208-40, 208-45 and 220-505 so far as those sections apply in relation to a \*100% subsidiary of the parent company.

### **NZ franking companies' exempting accounts**

#### **220-605 Effect on exempting account if NZ franking choice ceases to be in force**

- (1) This section has effect if:
  - (a) a company has made an \*NZ franking choice; and
  - (b) the choice is revoked or cancelled at a time (the *end time*); and
  - (c) immediately before the end time:
    - (i) the company is a foreign resident; and
    - (ii) the company is a \*former exempting entity.

*Exempting debit if exempting surplus just before end time*

- (2) An \*exempting debit arises in the company's \*exempting account at the end time if the account was in \*surplus immediately before that time. The amount of the debit equals the \*exempting surplus.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 220-700

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*If exempting deficit just before end time*

- (3) If the company's \*exempting account was in \*deficit immediately before the end time:
  - (a) a \*franking debit equal to that deficit arises in the company's \*franking account immediately before the end time; and
  - (b) an \*exempting credit equal to that deficit arises in the company's exempting account at the end time.

**Tax effect of distribution franked by NZ franking company with an exempting credit**

**220-700 Tax effect of distribution franked by NZ franking company with an exempting credit**

- (1) This section has effect if an \*NZ franking company \*franks with an exempting credit a \*distribution the company makes when it is a \*former exempting entity.
- (2) If, under Subdivision 208-H, Division 207 applies in relation to the \*distribution, it applies subject to the provisions of this Division that modify the effect of that Division.

Note 1: Subdivision 208-H provides in some cases for the tax effect of a distribution franked with an exempting credit by applying Division 207 as if the distribution were a franked distribution.

Note 2: Sections 220-400 and 220-405 modify the effect of Division 207 so far as it relates to the tax effect of distributions by NZ franking companies that pay supplementary dividends in connection with the distributions.

- (3) Subdivision 208-H has effect subject to this section.

**Joint and several liability for NZ resident company's unmet franking liabilities**

**220-800 Joint and several liability for NZ resident company's franking tax etc.**

- (1) This section has effect if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) a company (the *defaulter*) became liable under another section to pay an amount described in subsection (2) because the company was an \*NZ franking company; and
- (b) the amount was unpaid by the time (the *defaulter's due time*) it was due and payable by the defaulter; and
- (c) at any time during the period for the amount (see subsection (2)), the defaulter was a member of the same \*wholly-owned group as one or more other companies (each of which is a *contributor*).
- (2) For the purposes of subsection (1), the amount and period are shown in the table:

<b>Amount and period</b>		
<b>Item</b>	<b>For an amount of this kind:</b>	<b>The period is:</b>
1	*Franking deficit tax	Whichever of these periods is relevant: (a) if the defaulter was liable to pay the tax because its franking account was in deficit at the end of an income year—that income year; (b) if the defaulter was liable to pay the tax because of another event—the period starting at the start of the income year in which the event occurred and ending when the event occurred
2	*Over-franking tax	The income year in which the defaulter made the *frankable distribution that made the defaulter liable to pay the tax
3	*General interest charge on *franking deficit tax or *over-franking tax	The period identified under item 1 or 2 for the tax

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 220-800

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**Amount and period**

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Item	For an amount of this kind:	The period is:
4	Administrative penalty that: (a) is mentioned in section 284-75, 284-145, 286-75 or 288-25 in Schedule 1 to the <i>Taxation                      Administration Act 1953</i> ; and (b) relates entirely to *franking deficit tax or *over-franking tax	The period identified under item 1 or 2 for the tax

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(3) Just after the defaulter's due time, these companies become jointly and severally liable to pay the unpaid amount:

- (a) the defaulter;
- (b) each contributor, other than one that, at that time:
  - (i) is neither an Australian resident nor an \*NZ resident; or
  - (ii) is prohibited by an \*Australian law or a law of New Zealand from entering into an \*arrangement that would make the contributor jointly or severally liable for the unpaid amount.

(4) The joint and several liability of a particular contributor becomes due and payable by the contributor 14 days after the Commissioner gives it written notice of the liability.

Note 1: Two or more contributors will have different due and payable dates for the same liability if the Commissioner gives them notice of their liability on different days.

Note 2: This section does not affect the time at which the liability for the unpaid amount arose for, or became due and payable by, the defaulter.

(5) If:

- (a) the unpaid amount (the ***first interest amount***) is \*general interest charge for a day in relation to another unpaid amount (the ***primary liability***) that consists of \*franking deficit tax or \*over-franking tax; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) on a day the Commissioner gives a particular contributor written notice under subsection (4) of the contributor's liability for the first interest amount; and
  - (c) general interest charge arises:
    - (i) for a day (the *later day*) after the days mentioned in paragraphs (a) and (b); and
    - (ii) in relation to the primary liability; and
  - (d) the general interest charge for the later day has not been paid or otherwise discharged in full by the time it became due and payable;
- the Commissioner is taken to have given the contributor written notice under subsection (4) of the general interest charge for the later day on that later day.
- (6) Section 254 of the *Income Tax Assessment Act 1936* applies in relation to the contributors' liability as if it were a liability for tax.
- Note: Section 254 of the *Income Tax Assessment Act 1936* deals with the payment of tax by agents and trustees.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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# **Income Tax Assessment Act 1997**

## **Act No. 38 of 1997 as amended**

This compilation was prepared on 2 July 2009  
taking into account amendments up to Act No. 62 of 2009

**Volume 6** includes: Table of Contents  
Sections 230-1 to 410-5

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

## **Chapter 3—Specialist liability rules**



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# Contents

<b>Chapter 3—Specialist liability rules</b>	i
<b>Part 3-10—Financial transactions</b>	1
<b>Division 230—Taxation of financial arrangements</b>	1
<b>Guide to Division 230</b>	1
230-1 What this Division is about .....	1
230-5 Scope of this Division .....	2
<b>Subdivision 230-A—Core rules</b>	3
<b>Objects</b>	4
230-10 Objects of this Division .....	4
<b>Tax treatment of gains and losses from financial arrangements</b>	4
230-15 Gains are assessable and losses deductible .....	4
230-20 Gain or loss to be taken into account only once under this Act .....	6
230-25 Associated financial benefits to be taken into account only once under this Act .....	7
230-30 Treatment of gains and losses related to exempt income and non-assessable non-exempt income .....	8
230-35 Treatment of gains and losses of private or domestic nature .....	9
<b>Method to be applied to take account of gain or loss</b>	10
230-40 Methods for taking gain or loss into account .....	10
<b>Financial arrangement concept</b>	12
230-45 Financial arrangement .....	12
230-50 Financial arrangement (equity interest or right or obligation in relation to equity interest) .....	14
230-55 Rights, obligations and arrangements (grouping and disaggregation rules) .....	15
<b>General rules</b>	16
230-60 When financial benefit provided or received under financial arrangement .....	16
230-65 Amount of financial benefit relating to more than one financial arrangement etc .....	18
230-70 Apportionment when financial benefit received or right ceases .....	18
230-75 Apportionment when financial benefit provided or obligation ceases .....	20
230-80 Consistency in working out gains or losses (integrity measure) .....	21
230-85 Rights and obligations include contingent rights and obligations .....	22



---

<b>Subdivision 230-B—The accruals/realisation methods</b>	22
<b>Guide to Subdivision 230-B</b>	23
230-90 What this Subdivision is about .....	23
<b>Objects of Subdivision</b>	24
230-95 Objects of this Subdivision.....	24
<b>When accruals method or realisation method applies</b>	24
230-100 When accruals method or realisation method applies.....	24
230-105 Sufficiently certain overall gain or loss .....	26
230-110 Sufficiently certain gain or loss from particular event.....	27
230-115 Sufficiently certain financial benefits .....	28
230-120 Financial arrangements with notional principal.....	30
<b>The accruals method</b>	31
230-125 Overview of the accruals method .....	31
230-130 Applying accruals method to work out period over which gain or loss is to be spread.....	32
230-135 How gain or loss is spread.....	33
230-140 Method of spreading gain or loss—effective interest method .....	34
230-145 Application of effective interest method where differing income and accounting years.....	35
230-150 Election for portfolio treatment of fees.....	37
230-155 Election for portfolio treatment of fees where differing income and accounting years.....	37
230-160 Portfolio treatment of fees .....	39
230-165 Portfolio treatment of premiums and discounts for acquiring portfolio .....	41
230-170 Allocating gain or loss to income years.....	42
230-175 Running balancing adjustments .....	43
<b>Realisation method</b>	45
230-180 Realisation method .....	45
<b>Reassessment and re-estimation</b>	46
230-185 Reassessment .....	46
230-190 Re-estimation.....	48
230-195 Balancing adjustment if rate of return maintained on re-estimation.....	50
230-200 Re-estimation if balancing adjustment on partial disposal.....	52
<b>Subdivision 230-C—Fair value method</b>	53
230-205 Objects of this Subdivision.....	54
230-210 Fair value election .....	54
230-215 Fair value election where differing income and accounting years .....	55
230-220 Financial arrangements to which fair value election applies .....	56
230-225 Financial arrangements to which election does not apply.....	58

---

---

230-230	Applying fair value method to gains and losses .....	59
230-235	Splitting financial arrangements into 2 financial arrangements .....	60
230-240	When election ceases to apply .....	60
230-245	Balancing adjustment if election ceases to apply.....	61
<b>Subdivision 230-D—Foreign exchange retranslation method</b>		62
230-250	Objects of this Subdivision.....	62
230-255	Foreign exchange retranslation election .....	62
230-260	Foreign exchange retranslation election where differing income and accounting years.....	64
230-265	Financial arrangements to which general election applies.....	65
230-270	Financial arrangements to which general election does not apply .....	67
230-275	Balancing adjustment for election in relation to qualifying forex accounts.....	68
230-280	Applying foreign exchange retranslation method to gains and losses .....	68
230-285	When election ceases to apply .....	71
230-290	Balancing adjustment if election ceases to apply.....	72
<b>Subdivision 230-E—Hedging financial arrangements method</b>		72
230-295	Objects of this Subdivision.....	73
230-300	Applying hedging financial arrangement method to gains and losses.....	73
230-305	Table of events and allocation rules .....	76
230-310	Aligning tax classification of gain or loss from hedging financial arrangement with tax classification of hedged item.....	76
230-315	Hedging financial arrangement election .....	81
230-320	Hedging financial arrangement election where differing income and accounting years.....	81
230-325	Hedging financial arrangements to which election applies.....	82
230-330	Hedging financial arrangements to which election does not apply .....	83
230-335	<i>Hedging financial arrangement and hedged item</i> .....	84
230-340	Generally whole arrangement must be financial hedging arrangement .....	87
230-345	Requirements not satisfied because of honest mistake or inadvertence.....	88
230-350	<i>Derivative financial arrangement and foreign currency hedge</i> .....	89
230-355	Recording requirements.....	89
230-360	Determining basis for allocating gain or loss .....	91
230-365	Effectiveness of the hedge .....	92
230-370	When election ceases to apply .....	93
230-375	Balancing adjustment if election ceases to apply.....	93
230-380	Where requirements not met.....	94

---

---

230-385	You may be excluded from this Subdivision for deliberate failures to comply with requirements .....	95
<b>Subdivision 230-F—Reliance on financial reports</b>		97
230-390	Objects of this Subdivision .....	97
230-395	Election to rely on financial reports .....	97
230-400	Financial reports election where differing income and accounting years .....	99
230-405	Commissioner discretion to waive requirements in paragraphs 230-395(2)(c) and (e) .....	100
230-410	Financial arrangements to which the election applies .....	101
230-415	Financial arrangements not covered by election .....	104
230-420	Effect of election to rely on financial reports .....	104
230-425	When election ceases to apply .....	106
230-430	Balancing adjustment if election ceases to apply .....	106
<b>Subdivision 230-G—Balancing adjustment on ceasing to have a financial arrangement</b>		107
230-435	When balancing adjustment made .....	108
230-440	Exceptions .....	109
230-445	Balancing adjustment .....	111
<b>Subdivision 230-H—Exceptions</b>		115
230-450	Short-term arrangements where non-money amount involved .....	115
230-455	Certain taxpayers where no significant deferral .....	116
230-460	Various rights and/or obligations .....	119
230-465	Ceasing to have a financial arrangement in certain circumstances .....	124
230-470	Forgiveness of commercial debts .....	125
230-475	Clarifying exceptions .....	125
230-480	Treatment of gains in form of franked distribution etc. ....	126
<b>Subdivision 230-I—Other provisions</b>		126
230-485	Effect of change of residence—rules for particular methods .....	127
230-490	Effect of change of residence—disposal and reacquisition etc. after ceasing to be Australian resident where no further recognised gains or losses from arrangement .....	129
230-495	Effect of change of accounting standards .....	129
230-500	Comparable foreign accounting and auditing standards .....	130
230-505	Financial arrangement as consideration for provision or acquisition of a thing .....	131
230-510	Non-arm’s length dealings in relation to financial arrangement .....	133
230-515	Arm’s length dealings in relation to financial arrangement—adjustment to gain or loss in certain situations .....	134
230-520	Disregard gains or losses covered by value shifting regime .....	135
230-525	Consolidated financial reports .....	136

---

---

<b>Subdivision 230-J—Additional operation of Division</b>	136
230-530 Additional operation of Division .....	136
<b>Division 240—Arrangements treated as a sale and loan</b>	138
<b>Guide to Division 240</b>	138
240-1 What this Division is about .....	138
240-3 How the recharacterisation affects the notional seller .....	138
240-7 How the recharacterisation affects the notional buyer .....	139
<b>Subdivision 240-A—Application and scope of Division</b>	140
<b>Operative provisions</b>	140
240-10 Application of this Division .....	140
240-15 Scope of Division .....	140
<b>Subdivision 240-B—The notional sale and notional loan</b>	141
<b>Operative provisions</b>	141
240-17 Who is the notional seller and the notional buyer? .....	141
240-20 Notional sale of property by notional seller and notional acquisition of property by notional buyer .....	141
240-25 Notional loan by notional seller to notional buyer .....	142
<b>Subdivision 240-C—Amounts to be included in notional seller’s                 assessable income</b>	143
<b>Guide to Subdivision 240-C</b>	143
240-30 What this Subdivision is about .....	143
<b>Operative provisions</b>	144
240-35 Amounts to be included in notional seller’s assessable income .....	144
240-40 Arrangement payments not to be included in notional seller’s assessable income .....	144
<b>Subdivision 240-D—Deductions allowable to notional buyer</b>	145
<b>Guide to Subdivision 240-D</b>	145
240-45 What this Subdivision is about .....	145
<b>Operative provisions</b>	145
240-50 Extent to which deductions are allowable to notional buyer .....	145
240-55 Arrangement payments not to be deductions .....	146
<b>Subdivision 240-E—Notional interest and arrangement payments</b>	146
<b>Operative provisions</b>	146
240-60 Notional interest .....	146
240-65 Arrangement payments .....	147
240-70 Arrangement payment periods .....	148

---

---

<b>Subdivision 240-F—The end of the arrangement</b>	148
<b>Operative provisions</b>	148
240-75 When is the end of the arrangement?.....	148
240-78 Termination amounts.....	149
240-80 What happens if the arrangement is extended or renewed.....	149
240-85 What happens if an amount is paid by or on behalf of the notional buyer to acquire the property.....	150
240-90 What happens if the notional buyer ceases to have the right to use the property.....	151
<b>Subdivision 240-G—Adjustments if total amount assessed to notional seller differs from amount of finance charge</b>	152
<b>Guide to Subdivision 240-G</b>	152
240-100 What this Subdivision is about.....	152
<b>Operative provisions</b>	152
240-105 Adjustments for notional seller.....	152
240-110 Adjustments for notional buyer.....	153
<b>Subdivision H—Application of Division 16E to certain arrangements</b>	154
240-112 Division 16E applies to certain arrangements.....	154
<b>Subdivision 240-I—Provisions applying to hire purchase agreements</b>	155
<b>Operative provisions</b>	155
240-115 Another person, or no person taken to own property in certain cases.....	155
<b>Division 243—Limited recourse debt</b>	157
<b>Guide to Division 243</b>	157
243-10 What this Division is about.....	157
<b>Subdivision 243-A—Circumstances in which Division operates</b>	157
<b>Operative provisions</b>	158
243-15 When does this Division apply?.....	158
243-20 What is limited recourse debt?.....	159
243-25 When is a debt arrangement terminated?.....	161
243-30 What is the financed property and the debt property?.....	162
<b>Subdivision 243-B—Working out the excessive deductions</b>	162
<b>Operative provisions</b>	162
243-35 Working out the excessive deductions.....	162

---

---

<b>Subdivision 243-C—Amounts included in assessable income and deductions</b>	165
<b>Operative provisions</b>	165
243-40 Amount included in debtor's assessable income .....	165
243-45 Deduction for later payments in respect of debt .....	165
243-50 Deduction for payments for replacement debt.....	166
243-55 Effect of Division on later capital allowance deductions.....	168
243-57 Effect of Division on later capital allowance balancing adjustments.....	168
243-58 Adjustment where debt only partially used for expenditure .....	169
<b>Subdivision 243-D—Special provisions</b>	170
<b>Operative provisions</b>	170
243-60 Application of Division to partnerships.....	170
243-65 Application where partner reduces liability .....	170
243-70 Application of Division to companies ceasing to be 100% subsidiary .....	172
243-75 Application of Division where debt forgiveness rules also apply .....	172
<b>Division 247—Capital protected borrowings</b>	173
<b>Guide to Division 247</b>	173
247-1 What this Division is about .....	173
<b>Operative provisions</b>	173
247-5 Object of Division .....	173
247-10 What <i>capital protected borrowing</i> and <i>capital protection</i> are .....	173
247-15 Application of this Division .....	174
247-20 Treating capital protection as a put option.....	175
247-25 Number of put options.....	176
247-30 Exercise or expiry of option .....	177
<b>Division 250—Assets put to tax preferred use</b>	178
<b>Guide to Division 250</b>	178
250-1 What this Division is about .....	178
<b>Subdivision 250-A—Objects</b>	179
250-5 Main objects .....	179
<b>Subdivision 250-B—When this Division applies to you and an asset</b>	179
<b>Overall test</b>	180
250-10 When this Division applies to you and an asset.....	180
250-15 General test.....	180
250-20 First exclusion—small business entities .....	181
250-25 Second exclusion—financial benefits under minimum value limit .....	181

---

---

250-30	Third exclusion—certain short term or low value arrangements .....	182
250-35	Exceptions to section 250-30.....	183
250-40	Fourth exclusion—sum of present values of financial benefits less than amount otherwise assessable .....	185
250-45	Fifth exclusion—Commissioner determination .....	186
<b>Tax preferred use of asset</b>		187
250-50	<i>End user</i> of an asset.....	187
250-55	<i>Tax preferred end user</i> .....	187
250-60	<i>Tax preferred use</i> of an asset.....	188
250-65	<i>Arrangement period</i> for tax preferred use .....	189
250-70	New tax preferred use at end of arrangement period if tax preferred use continues.....	190
250-75	What constitutes a separate asset for the purposes of this Division .....	191
250-80	Treatment of particular arrangements in the same way as leases .....	192
<b>Financial benefits in relation to tax preferred use</b>		192
250-85	Financial benefits in relation to tax preferred use of an asset .....	192
250-90	Financial benefit provided directly or indirectly.....	195
250-95	Expected financial benefits in relation to an asset put to tax preferred use .....	195
250-100	Present value of financial benefit that has already been provided.....	195
<b>Discount rate to be used in working out present values</b>		196
250-105	Discount rate to be used in working out present values.....	196
<b>Predominant economic interest</b>		196
250-110	Predominant economic interest.....	196
250-115	Limited recourse debt test.....	197
250-120	Right to acquire asset test .....	198
250-125	Effectively non-cancellable, long term arrangement test.....	199
250-130	Meaning of <i>effectively non-cancellable</i> arrangement .....	200
250-135	Level of expected financial benefits test.....	200
250-140	When to retest predominant economic interest under section 250-135 .....	201
<b>Subdivision 250-C—Denial of, or reduction in, capital allowance deductions</b>		203
250-145	Denial of capital allowance deductions .....	203
250-150	Apportionment rule .....	203
<b>Subdivision 250-D—Deemed loan treatment of financial benefits provided for tax preferred use</b>		205
250-155	Arrangement treated as loan .....	205
250-160	Financial benefits that are <i>subject to deemed loan treatment</i> .....	208

---

---

250-180	<i>End value</i> of asset .....	210
250-185	Financial benefits subject to deemed loan treatment not assessed .....	211
	<b>Subdivision 250-E—Taxation of deemed loan</b>	212
	<b>Guide to Subdivision 250-E</b>	213
250-190	What this Subdivision is about .....	213
	<b>Application and objects of Subdivision</b>	213
250-195	Application of Subdivision .....	213
250-200	Objects of this Subdivision .....	214
	<b>Tax treatment of gains and losses from financial arrangements</b>	214
250-205	Gains are assessable and losses deductible .....	214
250-210	Gain or loss to be taken into account only once under this Act .....	214
	<b>Method to be applied to take account of gain or loss</b>	215
250-215	Methods for taking gain or loss into account .....	215
	<b>General rules</b>	216
250-220	Consistency in working out gains or losses (integrity measure) .....	216
250-225	Rights and obligations include contingent rights and obligations .....	216
	<b>The accruals method</b>	217
250-230	Application of accruals method .....	217
250-235	Overview of the accruals method .....	217
250-240	Applying accruals method to work out period over which gain or loss is to be spread .....	217
250-245	How gain or loss is spread .....	218
250-250	Allocating gain or loss to income years .....	218
250-255	When to re-estimate .....	219
250-260	Re-estimation if balancing adjustment on partial disposal .....	221
	<b>Balancing adjustment</b>	223
250-265	When balancing adjustment made .....	223
250-270	Exception for subsidiary member leaving consolidated group .....	224
250-275	Balancing adjustment .....	224
	<b>Other provisions</b>	227
250-280	Financial arrangement received or provided as consideration .....	227
	<b>Subdivision 250-F—Treatment of asset when Division ceases to apply to the asset</b>	229
250-285	Treatment of asset after Division ceases to apply to the asset .....	230
250-290	Balancing adjustment under Subdivision 40-D in some circumstances .....	232

---



---

<b>Subdivision 250-G—Objections against determinations and decisions by the Commissioner</b>	233
250-295 Objections against determinations and decisions by the Commissioner.....	233
<b>Division 253—Financial claims scheme for account-holders with insolvent ADIs</b>	234
<b>Subdivision 253-A—Tax treatment of entitlements under financial claims scheme</b>	234
<b>Guide to Subdivision 253-A</b>	234
253-1 What this Subdivision is about .....	234
<b>Operative provisions</b>	235
253-5 Payment of entitlement under financial claims scheme treated as payment from ADI .....	235
253-10 Disposal of rights against ADI to APRA and meeting of financial claims scheme entitlement have no CGT effects .....	235
253-15 Cost base of financial claims scheme entitlement and any remaining part of account that gave rise to entitlement .....	236
<b>Part 3-30—Superannuation</b>	237
<b>Division 280—Guide to the superannuation provisions</b>	237
280-1 Effect of this Division .....	237
280-5 Overview .....	238
<b>Contributions phase</b>	238
280-10 Contributions phase—deductibility .....	238
280-15 Contributions phase—limits on superannuation tax concessions.....	239
<b>Investment phase</b>	239
280-20 Investment phase .....	239
<b>Benefits phase</b>	240
280-25 Benefits phase—different types of superannuation benefit .....	240
280-30 Benefits phase—taxation varies with age of recipient and type of benefit.....	240
280-35 Benefits phase—roll-overs .....	241
<b>The regulatory scheme outside this Act</b>	241
280-40 Other relevant legislative schemes .....	241
<b>Division 285—General concepts relating to superannuation</b>	242
285-5 Transfers of property .....	242
<b>Division 290—Contributions to superannuation funds</b>	243
<b>Guide to Division 290</b>	243
290-1 What this Division is about .....	243

---

---

<b>Subdivision 290-A—General rules</b>	243
290-5 Non-application to roll-over superannuation benefits etc.....	243
290-10 No deductions other than under this Division.....	244
<b>Subdivision 290-B—Deduction of employer contributions and other employment-connected contributions</b>	244
<b>Deducting employer contributions</b>	245
290-60 Employer contributions deductible.....	245
290-65 Application to employees etc.....	245
<b>Conditions for deducting an employer contribution</b>	246
290-70 Employment activity conditions.....	246
290-75 Complying fund conditions.....	246
290-80 Age related conditions.....	247
<b>Other employment-connected deductions</b>	248
290-85 Contributions for former employees etc.....	248
290-90 Controlling interest deductions.....	249
290-95 Amounts offset against superannuation guarantee charge.....	251
<b>Returned contributions</b>	251
290-100 Returned contributions assessable.....	251
<b>Subdivision 290-C—Deducting personal contributions</b>	251
290-150 Personal contributions deductible.....	252
<b>Conditions for deducting a personal contribution</b>	253
290-155 Complying superannuation fund condition.....	253
290-160 Maximum earnings as employee condition.....	253
290-165 Age-related conditions.....	253
290-170 Notice of intent to deduct conditions.....	254
290-175 Deduction limited by amount specified in notice.....	255
290-180 Notice may be varied but not revoked or withdrawn.....	255
<b>Subdivision 290-D—Tax offsets for spouse contributions</b>	256
290-230 Offset for spouse contribution.....	256
290-235 Limit on amount of tax offsets.....	257
290-240 Tax file number.....	257
<b>Division 292—Excess contributions tax</b>	259
<b>Guide to Division 292</b>	259
292-1 What this Division is about.....	259
<b>Subdivision 292-A—Object of this Division</b>	259
292-5 Object of this Division.....	259
<b>Subdivision 292-B—Excess concessional contributions tax</b>	260
292-10 What this Subdivision is about.....	260

---

---

<b>Operative provisions</b>	260
292-15 Liability for excess concessional contributions tax .....	260
292-20 Your <i>excess concessional contributions</i> for a financial year .....	260
292-25 Your <i>concessional contributions</i> for a financial year .....	261
<b>Subdivision 292-C—Excess non-concessional contributions tax</b>	262
292-75 What this Subdivision is about .....	262
<b>Operative provisions</b>	262
292-80 Liability for excess non-concessional contributions tax .....	262
292-85 Your <i>excess non-concessional contributions</i> for a financial year .....	262
292-90 Your <i>non-concessional contributions</i> for a financial year .....	263
292-95 Contributions arising from structured settlements or orders for personal injuries .....	265
292-100 Contribution relating to some CGT small business concessions .....	267
292-105 CGT cap amount .....	269
<b>Subdivision 292-D—Modifications for defined benefit interests</b>	270
292-155 What this Subdivision is about .....	270
<b>Operative provisions</b>	270
292-160 Application .....	270
292-165 Concessional contributions—special rules for defined benefit interests .....	270
292-170 <i>Notional taxed contributions</i> .....	271
292-175 <i>Defined benefit interest</i> .....	274
<b>Subdivision 292-E—Excess contributions tax assessments</b>	275
<b>Guide to Subdivision 292-E</b>	275
292-225 What this Subdivision is about .....	275
<b>Operative provisions</b>	275
292-230 Commissioner must make an <i>excess contributions tax assessment</i> .....	275
292-235 Part-year assessment .....	276
292-240 Validity of assessment .....	276
292-245 Objections .....	277
292-250 Evidence .....	277
<b>Subdivision 292-F—Amending excess contributions tax assessments</b>	277
<b>Guide to Subdivision 292-F</b>	277
292-300 What this Subdivision is about .....	277
<b>Operative provisions</b>	278
292-305 Amendments within 4 years of the original assessment .....	278
292-310 Amended assessments are treated as excess contributions tax assessments .....	278

---

---

292-315	Later amendments—on request .....	278
292-320	Later amendments—fraud or evasion .....	279
292-325	Further amendment of an amended particular .....	279
292-330	Amendment on review etc. ....	280
<b>Subdivision 292-G—Collection and recovery</b>		<b>280</b>
<b>Guide to Subdivision 292-G</b>		<b>280</b>
292-380	What this Subdivision is about .....	280
<b>Operative provisions</b>		<b>281</b>
292-385	Due date for payment of excess contributions tax .....	281
292-390	General interest charge .....	281
292-395	Refunds of amounts overpaid .....	281
292-400	Security for payment of tax .....	281
292-405	Release authority .....	282
292-410	Giving a release authority to a superannuation provider.....	282
292-415	Superannuation provider given release authority must pay amount.....	284
<b>Subdivision 292-H—Other provisions</b>		<b>285</b>
292-465	Commissioner’s discretion to disregard contributions etc. in relation to a financial year .....	285
292-470	Power of Commissioner to obtain information.....	286
<b>Division 295—Taxation of superannuation entities</b>		<b>288</b>
<b>Guide to Division 295</b>		<b>288</b>
295-1	What this Division is about .....	288
<b>Subdivision 295-A—Provisions of general operation</b>		<b>289</b>
295-5	Entities to which Division applies .....	289
295-10	How to work out the tax payable by superannuation entities .....	290
295-15	Division does not impose a tax on property of a State.....	291
295-20	Exempting laws ineffective .....	291
295-25	Assessments on basis of anticipated SIS Act notice .....	292
295-30	Effect of revocation etc. of SIS Act notices.....	292
295-35	Acronyms used in tables.....	292
<b>Subdivision 295-B—Modifications of provisions of this Act</b>		<b>293</b>
295-85	CGT to be primary code for calculating gains or losses .....	293
295-90	CGT rules for pre-30 June 1988 assets .....	294
295-95	Deductions related to contributions .....	295
295-100	Deductions for investing in PSTs and life policies .....	296
295-105	Distributions to PST unitholders .....	297
<b>Subdivision 295-C—Contributions included</b>		<b>297</b>
<b>Guide to Subdivision 295-C</b>		<b>297</b>
295-155	What this Subdivision is about .....	297

---

---

<b>Contributions and payments</b>	298
295-160 Contributions and payments .....	298
295-165 Exception—spouse contributions .....	299
295-170 Exception—Government co-contributions and contributions for a child .....	300
295-171 Exception—payments from FHSAs and Government FHSA contributions .....	300
295-173 Exception—trustee contributions .....	300
295-175 Exception—payments by a member spouse .....	301
295-180 Exception—choice to exclude certain contributions .....	301
295-185 Exception—temporary residents .....	301
<b>Personal contributions and roll-over amounts</b>	302
295-190 Personal contributions and roll-over amounts .....	302
295-195 Exclusion of personal contributions .....	303
<b>Transfers from foreign funds</b>	304
295-200 Transfers from foreign superannuation funds .....	304
<b>Application of tables to RSA providers</b>	304
295-205 Application of tables to RSA providers .....	304
<b>Former constitutionally protected funds</b>	305
295-210 Former constitutionally protected funds .....	305
<b>Subdivision 295-D—Contributions excluded</b>	305
295-260 Transfer of liability to investment vehicle .....	305
295-265 Application of pre-1 July 88 funding credits .....	307
295-270 Anticipated funding credits .....	309
<b>Subdivision 295-E—Other income amounts</b>	310
<b>Amounts included</b>	310
295-320 Other amounts included in assessable income .....	310
295-325 Previously complying funds .....	311
295-330 Previously foreign funds .....	312
<b>Amounts excluded</b>	312
295-335 Amounts excluded from assessable income .....	312
<b>Subdivision 295-F—Exempt income</b>	313
295-385 Income from assets set aside to meet current pension liabilities .....	313
295-390 Income from other assets used to meet current pension liabilities .....	314
295-395 Meaning of <i>segregated non-current assets</i> .....	316
295-400 Income of a PST attributable to current pension liabilities .....	317
295-405 Other exempt income .....	318
295-410 Amount credited to RSA .....	318

---

---

<b>Subdivision 295-G—Deductions</b>	319
<b>Death or disability benefits</b>	319
295-460 Benefits for which deductions are available .....	319
295-465 Complying funds—deductions for insurance premiums.....	320
295-470 Complying funds—deductions for future liability to pay benefits .....	321
295-475 RSA providers—deductions for insurance premiums.....	323
295-480 Meaning of <i>whole of life policy</i> and <i>endowment policy</i> .....	323
<b>Increased amount of superannuation lump sum death benefits</b>	324
295-485 Deductions for increased amount of superannuation lump sum death benefit.....	324
<b>Other deductions</b>	325
295-490 Other deductions.....	325
<b>Certain amounts cannot be deducted</b>	326
295-495 Amounts that cannot be deducted.....	326
<b>Subdivision 295-H—Components of taxable income</b>	327
295-545 Components of taxable income—complying superannuation funds, complying ADFs and PSTs.....	327
295-550 Meaning of <i>non-arm's length income</i> .....	328
295-555 Components of taxable income—RSA providers .....	329
<b>Subdivision 295-I—No-TFN contributions</b>	330
295-605 Liability for tax on no-TFN contributions income.....	331
295-610 No-TFN contributions income.....	331
295-615 Meaning of <i>quoted (for superannuation purposes)</i> .....	332
295-620 No reduction under Subdivision 295-D .....	332
295-625 Assessments .....	333
<b>Subdivision 295-J—Tax offset for no-TFN contributions income             (TFN quoted within 4 years)</b>	334
295-675 Entitlement to a tax offset.....	334
295-680 Amount of the tax offset.....	334
<b>Division 301—Superannuation member benefits paid from             complying plans etc.</b>	335
<b>Guide to Division 301</b>	335
301-1 What this Division is about .....	335
<b>Subdivision 301-A—Application</b>	335
301-5 Division applies to superannuation member benefits paid from complying plans etc. ....	335
<b>Subdivision 301-B—Member benefits: general rules</b>	336
<b>Member benefits—recipient aged 60 or above</b>	336
301-10 All superannuation benefits are tax free .....	336

---

---

<b>Member benefits—recipient aged over preservation age and under 60</b>	337
301-15 Tax free status of tax free component.....	337
301-20 Superannuation lump sum—taxable component taxed at 0% up to low rate cap amount, 15% on remainder .....	337
301-25 Superannuation income stream—taxable component attracts 15% offset .....	338
<b>Member benefits—recipient aged under preservation age</b>	338
301-30 Tax free status of tax free component.....	338
301-35 Superannuation lump sum—taxable component taxed at 20% .....	338
301-40 Superannuation income stream—taxable component is assessable income, 15% offset for disability benefit .....	339
<b>Subdivision 301-C—Member benefits: elements untaxed in fund</b>	339
301-90 Tax free component and element taxed in fund dealt with under Subdivision 301-B, but element untaxed in the fund dealt with under this Subdivision .....	340
<b>Member benefits (element untaxed in fund)—recipient aged 60 or above</b>	340
301-95 Superannuation lump sum—element untaxed in fund taxed at 15% up to untaxed plan cap amount, top rate on remainder .....	340
301-100 Superannuation income stream—element untaxed in fund attracts 10% offset .....	341
<b>Member benefits (element untaxed in fund)—recipient aged over preservation age and under 60</b>	341
301-105 Superannuation lump sum—element untaxed in fund taxed at 15% up to low rate cap amount, 30% up to untaxed plan cap amount, top rate on remainder.....	341
301-110 Superannuation income stream—element untaxed in fund is assessable income .....	342
<b>Member benefits (element untaxed in fund)—recipient aged under preservation age</b>	342
301-115 Superannuation lump sum—element untaxed in fund taxed at 30% up to untaxed plan cap amount, top rate on remainder .....	342
301-120 Superannuation income stream—element untaxed in fund is assessable income .....	343
<b>Miscellaneous</b>	343
301-125 Unclaimed money payments by the Commissioner.....	343
<b>Subdivision 301-D—Departing Australia superannuation payments</b>	343
301-170 <i>Departing Australia superannuation payments</i> .....	343
301-175 Treatment of departing Australia superannuation benefits .....	344

---

---

<b>Subdivision 301-E—Superannuation lump sum member benefits less than \$200</b>	345
301-225 Superannuation lump sum member benefits less than \$200 are tax free.....	345
<b>Division 302—Superannuation death benefits paid from complying plans etc.</b>	346
<b>Guide to Division 302</b>	346
302-1 What this Division is about .....	346
<b>Subdivision 302-A—Application</b>	346
302-5 Division applies to superannuation death benefits paid from complying plans etc.....	346
302-10 Superannuation death benefits paid to trustee of deceased estate.....	347
<b>Subdivision 302-B—Death benefits to dependant</b>	347
<b>Lump sum death benefits to dependants are tax free</b>	348
302-60 All of superannuation lump sum is tax free .....	348
<b>Superannuation income stream—either deceased died aged 60 or above or dependant aged 60 or above</b>	348
302-65 Superannuation income stream benefits are tax free.....	348
<b>Superannuation income stream—deceased died aged under 60 and dependant aged under 60</b>	349
302-70 Superannuation income stream—tax free status of tax free component .....	349
302-75 Superannuation income stream—taxable component attracts 15% offset .....	349
<b>Death benefits to dependant—elements untaxed in fund</b>	349
302-80 Treatment of element untaxed in the fund of superannuation income stream death benefit to dependant.....	349
302-85 Deceased died aged 60 or above or dependant aged 60 years or above—superannuation income stream: element untaxed in fund attracts 10% offset.....	350
302-90 Deceased died aged under 60 and dependant aged under 60—superannuation income stream: element untaxed in fund is assessable income .....	350
<b>Subdivision 302-C—Death benefits to non-dependant</b>	350
<b>Superannuation lump sum</b>	351
302-140 Superannuation lump sum—tax free status of tax free component .....	351
302-145 Superannuation lump sum—element taxed in the fund taxed at 15%, element untaxed in the fund taxed at 30% .....	351
<b>Subdivision 302-D—Definitions relating to dependants</b>	351
302-195 Meaning of <i>death benefits dependant</i> .....	352

---



---

302-200	What is an <i>interdependency relationship</i> ?	352
<b>Division 303—Superannuation benefits paid in special circumstances</b>		
303-5	Commutation of income stream if you are under 25 etc.	354
303-10	Superannuation lump sum member benefit paid to member having a terminal medical condition	354
<b>Division 304—Superannuation benefits in breach of legislative requirements etc.</b>		
<b>Guide to Division 304</b>		
304-1	What this Division is about	356
<b>Operative provisions</b>		
304-5	Application	356
304-10	Superannuation benefits in breach of legislative requirements etc.	356
304-15	Excess payments from release authorities	358
<b>Division 305—Superannuation benefits paid from non-complying superannuation plans</b>		
<b>Guide to Division 305</b>		
305-1	What this Division is about	359
<b>Subdivision 305-A—Superannuation benefits from Australian non-complying superannuation funds</b>		
305-5	Tax treatment of superannuation benefits from certain Australian non-complying superannuation funds	359
<b>Subdivision 305-B—Superannuation benefits from foreign superannuation funds</b>		
<b>Application of Subdivision</b>		
305-55	Restriction to lump sums received from certain foreign superannuation funds	360
<b>Lump sums received within 6 months after Australian residency or termination of foreign employment etc.</b>		
305-60	Lump sums tax free—foreign resident period	361
305-65	Lump sums tax free—Australian resident period	362
<b>Lump sums to which sections 305-60 and 305-65 do not apply</b>		
305-70	Lump sums received more than 6 months after Australian residency or termination of foreign employment etc.	363
305-75	Lump sums— <i>applicable fund earnings</i>	364
305-80	Lump sums paid into complying superannuation plans—choice	366
<b>Division 306—Roll-overs etc.</b>		
<b>Guide to Division 306</b>		
306-1	What this Division is about	367

---

---

<b>Operative provisions</b>	367
306-5 Effect of a roll-over superannuation benefit .....	367
306-10 <i>Roll-over superannuation benefit</i> .....	367
306-15 Tax on <i>excess untaxed roll-over amounts</i> .....	368
306-20 Effect of payment to government of unclaimed superannuation money.....	369
306-25 Payments connected with financial claims scheme to RSAs .....	369
<b>Division 307—Key concepts relating to superannuation benefits</b>	372
<b>Guide to Division 307</b>	372
307-1 What this Division is about .....	372
<b>Subdivision 307-A—Superannuation benefits generally</b>	373
307-5 What is a <i>superannuation benefit</i> ?.....	373
307-10 Payments that are not <i>superannuation benefits</i> .....	378
307-15 Payments for your benefit or at your direction or request.....	379
<b>Subdivision 307-B—Superannuation lump sums and superannuation income stream benefits</b>	379
307-65 Meaning of <i>superannuation lump sum</i> .....	379
307-70 Meaning of <i>superannuation income stream</i> and <i>superannuation income stream benefit</i> .....	379
<b>Subdivision 307-C—Components of a superannuation benefit</b>	380
307-120 Components of superannuation benefit .....	380
307-125 Proportioning rule.....	381
307-130 Superannuation guarantee payment consists entirely of taxable component.....	382
307-135 Superannuation co-contribution benefit payment consists entirely of tax free component.....	382
307-140 Contributions-splitting superannuation benefit consists entirely of taxable component .....	383
307-142 Components of certain unclaimed money payments .....	383
307-145 Modification for disability benefits .....	385
307-150 Modification in respect of superannuation lump sum with element untaxed in fund .....	386
<b>Subdivision 307-D—Superannuation interests</b>	387
307-200 Regulations relating to meaning of superannuation interests.....	388
307-205 <i>Value</i> of superannuation interest .....	388
307-210 <i>Tax free component</i> of superannuation interest .....	389
307-215 <i>Taxable component</i> of superannuation interest.....	389
307-220 What is the <i>contributions segment</i> ? .....	389
307-225 What is the <i>crystallised segment</i> ?.....	390

---

---

<b>Subdivision 307-E—Elements taxed and untaxed in the fund of the taxable component of superannuation benefit</b>	391
307-275 <i>Element taxed in the fund and element untaxed in the fund of superannuation benefits</i> .....	391
307-280 Superannuation benefits from constitutionally protected funds etc. ....	392
307-285 Trustee can choose to convert element taxed in the fund to element untaxed in the fund.....	392
307-290 Taxed and untaxed elements of death benefit superannuation lump sums .....	393
307-295 Superannuation benefits from public sector superannuation schemes may include untaxed element .....	393
307-300 Certain unclaimed money payments.....	395
<b>Subdivision 307-F—Low rate cap and untaxed plan cap amounts</b>	397
307-345 <i>Low rate cap amount</i> .....	397
307-350 <i>Untaxed plan cap amount</i> .....	398
<b>Subdivision 307-G—Other concepts</b>	399
307-400 Meaning of <i>service period</i> for a superannuation lump sum.....	399
<b>Part 3-32—Co-operatives and mutual entities</b>	401
<b>Division 315—Demutualisation of private health insurers</b>	401
<b>Guide to Division 315</b>	401
315-1 What this Division is about .....	401
<b>Subdivision 315-A—Capital gains and losses connected with a demutualisation of a private health insurer to be disregarded</b>	402
<b>Rules for policy holders</b>	403
315-5 Policy holders to disregard capital gains and losses related to demutualisation of private health insurer.....	403
315-10 Effect on the legal personal representative or beneficiary .....	403
315-15 Demutualisations to which this Division applies.....	403
315-20 What assets are covered.....	404
<b>Rules for demutualising health insurer</b>	404
315-25 Demutualising health insurers to disregard capital gains and losses related to demutualisation .....	404
<b>Rules for other entities</b>	405
315-30 Other entities to disregard capital gains and losses related to demutualisation .....	405
<b>Subdivision 315-B—Cost base of certain shares and rights in private health insurers</b>	405
315-80 Cost base and acquisition time of demutualisation assets.....	405
315-85 Demutualisation asset .....	406
315-90 Participating policy holders .....	407

---

---

<b>Subdivision 315-C—Lost policy holders trust</b>	407
315-140 Lost policy holders trust .....	407
315-145 CGT treatment of demutualisation assets in lost policy holders trust .....	408
315-150 Roll-over where assets transferred to lost policy holder .....	408
315-155 Trustee assessed if assets dealt with not for benefit of lost policy holder .....	409
315-160 Subdivision 126-E does not apply to lost policy holders trust .....	410
<b>Subdivision 315-D—Special cost base rules for certain shares and rights in holding companies</b>	410
315-210 Cost base for shares and rights in certain holding companies .....	410
<b>Subdivision 315-E—Special CGT rule for legal personal representatives and beneficiaries</b>	412
315-260 Special CGT rule for legal personal representatives and beneficiaries .....	412
<b>Subdivision 315-F—Non-CGT consequences of demutualisation</b>	413
315-310 General taxation consequences of issue of demutualisation assets etc. ....	413
<b>Part 3-35—Insurance business</b>	414
<b>Division 320—Life insurance companies</b>	414
<b>Guide to Division 320</b>	414
320-1 What this Division is about .....	414
<b>Operative provisions</b>	416
<b>Subdivision 320-A—Preliminary</b>	416
320-5 Object of Division .....	416
<b>Subdivision 320-B—What is included in a life insurance company’s assessable income</b>	417
<b>Guide to Subdivision 320-B</b>	417
320-10 What this Subdivision is about .....	417
<b>Operative provisions</b>	417
320-15 Assessable income—various amounts .....	417
320-30 Assessable income—special provision for certain income years .....	419
320-35 Exempt income .....	420
320-37 Non-assessable non-exempt income .....	420
320-45 Tax treatment of gains or losses from CGT events in relation to complying superannuation/FHSA assets .....	423
<b>Subdivision 320-C—Deductions and capital losses</b>	423
<b>Guide to Subdivision 320-C</b>	423
320-50 What this Subdivision is about .....	423

---

---

<b>Operative provisions</b>	424
320-55 Deduction for life insurance premiums where liabilities under life insurance policies are to be discharged from complying superannuation/FHSA assets .....	424
320-60 Deduction for life insurance premiums where liabilities under life insurance policies are to be discharged from segregated exempt assets .....	425
320-65 Deduction for life insurance premiums in respect of life insurance policies that provide for participating or discretionary benefits.....	425
320-70 No deduction for life insurance premiums in respect of certain life insurance policies payable only on death or disability .....	425
320-75 Deduction for ordinary investment policies.....	426
320-80 Deduction for certain claims paid under life insurance policies .....	426
320-85 Deduction for increase in value of liabilities under net risk components of life insurance policies.....	427
320-87 Deduction for assets transferred from or to complying superannuation/FHSA asset pool.....	428
320-100 Deduction for life insurance premiums paid under certain contracts of reinsurance .....	429
320-105 Deduction for assets transferred to segregated exempt assets.....	429
320-107 Deductions for increased amount of lump sum death benefit.....	429
320-110 Deduction for interest credited to income bonds .....	430
320-111 Deduction for funeral policy payout.....	431
320-112 Deduction for scholarship plan payout .....	431
320-115 No deduction for amounts credited to RSAs .....	432
320-120 Capital losses from assets other than complying superannuation/FHSA assets or segregated exempt assets .....	432
320-125 Capital losses from complying superannuation/FHSA assets.....	432
<b>Subdivision 320-D—Income tax, taxable income and tax loss of life insurance companies</b>	433
<b>Guide to Subdivision 320-D</b>	433
320-130 What this Subdivision is about .....	433
320-131 Overview of Subdivision.....	433
<b>General rules</b>	435
320-133 Object of Subdivision .....	435
320-134 Income tax of a life insurance company .....	435
320-135 Taxable income and tax loss of each of the 2 classes .....	436
<b>Taxable income and tax loss of life insurance companies</b>	437
320-137 Taxable income—complying superannuation/FHSA class.....	437
320-139 Taxable income—ordinary class .....	439
320-141 Tax loss—complying superannuation/FHSA class.....	440

---

---

320-143 Tax loss—ordinary class .....	441
320-149 Provisions that apply only in relation to the ordinary class .....	442
<b>Subdivision 320-E—No-TFN contributions of life insurance companies that are RSA providers</b>	442
<b>Guide to Subdivision 320-E</b>	442
320-150 What this Subdivision is about .....	442
<b>Operative provisions</b>	443
320-155 Subdivisions 295-I and 295-J apply to companies that are RSA providers .....	443
<b>Subdivision 320-F—Complying superannuation/FHSA asset pool</b>	443
<b>Guide to Subdivision 320-F</b>	443
320-165 What this Subdivision is about .....	443
<b>Operative provisions</b>	444
320-170 Establishment of complying superannuation/FHSA asset pool.....	444
320-175 Valuations of complying superannuation/FHSA assets and complying superannuation/FHSA liabilities for each valuation time .....	445
320-180 Consequences of a valuation under section 320-175 .....	446
320-185 Transfer of assets to complying superannuation/FHSA asset pool otherwise than as a result of a valuation under section 320-175 .....	447
320-190 Complying superannuation/FHSA liabilities .....	448
320-195 Transfer of assets and payment of amounts from a complying superannuation/FHSA asset pool otherwise than as a result of a valuation under section 320-175 .....	449
320-200 Consequences of transfer of assets to or from complying superannuation/FHSA asset pool.....	450
<b>Subdivision 320-H—Segregation of assets to discharge exempt life insurance policy liabilities</b>	452
<b>Guide to Subdivision 320-H</b>	452
320-220 What this Subdivision is about .....	452
<b>Operative provisions</b>	453
320-225 Segregation of assets for purpose of discharging exempt life insurance policy liabilities .....	453
320-230 Valuations of segregated exempt assets and exempt life insurance policy liabilities for each valuation time.....	454
320-235 Consequences of a valuation under section 320-230 .....	455
320-240 Transfer of assets to segregated exempt assets otherwise than as a result of a valuation under section 320-230.....	456
320-245 Exempt life insurance policy liabilities.....	457
320-246 Exempt life insurance policy .....	458

---

---

320-247	Policy split into an exempt life insurance policy and another life insurance policy .....	460
320-250	Transfer of assets and payment of amounts from segregated exempt assets otherwise than as a result of a valuation under section 320-230 .....	460
320-255	Consequences of transfer of assets to or from segregated exempt assets.....	461
<b>Subdivision 320-I—Transfers of business</b>		<b>465</b>
<b>Guide to Subdivision 320-I</b>		<b>465</b>
320-300	What this Subdivision is about .....	465
<b>Operative provisions</b>		<b>465</b>
320-305	When this Subdivision applies.....	465
320-310	Special deductions and amounts of assessable income.....	466
320-315	Complying superannuation/FHSA asset pool and segregated exempt assets.....	466
320-320	Certain amounts treated as life insurance premiums.....	467
320-325	Friendly societies.....	467
320-330	Immediate annuities.....	467
320-335	Parts of assets treated as separate assets .....	468
320-340	Continuous disability policies.....	468
320-345	Exemption of management fees.....	469
<b>Division 322—Assistance for policyholders with insolvent general insurers</b>		<b>471</b>
<b>Guide to Division 322</b>		<b>471</b>
322-1	What this Division is about .....	471
<b>Subdivision 322-A—HIH rescue package</b>		<b>471</b>
322-5	Rescue payments treated as insurance payments by HIH.....	471
322-10	HIH Trust exempt from tax .....	472
322-15	Certain capital gains and capital losses disregarded .....	472
<b>Subdivision 322-B—Tax treatment of entitlements under financial claims scheme</b>		<b>472</b>
<b>Guide to Subdivision 322-B</b>		<b>472</b>
322-20	What this Subdivision is about .....	472
<b>Operative provisions</b>		<b>473</b>
322-25	Payment of entitlement under financial claims scheme treated as payment from insurer .....	473
322-30	Disposal of rights against insurer to APRA and meeting of financial claims scheme entitlement have no CGT effects .....	473
<b>Part 3-45—Rules for particular industries and occupations</b>		<b>475</b>
<b>Division 328—Small business entities</b>		<b>475</b>
<b>Guide to Division 328</b>		<b>475</b>

---

---

328-5	What this Division is about .....	475
328-10	Concessions available to small business entities .....	476
<b>Subdivision 328-B—Objects of this Division</b>		477
328-50	Objects of this Division .....	477
<b>Subdivision 328-C—What is a small business entity</b>		478
<b>Guide to Subdivision 328-C</b>		478
328-105	What this Subdivision is about .....	478
<b>Operative provisions</b>		478
328-110	Meaning of <i>small business entity</i> .....	478
328-115	Meaning of <i>aggregated turnover</i> .....	480
328-120	Meaning of <i>annual turnover</i> .....	481
328-125	Meaning of <i>connected with an entity</i> .....	482
328-130	Meaning of <i>affiliate</i> .....	484
<b>Subdivision 328-D—Capital allowances for small business entities</b>		485
<b>Guide to Subdivision 328-D</b>		485
328-170	What this Subdivision is about .....	485
<b>Operative provisions</b>		486
328-175	Calculations for depreciating assets .....	486
328-180	Low cost assets .....	489
328-185	Pooling .....	490
328-190	Calculation .....	492
328-195	Opening pool balance .....	493
328-200	Closing pool balance .....	493
328-205	Estimate of taxable use .....	495
328-210	Low pool value .....	497
328-215	Disposal etc. of depreciating assets .....	498
328-220	What happens if you are not a small business entity or do not choose to use this Subdivision for an income year .....	498
328-225	Change in business use [ <i>see</i> Note 6] .....	499
328-230	Estimate where deduction denied .....	502
328-235	Interaction with Divisions 85 and 86 .....	502
328-243	Roll-over relief .....	502
328-245	Consequences of roll-over .....	503
328-247	Pool deductions .....	504
328-250	Deductions for assets first used in BAE year .....	504
328-253	Deductions for cost addition amounts .....	506
328-255	Closing pool balance etc. below zero .....	507
328-257	Taxable use .....	507
<b>Subdivision 328-E—Trading stock for small business entities</b>		508
<b>Guide to Subdivision 328-E</b>		508
328-280	What this Subdivision is about .....	508

---



---

<b>Operative provisions</b>	508
328-285 Trading stock for small business entities .....	508
328-295 Value of trading stock on hand .....	509
<b>Division 345—FHSAs</b>	511
<b>Guide to Division 345</b>	511
345-1 What this Division is about .....	511
<b>Subdivision 345-A—Treatment of FHSA providers</b>	511
345-5 FHSA provider that is trustee of FHSA trust—tax payable .....	512
345-10 FHSA provider that is trustee of FHSA trust—CGT to be primary code for calculating gains or losses .....	512
345-15 FHSA provider that is an ADI (other than RSA provider)— taxable income and standard component of taxable income .....	513
345-20 FHSA provider that is an ADI—FHSA component of taxable income .....	514
345-25 FHSA provider that is an ADI (other than an RSA provider)—amounts that cannot be deducted .....	514
345-30 Amounts of tax paid by FHSA providers that are ADIs .....	514
<b>Subdivision 345-B—Treatment of FHSA holders</b>	515
345-50 Credits to and payments from FHSAs etc. ....	515
<b>Subdivision 345-C—FHSA misuse tax</b>	515
345-100 Liability for FHSA misuse tax .....	515
345-110 Due date for payment of FHSA misuse tax .....	516
345-115 General interest charge .....	516
<b>Division 375—Australian films</b>	517
<b>Subdivision 375-G—Film losses</b>	517
<b>Guide to Subdivision 375-G</b>	517
375-800 What this Subdivision is about .....	517
<b>Operative provisions</b>	517
375-805 Does your tax loss have a film component? .....	517
375-810 What is a film loss? .....	519
375-815 Deductibility of film losses .....	519
375-820 Order in which tax losses are to be deducted .....	519
<b>Subdivision 375-H—Deductions for shares in a film licensed                 investment company</b>	520
375-850 What this Subdivision is about .....	520
<b>Provisions affecting you if you own shares in a film licensed                 investment company</b>	520
375-855 What can you deduct? .....	520
375-860 When can you claim the deduction? .....	521
375-865 How can you lose your entitlement? .....	521
375-870 How this Subdivision applies to partners and partnerships .....	522

---

---

375-872 Distribution of FLIC concessional capital is instead taken to be a dividend .....	523
<b>Provisions affecting film licensed investment companies</b>	524
375-875 Tax losses cannot be transferred to or from FLICs.....	524
375-880 FLIC cannot claim deductions for concessional capital.....	524
<b>Division 376—Films generally (tax offsets for Australian production expenditure)</b>	525
<b>Subdivision 376-A—Guide to Division 376</b>	525
376-1 What this Division is about .....	525
376-2 Key features of the tax offsets for Australian production expenditure on films .....	525
376-5 Structure of this Division.....	526
<b>Subdivision 376-B—Tax offsets for Australian expenditure in making a film</b>	527
<b>Refundable tax offset for Australian expenditure in making a film (location offset)</b>	528
376-10 Film production company entitled to refundable tax offset for Australian expenditure in making a film (location offset).....	528
376-15 Amount of the location offset .....	529
376-20 Minister must issue certificate for a film for the location offset.....	529
376-25 Company may nominate one individual whose remuneration is to be disregarded for the location offset.....	532
376-30 Minister to determine a company’s qualifying Australian production expenditure for the location offset.....	533
<b>Refundable tax offset for post, digital and visual effects production for a film (PDV offset)</b>	533
376-35 Film production company entitled to refundable tax offset for post, digital and visual effects production for a film (PDV offset) .....	533
376-40 Amount of the PDV offset.....	535
376-45 Minister must issue certificate for a film for the PDV offset.....	535
376-50 Minister to determine a company’s qualifying Australian production expenditure for the PDV offset.....	537
<b>Refundable tax offset for Australian expenditure in making an Australian film (producer offset)</b>	538
376-55 Film production company entitled to refundable tax offset for Australian expenditure in making an Australian film (producer offset) .....	538
376-60 Amount of the producer offset.....	540
376-65 Film authority must issue certificate for an Australian film for the producer offset .....	540
376-70 Determination of content of film .....	545

---

---

376-75	Film authority to determine a company's qualifying Australian production expenditure for the producer offset .....	546
<b>Subdivision 376-C—Production expenditure and qualifying Australian production expenditure</b>		<b>547</b>
<b>Production expenditure—common rules</b>		<b>548</b>
376-125	Production expenditure—general test.....	548
376-130	Production expenditure—special qualifying Australian production expenditure .....	549
376-135	Production expenditure—specific exclusions.....	550
<b>Production expenditure—special rules for the location offset</b>		<b>552</b>
376-140	Production expenditure—special rules for the location offset .....	552
<b>Qualifying Australian production expenditure—common rules</b>		<b>553</b>
376-145	Qualifying Australian production expenditure—general test .....	553
376-150	Qualifying Australian production expenditure—specific inclusions.....	553
376-155	Qualifying Australian production expenditure—specific exclusions .....	554
376-160	Qualifying Australian production expenditure—treatment of services embodied in goods .....	555
<b>Qualifying Australian production expenditure—special rules for the location offset and the PDV offset</b>		<b>555</b>
376-165	Qualifying Australian production expenditure—special rules for the location offset and the PDV offset .....	555
<b>Qualifying Australian production expenditure—special rules for the producer offset</b>		<b>557</b>
376-170	Qualifying Australian production expenditure—special rules for the producer offset .....	557
<b>Expenditure generally—common rules</b>		<b>560</b>
376-175	Expenditure to be worked out on an arm's length basis .....	560
376-180	Expenditure incurred by prior production companies.....	560
<b>Subdivision 376-D—Certificates for films and other matters</b>		<b>562</b>
376-230	Production company may apply for certificate .....	562
376-235	Notice of refusal to issue certificate .....	563
376-240	Issue of certificate.....	564
376-245	Revocation of certificate.....	565
376-250	Notice of decision or determination.....	566
376-255	Review of decisions by the Administrative Appeals Tribunal.....	567
376-260	Minister may make rules about the location offset and the PDV offset.....	567
376-265	Film authority may make rules about the producer offset .....	569
376-270	Amendment of assessments.....	569
376-275	Review in relation to certain production levels .....	570

---

---

<b>Division 380—National Rental Affordability Scheme</b>	571
<b>Guide to Division 380</b>	571
380-1 What this Division is about .....	571
<b>Subdivision 380-A—National Rental Affordability Scheme Tax Offset</b>	571
380-5 Claims by individuals, corporate tax entities and superannuation funds .....	572
380-10 Claims by a party to a non-entity joint venture .....	572
380-15 Claims by certain entities to whom NRAS rent flows indirectly .....	574
380-20 Claims by a trustee of a trust that does not have net income for an income year .....	575
380-25 When NRAS rent flows indirectly to or through an entity .....	576
380-30 Share of NRAS rent .....	578
<b>Subdivision 380-B—Payments made in relation to the National Rental Affordability Scheme etc.</b>	581
380-35 Payments made and non-cash benefits provided in relation to the National Rental Affordability Scheme .....	581
<b>Division 385—Primary production</b>	582
<b>Guide to Division 385</b>	582
385-1 What this Division is about .....	582
385-5 Where to find some other rules relevant to primary producers .....	582
<b>Subdivision 385-E—Primary producer can elect to spread or defer tax on profit from forced disposal or death of live stock</b>	583
<b>Guide to Subdivision 385-E</b>	583
385-90 What this Subdivision is about .....	583
385-95 Basic principles for elections under this Subdivision .....	584
<b>Operative provisions</b>	584
385-100 Cases where you can make an election .....	584
385-105 Election to spread tax profit over 5 years .....	586
385-110 Alternative election to defer tax profit and reduce cost of replacement live stock .....	586
385-115 Your assessable income includes an amount for replacement live stock you breed .....	587
385-120 Purchase price of replacement live stock is reduced .....	587
385-125 Alternative election because of bovine tuberculosis has effect over 10 years not 5 .....	588
<b>Subdivision 385-F—Insurance for loss of live stock or trees</b>	588
385-130 Insurance for loss of live stock or trees .....	588
<b>Subdivision 385-G—Double wool clips</b>	589
385-135 Election to defer including profit on second wool clip .....	589

---

---

<b>Subdivision 385-H—Rules that apply to all elections made under Subdivisions 385-E, 385-F and 385-G</b>	590
385-145 Partnerships and trusts .....	590
385-150 Time for making election .....	590
385-155 Amounts are assessable income from carrying on the primary production business.....	591
385-160 Effect of certain events on election.....	591
385-163 Disentitling events .....	591
385-165 New partnership can elect to be treated as same entity as old partnership .....	593
385-170 New partnership can elect to take advantage of election made by former owner of the business .....	593
 <b>Division 392—Long-term averaging of primary producers' tax liability</b>	 594
<b>Guide to Division 392</b>	594
392-1 What this Division is about .....	594
392-5 Overview of averaging process .....	594
<b>Subdivision 392-A—Is your income tax affected by averaging?</b>	597
392-10 Individuals who carry on a primary production business .....	597
392-15 Meaning of <i>basic taxable income</i> .....	598
392-20 Trust beneficiaries taken to be carrying on primary production business .....	599
392-25 Choosing not to have your income tax averaged .....	599
<b>Subdivision 392-B—What kind of averaging adjustment must you make?</b>	600
<b>Guide to Subdivision 392-B</b>	600
392-30 What this Subdivision is about .....	600
<b>Tax offset or extra income tax</b>	600
392-35 Will you get a tax offset or have to pay extra income tax?.....	600
<b>How to work out the comparison rate</b>	602
392-40 Identify income years for averaging your basic taxable income .....	602
392-45 Work out your average income for those years .....	603
392-50 Work out the income tax on your average income at basic rates .....	603
392-55 Work out the comparison rate.....	603
<b>Subdivision 392-C—How big is your averaging adjustment?</b>	604
<b>Guide to Subdivision 392-C</b>	604
392-60 What this Subdivision is about .....	604
392-65 What your averaging adjustment reflects .....	604
<b>Your gross averaging amount</b>	606
392-70 Working out your gross averaging amount.....	606

---

---

<b>Your averaging adjustment</b>	606
392-75 Working out your averaging adjustment.....	606
<b>How to work out your averaging component</b>	606
392-80 Work out your taxable primary production income.....	606
392-85 Work out your taxable non-primary production income.....	608
392-90 Work out your averaging component .....	609
<b>Subdivision 392-D—Effect of permanent reduction of your basic taxable income</b>	610
392-95 You are treated as if you had not carried on business before.....	610
<b>Division 394—Forestry managed investment schemes</b>	612
<b>Guide to Division 394</b>	612
394-1 What this Division is about .....	612
394-5 Object of this Division.....	612
394-10 Deduction for amounts paid under forestry managed investment schemes .....	613
394-15 Forestry managed investment schemes and related concepts .....	614
394-20 Payments on behalf of participant in forestry managed investment scheme.....	615
394-25 CGT event in relation to forestry interest in forestry managed investment scheme—initial participant .....	615
394-30 CGT event in relation to forestry interest in forestry managed investment scheme—subsequent participant .....	616
394-35 70% DFE rule.....	618
394-40 Payments under forestry managed investment scheme.....	619
394-45 Direct forestry expenditure .....	619
<b>Division 396—Land transport facilities borrowings</b>	622
<b>Guide to Division 396</b>	622
396-5 What this Division is about .....	622
<b>Subdivision 396-A—Key operative provisions</b>	623
<b>Guide to Subdivision 396-A</b>	623
396-10 What this Subdivision is about .....	623
<b>Operative provisions</b>	623
396-15 Tax offset for LTF interest on land transport facilities borrowings.....	623
396-20 Maximum cost to Commonwealth.....	624
396-25 Borrower cannot deduct LTF interest for which lender has tax offset.....	624
<b>Subdivision 396-B—What LTF interest is covered?</b>	625
<b>Guide to Subdivision 396-B</b>	625
<b>Operative provisions</b>	625
396-30 What is <i>LTF interest</i> ? .....	625

---

---

396-35	Interest covered by land transport facilities borrowings agreement .....	626
396-40	Interest ceasing to be covered by a land transport facilities borrowings agreement .....	626
<b>Subdivision 396-C—Projects, borrowers and lenders</b>		627
<b>Guide to Subdivision 396-C</b>		627
<b>Operative provisions</b>		627
396-45	What projects can be approved? .....	627
396-50	Who can be approved as a borrower? .....	628
396-55	Who can be a lender? .....	629
<b>Subdivision 396-D—Application, approval and agreement process</b>		629
<b>Guide to Subdivision 396-D</b>		629
<b>Operative provisions</b>		629
396-60	Applications .....	629
396-65	Minister or Commissioner may seek more information .....	630
396-70	Minister for Transport and Regional Development to consider applications .....	630
396-75	Selection criteria.....	631
396-80	Land transport facilities borrowings agreements .....	632
396-85	Conditions to be in all agreements.....	633
396-90	Variation of agreements.....	634
<b>Subdivision 396-E—Miscellaneous</b>		634
396-95	Provision of information.....	634
396-100	Publication of information about approvals and agreements .....	635
396-105	Delegation by Minister for Transport and Regional Development .....	635
396-110	Decision by Minister for Transport and Regional Development not reviewable by AAT .....	636
<b>Division 402—Environment protection expenditure</b>		637
<b>Guide to Division 402</b>		637
402-1	What this Division is about .....	637
<b>Subdivision 402-W—Urban water tax offset</b>		637
<b>Guide to Subdivision 402-W</b>		637
402-750	What this Subdivision is about .....	637
402-755	Entitlement to urban water tax offset.....	638
402-760	Certificates .....	638
402-765	Amount of urban water tax offset.....	639
402-770	Revoking certificates .....	640
402-775	AAT review.....	641
402-780	Guidelines.....	641

---

---

<b>Division 405—Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons</b>	642
<b>Guide to Division 405</b>	642
405-1 What this Division is about .....	642
405-5 Special rate of income tax on your above-average special professional income.....	643
405-10 Overview of the Division .....	644
<b>Subdivision 405-A—Above-average special professional income</b>	645
405-15 When do you have above-average special professional income? .....	645
<b>Subdivision 405-B—Assessable professional income</b>	646
405-20 What you count as <i>assessable professional income</i> .....	646
405-25 Meaning of <i>special professional, performing artist, production associate, sportsperson</i> and <i>sporting competition</i> .....	648
405-30 What you <i>cannot</i> count as assessable professional income .....	650
405-35 Limits on counting amounts as assessable professional income .....	651
405-40 Joint author or inventor treated as sole author or inventor.....	652
<b>Subdivision 405-C—Taxable professional income and average taxable professional income</b>	652
405-45 Working out your taxable professional income .....	652
405-50 Working out your average taxable professional income.....	653
<b>Division 410—Copyright collecting societies</b>	655
410-1 What this Division is about .....	655
<b>Operative provision</b>	655
410-5 Copyright collecting society must give a notice to a member of the society .....	655





## **Part 3-10—Financial transactions**

### **Division 230—Taxation of financial arrangements**

#### **Table of Subdivisions**

	Guide to Division 230
230-A	Core rules
230-B	The accruals/realisation methods
230-C	Fair value method
230-D	Foreign exchange retranslation method
230-E	Hedging financial arrangements method
230-F	Reliance on financial reports
230-G	Balancing adjustment on ceasing to have a financial arrangement
230-H	Exceptions
230-I	Other provisions
230-J	Additional operation of Division

#### **Guide to Division 230**

##### **230-1 What this Division is about**

This Division is about the tax treatment of gains and losses from your financial arrangements.

You recognise the gains and losses, as appropriate, over the life of a financial arrangement and ignore distinctions between income and capital unless specific rules apply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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If it is sufficiently certain that you will make a gain or loss, you use a compounding accruals method to recognise the gain or loss. Otherwise you use a realisation method. Instead of either, you may be able to choose to use a fair value or hedging method or to rely on your financial reports. You may also be able to choose to recognise foreign exchange gains and losses using a retranslation method.

### **230-5 Scope of this Division**

- (1) You have a financial arrangement if you have one or more cash settleable legal or equitable rights and/or obligations to receive or provide a financial benefit.
- (2) This Division does not apply to all financial arrangements. The main exceptions are if:
  - (a) you are:
    - (i) an individual; or
    - (ii) a superannuation entity, managed investment scheme or an entity substantially similar to a managed investment scheme under foreign law with assets of less than \$100 million; or
    - (iii) an ADI, securitisation vehicle or other financial sector entity with an aggregated turnover of less than \$20 million; or
    - (iv) another entity with an aggregated turnover of less than \$100 million, financial assets of less than \$100 million and assets of less than \$300 million;and either:
    - (iv) the arrangement is to end not more than 12 months after you start to have it; or
    - (v) the arrangement is not a qualifying security; or
  - (b) the arrangement is a financial arrangement under section 230-50 (equity interests etc.) and neither a fair value election, a hedging financial arrangement election nor an election to rely on financial reports applies to the arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: Section 230-455 provides for the exceptions referred to in paragraph (a).

## **Subdivision 230-A—Core rules**

### **Table of sections**

#### **Objects**

230-10 Objects of this Division

#### **Tax treatment of gains and losses from financial arrangements**

230-15 Gains are assessable and losses deductible  
230-20 Gain or loss to be taken into account only once under this Act  
230-25 Associated financial benefits to be taken into account only once under this Act  
230-30 Treatment of gains and losses related to exempt income and non-assessable non-exempt income  
230-35 Treatment of gains and losses of private or domestic nature

#### **Method to be applied to take account of gain or loss**

230-40 Methods for taking gain or loss into account

#### **Financial arrangement concept**

230-45 Financial arrangement  
230-50 Financial arrangement (equity interest or right or obligation in relation to equity interest)  
230-55 Rights, obligations and arrangements (grouping and disaggregation rules)

#### **General rules**

230-60 When financial benefit provided or received under financial arrangement  
230-65 Amount of financial benefit relating to more than one financial arrangement etc.  
230-70 Apportionment when financial benefit received or right ceases  
230-75 Apportionment when financial benefit provided or obligation ceases  
230-80 Consistency in working out gains or losses (integrity measure)  
230-85 Rights and obligations include contingent rights and obligations

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Objects**

### **230-10 Objects of this Division**

The objects of this Division are:

- (a) to minimise the extent to which the tax treatment of gains and losses from your \*financial arrangements distorts, by providing inappropriate impediments and stimulation, your trading, financing and investment decisions and your risk taking and risk management; and
- (b) to do so by aligning more closely the tax and commercial recognition of gains and losses from your financial arrangements in the following ways:
  - (i) by allocating the gains and losses to income years throughout the life of your financial arrangements on a reasonable basis;
  - (ii) by generally recognising gains and losses on revenue rather than capital account; and
- (c) to appropriately take account of, and minimise, your compliance costs.

## **Tax treatment of gains and losses from financial arrangements**

### **230-15 Gains are assessable and losses deductible**

#### *Gains*

- (1) Your assessable income includes a gain you make from a \*financial arrangement.

Note: This Division does not apply to gains that are subject to exceptions under Subdivision 230-H.

#### *Losses*

- (2) You can deduct a loss you make from a \*financial arrangement, but only to the extent that:
  - (a) you make it in gaining or producing your assessable income;
  - or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) you necessarily make it in carrying on a \*business for the purpose of gaining or producing your assessable income.

Note: This Division does not apply to losses that are subject to exceptions under Subdivision 230-H.

- (3) You can also deduct a loss you make from a \*financial arrangement if:

- (a) you are an \*Australian entity; and
- (b) you make the loss in deriving income from a foreign source; and
- (c) the income is \*non-assessable non-exempt income under section 23AI, 23AJ or 23AK of the *Income Tax Assessment Act 1936*; and
- (d) the loss is, in whole or in part, a cost in relation to a \*debt interest you issue that is covered by paragraph 820-40(1)(a).

You can deduct the loss only to the extent to which it is a cost in relation to a \*debt interest you issue that is covered by paragraph 820-40(1)(a).

Note: This Division does not apply to losses that are subject to exceptions under Subdivision 230-H.

- (4) If the \*financial arrangement is a \*debt interest, the loss is not prevented from being deductible for an income year under subsection (2) merely because of either or both of the following:
- (a) one or more of the \*financial benefits that are taken into account in working out the amount of the loss are \*contingent on the economic performance (whether past, current or future) of:
    - (i) you or a part of your activities; or
    - (ii) a \*connected entity of yours or a part of the activities of a connected entity of yours;
  - (b) one or more of the financial benefits that are taken into account in working out the amount of the loss secure a permanent or enduring benefit for you or a connected entity of yours.
- (5) Subject to subsection (6), subsection (4) does not apply to the loss to the extent to which the annually compounded internal rate of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 230-20

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return on the \*debt interest exceeds the \*benchmark rate of return for the debt interest increased by 150 basis points.

- (6) If:
- (a) regulations made for the purposes of subsection 25-85(6) provide that a specified number of basis points is to apply for the purposes of applying subsection 25-85(5) in particular circumstances; and
  - (b) those circumstances exist in relation to the \*debt interest; subsection (5) applies as if the reference in that subsection to 150 basis points were a reference to the number of basis points specified in the regulations.

*Division does not affect foreign residence rules*

- (7) Nothing in this Division affects the operation of the provisions of Division 6 that provide for the significance of foreign residence for the assessability of ordinary and statutory income.

Note 1: Gains that you make under this Division may be ordinary or statutory income for the purposes of Division 6.

Note 2: For the effect of a change of residence during an income year, see sections 230-485 and 230-490.

**230-20 Gain or loss to be taken into account only once under this Act**

*Application of section*

- (1) This section applies to the following:
- (a) a gain that is included in your assessable income for an income year under this Division;
  - (b) a loss that is allowable as a deduction to you for an income year under this Division;
  - (c) a gain or a loss that is dealt with in accordance with subsection 230-310(4) in relation to an income year.

*Purpose of this section*

- (2) The purpose of this section is to ensure that your gains and losses, and \*financial benefits, to which this section applies are taken into

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

account only once under this Act in working out your taxable income.

*Gain or loss to be taken into account only once*

- (3) A gain or loss to which this section applies is not to be (to any extent):
- (a) included in your assessable income; or
  - (b) allowable as a deduction to you; or
  - (c) dealt with in accordance with subsection 230-310(4);
- again under this Division for the same or any other income year.
- (4) A gain or loss to which this section applies is not to be (to any extent):
- (a) included in your assessable income; or
  - (b) allowable as a deduction to you;
- under any provisions of this Act outside this Division for the same or any other income year.

*Section does not give rise to exempt income*

- (5) A gain is not to be treated as \*exempt income merely because it is not included in your assessable income under this section.

**230-25 Associated financial benefits to be taken into account only once under this Act**

*Application of section*

- (1) This section applies to a \*financial benefit whose amount or value is taken into account in working out whether you make, or the amount of, a gain or loss to which paragraph 230-20(1)(a), (b) or (c) applies.

*Associated financial benefit to be taken into account only once*

- (2) A \*financial benefit to which this section applies is not to be (to any extent):
- (a) included in your assessable income; or
  - (b) allowable as a deduction to you;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 230-30

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under any provision of this Act outside this Division for the same or any other income year.

*Exception for certain bad debts*

- (3) If:
- (a) a \*financial benefit has been included in your assessable income under a provision of this Act outside this Division; and
  - (b) a bad debt deduction would have been allowed under section 25-35 in relation to the financial benefit;
- subsection (2) does not prevent that bad debt deduction from being allowed under section 25-35 in relation to the financial benefit as if the debt were still outstanding.

*Section does not give rise to exempt income*

- (4) A \*financial benefit is not to be treated as \*exempt income merely because it is not included in your assessable income under this section.

**230-30 Treatment of gains and losses related to exempt income and non-assessable non-exempt income**

- (1) Despite section 230-15, a gain that you make from a \*financial arrangement:
- (a) to the extent that it reflects an amount that would be treated, or would reasonably be expected to be treated, as \*exempt income under a provision of this Act if this Division were disregarded—is exempt income; and
  - (b) to the extent that it reflects an amount that would be treated or would reasonably be expected to be treated, as \*non-assessable non-exempt income under a provision of this Act if this Division were disregarded—is not assessable income and is not exempt income.
- (2) Despite section 230-15, a gain that you make from a \*financial arrangement:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) to the extent that, if it had been a loss, you would have made it in gaining or producing \*exempt income—is exempt income; and
  - (b) to the extent to which, if it had been a loss, you would have made it in gaining or producing \*non-assessable non-exempt income—is not assessable income and is not exempt income.
- (3) A loss you make from a \*financial arrangement is *not* allowable as a deduction to you under any provision of this Act (other than subsection 230-15(3)) to the extent that you make it in gaining or producing your:
- (a) \*exempt income; or
  - (b) \*non-assessable non-exempt income.

### **230-35 Treatment of gains and losses of private or domestic nature**

*Borrowings etc. used for private or domestic purpose*

- (1) Subsections (2) and (3) apply if:
  - (a) a \*borrowing is made by you, or credit is provided to you, under a \*financial arrangement; and
  - (b) you use some or all of the funds borrowed or the credit provided for a private or domestic purpose.
- (2) This Division does not apply to a gain you make from the arrangement to the extent that you use the funds raised or the credit provided for a private or domestic purpose.
- (3) A loss you make from the arrangement is *not* allowable as a deduction to you under any provision of this Act to the extent that you use the funds raised or the credit provided for a private or domestic purpose.

*Derivative financial arrangement held for private or domestic purpose*

- (4) Subsections (5) and (6) apply if:
  - (a) you are an individual; and
  - (b) you make a gain or loss from a \*derivative financial arrangement; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-40

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- (c) the arrangement is held, wholly or in part, for a private or domestic purpose.
- (5) This Division does not apply to a gain you make from the arrangement to the extent that the arrangement is held or used for a private or domestic purpose.
- (6) A loss you make from the arrangement is *not* allowable as a deduction to you under any provision of this Act to the extent that the arrangement is held or used for a private or domestic purpose.

**Method to be applied to take account of gain or loss**

**230-40 Methods for taking gain or loss into account**

*Methods available*

- (1) The methods that can be applied to take account of a gain or loss you make from a \*financial arrangement are:
  - (a) the accruals and realisation methods provided for in Subdivision 230-B; or
  - (b) the fair value method provided for in Subdivision 230-C; or
  - (c) the foreign exchange retranslation method provided for in Subdivision 230-D; or
  - (d) the hedging financial arrangement method provided for in Subdivision 230-E; or
  - (e) the method of relying on your financial reports provided for in Subdivision 230-F; or
  - (f) a balancing adjustment provided for in Subdivision 230-G.

Note: The methods referred to in paragraphs (b) to (e) only apply if you make an election under the relevant Subdivision and you must meet certain requirements before you can make such an election.

- (2) A gain or loss is not taken into account under any of the methods referred to in paragraphs (1)(a), (b), (c) and (e) to the extent to which it is taken into account under the method referred to in paragraph (1)(f) (balancing adjustment).
- (3) A gain or loss is not taken into account under the method referred to in paragraph (1)(f) (balancing adjustment) to the extent to which

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

it is taken into account under the method referred to in paragraph (1)(d) (hedging financial arrangement method).

Note: The hedging financial arrangement method may take some account of the gain or loss by reference to the balancing adjustment method (see subsection 230-300(5)).

*Elections override accruals and realisation methods*

- (4) Subdivision 230-B (accruals and realisation method) does not apply to a gain or loss you make from a \*financial arrangement:
- (a) if Subdivision 230-C (fair value method) applies to the arrangement; or
  - (b) to the extent that Subdivision 230-D (foreign exchange retranslation method) applies to the gain or loss; or
  - (c) to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement; or
  - (d) if Subdivision 230-F (method of relying on financial reports) applies to the arrangement; or
  - (e) if the arrangement is a financial arrangement under section 230-50 (equity interests etc.).

*Priorities among election methods*

- (5) Subdivision 230-C (fair value method) does not apply to a gain or loss you make from a \*financial arrangement:
- (a) to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement; or
  - (b) if Subdivision 230-F (method of relying on financial reports) applies to the arrangement.
- (6) Subdivision 230-D (foreign exchange retranslation method) does not apply to a gain or loss you make from a \*financial arrangement:
- (a) if Subdivision 230-C (fair value method) applies to the arrangement; or
  - (b) to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement; or
  - (c) if Subdivision 230-F (method of relying on financial reports) applies to the arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (7) Subdivision 230-F (method of relying on financial reports) does not apply to a gain or loss you make from a \*financial arrangement to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement.

## Financial arrangement concept

### 230-45 Financial arrangement

- (1) You have a *financial arrangement* if you have, under an \*arrangement:
- (a) a \*cash settleable legal or equitable right to receive a \*financial benefit; or
  - (b) a cash settleable legal or equitable obligation to provide a financial benefit; or
  - (c) a combination of one or more such rights and/or one or more such obligations;
- unless:
- (d) you also have under the arrangement one or more legal or equitable rights to receive something and/or one or more legal or equitable obligations to provide something; and
  - (e) for one or more of the rights and/or obligations covered by paragraph (d):
    - (i) the thing that you have the right to receive, or the obligation to provide, is not a financial benefit; or
    - (ii) the right or obligation is not cash settleable; and
  - (f) the one or more rights and/or obligations covered by paragraph (e) are not insignificant in comparison with the right, obligation or combination covered by paragraph (a), (b) or (c).

The right, obligation or combination covered by paragraph (a), (b) or (c) constitutes the financial arrangement.

Note 1: Whether your rights and/or obligations under an arrangement constitute a financial arrangement can change over time depending on changes either to the terms of the arrangement or external circumstances (such as particular rights or obligations under the arrangement being satisfied by the parties). For example, a contract may provide for the transfer of a boat in 6 months time and payment of the contract price at the end of 2 years. Until the boat is delivered, there is no financial arrangement because of the operation of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

paragraphs (d), (e) and (f) above. Once the boat is delivered, there is a financial arrangement because those paragraphs are no longer applicable.

Note 2: The operative provisions of this Division do not apply to all financial arrangements, and only apply partially to some: see the exceptions in Subdivision 230-H.

Note 3: There are some rules in this Division that tell you what happens if an arrangement ceases to be a financial arrangement (see Subdivision 230-G and section 230-505).

- (2) A right you have to receive, or an obligation you have to provide, a \*financial benefit is ***cash settleable*** if, and only if:
- (a) the benefit is money or a \*money equivalent; or
  - (b) in the case of a right—you intend to satisfy or settle it by receiving money or a money equivalent or by starting to have, or ceasing to have, another \*financial arrangement; or
  - (c) in the case of an obligation—you intend to satisfy or settle it by providing money or a money equivalent or by starting to have, or ceasing to have, another financial arrangement; or
  - (d) you have a practice of satisfying or settling similar rights or obligations as mentioned in paragraph (b) or (c) (whether or not you intend to satisfy or settle the right or obligation in that way); or
  - (e) you deal with the right or obligation, or with similar rights or obligations, in order to generate a profit from short-term fluctuations in price, from a dealer's margin, or from both; or
  - (f) none of paragraphs (a) to (e) applies but you satisfy subsection (3); or
  - (g) you are able to settle the right or obligation as mentioned in paragraph (b) or (c) (whether or not you intend to satisfy or settle the right or obligation in that way) and you do not have, as your sole or dominant purpose for entering into the arrangement under which you are to receive or provide the financial benefit, the purpose of receiving or delivering the financial benefit as part of your expected purchase, sale or usage requirements.

A reference in paragraph (b) or (c) to a financial arrangement does not include a reference to something that is a financial arrangement under section 230-50.

Note: Examples of dealing of the kind covered by paragraph (e) are:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-50

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- (a) dealing with the right or obligation, or similar rights or obligations, on a frequent basis, a short-term basis or on a frequent and short-term basis; and
  - (b) acquiring the right or obligation, or similar rights or obligations, and managing the resulting risk by entering into offsetting arrangements that provide a profit margin.
- (3) You satisfy this subsection if:
- (a) the \*financial benefit is readily convertible into money or a \*money equivalent; and
  - (b) there is a market for the financial benefit that has a high degree of liquidity; and
  - (c) either:
    - (i) the amount of the money or money equivalent referred to in paragraph (a) is not subject to a substantial risk of change in value; or
    - (ii) your purpose, or one of your purposes, for entering into the arrangement under which you are to receive or provide the financial benefit, is to receive or deliver the financial benefit so that it may be converted or liquidated into money or a money equivalent (other than in the ordinary course of business).

**230-50 Financial arrangement (equity interest or right or obligation in relation to equity interest)**

- (1) You also have a *financial arrangement* if you have an \*equity interest. The equity interest constitutes the financial arrangement.
- (2) You also have a *financial arrangement* if:
  - (a) you have, under an \*arrangement:
    - (i) a legal or equitable right to receive something that is a financial arrangement under this section; or
    - (ii) a legal or equitable obligation to provide something that is a financial arrangement under this section; or
    - (iii) a combination of one or more such rights and/or obligations; and
  - (b) the right, obligation or combination does not constitute, or form part of, a financial arrangement under subsection 230-45(1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

The right, obligation or combination referred to in paragraph (a) constitutes the financial arrangement.

Note 1: Paragraph 230-40(4)(e) prevents the accruals method or the realisation method being applied to something that is a financial arrangement under this section.

Note 2: Subsection 230-270(1) prevents the retranslation method being applied to something that is a financial arrangement under this section.

Note 3: Subsection 230-330(1) prevents the hedging method being applied to something that is a financial arrangement under this section.

### **230-55 Rights, obligations and arrangements (grouping and disaggregation rules)**

*Single right or obligation or multiple rights or obligations?*

- (1) If you have a right to receive 2 or more \*financial benefits, you are taken, for the purposes of this Division, to have a separate right to receive each of those financial benefits.
- (2) If you have an obligation to provide 2 or more \*financial benefits, you are taken, for the purposes of this Division, to have a separate obligation to provide each of those financial benefits.
- (3) Subsections (1) and (2) apply for the avoidance of doubt.

*Matters relevant to determining what rights and/or obligations constitute particular arrangements*

- (4) For the purposes of this Division, whether a number of rights and/or obligations are themselves an \*arrangement or are 2 or more separate arrangements is a question of fact and degree that you determine having regard to the following:
  - (a) the nature of the rights and/or obligations;
  - (b) their terms and conditions (including those relating to any payment or other consideration for them);
  - (c) the circumstances surrounding their creation and their proposed exercise or performance (including what can reasonably be seen as the purposes of one or more of the entities involved);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 230-60

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- (d) whether they can be dealt with separately or must be dealt with together;
- (e) normal commercial understandings and practices in relation to them (including whether they are regarded commercially as separate things or as a group or series that forms a whole);
- (f) the objects of this Division.

In applying this subsection, have regard to the matters referred to in paragraphs (a) to (f) both in relation to the rights and/or obligations separately and in relation to the rights and/or obligations in combination with each other.

Example 1: Your rights and obligations under a typical convertible note, including the right to convert the note into a share or shares, would constitute one arrangement.

Example 2: Your rights and obligations under a typical price-linked or index-linked bond would constitute one arrangement.

Note 1: If you raised funds by means of a contract that you would not have entered into without entering into another contract, and neither contract could be assigned to a third party without the other also being assigned, this would tend to indicate that your rights and obligations under the 2 contracts together constitute one arrangement.

Note 2: If the commercial effect of your individual rights and/or obligations in a group or series cannot be understood without reference to the group or series as a whole, this would tend to indicate that all of your rights and/or obligations in the group or series together constitute one arrangement.

## General rules

### **230-60 When financial benefit provided or received under financial arrangement**

#### *Financial benefit provided under financial arrangement*

- (1) You are taken, for the purposes of this Division, to have (or to have had) an obligation to provide a \*financial benefit under a \*financial arrangement if:
  - (a) you have (or had) an obligation to provide the financial benefit in relation to the arrangement; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the financial benefit would not otherwise be treated as one that you have (or had) an obligation to provide under the arrangement; and
- (c) the financial benefit plays an integral role in determining:
  - (i) whether you make a gain or loss from the arrangement; or
  - (ii) the amount of such a gain or loss.

Paragraph (a) applies even if the entity to which you provide the financial benefit is not a party to the arrangement.

Note: This means that the financial benefits you provide to acquire the financial arrangement (whether to the issuer, a previous holder or a third party) are taken to be financial benefits you provide under the arrangement. The financial benefits you provide may include, for example, fees paid or the forgoing of rights to receive a financial benefit.

*Financial benefit received under financial arrangement*

- (2) You are taken, for the purposes of this Division, to have (or to have had) a right to receive a \*financial benefit under a \*financial arrangement if:
  - (a) you have (or had) a right to receive the financial benefit in relation to the arrangement; and
  - (b) the financial benefit would not otherwise be treated as one that you have (or had) a right to receive under the arrangement; and
  - (c) the financial benefit plays an integral role in determining:
    - (i) whether you make a gain or loss from the arrangement; or
    - (ii) the amount of such a gain or loss.

Paragraph (a) applies even if the entity that provides the financial benefit is not a party to the arrangement.

Note: The financial benefits you receive may include, for example, the waiving of an obligation you have to provide a financial benefit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**230-65 Amount of financial benefit relating to more than one financial arrangement etc.**

- (1) This section applies if:
  - (a) a \*financial benefit plays the integral role mentioned in paragraph 230-60(1)(c) or (2)(c) in relation to a \*financial arrangement; and
  - (b) either or both of the following apply:
    - (i) the financial benefit plays that role in relation to one or more other financial arrangements;
    - (ii) the financial benefit is provided or received for one or more other things that are not financial arrangements.
- (2) For the purposes of this Division, determine the amount of the \*financial benefit that plays that role in relation to a particular \*financial arrangement by apportioning the actual amount of the financial benefit, on a reasonable basis, between:
  - (a) that financial arrangement; and
  - (b) each other financial arrangement (if any) in relation to which the benefit plays that role; and
  - (c) each other thing (if any) mentioned in subparagraph (1)(b)(ii).

**230-70 Apportionment when financial benefit received or right ceases**

- (1) Apply subsection (2) in working out whether you make, or will make, a gain or loss (and the amount of the gain or loss) at a time when:
  - (a) you receive a particular \*financial benefit under a \*financial arrangement; or
  - (b) one of your rights under a financial arrangement \*ceases.The gain or loss is to be calculated in nominal (and not \*present value) terms.
- (2) You must have regard to the extent to which the \*financial benefits that you have provided, or are to provide, under the \*financial arrangement are reasonably attributable, at the time mentioned in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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subsection (1), to the benefit or right referred to in paragraph (1)(a) or (b).

- (3) Any attribution made under subsection (2) must reflect appropriate and commercially accepted valuation principles that properly take into account:
- (a) the nature of the rights and obligations under the \*financial arrangement; and
  - (b) the risks associated with each \*financial benefit, right and obligation under the arrangement; and
  - (c) the time value of money.
- (4) Despite subsection (2), no \*financial benefit that you have provided, or are to provide, under the \*financial arrangement is to be attributed to the benefit or right referred to in paragraph (1)(a) or (b) if:
- (a) you are working out the amount of a gain or loss for the purposes of Subdivision 230-B; and
  - (b) the gain or loss is not an overall gain or loss from the arrangement (within the meaning of that Subdivision) at the time when you start to have the arrangement; and
  - (c) the benefit or right referred to in paragraph (1)(a) or (b) is an amount that represents, or is a right to an amount that represents:
    - (i) interest; or
    - (ii) a \*return paid or provided on a \*debt interest; or
    - (iii) something that is in the nature of interest; or
    - (iv) something that could reasonably be regarded as being a substitute for interest; or
    - (v) something prescribed by the regulations for the purposes of this paragraph.

Note 1: An example of something in the nature of interest is a discount on a security.

Note 2: An example of something that could reasonably be regarded as being a substitute for interest is a lump sum payment received instead of payments of interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**230-75 Apportionment when financial benefit provided or obligation ceases**

- (1) Apply subsection (2) in working out whether you make, or will make, a gain or loss (and the amount of the gain or loss) at a time when:
- (a) you provide a particular \*financial benefit under the \*financial arrangement; or
  - (b) one of your obligations under a financial arrangement \*ceases.

The gain or loss is to be calculated in nominal (and not \*present value) terms.

- (2) You must have regard to the extent to which the \*financial benefits that you have received, or are to receive, under the \*financial arrangement are reasonably attributable, at the time mentioned in subsection (1), to the benefit or obligation referred to in paragraph (1)(a) or (b).
- (3) Any attribution made under subsection (2) must reflect appropriate and commercially accepted valuation principles that properly take into account:
- (a) the nature of the rights and obligations under the \*financial arrangement; and
  - (b) the risks associated with each \*financial benefit, right and obligation under the arrangement; and
  - (c) the time value of money.
- (4) Despite subsection (2), no \*financial benefit that you have received, or are to receive, under the \*financial arrangement is to be attributed to the benefit or obligation referred to in paragraph (1)(a) or (b) if:
- (a) you are working out the amount of a gain or loss for the purposes of Subdivision 230-B; and
  - (b) the gain or loss is not an overall gain or loss from the arrangement (within the meaning of that Subdivision) at the time when you start to have the arrangement; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) the benefit or obligation referred to in paragraph (1)(a) or (b) is an amount that represents, or is an obligation to provide an amount that represents:
- (i) interest; or
  - (ii) a \*return paid or provided on a \*debt interest; or
  - (iii) something that is in the nature of interest; or
  - (iv) something that could reasonably be regarded as being a substitute for interest; or
  - (v) something prescribed by the regulations for the purposes of this paragraph.

Note 1: An example of something in the nature of interest is a discount on a security.

Note 2: An example of something that could reasonably be regarded as being a substitute for interest is a lump sum payment made instead of payments of interest.

### **230-80 Consistency in working out gains or losses (integrity measure)**

#### *Object of section*

- (1) The object of this section is to stop you obtaining an inappropriate tax benefit from not working out your gains and losses in a consistent manner.

#### *Consistent treatment for particular financial arrangement*

- (2) If:
- (a) this Division provides that a particular method applies to gains or losses you make from a \*financial arrangement; and
  - (b) that method allows you to choose the particular manner in which you apply that method;
- you must use that manner consistently for the arrangement for all income years.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Consistent treatment for financial arrangements of essentially the same nature*

- (3) If:
- (a) this Division provides that a particular method applies to gains or losses you make from 2 or more \*financial arrangements; and
  - (b) that method allows you to choose the particular manner in which you apply that method;
- you must use that same manner consistently for all of those financial arrangements that are essentially of the same nature.

### **230-85 Rights and obligations include contingent rights and obligations**

To avoid doubt:

- (a) a right is treated as a right for the purposes of this Division even it is subject to a contingency; and
- (b) an obligation is treated as an obligation for the purposes of this Division even if it is subject to a contingency.

### **Subdivision 230-B—The accruals/realisation methods**

#### **Table of sections**

##### **Guide to Subdivision 230-B**

230-90 What this Subdivision is about

##### **Objects of Subdivision**

230-95 Objects of this Subdivision

##### **When accruals method or realisation method applies**

230-100 When accruals method or realisation method applies

230-105 Sufficiently certain overall gain or loss

230-110 Sufficiently certain gain or loss from particular event

230-115 Sufficiently certain financial benefits

230-120 Financial arrangements with notional principal

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**The accruals method**

- 230-125 Overview of the accruals method
- 230-130 Applying accruals method to work out period over which gain or loss is to be spread
- 230-135 How gain or loss is spread
- 230-140 Method of spreading gain or loss—effective interest method
- 230-145 Application of effective interest method where differing income and accounting years
- 230-150 Election for portfolio treatment of fees
- 230-155 Election for portfolio treatment of fees where differing income and accounting years
- 230-160 Portfolio treatment of fees
- 230-165 Portfolio treatment of premiums and discounts for acquiring portfolio
- 230-170 Allocating gain or loss to income years
- 230-175 Running balancing adjustments

**Realisation method**

- 230-180 Realisation method

**Reassessment and re-estimation**

- 230-185 Reassessment
- 230-190 Re-estimation
- 230-195 Balancing adjustment if rate of return maintained on re-estimation
- 230-200 Re-estimation if balancing adjustment on partial disposal

**Guide to Subdivision 230-B**

**230-90 What this Subdivision is about**

This Subdivision applies the accruals method to determine the amount and timing of gains and losses from a financial arrangement if they are sufficiently certain for such accrual to be done.

This Subdivision applies the realisation method to determine the amount and timing of gains and losses if they are not sufficiently certain to be dealt with under the accruals method.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



If the accruals method is applied to a gain or loss on the basis of an estimate of a financial benefit and the benefit when received or provided is more or less than the estimate, a balancing adjustment is made to correct for the underestimate or overestimate.

If the accruals method is being applied to gains and losses from the arrangement and there is a material change to the arrangement, or the circumstances in which it operates, a reassessment is made of whether the accruals method or the realisation method should apply to gains and losses from the arrangement.

A change in circumstances may also cause a re-estimation of gains and losses that the accruals method is being applied to.

## **Objects of Subdivision**

### **230-95 Objects of this Subdivision**

The objects of this Subdivision are:

- (a) to properly recognise gains and losses from \*financial arrangements by allocating them to appropriate periods of time; and
- (b) to reduce compliance costs by reflecting commercial accounting concepts where appropriate; and
- (c) to minimise tax deferral.

## **When accruals method or realisation method applies**

### **230-100 When accruals method or realisation method applies**

*When accruals method applies and when realisation method applies*

- (1) This section tells you when to apply the accruals method and when to apply the realisation method if this Subdivision applies to gains and losses from a \*financial arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Accruals method—sufficiently certain overall gain or loss at start time*

- (2) The accruals method provided for in this Subdivision applies to a gain or loss you make from a \*financial arrangement if:
- (a) the gain or loss is an overall gain or loss from the arrangement; and
  - (b) the gain or loss is sufficiently certain at the time when you start to have the arrangement.

Note: Subsection 230-105(1) tells you when you have a sufficiently certain overall gain or loss.

*Accruals method—sufficiently certain particular gain or loss*

- (3) The accruals method provided for in this Subdivision also applies to a gain or loss you make from a \*financial arrangement if:
- (a) the gain or loss arises from a \*financial benefit that you are to receive or are to provide under the arrangement; and
  - (b) the gain or loss:
    - (i) is sufficiently certain at the time when you start to have the arrangement and before you are to receive or provide the benefit; or
    - (ii) becomes sufficiently certain after the time when you start to have the arrangement and before you are to receive or provide the benefit; and
  - (c) the benefit has not already been taken into account in applying:
    - (i) the accruals method provided for in this Subdivision; or
    - (ii) the realisation method provided for in this Subdivision; to another gain or loss from the arrangement.

This subsection has effect subject to subsection (4).

Note: Subsection 230-110(1) tells you when you have a sufficiently certain gain or loss at a particular time.

- (4) Subsection (3) does not apply to a gain or loss that you make from a \*financial arrangement if:
- (a) you are:
    - (i) an individual; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 230-105

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- (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
- (b) the arrangement is a \*qualifying security; and
- (c) you have not made an election under subsection 230-455(7).

*Realisation method—gain or loss not sufficiently certain*

- (5) The realisation method provided for in this Subdivision applies to a gain or loss that you make from a \*financial arrangement if the accruals method provided for in this Subdivision does not apply to that gain or loss.

Note: Section 230-180 tells you how to apply the realisation method to the gain or loss.

**230-105 Sufficiently certain overall gain or loss**

- (1) You have a sufficiently certain overall gain or loss from a \*financial arrangement at the time when you start to have the arrangement only if it is sufficiently certain at that time that you will make an overall gain or loss from the arrangement of:
  - (a) a particular amount; or
  - (b) at least a particular amount.

The amount of the gain or loss is the amount referred to in paragraph (a) or (b).

Note: Sections 230-70 and 230-75 (about apportionment of financial benefits) only apply in working out whether you make, or will make, a gain or loss (and the amount of the gain or loss) when particular events happen. They do not apply in working out, at the time when you start to have a financial arrangement, whether it is sufficiently certain that you will make an overall gain or loss from the arrangement.

- (2) In applying subsection (1), you must:
  - (a) assume that you will continue to have the \*financial arrangement for the rest of its life; and
  - (b) have regard to the extent of the risk that a \*financial benefit that you are not sufficiently certain to provide or receive under the arrangement may reduce the amount of the gain or loss.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**230-110 Sufficiently certain gain or loss from particular event**

(1) You have a sufficiently certain gain or loss from a \*financial arrangement at a particular time if it is sufficiently certain at that time that you will make a gain or loss from the arrangement of:

- (a) a particular amount; or
- (b) at least a particular amount;

when one of the following occurs:

- (c) you receive a particular \*financial benefit under the arrangement or one of your rights under the arrangement \*ceases;
- (d) you provide a particular financial benefit under the arrangement or one of your obligations under the arrangement ceases.

The amount of the gain or loss is the amount referred to in paragraph (a) or (b).

(2) In applying subsection (1) to work out whether you have a sufficiently certain gain or loss at a particular time:

- (a) have regard to the extent of the risk that a \*financial benefit that you are not sufficiently certain to provide or receive under the arrangement may reduce the amount of the gain or loss; and
- (b) disregard any financial benefit that has already been taken into account in working out the amount of a sufficiently certain overall gain or loss from the \*financial arrangement under subsection 230-105(1) at the time when you started to have the arrangement; and
- (c) disregard any financial benefit (or that part of any financial benefit) that has already been taken into account in working out the amount of a sufficiently certain gain or loss from the \*financial arrangement under subsection (1).

Note: Sections 230-70 and 230-75 allow you to apportion financial benefits provided and financial benefits received in working out the amount of a gain or loss.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 230-115 Sufficiently certain financial benefits

- (1) In deciding for the purposes of this Subdivision whether it is sufficiently certain at a particular time that you will make a gain or loss from a \*financial arrangement, have regard only to:
- (a) \*financial benefits that you are sufficiently certain to receive; and
  - (b) financial benefits that you are sufficiently certain to provide.

Note: The particular time may be the time at which you start to have the arrangement.

- (2) A \*financial benefit that you are to receive or provide is to be treated as one that you are sufficiently certain to receive or to provide only if:
- (a) it is reasonably expected that you will receive or provide the financial benefit (assuming that you will continue to have the \*financial arrangement for the rest of its life); and
  - (b) at least some of the amount or value of the benefit is, at that time, fixed or determinable with reasonable accuracy.
- (3) In applying subsection (2) to the \*financial benefit:
- (a) you must have regard to:
    - (i) the terms and conditions of the \*financial arrangement; and
    - (ii) accepted pricing and valuation techniques; and
    - (iii) the economic or commercial substance and effect of the arrangement; and
    - (iv) the contingencies that attach to the other financial benefits that are to be provided or received under the arrangement; and
  - (b) you must treat the financial benefit as if it were not contingent if it is appropriate to do so having regard to the contingencies that attach to the other financial benefits that are to be received or provided under the arrangement.
- (4) In applying paragraph (2)(b) at a particular time (the *reference time*) to a \*financial benefit that depends on a variable that is based on:
- (a) an interest rate; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) a rate that solely or primarily reflects the time value of money; or
  - (c) a rate that solely or primarily reflects a consumer price index; or
  - (d) a rate that solely or primarily reflects an index prescribed by the regulations for the purposes of this paragraph;  
you must assume that that variable will continue to have the value it has at the reference time.
- (5) Despite subsection (4), in applying paragraph (2)(b) at a particular time to a \*financial benefit that depends on a rate of change to a variable that is based on:
- (a) a rate that solely or primarily reflects a consumer price index; or
  - (b) a rate that solely or primarily reflects an index prescribed by the regulations for the purposes of this paragraph;  
you must assume that the rate of change to that variable will continue to be the rate of change that is current at that time.
- (6) If subsection (4) or (5) applies to a gain or loss and you are determining the amount of the gain or loss at a particular time, you must also assume that that variable will continue to have the value that it has at that time.
- (7) Subsections (4) and (5) do not limit paragraph (2)(b).
- (8) If all of the \*financial benefits provided and received under the \*financial arrangement are denominated in a particular foreign currency, those financial benefits are not to be translated into your \*applicable functional currency for the purposes of applying subsection (2) to the arrangement.
- (9) To avoid doubt:
- (a) a \*financial benefit that you have already provided at a particular time is taken to be one that it is, at that time, a financial benefit that you are sufficiently certain to provide; and
  - (b) a financial benefit that you have already received at a particular time is taken to be one that it is, at that time, a financial benefit that you are sufficiently certain to receive.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**230-120 Financial arrangements with notional principal**

- (1) This section applies to a \*financial arrangement that you have if, in substance or effect, and having regard to the pricing, terms and conditions of the arrangement:
- (a) the arrangement consists of these things:
    - (i) a leg, the \*financial benefits to be provided or received in respect of which are calculated by reference to, or are reasonably related to, a notional principal;
    - (ii) another leg, the financial benefits to be provided or received in respect of which also are calculated by reference to, or are reasonably related to, a notional principal;
    - (iii) if the arrangement includes one or more other things—those things; and
  - (b) when you start to have the arrangement, the value of the notional principal in relation to one leg is equal to the value of the notional principal in relation to the other leg; and
  - (c) all or part of the notional principal in relation to each leg is provided or received at a time, regardless of whether that time is different in relation to each leg.

Example: A swap contract.

- (2) To avoid doubt, the \*financial benefits mentioned in subparagraphs (1)(a)(i) and (ii), and the notional principal in relation to each leg, need not actually be provided or received.
- (3) In applying this Subdivision to the \*financial arrangement:
- (a) work out the \*financial benefits from the arrangement as follows:
    - (i) work out the financial benefits from each thing of which the arrangement consists separately from the financial benefits from each other thing of which the arrangement consists;
    - (ii) ensure that results under subparagraph (i) are consistent with the timing and amount of financial benefits to be actually provided or received under the arrangement; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) work out your gains and losses from the arrangement as follows:
  - (i) work out the gains and losses from each thing of which the arrangement consists separately from the gains and losses from each other thing of which the arrangement consists;
  - (ii) treat the gains and losses mentioned in subparagraph (i) for all of those things as your gains and losses from the arrangement; and
- (c) in working out a gain or loss from a thing for the purposes of subparagraph (b)(i), and, if the accruals method applies to the gain or loss, how it is to be spread and allocated:
  - (i) if the thing is a leg—take into account the amount of the notional principal at a time and in a manner that properly reflects the way in which the financial benefits in respect of that leg are calculated; and
  - (ii) if the thing is *not* a leg—take into account an amount relevant to the thing at a time and in a manner that properly reflects the way in which the financial benefits in respect of that thing are calculated.

## The accruals method

### 230-125 Overview of the accruals method

If the accruals method applies to a gain or loss you make from a <sup>\*</sup>financial arrangement:

- (a) you use section 230-130 to work out the period over which the gain or loss is to be spread; and
- (b) you use section 230-135 to work out how to allocate the gain or loss to particular intervals within the period over which the gain or loss is to be spread; and
- (c) if an interval to which part of the gain or loss is allocated straddles 2 income years, you use section 230-170 to work out how to allocate that part of the gain or loss allocated between those 2 income years.

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<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**230-130 Applying accruals method to work out period over which gain or loss is to be spread**

*Period over which overall gain or loss is to be spread*

- (1) If you have a sufficiently certain overall gain or loss from a \*financial arrangement under subsection 230-105(1), the period over which the gain or loss is to be spread is the period that:
  - (a) starts when you start to have the arrangement; and
  - (b) ends when you will cease to have the arrangement.In applying paragraph (b), you must assume that you will continue to have the arrangement for the rest of its life.
- (2) However, if you have sufficiently certain gains or losses from the arrangement that:
  - (a) can be spread under subsection (3); and
  - (b) when considered together, represent adequately the overall gain or loss mentioned in subsection (1);you may spread those gains or losses in accordance with subsection (3) instead of spreading the overall gain or loss in accordance with subsection (1).

*Period over which particular gain or loss is to be spread*

- (3) If you have a sufficiently certain gain or loss from a \*financial arrangement under subsection 230-110(1), the period over which the gain or loss is to be spread is the period to which the gain or loss relates. Have regard to the pricing, terms and conditions of the arrangement in working out the period to which the gain or loss relates. This subsection has effect subject to subsections (4) and (5).
- (4) The start of the period over which a gain or loss to which subsection (3) applies is to be spread must:
  - (a) not start earlier than the time when you start to have the \*financial arrangement; and
  - (b) not start earlier than the start of the income year during which it becomes sufficiently certain that you will make the gain or loss.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (5) The end of the period over which a gain or loss to which subsection (3) applies is to be spread must:
- (a) not end later than the time when you will cease to have the \*financial arrangement; and
  - (b) not end later than the end of the income year during which:
    - (i) the \*financial benefit that gives rise to the gain or loss is to be received or provided; or
    - (ii) the right or obligation whose \*ceasing gives rise to the gain or loss is to cease.

### **230-135 How gain or loss is spread**

#### *How to spread gain or loss*

- (1) This section tells you how to spread a gain or loss to which the accruals method applies.

#### *Compounding accruals or approximation*

- (2) The gain or loss is to be spread using:
- (a) compounding accruals; or
  - (b) a method whose results approximate those obtained using the method referred to in paragraph (a) (having regard to the length of the period over which the gain or loss is to be spread).
- (3) The following subsections of this section clarify the way in which the gain or loss is to be spread in accordance with paragraph (2)(a).

#### *Intervals to which parts of gain or loss allocated*

- (4) The intervals to which parts of the gain or loss are allocated must:
- (a) not exceed 12 months; and
  - (b) all be of the same length.

Paragraph (b) does not apply to the first and last intervals. These may be shorter than the other intervals.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Fixing of amount and rate for interval*

- (5) For each interval:
  - (a) determine a rate of return; and
  - (b) determine an amount to which you apply the rate of return.
- (6) For the purposes of paragraph (5)(b), in determining the amount to which you apply the rate of return for an interval, have regard to:
  - (a) the amount or value; and
  - (b) the timing;of \*financial benefits that are to be taken into account in working out the amount of the gain or loss, and were provided or received by you during the interval.

*Assumption of continuing to hold arrangement for rest of its life*

- (7) The gain or loss is to be spread assuming that you will continue to have the \*financial arrangement for the rest of its life.

*Regard to be had to financial benefits provided or received in interval*

- (8) In allocating the gain or loss to intervals, have regard to the \*financial benefits to be provided or received in each of those intervals.

**230-140 Method of spreading gain or loss—effective interest method**

- (1) This section clarifies that the method mentioned in subsection (2) of spreading gains and losses is a method covered by paragraph 230-135(2)(b) (methods approximating compounding accruals).
- (2) The method is the effective interest method mentioned in \*accounting standard AASB 139 (or another accounting standard prescribed by the regulations for the purposes of this subsection).
- (3) However, this section applies to a particular \*financial arrangement you have only if:
  - (a) in a case where there is a discount or premium under the arrangement—when you start to have the arrangement, the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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annually compounded rate of return applicable to the discount or premium does not exceed 1%; and

- (b) when you start to have the arrangement, neither the maximum life of the arrangement (as determined under the terms and conditions of the arrangement) nor the expected life of the arrangement exceeds:
    - (i) unless subparagraph (ii) applies—30 years; or
    - (ii) if the regulations prescribe a different period for the purposes of this subparagraph—that period; and
  - (c) each <sup>\*</sup>financial benefit that you have an obligation to provide or a right to receive under the arrangement, and that gives rise to a gain or loss from the arrangement (other than a gain or loss that is attributable to any discount or premium):
    - (i) relates to a period not exceeding 12 months; and
    - (ii) will be provided or received in the period to which it relates; and
- Note: Different financial benefits may relate to different periods.
- (d) you prepare a financial report for the year in which you start to have the arrangement; and
  - (e) that financial report is:
    - (i) prepared in accordance with paragraph 230-210(2)(a); and
    - (ii) audited in accordance with paragraph 230-210(2)(b); and
  - (f) all gains and losses from the arrangement to which the accrual method applies are spread in a way that is consistent with that financial report.

- (4) For the purposes of paragraph (3)(a), assume that you will continue to have the arrangement for the rest of its expected life.

### **230-145 Application of effective interest method where differing income and accounting years**

- (1) This section applies if:
  - (a) you prepare a financial report for a year (the *first year*); and
  - (b) you prepare a financial report for the subsequent year (the *second year*); and

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<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-145

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- (c) your income year starts in the first year and ends in the second year; and
  - (d) both the financial report for the first year and the financial report for the second year are:
    - (i) prepared in accordance with paragraph 230-210(2)(a); and
    - (ii) audited in accordance with paragraph 230-210(2)(b); and
  - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) For the purposes of paragraph 230-140(3)(d), treat yourself as having prepared a financial report for the income year in which you start to have the arrangement.
- (3) Work out the gain or loss you make from the arrangement for the income year as follows:
- (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with paragraph 230-140(3)(f) (treating the first year as an income year);
  - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
  - (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with paragraph 230-140(3)(f) (treating the second year as an income year);
  - (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);
  - (e) next:
    - (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or
    - (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.
- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
  - (a) using a methodology that is reasonable; and
  - (b) using the same methodology for the first and second years.
- (5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

### **230-150 Election for portfolio treatment of fees**

- (1) You may make an election for an income year under this section if:
  - (a) you prepare a financial report for the income year in accordance with:
    - (i) the \*accounting standards; or
    - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards made under a \*foreign law that apply to the preparation of the financial report under a foreign law; and
  - (b) the financial report is audited in accordance with:
    - (i) the \*auditing standards; or
    - (ii) if the auditing standards do not apply to the auditing of the financial report—comparable auditing standards made under a foreign law.
- (2) An election under this section is irrevocable.

### **230-155 Election for portfolio treatment of fees where differing income and accounting years**

- (1) This section applies if:
  - (a) you prepare a financial report for a year (the *first year*); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) you prepare a financial report for the subsequent year (the *second year*); and
  - (c) your income year starts in the first year and ends in the second year; and
  - (d) both the financial report for the first year and the financial report for the second year are:
    - (i) prepared in accordance with paragraph 230-150(1)(a); and
    - (ii) audited in accordance with paragraph 230-150(1)(b); and
  - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-150(1).
- (3) Work out the gain or loss you make from the arrangement for the income year as follows:
- (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with subsections 230-160(3) and (4) or 230-165(3) and (4) (treating the first year as an income year);
  - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
  - (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with subsections 230-160(3) and (4) or 230-165(3) and (4) (treating the second year as an income year);
  - (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);
  - (e) next:
    - (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or
  - (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.
- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
- (a) using a methodology that is reasonable; and
  - (b) using the same methodology for the first and second years.
- (5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

### **230-160 Portfolio treatment of fees**

- (1) This section applies in relation to a \*financial arrangement if:
- (a) you have made an election under section 230-150 in an income year; and
  - (b) you start to have the financial arrangement in that income year or a later income year; and
  - (c) the financial arrangement is part of a portfolio of similar financial arrangements; and
  - (d) a gain or loss to which subsection 230-130(3) applies arises in part from fees in respect of the \*financial arrangement; and
  - (e) the fees play an integral role in determining the amount of the gain or loss; and
  - (f) the net amount of the fees is *not* expected to be significant relative to an overall gain or loss from the arrangement.
- (2) For the purposes of this Division, split the gain or loss mentioned in paragraph (1)(d) as follows:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 230-160

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- (a) to the extent that it arises from the fees, treat it as a gain or loss from the \*financial arrangement (the *fees gain or loss*) to which subsection 230-130(3) applies;
- (b) to the extent that it does not arise from the fees, treat it as a separate gain or loss from the financial arrangement to which subsection 230-130(3) applies.

Note: The separate gain or loss mentioned in paragraph (b) may itself be split under subsection 230-165(2) (premium/discount gain or loss).

*Determination of period for fees gain or loss*

- (3) The period over which the fees gain or loss is to be spread is the period that you determine to be the expected life of the portfolio, if:
  - (a) the basis on which you determine the period accords with the spreading of the fees gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and
  - (b) the basis on which you determine the period is set and recorded before any fees in respect of the \*financial arrangement fall due; and
  - (c) the period can be justified objectively; and
  - (d) the period is reasonable in the circumstances.

*Spreading the fees gain or loss*

- (4) The method by which the fees gain or loss is to be spread is the method that you determine, if:
  - (a) the basis on which you determine the method accords with the spreading of the fees gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and
  - (b) the method is determined before any fees in respect of the \*financial arrangement fall due; and
  - (c) the method can be justified objectively; and
  - (d) the method is reasonable in the circumstances.
- (5) To avoid doubt, subsections (3) and (4) apply despite sections 230-130 and 230-135.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**230-165 Portfolio treatment of premiums and discounts for acquiring portfolio**

- (1) This section applies in relation to a \*financial arrangement if:
  - (a) you have made an election under section 230-150 in an income year; and
  - (b) you start to have the financial arrangement in that income year or a later income year; and
  - (c) the financial arrangement is part of a portfolio of similar financial arrangements; and
  - (d) a gain or loss to which subsection 230-130(3) applies arises in part from a premium or discount in starting to have the portfolio; and
  - (e) the gain or loss is *not* expected to be significant relative to the amount of the gain or loss on the portfolio.
- (2) For the purposes of this Division, split the gain or loss mentioned in paragraph (1)(d) as follows:
  - (a) to the extent that it arises from the premium or discount, treat it as a gain or loss from the \*financial arrangement (the ***premium/discount gain or loss***) to which subsection 230-130(3) applies;
  - (b) to the extent that it does not arise from the premium or discount, treat it as a separate gain or loss from the financial arrangement to which subsection 230-130(3) applies.

Note: The separate gain or loss mentioned in paragraph (b) may itself be split under subsection 230-160(2) (portfolio fees gain or loss).

*Determination of period for premium/discount gain or loss*

- (3) The period over which the premium/discount gain or loss is to be spread is the period that you determine to be the expected life of the portfolio, if:
  - (a) the basis on which you determine the period accords with the spreading of the premium/discount gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 230-170

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- (b) the basis on which you determine the period is set and recorded before you start to have the \*financial arrangement; and
- (c) the period can be justified objectively; and
- (d) the period is reasonable in the circumstances.

*Spreading the premium/discount gain or loss*

- (4) The method by which the premium/discount gain or loss is to be spread is the method that you determine, if:
  - (a) the basis on which you determine the method accords with the spreading of the premium/discount gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and
  - (b) the method is determined before you start to have the \*financial arrangement; and
  - (c) the method can be justified objectively; and
  - (d) the method is reasonable in the circumstances.
- (5) To avoid doubt, subsections (3) and (4) apply despite sections 230-130 and 230-135.

**230-170 Allocating gain or loss to income years**

- (1) You are taken, for the purposes of section 230-15, to make, for an income year, a gain or loss equal to a part of a gain or loss if:
  - (a) that part of the gain or loss is allocated to an interval under section 230-135; and
  - (b) that interval falls wholly within that income year.
- (2) If:
  - (a) a part of a gain or loss is allocated to an interval under section 230-135; and
  - (b) that interval straddles 2 income years;you are taken, for purposes of section 230-15, to make a gain or loss equal to so much of that part of the gain or loss as is allocated between those income years on a reasonable basis.
- (3) If:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) a \*head company of a \*consolidated group or \*MEC group has a \*financial arrangement; and
- (b) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and
- (c) immediately after the leaving time, the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group;

an income year of the group is taken, for the purposes of applying this section to the group and the arrangement, to end at the leaving time.

### **230-175 Running balancing adjustments**

#### *Overestimate of financial benefit to be received*

- (1) You are taken for the purposes of this Division to make a loss from a \*financial arrangement if:
  - (a) a provision of this Subdivision has applied on the basis that you were sufficiently certain, at a particular time, to receive a \*financial benefit of, or of at least, a particular amount under the arrangement; and
  - (b) when you receive the benefit (or the time comes for you to receive the benefit), the amount you receive (or are to receive) is nil or is less than the amount estimated.

The amount of the loss is equal to the difference between the amount estimated and the amount you receive (or are to receive). You are taken to have made the loss for the income year in which you receive the benefit (or in which the time comes for you to receive the benefit).

#### *Underestimate of financial benefit to be received*

- (2) You are taken for the purposes of this Division to make a gain from a \*financial arrangement if:
  - (a) a provision of this Subdivision has applied on the basis that you were sufficiently certain at a particular time to receive a \*financial benefit of, or of at least, a particular amount under the arrangement; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) when you receive the benefit, or the time comes for you to receive the benefit, the amount you receive, or are to receive, is more than the amount estimated.

The amount of the gain is equal to the difference between the amount estimated and the amount you receive or are to receive. You are taken to have made that gain in the income year in which you receive the benefit or in which the time comes for you to receive the benefit.

*Overestimate of financial benefit to be provided*

- (3) You are taken for the purposes of this Division to make a gain from a \*financial arrangement if:
  - (a) a provision of this Subdivision has applied on the basis that you were sufficiently certain at a particular time to provide a \*financial benefit of, or of at least, a particular amount under the arrangement; and
  - (b) when you provide the benefit, or the time comes for you to provide the benefit, the amount you provide, or are to provide, is nil or is less than the amount estimated.

The amount of the gain is equal to the difference between the amount estimated and the amount you provide or are to provide. You are taken to have made that gain in the income year in which you provide the benefit or in which the time comes for you to provide the benefit.

*Underestimate of financial benefit to be provided*

- (4) You are taken for the purposes of this Division to make a loss from a \*financial arrangement if:
  - (a) a provision of this Subdivision has applied on the basis that you were sufficiently certain at a particular time to provide a \*financial benefit of, or of at least, a particular amount under the arrangement; and
  - (b) when you provide the benefit, or the time comes for you to provide the benefit, the amount you are to provide is more than the estimated amount referred to in paragraph (a).

The amount of the loss is equal to the difference between the amount estimated and the amount you are to provide. You are

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

taken to have made that loss in the income year in which you provide the benefit or in which the time comes for you to provide the benefit.

## Realisation method

### 230-180 Realisation method

- (1) If a gain or loss is to be taken into account using the realisation method, you are taken, for the purposes of section 230-15, to make the gain or loss for the income year in which the gain or loss occurs.

Note: Sections 230-70 and 230-75 allow you to apportion financial benefits provided and financial benefits received in working out the amount of the gain or loss.

- (2) For the purposes of subsection (1), a gain or loss from a \*financial arrangement is taken to occur at the time at which the last of the \*financial benefits taken into account in determining the amount of the gain or loss:
- (a) is provided; or
  - (b) if the financial benefit is not provided at the time when it is due to be provided under the arrangement and it is reasonable to expect that the financial benefit will be provided—is due to be provided.

This subsection has effect subject to subsection (3).

- (3) For the purposes of subsection (1), you make a loss from a \*financial arrangement from writing off, as a bad debt, a right to a \*financial benefit (or a part of a financial benefit) if:
- (a) the financial benefit was taken into account in working out the amount of a gain from the arrangement and the gain has been included in your assessable income under this Division; or
  - (b) the right is one in respect of money that you lent in the ordinary course of your \*business of lending money; or
  - (c) the right is one that you bought in the ordinary course of your business of lending money.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-185

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- (4) The loss referred to in subsection (3) occurs when you write off the right to the \*financial benefit (or the part of the financial benefit) as a bad debt.
- (5) The amount of the loss referred to in subsection (3) is:
  - (a) if paragraph (3)(a) applies—so much of the gain referred to in that paragraph as is reasonably attributable to the \*financial benefit (or the part of the financial benefit); or
  - (b) if paragraph (3)(b) applies—the amount of the financial benefit (or the part of the financial benefit); or
  - (c) if paragraph (3)(c) applies—the amount of the financial benefit (or the part of the financial benefit) but only up to the value of the financial benefit you provided to acquire the right to the financial benefit (or the part of the financial benefit).
- (6) For the purposes of this Act, a deduction for the loss referred to in subsection (3) is to be treated as a deduction of a bad debt.

Note: Various provisions in this Act and the *Income Tax Assessment Act 1936* restrict the availability of deductions for bad debts and make provision in relation to the recoupment of amounts in relation to bad debts that have been written off. These provisions are set out in subsection 25-35(5).

## **Reassessment and re-estimation**

### **230-185 Reassessment**

- (1) You must make a fresh assessment of which gains and losses from a \*financial arrangement the accruals method should apply to, and which gains and losses from that arrangement the realisation method should apply to, if:
  - (a) the accruals method, or the realisation method, provided for in this Subdivision applies to gains and losses from the arrangement; and
  - (b) there is a material change to:
    - (i) the terms and conditions of the arrangement; or
    - (ii) circumstances that affect the arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) Without limiting subsection (1), the following changes are material changes to the terms and conditions of, or circumstances that affect, the \*financial arrangement:
- (a) a change to the terms or conditions of the arrangement in a way that alters the essential nature of the arrangement (for example, by altering it from a \*debt interest to an \*equity interest or from an equity interest to a debt interest);
  - (b) a change to the terms or conditions of the arrangement in a way that materially affects the contingencies on which significant obligations and rights under the arrangement are dependent (for example, by introducing such a contingency or removing such a contingency);
  - (c) a change in circumstances that makes something that:
    - (i) materially affects significant obligations and rights under the arrangement; and
    - (ii) was previously dependent on a contingency; no longer dependent on a contingency (because, for example, only one of a number of previously possible contingencies is realised);
  - (d) a change to:
    - (i) the terms on which credit is to be provided to an entity that is not a party to the arrangement; or
    - (ii) the credit rating of an entity that is not a party to the arrangement;if a significant obligation or right under the arrangement is dependent on that credit being provided or that rating being maintained;
  - (e) if the arrangement is, or includes, a financial asset or financial liability and you prepare your financial reports in accordance with:
    - (i) the \*accounting standards; or
    - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards made under a \*foreign law that apply to the preparation of the financial report under a foreign law;a change to the terms or conditions of, or circumstances that affect, the arrangement that are sufficient for the financial

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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asset or financial liability to be treated as impaired for the purposes of those standards.

- (3) You do not need to make a reassessment under this section merely because of a change in the fair value of the \*financial arrangement.

### **230-190 Re-estimation**

#### *When re-estimation necessary*

- (1) You re-estimate a gain or loss from a \*financial arrangement under subsection (5) if:
- (a) the accruals method applies to the gain or loss; and
  - (b) circumstances arise that materially affect:
    - (i) the amount or value; or
    - (ii) the timing;of \*financial benefits that were taken into account in working out the amount of the gain or loss; and
  - (c) the circumstances do not give rise to a re-estimation under section 230-200; and
  - (d) in a case where the gain or loss is spread using the method referred to in paragraph 230-135(2)(b) in accordance with section 230-140 (effective interest method)—the maximum life of the arrangement (as determined under the terms and conditions of the arrangement) is more than 12 months.
- (2) If subsection (1) applies, you must re-estimate the gain or loss:
- (a) unless paragraph (b) applies—as soon as reasonably practicable after you become aware of the circumstances referred to in paragraph (1)(b); or
  - (b) if paragraph (1)(d) is satisfied and the terms and conditions of the \*financial arrangement provide for reset dates to occur no more than 12 months apart—at the relevant reset date.
- (3) Without limiting subsection (1), the following are circumstances of the kind referred to in paragraph (1)(b):
- (a) a material change in market conditions that are relevant to the amount or value of the \*financial benefits to be received or provided under the \*financial arrangement;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) cash flows that were previously estimated becoming known and the difference between the cash flows that become known and the cash flows that were previously estimates is not insignificant;
  - (c) a right to, or a part of a right to, a financial benefit under the arrangement is written off as a bad debt;
  - (d) you have made a reassessment under section 230-185 in relation to gains or losses under the arrangement and you have determined on the reassessment under that section that the accruals method should continue to apply to those gains or losses.
- (4) You do not re-estimate the gain or loss from a \*financial arrangement under subsection (5) merely because of a change in the credit rating, or the creditworthiness, of a party or parties to the arrangement.

*Nature of re-estimation*

- (5) Making a re-estimation in relation to a gain or loss under this subsection involves:
- (a) a fresh determination of the amount of the gain or loss; and
  - (b) a reapplication of the accruals method to the redetermined gain or loss to make a fresh allocation of the part of the redetermined gain or loss that has not already been allocated to intervals ending before the re-estimation is made to intervals ending after the re-estimation is made.

*Basis for re-estimation*

- (6) You may make the fresh allocation of the gain or loss under subsection (5) on these bases:
- (a) if you satisfy subsection (7) in relation to the \*financial arrangement—by maintaining the rate of return being used and adjusting the amount to which you apply the rate of return to the present value of the estimated future cash flows discounted at the maintained rate of return;
  - (b) in any case—by adjusting the rate of return and maintaining the amount to which the adjusted rate of return is to be applied.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 230-195

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The object to be achieved by both bases is to allow you to bring the remainder of the gain or loss based on the new estimates properly to account over the remainder of the period over which you spread the gain or loss.

Note: The amount referred to in paragraph (b) is the amount to which the previous rate of return was being applied immediately before the re-estimation.

- (7) You satisfy this subsection in relation to a \*financial arrangement if every re-estimation you make under subsection (5) in relation to a gain or loss from the arrangement is made in accordance with:
  - (a) financial reports of the kind referred to in paragraph 230-395(2)(a) that are audited as referred to in paragraph 230-395(2)(b) (regardless of whether Subdivision 230-F (reliance on financial reports method) are to apply to a particular financial arrangement); and
  - (b) \*accounting standard AASB 139 (or another accounting standard prescribed by the regulations for the purposes of this paragraph).
- (8) The following subsections apply if the re-estimation arises because of an impairment (within the meaning of the \*accounting standards) of:
  - (a) the \*financial arrangement; or
  - (b) a financial asset or financial liability that forms part of the arrangement.
- (9) Despite paragraph (6)(a), you must make the fresh allocation in accordance with paragraph (6)(b).
- (10) To the extent that the impairment results in you making a loss for an income year under section 230-15, you cannot deduct that loss for the income year.

**230-195 Balancing adjustment if rate of return maintained on re-estimation**

- (1) If you make a fresh allocation of the gain or loss on the basis referred to in paragraph 230-190(6)(a), you must make the following balancing adjustment:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) if you re-estimate a gain and the amount to which you apply the rate of return increases—you make a gain from the \*financial arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;
  - (b) if you re-estimate a gain and the amount to which you apply the rate of return decreases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the decrease;
  - (c) if you re-estimate a loss and the amount to which you apply the rate of return increases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;
  - (d) if you re-estimate a loss and the amount to which you apply the rate of return decreases—you make a gain from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the decrease.
- (2) Subsection (3) applies if:
- (a) the re-estimation is made wholly or partly on the basis that you have written off, as a bad debt, a right to receive a \*financial benefit (or a part of a financial benefit); and
  - (b) the right:
    - (i) is not one in respect of money that you lent in the ordinary course of your \*business of lending money; and
    - (ii) is not one that you bought in the ordinary course of your business of lending money.
- (3) The balancing adjustment to be made under paragraph (1)(b), to the extent that it relates to the writing off of the bad debt, must not exceed so much of the gain in relation to the \*financial arrangement as:
- (a) has been assessed under this Division; and
  - (b) is reasonably attributable to the \*financial benefit (or the part of the financial benefit).
- (4) Subsection (5) applies if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 230-200

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- (a) the re-estimation is made wholly or partly on the basis that you have written off, as a bad debt, a right to receive a \*financial benefit; and
  - (b) the right is one that you bought in the ordinary course of your \*business of lending money.
- (5) The balancing adjustment to be made under paragraph (1)(b), to the extent that it relates to the writing off of the bad debt, must not exceed the value of the \*financial benefit you provided to acquire the right to the financial benefit (or the part of the financial benefit).
- (6) For the purposes of this Act, a deduction for the balancing adjustment referred to in subsection (3) is to be treated as a deduction of a bad debt.

Note: Various provisions in this Act and the *Income Tax Assessment Act 1936* restrict the availability of deductions for bad debts and make provision in relation to the recoupment of amounts in relation to bad debts that have been written off. These provisions are set out in subsection 25-35(5).

**230-200 Re-estimation if balancing adjustment on partial disposal**

*Re-estimation if balancing adjustment on partial disposal*

- (1) You also re-estimate a gain or loss from a \*financial arrangement under subsection (2) if:
- (a) the accruals method applies to the gain or loss; and
  - (b) a balancing adjustment is made in relation to the arrangement under Subdivision 230-G because you transfer to another entity:
    - (i) a proportionate share of all of your rights and/or obligations under the arrangement; or
    - (ii) a right or obligation that you have under the arrangement to a specifically identified \*financial benefit; or
    - (iii) a proportionate share of a right or obligation that you have under the arrangement to a specifically identified financial benefit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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You must re-estimate the gain or loss as soon as reasonably practicable after the transfer occurs.

*Nature of re-estimation*

- (2) Making a re-estimation in relation to a gain or loss under this subsection involves:
- (a) a fresh determination of the amount of the gain or loss disregarding:
    - (i) \*financial benefits; and
    - (ii) amounts of the gain or loss that have already been allocated to intervals ending before the re-estimation is made;to the extent to which they are reasonably attributable to the proportionate share, or the right or obligation, referred to in paragraph (1)(b); and
  - (b) a reapplication of the accruals method to the redetermined gain or loss to make a fresh allocation of the part of that gain or loss that has not already been allocated to intervals ending before the re-estimation is made to intervals ending after the re-estimation is made.

In applying paragraph (a), disregard subsections 230-70(4) and 230-75(4).

*Basis for re-estimation*

- (3) You make the fresh allocation of the gain or loss under subsection (2) by maintaining the rate of return being used and adjusting the amount to which you apply the rate of return to the present value of the estimated future cash flows discounted at the maintained rate of return. The object to be achieved by the fresh allocation is to allow you to bring the redetermined gain or loss properly to account over the remainder of the period over which you spread the gain or loss.

### **Subdivision 230-C—Fair value method**

#### **Table of sections**

230-205 Objects of this Subdivision

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-205

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- 230-210 Fair value election
- 230-215 Fair value election where differing income and accounting years
- 230-220 Financial arrangements to which fair value election applies
- 230-225 Financial arrangements to which election does not apply
- 230-230 Applying fair value method to gains and losses
- 230-235 Splitting financial arrangements into 2 financial arrangements
- 230-240 When election ceases to apply
- 230-245 Balancing adjustment if election ceases to apply

**230-205 Objects of this Subdivision**

The objects of this Subdivision are:

- (a) to allow you to align the tax treatment of gains and losses from \*financial arrangements with the accounting treatment that applies where assets and liabilities are classified or designated as at fair value through profit or loss; and
- (b) to facilitate efficient price-making; and
- (c) to achieve the above objects without allowing you to obtain an inappropriate tax benefit.

**230-210 Fair value election**

*Election*

- (1) You may make a ***fair value election*** under this section if you are eligible under subsection (2) to make the election for the income year in which you make the election.

*Eligibility to make fair value election for an income year*

- (2) You are eligible to make a ***fair value election*** for an income year if:
  - (a) you prepare a financial report for that income year in accordance with:
    - (i) the \*accounting standards; or
    - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards made under a \*foreign law that apply to the preparation of the financial report under a foreign law; and
  - (b) the financial report is audited in accordance with:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (i) the \*auditing standards; or
- (ii) if the auditing standards do not apply to the auditing of the financial report—comparable auditing standards made under a foreign law.

Note: Section 230-500 allows regulations to be made specifying particular foreign accounting and auditing standards as ones that are to be treated as comparable with Australian accounting and auditing standards for the purposes of this Division.

*Election irrevocable*

- (3) A \*fair value election is irrevocable.

Note: The election may cease to have effect, or cease to apply to a particular financial arrangement, under section 230-240.

### **230-215 Fair value election where differing income and accounting years**

- (1) This section applies if:
  - (a) you prepare a financial report for a year (the *first year*); and
  - (b) you prepare a financial report for the subsequent year (the *second year*); and
  - (c) your income year starts in the first year and ends in the second year; and
  - (d) both the financial report for the first year and the financial report for the second year are:
    - (i) prepared in accordance with paragraph 230-210(2)(a); and
    - (ii) audited in accordance with paragraph 230-210(2)(b); and
  - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-210(2).
- (3) Work out the gain or loss you make from the \*financial arrangement for the income year as follows:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 230-220

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- (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with section 230-230 (treating the first year as an income year);
  - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
  - (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with section 230-230 (treating the second year as an income year);
  - (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);
  - (e) next:
    - (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or
    - (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or
    - (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.
- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
- (a) using a methodology that is reasonable; and
  - (b) using the same methodology for the first and second years.
- (5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

**230-220 Financial arrangements to which fair value election applies**

- (1) A \*fair value election applies in relation to \*financial arrangements that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) are \*Division 230 financial arrangements; and
- (b) are recognised in financial reports of the kind referred to in paragraph 230-210(2)(a) that are audited, or required to be audited, as referred to in paragraph 230-210(2)(b); and
- (c) are assets or liabilities that you are required (whether or not as a result of a choice you make) by:
  - (i) the \*accounting standards; or
  - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards that apply to the preparation of the financial report under a \*foreign law;  
to classify or designate, in the financial reports, as at fair value through profit or loss; and
- (d) you start to have in the income year in which you make the election or in a later income year.

This subsection has effect subject to section 230-225.

- (2) If, but for this subsection, paragraphs (1)(b) and (c) would not be satisfied in relation to a \*financial arrangement because the arrangement is an intra-group transaction for the purposes of:
  - (a) \*accounting standard AASB 127 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
  - (b) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a \*foreign law;

paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.

Note: Financial arrangements between members of a consolidated group or MEC group are not covered by this subsection because the single entity rule in subsection 701-1(1) operates to treat them as not being financial arrangements for the purposes of this Division.

- (3) If:
  - (a) the \*financial arrangement would not be a financial arrangement if the following provisions were disregarded:
    - (i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-225

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- (ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and
  - (b) paragraphs (1)(b) and (c) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities; and
  - (c) the \*fair value election is made by:
    - (i) if section 121EB of the *Income Tax Assessment Act 1936* applies—the OBU mentioned in that section (disregarding the operation of that section); or
    - (ii) if section 160ZZW of that Act applies—the bank mentioned in that section (disregarding the operation of that section);
- paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.

**230-225 Financial arrangements to which election does not apply**

- (1) A \*fair value election does not apply to a \*financial arrangement if:
  - (a) the arrangement is an \*equity interest; and
  - (b) you are the issuer of the equity interest.
- (2) A \*fair value election does not apply to a \*financial arrangement if:
  - (a) you are:
    - (i) an individual; or
    - (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
  - (b) the arrangement is a \*qualifying security; and
  - (c) you have not made an election under subsection 230-455(7).
- (3) A \*fair value election does not apply to a \*financial arrangement if:
  - (a) the election is made by the \*head company of a \*consolidated group or \*MEC group; and
  - (b) the election specifies that the election is not to apply to financial arrangements in relation to \*life insurance business carried on by a member of the consolidated group or MEC group; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.
- (4) A \*fair value election does not apply to a \*financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

### **230-230 Applying fair value method to gains and losses**

- (1) If a \*fair value election applies to your \*financial arrangement, the gain or loss you make from the arrangement for an income year is:
  - (a) the gain or loss that the standards referred to in paragraph 230-210(2)(a) require you to recognise in profit or loss for the income year from the asset or liability mentioned in paragraph 230-220(1)(c); or
  - (b) if subsection 230-220(2) applies to the arrangement—the gain or loss that the standards referred to in paragraph 230-220(1)(c) would have required you to recognise in profit or loss for the year from the asset or liability mentioned in paragraph 230-220(1)(c) if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-220(2)(b); or
  - (c) if subsection 230-220(3) applies to the arrangement—the gain or loss that the standards referred to in paragraph 230-220(1)(c) would have required you to recognise in profit or loss for the year from the asset or liability mentioned in paragraph 230-220(1)(c) if the arrangement had been between 2 separate entities.

Note: Subsection 230-40(7) provides that an election under Subdivision 230-E (hedging financial arrangements method) or Subdivision 230-F (method of relying on financial reports) may override a fair value election.

- (2) Subsection (3) applies if:
  - (a) a \*head company of a \*consolidated group or \*MEC group has a \*financial arrangement; and
  - (b) a \*fair value election applies to the arrangement; and
  - (c) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-235

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- (d) immediately after the leaving time, the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group.
- (3) The gain or loss the group makes from the arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that the standards referred to in paragraph 230-210(2)(a) would require the group to recognise as at fair value through profit or loss for the income year from the asset or liability mentioned in paragraph 230-220(1)(c) if:
  - (a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and
  - (b) any circumstances that arise in relation to the financial arrangement after the leaving time were disregarded.

**230-235 Splitting financial arrangements into 2 financial arrangements**

- (1) If:
  - (a) a \*financial arrangement is constituted only in part by an asset or liability mentioned in paragraph 230-220(1)(c); and
  - (b) a \*fair value election would apply to the arrangement if it were constituted solely by that asset or liability;the provisions of this Division (other than this section) apply to the arrangement as if it were instead 2 separate financial arrangements.
- (2) The 2 separate \*financial arrangements are:
  - (a) one consisting of the part referred to in paragraph (1)(a); and
  - (b) one consisting of the remaining part.

**230-240 When election ceases to apply**

- (1) A \*fair value election ceases to have effect from the start of an income year if you cease to be eligible under subsection 230-210(2) to make the fair value election for that income year.
- (2) Subsection (1) does not prevent you from making a new \*fair value election at a later time if you become, at that later time, eligible

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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under subsection 230-210(2) to make a fair value election for an income year.

Note: The new election will only apply to financial arrangements you start to have after the start of the income year in which the new election is made.

- (3) A \*fair value election ceases to apply to a particular \*financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of paragraph 230-220(1)(b) or (c) during that income year.
- (4) If the election ceases to apply to a particular \*financial arrangement under subsection (3), the election cannot subsequently reapply to that arrangement (even if the requirements of paragraphs 230-220(1)(b) and (c) are satisfied once more in relation to the arrangement).

### **230-245 Balancing adjustment if election ceases to apply**

- (1) You must make balancing adjustments under subsection (2) if a \*fair value election ceases to have effect under subsection 230-240(1).
- (2) The balancing adjustments under this subsection are the balancing adjustments you would make under Subdivision 230-G for each of the \*financial arrangements to which the election applied if you disposed of the arrangement for its fair value when the election ceases to have effect.
- (3) You must make a balancing adjustment under subsection (4) if a \*fair value election ceases to apply to a particular \*financial arrangement under subsection 230-240(3).
- (4) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you disposed of the \*financial arrangement for its fair value when the election ceases to apply to the arrangement.
- (5) If a balancing adjustment is made under subsection (2) or (4) in relation to a \*financial arrangement, you are taken, for the purposes of this Division, to have reacquired the arrangement at its fair value

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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immediately after the election ceased to have effect or ceased to apply to the arrangement.

### **Subdivision 230-D—Foreign exchange retranslation method**

#### **Table of sections**

230-250	Objects of this Subdivision
230-255	Foreign exchange retranslation election
230-260	Foreign exchange retranslation election where differing income and accounting years
230-265	Financial arrangements to which general election applies
230-270	Financial arrangements to which general election does not apply
230-275	Balancing adjustment for election in relation to qualifying forex accounts
230-280	Applying foreign exchange retranslation method to gains and losses
230-285	When election ceases to apply
230-290	Balancing adjustment if election ceases to apply

#### **230-250 Objects of this Subdivision**

The objects of this Subdivision are:

- (a) to allow you to align the tax treatment of gains and losses from foreign exchange rate changes with the accounting treatment of profits and losses from such changes; and
- (b) to achieve this without allowing you to obtain an inappropriate tax benefit.

#### **230-255 Foreign exchange retranslation election**

##### *General election*

- (1) You may make a *foreign exchange retranslation election* under this subsection if you are eligible under subsection (2) to make the election for the income year in which you make the election.

##### *Eligibility to make election*

- (2) You are eligible to make a \*foreign exchange retranslation election for an income year if:
  - (a) you prepare a financial report for that income year in accordance with:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (i) the \*accounting standards; or
- (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards made under a \*foreign law that apply to the preparation of the financial report under a foreign law; and
- (b) the financial report is audited in accordance with:
  - (i) the \*auditing standards; or
  - (ii) if the auditing standards do not apply to the auditing of the financial report—comparable auditing standards made under a foreign law.

Note: Section 230-500 allows regulations to be made specifying particular foreign accounting and auditing standards as ones that are to be treated as comparable with Australian accounting and auditing standards for the purposes of this Division.

*Election in relation to qualifying forex accounts*

- (3) You may make a **foreign exchange retranslation election** under this subsection in relation to a \*financial arrangement if:
  - (a) the arrangement is a \*qualifying forex account; and
  - (b) you have not made a \*foreign exchange retranslation election under subsection (1) that applies to the account.

You may make the election even if you start to have the arrangement before you make the election.

*Financial arrangements to which election in relation to qualifying forex accounts applies*

- (4) The election under subsection (3) applies to the \*financial arrangement:
  - (a) from the time when you start to have the arrangement if the election is made before you start to have the arrangement; or
  - (b) from the start of the income year in which the election is made if you make the election after you start to have the arrangement.

*Election irrevocable*

- (5) A \*foreign exchange retranslation election is irrevocable.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: The election may cease to apply under section 230-285.

**230-260 Foreign exchange retranslation election where differing income and accounting years**

- (1) This section applies if:
  - (a) you prepare a financial report for a year (the *first year*); and
  - (b) you prepare a financial report for the subsequent year (the *second year*); and
  - (c) your income year starts in the first year and ends in the second year; and
  - (d) both the financial report for the first year and the financial report for the second year are:
    - (i) prepared in accordance with paragraph 230-255(2)(a); and
    - (ii) audited in accordance with paragraph 230-255(2)(b); and
  - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-255(2).
- (3) Work out the gain or loss you make from the arrangement for the income year as follows:
  - (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with section 230-280 (treating the first year as an income year);
  - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
  - (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with section 230-280 (treating the second year as an income year);
  - (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);
  - (e) next:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or
  - (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or
  - (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.
- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
- (a) using a methodology that is reasonable; and
  - (b) using the same methodology for the first and second years.
- (5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

### **230-265 Financial arrangements to which general election applies**

- (1) A \*foreign exchange retranslation election under subsection 230-255(1) applies to each of your \*financial arrangements:
- (a) that are \*Division 230 financial arrangements; and
  - (b) that are recognised in financial reports of a kind referred to in paragraph 230-255(2)(a) that are audited, or required to be audited, as referred to in paragraph 230-255(2)(b); and
  - (c) in relation to which you are required by:
    - (i) \*accounting standard AASB 121 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
    - (ii) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a \*foreign law;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-265

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to recognise, in the financial reports, amounts in profit or loss (if any) that are attributable to changes in currency exchange rates; and

- (d) that you start to have in the income year in which you make the election or in a later income year.

This subsection has effect subject to section 230-270.

Note: The election also has consequences under Subdivision 775-F for arrangements that are not Division 230 financial arrangements.

- (2) If, but for this subsection, paragraphs (1)(b) and (c) would not be satisfied in relation to a \*financial arrangement because the arrangement is an intra-group transaction for the purposes of:
- (a) \*accounting standard AASB 127 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
  - (b) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a \*foreign law;

paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.

Note: Financial arrangements between members of a consolidated group or MEC group are not covered by this subsection because the single entity rule in subsection 701-1(1) operates to treat them as not being financial arrangements for the purposes of this Division.

- (3) If:
- (a) the \*financial arrangement would not be a financial arrangement if the following provisions were disregarded:
    - (i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);
    - (ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and
  - (b) paragraphs (1)(b) and (c) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities; and
  - (c) the \*foreign exchange retranslation election under subsection 230-255(1) is made by:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) if section 121EB of the *Income Tax Assessment Act 1936* applies—the OBU mentioned in that section (disregarding the operation of that section); or
- (ii) if section 160ZZW of that Act applies—the bank mentioned in that section (disregarding the operation of that section);

paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.

### **230-270 Financial arrangements to which general election does not apply**

- (1) For the purposes of this Division, a \*foreign exchange retranslation election under subsection 230-255(1) does not apply to a \*financial arrangement if the arrangement is a financial arrangement under section 230-50 (equity interests etc.).
- (2) For the purposes of this Division, a \*foreign exchange retranslation election under subsection 230-255(1) does not apply to a \*financial arrangement if:
  - (a) you are:
    - (i) an individual; or
    - (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
  - (b) the arrangement is a \*qualifying security; and
  - (c) you have not made an election under subsection 230-455(7).
- (3) A \*foreign exchange retranslation election under subsection 230-255(1) does not apply to a \*financial arrangement if:
  - (a) the election is made by the \*head company of a \*consolidated group or \*MEC group; and
  - (b) the election specifies that the election is not to apply to financial arrangements in relation to \*life insurance business carried on by a member of the consolidated group or MEC group; and
  - (c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-275

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- (4) A \*foreign exchange retranslation election does not apply to a \*financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

**230-275 Balancing adjustment for election in relation to qualifying forex accounts**

- (1) If a \*hedging financial arrangement that you have does not (apart from this section) meet the requirements of sections 230-355 to 230-365, treat it as meeting those requirements if the Commissioner makes a determination under subsection (2) in relation to the arrangement.
- (2) The Commissioner may make the determination if the Commissioner considers that this is appropriate, having regard to:
- (a) the respects in which the arrangement does not meet those requirements; and
  - (b) the extent to which it does not meet those requirements; and
  - (c) the reasons why it does not meet those requirements; and
  - (d) if the Commissioner is considering whether to impose conditions under subsection (3)—the likelihood that you will comply with those conditions; and
  - (e) the objects of this Subdivision.
- (3) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you ceased to have the arrangement for its fair value at the time when the election started to apply to the arrangement (but only to the extent to which the balancing adjustment is reasonably attributable to a \*currency exchange rate effect).

**230-280 Applying foreign exchange retranslation method to gains and losses**

*General election*

- (1) You make a gain or loss from a \*financial arrangement for an income year if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) a \*foreign exchange retranslation election under subsection 230-255(1) applies to the arrangement; and
- (b) any of the following subparagraphs apply:
  - (i) the standard referred to in paragraph 230-265(1)(c) requires you to recognise a particular amount in profit or loss in relation to that arrangement for that income year;
  - (ii) if subsection 230-265(2) applies to the arrangement—the standard referred to in paragraph 230-265(1)(c) would have required you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-265(2)(b);
  - (iii) if subsection 230-265(3) applies to the arrangement—the standard referred to in paragraph 230-265(1)(c) would have required you to recognise a particular amount in profit or loss for the year that is attributable to currency exchange rates mentioned in paragraph 230-265(1)(c) if the arrangement had been between 2 separate entities.

The amount of the gain or loss is the amount the standard requires, or would have required, you to recognise.

Note: See subsection 230-40(6).

*Election in relation to qualifying forex accounts*

- (2) You make a gain or loss from a \*financial arrangement for an income year if:
  - (a) a \*foreign exchange retranslation election under subsection 230-255(3) applies to the arrangement; and
  - (b) the standard referred to in paragraph 230-265(1)(c):
    - (i) requires you to recognise a particular amount in profit or loss in relation to that arrangement for that income year; or
    - (ii) would require you to recognise a particular amount in profit or loss in relation to that arrangement for that

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

income year if that standard applied to the arrangement;  
or

- (iii) would require you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-265(2)(b); or
- (iv) would require you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-265(2)(b) and if that standard applied to the arrangement.

The amount of the gain or loss is the amount the standard requires, or would require, you to recognise.

*Subsidiary leaving group*

- (3) Subsection (4) applies if:
  - (a) a \*head company of a \*consolidated group or \*MEC group has a \*financial arrangement; and
  - (b) a \*foreign exchange retranslation election under subsection 230-255(1) or (3) applies to the arrangement; and
  - (c) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and
  - (d) immediately after the leaving time, the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group.
- (4) The gain or loss the group makes from the \*financial arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that the standard referred to in paragraph 230-265(1)(c) would require the group to recognise in profit or loss in relation to the arrangement for that income year if:
  - (a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and
  - (b) any circumstances that arise in relation to the arrangement after the leaving time were disregarded.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## 230-285 When election ceases to apply

### *General election*

- (1) A \*foreign exchange retranslation election under subsection 230-255(1) ceases to have effect from the start of an income year if you cease to be eligible under subsection 230-255(2) to make a foreign exchange retranslation election under subsection 230-255(1) for that income year.
- (2) Subsection (1) does not prevent you from making a new \*foreign exchange retranslation election at a later time if you become, at that later time, eligible under subsection 230-255(2), to make a foreign exchange retranslation election under subsection 230-255(1) for that income year.

Note: The new election will only apply to financial arrangements you start to have after the start of the income year in which the new election is made.

- (3) A \*foreign exchange retranslation election under subsection 230-255(1) ceases to apply to a \*financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of paragraph 230-265(1)(b) or (c) during that income year.
- (4) If the election ceases to apply to a particular \*financial arrangement under subsection (3), the election cannot subsequently reapply to that arrangement (even if the requirements of paragraphs 230-265(1)(b) and (c) are satisfied once more in relation to the arrangement).

### *Election in relation to qualifying forex accounts*

- (5) A \*foreign exchange retranslation election under subsection 230-255(3) ceases to apply to a \*financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of subsection 230-255(3) during that income year.
- (6) If the election ceases to apply to a particular \*financial arrangement under subsection (5), the election cannot subsequently reapply to that arrangement (even if the requirements of subsection 230-255(3) are satisfied once more in relation to the arrangement).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



### **230-290 Balancing adjustment if election ceases to apply**

- (1) You must make balancing adjustments under subsection (2) if a \*foreign currency retranslation election ceases to have effect under subsection 230-285(1).
- (2) The balancing adjustments under this subsection are the balancing adjustments you would make under Subdivision 230-G for each of the \*financial arrangements to which the election applied if you disposed of the arrangement for its fair value when the election ceases to have effect (but only to the extent to which the balancing adjustment is reasonably attributable to a \*currency exchange rate effect).
- (3) You must make a balancing adjustment under this section if a \*foreign currency retranslation election ceases to apply to a particular \*financial arrangement under subsection 230-285(3) or (5).
- (4) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you disposed of the \*financial arrangement for its fair value when the election ceases to apply to the arrangement (but only to the extent to which the balancing adjustment is reasonably attributable to a \*currency exchange rate effect).
- (5) If a balancing adjustment is made under subsection (2) or (4) in relation to a \*financial arrangement, you are taken, for the purposes of this Division, to have reacquired the arrangement at its fair value immediately after the election ceased to have effect or ceased to apply to the arrangement.

### **Subdivision 230-E—Hedging financial arrangements method**

#### **Table of sections**

230-295	Objects of this Subdivision
230-300	Applying hedging financial arrangement method to gains and losses
230-305	Table of events and allocation rules
230-310	Aligning tax classification of gain or loss from hedging financial arrangement with tax classification of hedged item
230-315	Hedging financial arrangement election

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- 230-320 Hedging financial arrangement election where differing income and accounting years
- 230-325 Hedging financial arrangements to which election applies
- 230-330 Hedging financial arrangements to which election does not apply
- 230-335 ***Hedging financial arrangement*** and ***hedged item***
- 230-340 Generally whole arrangement must be financial hedging arrangement
- 230-345 Requirements not satisfied because of honest mistake or inadvertence
- 230-350 ***Derivative financial arrangement*** and ***foreign currency hedge***
- 230-355 Recording requirements
- 230-360 Determining basis for allocating gain or loss
- 230-365 Effectiveness of the hedge
- 230-370 When election ceases to apply
- 230-375 Balancing adjustment if election ceases to apply
- 230-380 Where requirements not met
- 230-385 You may be excluded from this Subdivision for deliberate failures to comply with requirements

### **230-295 Objects of this Subdivision**

The objects of this Subdivision are:

- (a) to facilitate the efficient management of financial risk by reducing after-tax mismatches and better aligning tax treatment where hedging takes place; and
- (b) to minimise tax deferral and tax motivated practices (including tax deferral arising from such practices as tax advantaged selection from among possible hedges and inappropriate selection of tax treatment).

### **230-300 Applying hedging financial arrangement method to gains and losses**

- (1) If you have a \*hedging financial arrangement to which a \*hedging financial arrangement election applies, the gain or loss you make for an income year from the arrangement is worked out under this section and section 230-310 instead of under Subdivision 230-B, 230-C, 230-D, 230-F or 230-G.
- (2) Except where subsection (5) applies, the gain or loss you make from the \*hedging financial arrangement is equal to the overall gain or loss you make from the arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 230-300

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- (3) The gain or loss you make from the \*hedging financial arrangement is allocated over income years according to the determination referred to in subsection 230-360(1).

Note 1: The allocation is capable of extending to income years after you cease to have the hedging financial arrangement (see subsection 230-360(3)).

Note 2: The determination must be included in the record made under section 230-355.

- (4) If the \*hedging financial arrangement is a \*foreign currency hedge and is a \*debt interest, split a gain or loss you make from the arrangement as follows:
- (a) to the extent to which the gain or loss represents a \*currency exchange rate effect attributable to the outstanding balance in relation to the debt interest, treat it as a separate gain or loss to which subsections (1) and (2) apply;
  - (b) to the extent that it does not represent that effect, treat it as a separate gain or loss from the financial arrangement that is allocated under Subdivision 230-B, 230-F or 230-G.
- (5) If an event listed in the table in section 230-305 occurs:
- (a) the gain or loss you make from the \*hedging financial arrangement is equal to any gain or loss that you would have made:
    - (i) while the arrangement was hedging the \*hedged item or items; and
    - (ii) on ceasing to have the arrangement;if you ceased to have the arrangement for its fair value at the time of the event; and
  - (b) this Division further applies as if, just after the event, you had acquired the arrangement for its fair value at the time of the event.

Despite subsection (3), the gain or loss referred to in paragraph (a) is allocated over income years according to the table.

- (6) The regulations may apply subsection (5) and section 230-305 (with the modifications that are provided for in the regulations) to the situation in which you cease to have one or more, but not all, of the \*hedged items.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (7) Subsection (8) applies if the \*hedging financial arrangement:
  - (a) is a \*financial arrangement under section 230-50 (equity interests etc.); and
  - (b) is a \*foreign currency hedge; and
  - (c) is one that you issue.
  
- (8) Split a gain or loss you make from the arrangement as follows:
  - (a) to the extent to which the gain or loss represents a \*currency exchange rate effect, treat it as a separate gain or loss to which subsections (1) and (2) apply;
  - (b) to the extent that it does not represent that effect, treat it as a separate gain or loss from the financial arrangement to which this Division does not apply.
  
- (9) Subsections (10) and (11) apply if:
  - (a) a \*head company of a \*consolidated group or \*MEC group has a \*hedging financial arrangement; and
  - (b) a \*hedging financial arrangement election applies to the arrangement; and
  - (c) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and
  - (d) immediately after the leaving time:
    - (i) the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group; and
    - (ii) the head company no longer has the \*hedged item (or all of the hedged items) because the subsidiary member ceased to be a member of the group.
  
- (10) The gain or loss the group makes from the arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that would be allocated to the group in accordance with this section (disregarding subsection (5)) if:
  - (a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and
  - (b) any circumstances that arise in relation to the \*financial arrangement after the leaving time were disregarded.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 230-305

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- (11) For the purposes of applying paragraph (5)(a) to the \*head company of the group at the leaving time, disregard item 2 of the table in section 230-305.

**230-305 Table of events and allocation rules**

For the purposes of paragraph 230-300(5)(a), the following table lists events and their consequences:

<b>Table of events and allocation rules</b>		
<b>Item</b>	<b>If this event occurs ...</b>	<b>Your gain or loss is allocated ...</b>
1	(a) you revoke the hedging designation; or (b) you redesignate your *hedging financial arrangement; or (c) you cease to meet the requirement of section 230-365 in relation to your hedging financial arrangement	over income years according to the basis determined under subsection 230-360(1).
2	(a) you cease to have the *hedged item or all of the hedged items; or (b) you cease to expect that the hedged item or items will come into existence; or (c) you cease to expect that you will have the hedged item or items	to the income year in which the event occurs.
3	a risk being hedged by your *hedging financial arrangement ceases to exist	to the income year in which the risk ceases to exist.

**230-310 Aligning tax classification of gain or loss from hedging financial arrangement with tax classification of hedged item**

- (1) The object of this section is to better align, in particular circumstances, the tax classification of a gain or loss you make

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

from a \*hedging financial arrangement with the tax classification of the \*hedged item.

- (2) This section applies if:
- (a) you make a gain or loss from a \*hedging financial arrangement for an income year; and
  - (b) a \*hedging financial arrangement election applies to the arrangement.
- (3) Subject to subsection (4):
- (a) if you make a gain from the arrangement—your assessable income includes the gain in accordance with subsection 230-15(1); and
  - (b) if you make a loss from the arrangement—you may deduct the loss in accordance with subsections 230-15(2) and (3).

Note: Section 230-300 tells you how to allocate the gain or loss to an income year or years.

- (4) A gain or loss you make from a \*hedging financial arrangement, to the extent to which it is reasonably attributable to a \*hedged item referred to in the following table, is dealt with in the way indicated in that item:

<b>Special tax classification for gains and losses</b>			
<b>Item</b>	<b>For a hedged item that is or produces ...</b>	<b>the gain ...</b>	<b>the loss ...</b>
1	a *CGT asset any *net capital gain in relation to which would be assessable under Parts 3-1 and 3-3 in relation to which a *CGT event (the <i>hedged item CGT event</i> ) occurs	is treated as a *capital gain from a CGT event (but only to the extent to which the gain is reasonably attributable to the hedged item CGT event)	is treated as a *capital loss from a CGT event (but only to the extent to which the loss is reasonably attributable to the hedged item CGT event)

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-310

<b>Special tax classification for gains and losses</b>			
<b>Item</b>	<b>For a hedged item that is or produces ...</b>	<b>the gain ...</b>	<b>the loss ...</b>
2	a *CGT asset that is *taxable Australian property	is treated as a *capital gain from a *CGT event for a CGT asset that is taxable Australian property	is treated as a *capital loss from a CGT event for a CGT asset that is taxable Australian property
3	a *CGT asset your capital gains and losses in relation to which are disregarded, or reduced by a particular percentage, under Division 855	is disregarded or reduced by the same percentage	is disregarded or reduced by the same percentage
4	*exempt income	is treated as exempt income	is not deductible
5	*non-assessable non-exempt income of an Australian resident	is treated as non-assessable non-exempt income	is not deductible
6	a share in a company that is a foreign resident if the capital gain or loss you make from a *CGT event that happens to the share is reduced by a particular percentage under Subdivision 768-G	is treated as a *capital gain from a CGT event that is reduced by the same percentage	is treated as a *capital loss from a CGT event that is reduced by the same percentage
7	*ordinary income or *statutory income from an *Australian source	is treated as ordinary income or statutory income from an Australian source	is treated as a loss incurred in gaining or producing ordinary income or statutory income from an Australian source

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Special tax classification for gains and losses**

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Item	For a hedged item that is or produces ...	the gain ...	the loss ...
8	*ordinary income or *statutory income from a source out of Australia	is treated as ordinary income or statutory income from a source out of Australia	is treated as a loss incurred in gaining or producing ordinary income or statutory income from a source out of Australia
9	a loss or outgoing incurred in gaining or producing *ordinary income or *statutory income from a source out of Australia	is treated as ordinary income or statutory income from a source out of Australia	is treated as a loss incurred in gaining or producing ordinary income or statutory income from a source out of Australia
10	a loss or outgoing incurred in gaining or producing *ordinary income or *statutory income from an *Australian source	is treated as ordinary income or statutory income from an Australian source	is treated as a loss incurred in gaining or producing ordinary income or statutory income from an Australian source
11	a loss or outgoing that is not allowed as a deduction	is treated as *non-assessable non-exempt income	is treated as a loss that is not allowed as a deduction

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 230-310

**Special tax classification for gains and losses**

Item	For a hedged item that is or produces ...	the gain ...	the loss ...
12	a net investment in a foreign operation (within the meaning of the *accounting standards) that is not carried on through: (a) a company in which you hold shares; or (b) a company that is a subsidiary of yours (within the meaning of the <i>Corporations Act 2001</i> ).	(a) to the extent that the net investment would give rise to income that is *non-assessable non-exempt income under section 23AH of the <i>Income Tax Assessment Act 1936</i> —is treated as non-assessable non-exempt income; and (b) otherwise—is treated in accordance with the item or items in this table that are applicable to the gain.	(a) to the extent that the net investment would give rise to income that is non-assessable non-exempt income under section 23AH of the <i>Income Tax Assessment Act 1936</i> —is not deductible; and (b) otherwise—is treated in accordance with the item or items in this table that are applicable to the loss.

(5) If:

- (a) a \*hedged item is your net investment in a foreign operation (within the meaning of the \*accounting standards); and
- (b) the foreign operation is carried on through:
  - (i) a company in which you hold shares; or
  - (ii) a company that is a subsidiary of yours (within the meaning of the *Corporations Act 2001*);

the hedged item is taken, for the purposes of applying the table in subsection (4), to be the interest you have in the shares of the company.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **230-315 Hedging financial arrangement election**

#### *Election*

- (1) You can make a **hedging financial arrangement election** if you are eligible under subsection (2) to make the election for the income year in which you make the election.

#### *Eligibility to make hedging financial arrangement election for an income year*

- (2) You are eligible to make a **hedging financial arrangement election** for an income year if:
- (a) you prepare a financial report for that income year in accordance with:
    - (i) the \*accounting standards; or
    - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards made under a \*foreign law that apply to the preparation of the financial report under a foreign law; and
  - (b) the financial report is audited in accordance with:
    - (i) the \*auditing standards; or
    - (ii) if the auditing standards do not apply to the auditing of the financial report—comparable auditing standards made under a foreign law.

Note: Section 230-500 allows regulations to be made specifying particular foreign accounting and auditing standards as ones that are to be treated as comparable with Australian accounting and auditing standards for the purposes of this Division.

#### *Election irrevocable*

- (3) The \*hedging financial arrangement election is irrevocable.

Note: The election may cease to apply under section 230-385.

### **230-320 Hedging financial arrangement election where differing income and accounting years**

- (1) This section applies if:
- (a) you prepare a financial report for a year (the **first year**); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-325

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- (b) you prepare a financial report for the subsequent year (the *second year*); and
  - (c) your income year starts in the first year and ends in the second year; and
  - (d) both the financial report for the first year and the financial report for the second year are:
    - (i) prepared in accordance with paragraph 230-315(2)(a); and
    - (ii) audited in accordance with paragraph 230-315(2)(b); and
  - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-315(2).

**230-325 Hedging financial arrangements to which election applies**

- (1) A \*hedging financial arrangement election applies to a \*hedging financial arrangement if:
- (a) you start to have the arrangement in the income year in which you make the election or in a later income year; and
  - (b) the requirements in sections 230-355 to 230-365 are met in relation to the arrangement.

Note: Paragraph (b)—see section 230-380 for the Commissioner's discretion in relation to failures to meet the requirements of sections 230-355 to 230-365.

- (2) For the purposes of paragraph (1)(b), treat the requirement in paragraph 230-365(c) as being met even if you do not assess the hedging of the risk mentioned in that paragraph, but you can demonstrate that you intend to do so.
- (3) This section has effect subject to section 230-330.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**230-330 Hedging financial arrangements to which election does not apply**

- (1) A \*hedging financial arrangement election does not apply to a \*financial arrangement if the arrangement is a financial arrangement under section 230-50 (equity interests etc.).
- (2) Subsection (1) does not apply to a \*hedging financial arrangement if:
  - (a) the hedging financial arrangement is a \*foreign currency hedge; and
  - (b) you issue the hedging financial arrangement.
- (3) A \*hedging financial arrangement election does not apply to a \*financial arrangement if:
  - (a) you are:
    - (i) an individual; or
    - (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
  - (b) the arrangement is a \*qualifying security; and
  - (c) you have not made an election under subsection 230-455(7).
- (4) A \*hedging financial arrangement election does not apply to a \*financial arrangement if:
  - (a) the election is made by the \*head company of a \*consolidated group or \*MEC group; and
  - (b) the election specifies that the election is not to apply to financial arrangements in relation to \*life insurance business carried on by a member of the consolidated group or MEC group; and
  - (c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.
- (5) A \*hedging financial arrangement election does not apply to a \*financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**230-335 Hedging financial arrangement and hedged item**

*Hedging financial arrangement*

- (1) A \*financial arrangement that you have that is a \*derivative financial arrangement, or is not a derivative financial arrangement but is a \*foreign currency hedge, is a **hedging financial arrangement** if:
- (a) you create, acquire or apply the arrangement for the purpose of hedging a risk or risks in relation to a \*hedged item; and
  - (b) at the time you create, acquire or apply the arrangement, the arrangement satisfies the requirements of the standards referred to in paragraph 230-315(2)(a) to be a hedging instrument; and
  - (c) the arrangement is recorded as a hedging instrument in:
    - (i) your financial report (including documents and records on which the report is based); or
    - (ii) if the arrangement hedges a risk in relation to foreign currency—the financial report of a consolidated entity in which you are included (including documents and records on which the report is based);for the income year in which the rights and/or obligations are created, acquired or applied.

Note: For **document** and **record**, see section 25 of the *Acts Interpretation Act 1901*.

- (2) If:
- (a) the \*financial arrangement would not be a financial arrangement if the following provisions were disregarded:
    - (i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);
    - (ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and
  - (b) paragraphs (1)(b) and (c) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities;
- paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) A \*financial arrangement that is a \*derivative financial arrangement, or is not a derivative financial arrangement but is a \*foreign currency hedge, is a **hedging financial arrangement** if:
- (a) you create, acquire or apply the arrangement for the purpose of hedging a risk or risks in relation to something; and
  - (b) one or more of subsections (4), (5), (6) or (7) is satisfied; and
  - (c) the requirements of paragraphs (1)(b) or (c) are not able to be satisfied:
    - (i) because of the requirements of the standards referred to in paragraph 230-315(2)(a); and
    - (ii) not because of any act or omission on your part to deliberately fail to satisfy those requirements; and
  - (d) you satisfy the additional recording requirements of subsection 230-355(5); and
  - (e) you satisfy the requirements (if any) prescribed by the regulations for the purposes of this paragraph.
- (4) This subsection is satisfied if:
- (a) the \*financial arrangement hedges a foreign currency risk in relation to an anticipated dividend from a \*connected entity; and
  - (b) the dividend is \*non-assessable non-exempt income under section 23AJ of the *Income Tax Assessment Act 1936*.
- (5) This subsection is satisfied if:
- (a) you enter into a \*financial arrangement with a \*connected entity; and
  - (b) the standards referred to in paragraph 230-315(2)(a) require that a consolidated financial report be prepared that deals with both your affairs and the affairs of the connected entity; and
  - (c) the report properly reflects your affairs; and
  - (d) the arrangement satisfies the requirements of paragraph (1)(a); and
  - (e) the arrangement would satisfy the requirements of paragraph (1)(b) or (c) but for the fact that the consolidated report disregards the arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 230-335

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- (6) This subsection is satisfied if:
- (a) the period for which the risk or risks are hedged does not straddle 2 or more income years; and
  - (b) the \*financial arrangement satisfies the requirements of paragraph (1)(a); and
  - (c) the arrangement would satisfy the requirements of paragraph (1)(c) if the period for which the risk or risks that are hedged did straddle 2 or more income years.

- (7) This subsection is satisfied if the requirements prescribed by the regulations for the purposes of this subsection are satisfied.

*Financial arrangement hedging more than one type of risk*

- (8) A \*financial arrangement that hedges more than one type of risk may only be a **hedging financial arrangement** if the standards referred to in paragraph (1)(b) allow the arrangement to be designated as a hedge of those risks.

*More than one financial arrangement hedging the same risk or risks*

- (9) If 2 or more \*financial arrangements hedge the same risk or risks, each of the arrangements may only be a **hedging financial arrangement** if the standards referred to in paragraph (1)(b) allow those arrangements to be viewed in combination and jointly designated as hedging that risk or those risks.

*Hedged item*

- (10) If a \*financial arrangement that you have hedges a risk in relation to:
- (a) an asset or a part of an asset; or
  - (b) a liability or a part of a liability; or
  - (c) a firm commitment (within the meaning of the \*accounting standards) or a part of such a commitment; or
  - (d) a highly probable forecast transaction (within the meaning of the accounting standards) or a part of such a transaction; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (e) a net investment in a foreign operation (within the meaning of the accounting standards) or a part of such an investment;  
or
  - (f) something prescribed by the regulations for the purposes of this paragraph;
- the asset (or that part of the asset), the liability (or that part of the liability), the commitment (or that part of the commitment), the transaction (or that part of the transaction) or the investment (or that part of the investment) is a ***hedged item*** for the arrangement.
- (11) If a \*financial arrangement is a \*hedging financial arrangement because of paragraph (4)(a), the anticipated dividend referred to in that subparagraph is a ***hedged item*** for the arrangement even if subsection (10) is not satisfied in relation to the anticipated dividend.

### **230-340 Generally whole arrangement must be financial hedging arrangement**

- (1) Subject to subsections (2), (3) and (4), the whole of a \*financial arrangement must satisfy the requirements of subsection 230-335(1) or (3) for the arrangement to be a ***hedging financial arrangement***.

#### *Partial hedges*

- (2) If a \*financial arrangement:
- (a) is an options contract; and
  - (b) hedges risk only in part by reference to changes in the intrinsic value of the options contract;
- the arrangement may be treated as a ***hedging financial arrangement*** to the extent to which the part of the arrangement referred to in paragraph (b) satisfies the requirements of subsection 230-335(1) or (3).
- (3) If a \*financial arrangement:
- (a) is a forward contract; and
  - (b) has a spot price element and an interest element;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 230-345

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the arrangement may be treated as a **hedging financial arrangement** to the extent to which the spot price element satisfies the requirements of subsection 230-335(1) or (3).

*Proportionate hedges*

- (4) A specified proportion of a \*financial arrangement may be treated as a **hedging financial arrangement** to the extent to which that proportion of the arrangement satisfies the requirements of subsection 230-335(1) or (3).

*Separate financial arrangements if partial or proportionate hedge*

- (5) If a part (or parts), or a proportion (or proportions), of a \*financial arrangement is (or are) treated as a \*hedging financial arrangement under subsection (2), (3) or (4):
- (a) the part (or each of the parts), or the proportion (or each of the proportions), of the arrangement that is (or are) treated as a hedging financial arrangement is taken to be a separate financial arrangement for the purposes of this Division; and
  - (b) the remaining part or proportion (if any) of the arrangement is taken to be a separate financial arrangement for the purposes of this Division.
- (6) Subsection (5) has effect even if there would not be separate \*arrangements under subsection 230-55(4).

**230-345 Requirements not satisfied because of honest mistake or inadvertence**

If a \*derivative financial arrangement, or a \*foreign currency hedge, that you have would not be a \*hedging financial arrangement only because the requirements of paragraph 230-335(1)(b) or (c), or both, are not satisfied because of an honest mistake or inadvertence, it is nevertheless a **hedging financial arrangement** if the Commissioner considers this appropriate having regard to:

- (a) your documented risk management practices and policies; and
- (b) your record keeping practices; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) your accounting systems and controls; and
- (d) your internal governance processes; and
- (e) the circumstances surrounding the mistake or inadvertence (including the steps (if any) taken to correct or address the mistake or inadvertence and the steps (if any) taken to prevent a recurrence); and
- (f) the extent to which the requirements of paragraphs 230-335(1)(b) and (c) have been met; and
- (g) the objects of this Subdivision.

### **230-350 *Derivative financial arrangement and foreign currency hedge***

#### *Derivative financial arrangement*

- (1) A ***derivative financial arrangement*** is a \*financial arrangement that you have where:
- (a) its value changes in response to changes in a specified variable or variables; and
  - (b) there is no requirement for a net investment, or there is such a requirement but the net investment is smaller than would be required for other types of financial arrangement that would be expected to have a similar response to changes in market factors.

Note: Paragraph (a)—a specified variable includes an interest rate, foreign exchange rate, credit rating, index or commodity or financial instrument price.

#### *Foreign currency hedge*

- (2) A ***foreign currency hedge*** is a \*financial arrangement that you have if:
- (a) paragraph (1)(a) is satisfied but paragraph (1)(b) is not; and
  - (b) the arrangement hedges a risk in relation to movements in currency exchange rates.

### **230-355 Recording requirements**

- (1) The requirement of this section is that you must make, or have in place, a record that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-355

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- (a) contains a description of the following:
    - (i) the \*hedging financial arrangement in relation to which the election is made;
    - (ii) the nature of the risk or risks being hedged;
    - (iii) the \*hedged item or items;
    - (iv) how you will assess the effectiveness of hedging the risk in reducing your exposure to changes in the fair value of the hedged item or items or cash flows or foreign currency exposure attributable to them;
    - (v) the risk management objective for, and the risk management strategy to be followed in, acquiring, creating or applying the arrangement; and
  - (b) contains any further details that the \*accounting standards require, by way of documentation, for an arrangement to be recorded in a financial report as a hedging instrument; and
  - (c) sets out the terms of the determinations you make under section 230-360.
- To avoid doubt, paragraph (b) applies even if the arrangement is not recorded in your financial report as a hedging instrument.
- (2) To avoid doubt, the record may consist of a single document or 2 or more documents.
  - (3) The record must be made or in place:
    - (a) at, or soon after, the time when you create, acquire or apply the \*hedging financial arrangement; or
    - (b) at such other time as is provided for in the regulations for the purposes of this paragraph.
  - (4) The description must be sufficiently precise and detailed that the following are clear:
    - (a) that the risk in respect of the particular \*hedged item or items was the one hedged by the \*hedging financial arrangement;
    - (b) the extent to which the risk was hedged;
    - (c) that the rights and/or obligations comprising the hedging financial arrangement were in fact those created, acquired or applied for the purpose of hedging the risk.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (5) If a \*financial arrangement is a \*hedging financial arrangement under subsection 230-335(2) or (3), the following requirements must be met in addition to the requirements of subsections (1), (3) and (4):
- (a) you must make or have in place, at, or soon before or soon after, the time when you create, acquire or apply the arrangement, a record that sets out:
    - (i) a statement of why, and the way in which, the arrangement operates commercially or economically as a hedge of the \*hedged item or items; and
    - (ii) the reasons why the arrangement does not satisfy the requirements of the standards referred to in paragraph 230-315(2)(a) to be a hedging instrument;
  - (b) you must, at the end of each income year during which you have the arrangement, make a record of the accumulated gains and/or losses (whether realised or unrealised) as at the end of that income year from the arrangement or arrangements relating to the hedged item or items that are yet to be included in your assessable income or allowed to you as deductions;
  - (c) you must have, at the time when you create, acquire or apply the arrangement, a record that sets out your risk management policies and practices;
  - (d) you must have in place, at the time when you create, acquire or apply the arrangement, internal risk management systems and controls that record the arrangement and the hedged item or items.
- (6) For the purposes of paragraph (5)(b), you must assume that:
- (a) all the gains from the \*financial arrangement would be assessable income; and
  - (b) all the losses from the financial arrangement would be allowed to you as deductions.

### **230-360 Determining basis for allocating gain or loss**

- (1) A requirement of this section is that you must determine the basis on which your gain or loss from the \*hedging financial

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-365

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arrangement is to be allocated to an income year, or over 2 or more income years, for the purposes of this Division.

- (2) It is also a requirement of this section that the basis that you determine must:
- (a) fairly and reasonably correspond with the basis on which gains, losses or other amounts in relation to the \*hedged item or items are recognised or allocated under this Act; and
  - (b) be objective; and
  - (c) be sufficiently precise and detailed that, when your gain, loss or other amount from the \*hedged item or items is taken into account for the purposes of this Act, the following will be clear from the record made under section 230-355:
    - (i) the time at which the gain or loss from the \*hedging financial arrangement is to be taken into account for the purposes of this Division;
    - (ii) the way in which that gain or loss will be dealt with under section 230-310.
- Note: Paragraph (a) refers to an amount in relation to the hedged item or items being recognised or allocated under this Act. This would include an amount being allowed as a deduction or an amount being included in assessable income. If the hedged item were an asset, an amount referable to a part of the cost of the asset might, for example, be allowed as a deduction for a particular income year.
- (3) To avoid doubt, the income years over which your gain or loss is to be allocated may include an income year that starts after you cease to have the \*hedging financial arrangement.

**230-365 Effectiveness of the hedge**

The requirement of this section is that:

- (a) hedging the risk must be expected to be highly effective (within the meaning of the standards referred to in paragraph 230-315(2)(a)), for the period for which you expect to have the \*hedging financial arrangement, in reducing your exposure to changes in the fair value of the \*hedged item or items or cash flows attributable to your hedged risk; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the fair value of the hedged item or items or cash flows relating to them and the fair value of the arrangement must be able to be reliably measured; and
- (c) you must assess the hedging of the risk by the arrangement:
  - (i) on a regular basis in accordance with the \*accounting standards; and
  - (ii) at least once in each 12 month period;and your assessment must be that it will be highly effective (within the meaning of the standards referred to in paragraph 230-315(2)(a)) in reducing your exposure to changes in the fair value of the hedged item or items or cash flows attributable to the hedged risk throughout the remainder of the period for which you expect to have the arrangement.

### **230-370 When election ceases to apply**

- (1) A \*hedging financial arrangement election ceases to have effect from the start of an income year if you cease to be eligible under subsection 230-315(2) to make the election for that income year.
- (2) Subsection (1) does not prevent you from making a new \*hedging financial arrangement election at a later time if you become, at that later time, eligible under subsection 230-315(2) to make an election for an income year.

Note: The new election will only apply to financial arrangements you start to have after the start of the income year in which the new election is made.

### **230-375 Balancing adjustment if election ceases to apply**

- (1) This section applies if a \*hedging financial arrangement election ceases to have effect under subsection 230-370(1).
- (2) You are taken, for the purposes of this Division, to have:
  - (a) disposed of each \*hedging financial arrangement to which the election applies for its fair value immediately before the election ceases to have effect; and
  - (b) reacquired the arrangement at its fair value immediately after the election ceases to have effect.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 230-380

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- (3) To avoid doubt, this Subdivision applies, for the purposes of working out the consequences of the disposal referred to in paragraph (2)(a), as if the \*hedging financial arrangement were one to which the \*hedging financial arrangement election applied at the time of the disposal.

**230-380 Where requirements not met**

*Commissioner may determine that requirement met*

- (1) If a \*hedging financial arrangement that you have would not meet the requirements of sections 230-355 to 230-365, it nevertheless meets the requirements if the Commissioner considers this appropriate having regard to:
- (a) the respects in which it would not do so; and
  - (b) the extent to which it would not do so; and
  - (c) the reasons why it would not do so; and
  - (d) if the Commissioner is considering whether to impose conditions under subsection (2)—the likelihood that you will comply with those conditions; and
  - (e) the objects of this Subdivision.

*Commissioner may impose additional record keeping requirements*

- (2) The Commissioner may make a determination under subsection (1) conditional on your keeping records in addition to those required by section 230-355.
- (3) A determination under subsection (1) ceases to have effect if you breach a condition imposed under subsection (2).
- (4) Subsection (3) ceases to apply to you if the Commissioner determines that that subsection ceases to apply to you. The determination takes effect from the date specified in the determination.
- (5) In deciding whether to make the determination under subsection (4), the Commissioner must have regard to:
- (a) your record keeping practices; and
  - (b) your compliance history; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) any changes that have been made to:
  - (i) your accounting systems and controls; and
  - (ii) your internal governance processes;to ensure that breaches of the kind referred to in subsection (3) do not happen again; and
- (d) any other relevant matter.

*Commissioner may determine matter under section 230-360*

- (6) If:
  - (a) the Commissioner makes a determination under subsection (1) in relation to a \*hedging financial arrangement; and
  - (b) either or both of the following applies:
    - (i) you fail to determine a matter in relation to the arrangement under section 230-360;
    - (ii) you determine a matter in relation to the arrangement under section 230-360 but the determination does not satisfy the requirements of subsection 230-360(2);the Commissioner may determine that matter and the Commissioner's determination has effect as if you had made the determination and recorded it under that section.

**230-385 You may be excluded from this Subdivision for deliberate failures to comply with requirements**

*When section applies*

- (1) This section applies if:
  - (a) you start to have a \*hedging financial arrangement to which your \*hedging financial arrangement election applies; and
  - (b) you do not meet a requirement of section 230-355 or 230-360 in relation to the arrangement; and
  - (c) you deliberately fail to meet that requirement in order to have this Subdivision not apply to the arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Hedging financial arrangement election ceases to apply*

- (2) The \*hedging financial arrangement election does not apply to a \*hedging financial arrangement you start to have after you fail to meet the requirement referred to in paragraph (1)(b).

*Commissioner may determine that hedging financial arrangement is to reapply*

- (3) Subsection (2) ceases to apply to you if the Commissioner determines that that subsection ceases to apply to you. The determination takes effect from the date specified in the determination.
- (4) The Commissioner may make the determination under subsection (3) only if satisfied that you are unlikely to deliberately fail again to meet a requirement of section 230-355 or 230-360 in order to have this Subdivision not apply to a \*hedging financial arrangement.
- (5) In deciding whether to make the determination under subsection (3), the Commissioner must have regard to:
- (a) your record keeping practices; and
  - (b) your compliance history; and
  - (c) any changes that have been made to:
    - (i) your accounting systems and controls; and
    - (ii) your internal governance processes;to ensure that failures of the kind referred to in paragraph (1)(c) do not happen again; and
  - (d) any other relevant matter.
- (6) If the Commissioner makes a determination under subsection (3), the \*hedging financial arrangement election applies to a \*hedging financial arrangement only if you start to have the arrangement after the determination takes effect.

*Commissioner may still exercise powers under section 230-380*

- (7) This section does not prevent the Commissioner from exercising the Commissioner's powers under section 230-380 in relation to the \*hedging financial arrangement referred to in paragraph (1)(a).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 230-F—Reliance on financial reports**

### **Table of sections**

230-390	Objects of this Subdivision
230-395	Election to rely on financial reports
230-400	Financial reports election where differing income and accounting years
230-405	Commissioner discretion to waive requirements in paragraphs 230-395(2)(c) and (e)
230-410	Financial arrangements to which the election applies
230-415	Financial arrangements not covered by election
230-420	Effect of election to rely on financial reports
230-425	When election ceases to apply
230-430	Balancing adjustment if election ceases to apply

### **230-390 Objects of this Subdivision**

The objects of this Subdivision are:

- (a) to reduce administration and compliance costs by allowing you to align the tax treatment of your gains and losses from a \*financial arrangement with the accounting treatment that applies to the arrangement; and
- (b) to achieve those objects without your obtaining inappropriate tax benefits.

### **230-395 Election to rely on financial reports**

#### *Election*

- (1) You may make an ***election to rely on financial reports*** if you are eligible under subsection (2) to make the election for the income year in which you make the election.

#### *Eligibility to make election*

- (2) You are eligible to make an election to rely on financial reports for an income year if:
  - (a) you prepare a financial report for that income year in accordance with:
    - (i) the \*accounting standards; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards made under a \*foreign law that apply to the preparation of the financial report under a foreign law; and
- (b) the financial report is audited in accordance with:
  - (i) the \*auditing standards; or
  - (ii) if the auditing standards do not apply to the auditing of the financial report—comparable auditing standards made under a foreign law; and
- (c) your auditor has not qualified the auditor’s report on your financial report for that income year or any of the last 4 financial years in a respect that is relevant to the taxation treatment of \*financial arrangements; and
- (d) your accounting systems and controls and your internal governance processes are reliable; and
- (e) no report of an audit or review conducted in the income year, or any of the preceding 4 income years, has included an adverse assessment of your accounting systems in a respect that is relevant to the taxation treatment of financial arrangements.

Note 1: Paragraph (b)—section 230-500 allows regulations to be made specifying particular foreign accounting and auditing standards as ones that are to be treated as comparable with Australian accounting and auditing standards for the purposes of this Division.

Note 2: For the purposes of paragraphs (c) and (e), a qualification or assessment may be relevant to the taxation treatment of financial arrangements even though it does not deal with the amount or timing of recognition of gains or losses (but relates, for example, to the reliability of the accounting systems through which information about financial arrangements is recorded).

- (3) Paragraph (2)(e) does not apply to a report of:
  - (a) an internal audit or review that you conduct; or
  - (b) an audit or review of a kind prescribed by the regulations for the purposes of this paragraph.

*Election irrevocable*

- (4) An election under subsection (1) is irrevocable.

Note: The election may cease to apply under section 230-425.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**230-400 Financial reports election where differing income and accounting years**

- (1) This section applies if:
  - (a) you prepare a financial report for a year (the *first year*); and
  - (b) you prepare a financial report for the subsequent year (the *second year*); and
  - (c) your income year starts in the first year and ends in the second year; and
  - (d) both the financial report for the first year and the financial report for the second year are:
    - (i) prepared in accordance with paragraph 230-395(2)(a); and
    - (ii) audited in accordance with paragraph 230-395(2)(b); and
  - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-395(2).
- (3) Work out the gain or loss you make from the arrangement for the income year as follows:
  - (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with section 230-420 (treating the first year as an income year);
  - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
  - (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with section 230-420 (treating the second year as an income year);
  - (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);
  - (e) next:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 230-405

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- (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or
  - (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or
  - (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.
- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
- (a) using a methodology that is reasonable; and
  - (b) using the same methodology for the first and second years.
- (5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

**230-405 Commissioner discretion to waive requirements in paragraphs 230-395(2)(c) and (e)**

- (1) Paragraph 230-395(2)(c) or (e) does not apply in relation to your \*election to rely on financial reports for a particular income year or income years if the Commissioner determines that the paragraph does not apply to the election for that income year or those income years.
- (2) In deciding whether to make the determination under subsection (1), the Commissioner must have regard to:
- (a) the reasons for the non-compliance with the standards concerned; and
  - (b) the remedial action (if any) that you have undertaken to ensure that non-compliance with those standards does not occur in future (such as changes to your accounting systems and controls or to your internal governance structures); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) if you, or your activities, are subject to regulatory oversight or review—any opinions expressed by the regulator about the adequacy of remedial action of the kind referred to in paragraph (b); and
- (d) any other relevant matter.

### **230-410 Financial arrangements to which the election applies**

- (1) An \*election to rely on financial reports applies in relation to a \*financial arrangement that you have if:
  - (a) the arrangement is a \*Division 230 financial arrangement; and
  - (b) you start to have the arrangement in the income year in which you make the election or in a later income year; and
  - (c) the arrangement is recognised in financial reports of the kind referred to in paragraph 230-395(2)(a) that are audited as referred to in paragraph 230-395(2)(b); and
  - (d) if the arrangement is a financial arrangement under section 230-50—the arrangement is an asset or liability that you are required (whether or not as a result of a choice you make) by:
    - (i) the \*accounting standards; or
    - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards that apply to the preparation of the financial report under a \*foreign law;to classify or designate, in the financial reports, as at fair value through profit or loss; and
  - (e) it is reasonably expected that the following is, or will be, the same:
    - (i) the amount of the overall gain or loss you make from the arrangement (as determined in accordance with the financial reports);
    - (ii) the amount of the overall gain or loss you make from the arrangement (as determined in accordance with the provisions of this Division if the election under subsection (1) did not apply to the arrangement); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-410

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- (f) the differences between the results of the following methods would reasonably be expected not to be substantial:
  - (i) the method used in your financial reports to work out the amounts of the gain or loss you make from the arrangement for each income year;
  - (ii) the method that would be applied by this Division to work out the amounts of those gains or losses if the election did not apply to the arrangement.

This subsection has effect subject to section 230-415.

- (2) In applying paragraph (1)(f) at the time when you start to have the \*financial arrangement, disregard any differences between the results of the methods referred to in subparagraphs (1)(f)(i) and (ii) that are attributable solely to the provision for the possible impairment of debts required by the standards referred to in paragraph 230-395(2)(a).
- (3) Subsections (4), (5) and (6) apply if, but for this subsection, paragraphs (1)(c) and (d) would not be satisfied in relation to a \*financial arrangement because the arrangement is an intra-group transaction for the purposes of:
  - (a) \*accounting standard AASB 127 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
  - (b) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a \*foreign law.

Note: Financial arrangements between members of a consolidated group or MEC group are not covered by this subsection because the single entity rule in subsection 701-1(1) operates to treat them as not being financial arrangements for the purposes of this Division.

- (4) Paragraphs (1)(c) and (d) are taken to be satisfied in relation to the \*financial arrangement.
- (5) Paragraph (1)(e) applies as if the reference in subparagraph (1)(e)(i) to the amount of the overall gain or loss you make from the \*financial arrangement (as determined in accordance with the financial reports) were a reference to the amount of that overall gain or loss (as would be determined in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

accordance with the financial reports if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph (3)(b)).

- (6) Paragraph (1)(f) applies as if the reference in subparagraph (1)(f)(i) to the method used in your financial reports to work out the amounts of the gain or loss you make from the arrangement for each income year were a reference to the method that would be used in your financial reports to work out those amounts if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph (3)(b).
- (7) For the purposes of applying subparagraphs (1)(e)(ii) and (f)(ii) to a \*financial arrangement, assume that you had made any election that:
  - (a) you could make under Subdivision 230-C or 230-D; and
  - (b) could apply to the arrangement.
- (8) If:
  - (a) the \*financial arrangement would not be a financial arrangement if the following provisions were disregarded:
    - (i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);
    - (ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and
  - (b) paragraphs (1)(c) and (d) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities; and
  - (c) the \*election to rely on financial reports is made by:
    - (i) if section 121EB of the *Income Tax Assessment Act 1936* applies—the OBU mentioned in that section (disregarding the operation of that section); or
    - (ii) if section 160ZZW of that Act applies—the bank mentioned in that section (disregarding the operation of that section);paragraphs (1)(c) and (d) are taken to be satisfied in relation to the arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **230-415 Financial arrangements not covered by election**

- (1) An \*election to rely on financial reports does not apply to a \*financial arrangement if:
  - (a) the arrangement is an \*equity interest; and
  - (b) you are the issuer of the equity interest.
- (2) An \*election to rely on financial reports does not apply to a \*financial arrangement if:
  - (a) you are:
    - (i) an individual; or
    - (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
  - (b) the arrangement is a \*qualifying security; and
  - (c) you have not made an election under subsection 230-455(7).
- (3) An \*election to rely on financial reports does not apply to a \*financial arrangement if:
  - (a) the election is made by the \*head company of a \*consolidated group or \*MEC group; and
  - (b) the election specifies that the election is not to apply to financial arrangements in relation to \*life insurance business carried on by a member of the consolidated group or MEC group; and
  - (c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.
- (4) An \*election to rely on financial reports does not apply to a \*financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

### **230-420 Effect of election to rely on financial reports**

- (1) If an \*election to rely on financial reports applies to a \*financial arrangement, the gain or loss you make from the arrangement for an income year is:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the gain or loss that the standards referred to in paragraph 230-395(2)(a) require you to recognise in profit or loss from that arrangement for that income year; or
- (b) if subsection 230-410(3) applies to the arrangement—the gain or loss that the standards referred to in paragraph 230-395(2)(a) would have required you to recognise in profit or loss from that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-410(3)(b); or
- (c) if subsection 230-410(8) applies to the arrangement—the gain or loss that the standards referred to in paragraph 230-410(1)(d) would have required you to recognise in profit or loss for the year from the asset or liability mentioned in paragraph 230-410(1)(d) if the arrangement had been between 2 separate entities.

Note: Subsection 230-40(7) provides that this Subdivision does not apply to a gain or loss from a financial arrangement to the extent to which Subdivision 230-E (hedging financial arrangements method) applies to the arrangement.

- (2) Subsection (3) applies if:
  - (a) a \*head company of a \*consolidated group or \*MEC group has a \*financial arrangement; and
  - (b) an \*election to rely on financial reports applies to the arrangement; and
  - (c) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and
  - (d) immediately after the leaving time, the subsidiary member has the arrangement.
- (3) The gain or loss the group makes from the \*financial arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that the standards referred to in paragraph 230-395(2)(a) would require the group to recognise in profit or loss from the arrangement for that income year if:
  - (a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) any circumstances that arise in relation to the arrangement after the leaving time were disregarded.

**230-425 When election ceases to apply**

- (1) An election under subsection 230-395(1) ceases to have effect from the start of an income year if you cease to be eligible to make an \*election to rely on financial reports for that income year.
- (2) Subsection (1) does not prevent you from making a new election under subsection 230-395(1) at a later time if you become, at that later time, eligible to make an \*election to rely on financial reports for an income year.

Note: The new election will only apply to financial arrangements you start to have after the start of the income year in which the new election is made.

- (3) An election under subsection 230-395(1) ceases to apply to a \*financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of paragraph 230-410(1)(c), (d), (e) or (f) during that income year.
- (4) If the election ceases to apply to a particular \*financial arrangement under subsection (3), the election cannot subsequently apply to that arrangement (even if the requirements of paragraphs 230-410(1)(c), (d), (e) and (f) are satisfied once more in relation to the arrangement).

**230-430 Balancing adjustment if election ceases to apply**

- (1) You must make balancing adjustments under subsection (2) if an election under subsection 230-395(1) ceases to have effect under subsection 230-425(1).
- (2) The balancing adjustments under this subsection are the balancing adjustments you would make under Subdivision 230-G in relation to each of the \*financial arrangements to which the election applied if you disposed of the arrangement for its fair value when the election ceases to have effect.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) You must make balancing adjustments under subsection (5) if an election under subsection 230-395(1) ceases to apply to a particular \*financial arrangement under subsection 230-425(3).
- (4) Subsection (3) does not apply to a \*financial arrangement if:
  - (a) the arrangement is not one that you are required (whether or not as a result of a choice you make) by the standards referred to in paragraph 230-395(2)(a) to classify or designate, in your financial reports, as at fair value through profit or loss; and
  - (b) the election under subsection 230-395(1) ceases to apply to the arrangement because the arrangement fails to satisfy the requirements of paragraph 230-410(1)(e) or (f); and
  - (c) the arrangement ceases to satisfy the requirements of that paragraph because the arrangement becomes impaired for the purposes of those standards.
- (5) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you disposed of the \*financial arrangement for its fair value when the election ceases to apply to the arrangement.
- (6) If a balancing adjustment is made under subsection (2) or (5) in relation to a \*financial arrangement, you are taken, for the purposes of this Division, to have reacquired the arrangement at its fair value immediately after the election ceased to have effect or ceased to apply to the arrangement.

### **Subdivision 230-G—Balancing adjustment on ceasing to have a financial arrangement**

#### **Table of sections**

230-435	When balancing adjustment made
230-440	Exceptions
230-445	Balancing adjustment

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 230-435 When balancing adjustment made

*When balancing adjustment made*

- (1) A balancing adjustment is made under this Subdivision if:
  - (a) you transfer to another entity all of your rights and/or obligations under a \*financial arrangement; or
  - (b) all of your rights and/or obligations under a financial arrangement otherwise cease; or
  - (c) you transfer to another entity:
    - (i) a proportionate share of all of your rights and/or obligations under a financial arrangement; or
    - (ii) a right or obligation that you have under a financial arrangement to a specifically identified \*financial benefit; or
    - (iii) a proportionate share of a right or obligation that you have under a financial arrangement to a specifically identified financial benefit; or
  - (d) an \*arrangement that is a \*Division 230 financial arrangement ceases to be a financial arrangement.
- (2) Paragraphs (1)(a), (b) and (c) do not apply to a right or obligation under a \*financial arrangement unless that right or obligation is one of the rights or obligations that constitute the financial arrangement.

Note: See subsections 230-45(1) and 230-50(1) and (2) for the rights and/or obligations that constitute a financial arrangement.

*Modifications for arrangements that are assets*

- (3) If the \*financial arrangement is an asset of yours at the time the event referred to in subsection (1) occurs, paragraphs (1)(a) and (c) do not apply unless the effect of the transfer is to transfer to the other entity substantially all the risks and rewards of ownership of the interest transferred.
- (4) If a \*financial arrangement is an asset of yours, for the purposes of applying this Subdivision to the arrangement, you are treated as transferring a right under the arrangement to another entity if:
  - (a) you retain the right but assume a new obligation; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) your assumption of the new obligation has the same effect, in substance, as transferring the right to another entity; and
- (c) the new obligation arises only to the extent to which the right to \*financial benefits under the arrangement is satisfied; and
- (d) you cannot sell or pledge the right (other than as security in relation to the new obligation); and
- (e) you must, under the new obligation, provide financial benefits you receive in relation to the right to the entity to which you owe the new obligation without delay.

*Historic rate rollover of derivative financial arrangement*

- (5) For the purposes of paragraph (1)(b), all of your rights and/or obligations under a \*financial arrangement that is a \*derivative financial arrangement are taken to \*cease if there is an historic rate rollover of the arrangement.

**230-440 Exceptions**

*Equity interests etc.*

- (1) A balancing adjustment is not made under this Subdivision in relation to a \*financial arrangement at a time if:
  - (a) the arrangement is a financial arrangement under section 230-50 (equity interests etc.); and
  - (b) neither Subdivision 230-C nor Subdivision 230-F apply to the arrangement immediately before that time.

*Financial arrangements to which hedging financial arrangement elections apply*

- (2) Balancing adjustments are not made under this Subdivision in relation to a \*financial arrangement in relation to which a \*hedging financial arrangement election applies.

*Bad debts, margining and conversion into, or exchange for, ordinary shares*

- (3) A balancing adjustment is not made under this Subdivision in relation to the following events:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-440

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- (a) a \*financial arrangement being written off in whole or part as a bad debt;
- (b) a financial arrangement that is a \*derivative financial arrangement being settled or closed out for margining purposes;
- (c) the ceasing of obligations or rights under a financial arrangement that is a \*traditional security if:
  - (i) the ceasing occurs because the traditional security is converted into ordinary shares in, or transferred to, a company that is the issuer of the traditional security or a \*connected entity; and
  - (ii) the traditional security was issued on the basis that it will or may convert into ordinary shares in, or be transferred to, the issuer of the traditional security or the connected entity;
- (d) the ceasing of obligations or rights under a financial arrangement that is a traditional security if:
  - (i) the ceasing occurs because the traditional security is exchanged for ordinary shares in a company that is neither the issuer of the traditional security nor a connected entity; and
  - (ii) if the ceasing of the obligations or rights occurs because of a disposal—the disposal is to the issuer of the traditional security or a connected entity; and
  - (iii) the traditional security was issued on the basis that it will or may be exchanged for ordinary shares in the company.

Note: Paragraph (a)—for the treatment of bad debts, see paragraph 230-190(3)(c).

*Subsidiary member leaving consolidated group or MEC group*

- (4) A balancing adjustment is not made under this Subdivision in relation to a subsidiary member of a \*consolidated group or \*MEC group that has a \*financial arrangement ceasing to be a member of the group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## 230-445 Balancing adjustment

### *Complete cessation or transfer*

- (1) Use the following method statement to make the balancing adjustment if paragraph 230-435(1)(a), (b) or (d) applies:

#### *Method statement for balancing adjustment*

Step 1. Add up the following:

- (a) the total of all the \*financial benefits you have received under the \*financial arrangement;

Note: This would include financial benefits you receive in relation to the transfer or cessation (see paragraph 230-60(2)(c)).

- (b) the total of the amounts that have been allowed to you as deductions, because of circumstances that have occurred before the transfer or cessation, for losses from the arrangement;

- (c) the total of the other amounts that would have been allowed to you as deductions, because of circumstances that have occurred before the transfer or cessation, for losses from the arrangement if all your losses from the arrangement were allowable as deductions;

Note: The losses from the arrangement here include losses made in gaining or producing exempt income or non-assessable non-exempt income.

- (d) the total of the amounts that will be allowed to you as deductions after the transfer or cessation because of a balancing adjustment under subitems 104(12) to (18) of the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* to the extent to which those amounts are attributable to the arrangement;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (e) the total of the amounts that will be allowed to you as deductions after the transfer or cessation because of sections 230-160 and 230-165 to the extent to which those amounts are attributable to the arrangement.

Step 2. Add up the following:

- (a) the total of all the \*financial benefits you have provided under the \*financial arrangement;

Note: This would include financial benefits you provide in relation to the transfer or cessation (see paragraph 230-60(1)(c)).

- (b) the total of the amounts that have been included in your assessable income, because of circumstances that have occurred before the transfer or cessation, as gains from the arrangement;

- (c) the total of the other amounts that would have been included in your assessable income, because of circumstances that have occurred before the transfer or cessation, as gains from the arrangement if all your gains from the arrangement were assessable;

Note: The gains from the arrangement here include amounts of exempt income or non-assessable non-exempt income.

- (d) the total of the amounts that will be included in your assessable income after the transfer or cessation because of a balancing adjustment under subitems 104(12) to (18) of the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* to the extent to which those amounts are attributable to the arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (e) the total of the amounts that will be included in your assessable income after the transfer or cessation because of sections 230-160 and 230-165 to the extent to which those amounts are attributable to the arrangement.

Step 3. Compare the amount obtained under step 1 (the *step 1 amount*) with the amount obtained under step 2 (the *step 2 amount*). If the step 1 amount exceeds the step 2 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a gain you make from the <sup>\*</sup>financial arrangement for the purposes of this Division. If the step 2 amount exceeds the step 1 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a loss that you make from the arrangement. If the step 1 amount and the step 2 amount are equal, no balancing adjustment is made.

*Proportionate transfer of all rights and/or obligations under financial arrangement*

- (2) If subparagraph 230-435(1)(c)(i) applies, you make the balancing adjustment by applying the method statement in subsection (1) but reduce:
- (a) the amounts referred to in step 1; and
  - (b) the amounts referred to in step 2;
- by applying the proportion referred to in subparagraph 230-435(1)(c)(i) to them.

*Transfer of specifically identified right or obligation under financial arrangement*

- (3) If subparagraph 230-435(1)(c)(ii) applies, you make the balancing adjustment by applying the method statement in subsection (1) as if the references to:
- (a) the amounts referred to in step 1; and
  - (b) the amounts referred to in step 2;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-445

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were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 230-435(1)(c)(ii).

*Proportionate transfer of specifically identified right or obligation under financial arrangement*

- (4) If subparagraph 230-435(1)(c)(iii) applies, you make the balancing adjustment by applying the method statement:
- (a) as if the references to:
    - (i) the amounts referred to in step 1; and
    - (ii) the amounts referred to in step 2;were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 230-435(1)(c)(iii); and
  - (b) by reducing those amounts by applying the proportion referred to in subparagraph 230-435(1)(c)(iii) to them.

*Attribution must reflect appropriate and commercially accepted valuation principles*

- (5) Any attribution made under subsection (3) or paragraph (4)(a) must reflect appropriate and commercially accepted valuation principles that properly take into account:
- (a) the nature of the rights and obligations under the \*financial arrangement; and
  - (b) the risks associated with each \*financial benefit, right and obligation under the arrangement; and
  - (c) the time value of money.

*Income year for which gain or loss is made*

- (6) The gain or loss you are taken to make under subsection (1), (2), (3) or (4) is a gain or loss for the income year in which the event referred to in subsection 230-435(1) occurs.

*Treatment of bad debts in relation to financial arrangements*

- (7) For the purposes of applying paragraph (b) of step 1 of the method statement in subsection (1) to a \*financial arrangement, a bad debt

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

deduction in relation to the arrangement to which subsection 230-25(3) applies is taken to be a deduction for a loss from the arrangement.

## **Subdivision 230-H—Exceptions**

### **Table of sections**

230-450	Short-term arrangements where non-money amount involved
230-455	Certain taxpayers where no significant deferral
230-460	Various rights and/or obligations
230-465	Ceasing to have a financial arrangement in certain circumstances
230-470	Forgiveness of commercial debts
230-475	Clarifying exceptions
230-480	Treatment of gains in form of franked distribution etc.

### **230-450 Short-term arrangements where non-money amount involved**

This Division does not apply in relation to your gains and losses from a \*financial arrangement if:

- (a) the arrangement is a financial arrangement under section 230-45; and
- (b) either:
  - (i) you acquired goods or other property (other than goods that are, or property that is, money or a \*money equivalent) or services (other than services that are a money equivalent) from another entity and the \*financial benefits you are to provide under the arrangement are consideration for those goods, that property or those services; or
  - (ii) you provided goods or other property (other than goods that are, or other property that is, money or a money equivalent) or services (other than services that are a money equivalent) to another entity and the financial benefits you are to receive under the arrangement are consideration for those goods, that property or those services; and
- (c) the period between the following is not more than 12 months:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 230-455

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- (i) the time when you are to provide or receive the consideration (or a substantial proportion of it);
- (ii) the time when you acquired or provided the property, goods or services (or a substantial proportion of them); and
- (d) the arrangement is not a \*derivative financial arrangement for any income year; and
- (e) a \*fair value election does not apply to the arrangement.

**230-455 Certain taxpayers where no significant deferral**

- (1) This Division does not apply in relation to your gains or losses from a \*financial arrangement for any income year if:
  - (a) you are:
    - (i) an individual; or
    - (ii) a superannuation entity (within the meaning of section 10 of the *Superannuation Industry (Supervision) Act 1993*), a managed investment scheme (within the meaning of the *Corporations Act 2001*) or an entity with a similar status to such a scheme under a \*foreign law relating to corporate regulation; or
    - (iii) an \*ADI, a \*securitisation vehicle, an entity that is required to register under the *Financial Sector (Collection of Data) Act 2001* or an entity that would be required to register under that Act if it were a corporation; or
    - (iv) an entity other than an entity of a kind mentioned in subparagraph (i), (ii) or (iii); and
  - (b) where subparagraph (a)(ii) applies—you satisfy subsection (2) for the income year in which you start to have the arrangement; and
  - (c) where subparagraph (a)(iii) applies—you satisfy subsection (3) for the income year in which you start to have the arrangement; and
  - (d) where subparagraph (iv) applies—you satisfy subsection (4) for the income year in which you start to have the arrangement; and
  - (e) either:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (i) the arrangement is to end not more than 12 months after you start to have it; or
  - (ii) the arrangement is not a \*qualifying security.
- (2) An entity satisfies this subsection for an income year if:
  - (a) the value of the entity's assets (see subsection (5)) for the income year (worked out at the end of the income year) is less than \$100 million if the income year is the one in which the entity comes into existence; or
  - (b) the value of the entity's assets for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$100 million if the income year is an income year after the one in which the entity comes into existence.
- (3) An entity satisfies this subsection for an income year if:
  - (a) the entity's \*aggregated turnover for the income year (worked out at the end of the income year) is less than \$20 million if the income year is the one in which the entity comes into existence; or
  - (b) the entity's aggregated turnover for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$20 million if the income year is an income year after the one in which the entity comes into existence.
- (4) An entity satisfies this subsection for an income year if:
  - (a) either:
    - (i) the entity's \*aggregated turnover for the income year (worked out at the end of the income year) is less than \$100 million if the income year is the one in which the entity comes into existence; or
    - (ii) the entity's aggregated turnover for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$100 million if the income year is an income year after the one in which the entity comes into existence; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) either:
    - (i) the value of the entity's financial assets (see subsection (5)) for the income year (worked out at the end of the income year) is less than \$100 million if the income year is the one in which the entity comes into existence; or
    - (ii) the value of the entity's financial assets for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$100 million if the income year is an income year after the one in which the entity comes into existence; and
  - (c) either:
    - (i) the value of the entity's assets (see subsection (5)) for the income year (worked out at the end of the income year) is less than \$300 million if the income year is the one in which the entity comes into existence; or
    - (ii) the value of the entity's assets for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$300 million if the income year is an income year after the one in which the entity comes into existence.
- (5) For the purposes of subsections (2) and (4), the value of the entity's assets or financial assets is to be determined in accordance with:
- (a) if the entity applies \*accounting standard AAS 25 in preparation of its financial reports—that accounting standard or another accounting standard prescribed by the regulations for the purposes of this paragraph; or
  - (b) if paragraph (a) does not apply and the entity prepares its financial reports in accordance with the accounting standards—the entity's financial reports; or
  - (c) if paragraphs (a) and (b) do not apply and the entity prepares its financial reports in accordance with an accounting standard comparable to accounting standard AAS 25 under a \*foreign law—that comparable standard; or
  - (d) if paragraphs (a), (b) and (c) do not apply—commercially accepted valuation principles.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (6) Subsection (1) does not apply to your gains or losses from a \*financial arrangement for an income year if:
  - (a) you have made an election under subsection (7) in that income year or an earlier income year; and
  - (b) you start to have the arrangement after the beginning of the income year in which you make the election.
- (7) An election under this subsection is an election to have this Division apply to all of the \*financial arrangements that you start to have in the income year in which the election is made or a later income year.
- (8) An election under subsection (7) is irrevocable.
- (9) This section does not apply in relation to your gains or losses from a \*financial arrangement that you start to have after a time if you are not an individual and you failed to satisfy subsection (2), (3) or (4) (as the case may be) for an income year ending before that time.

### **230-460 Various rights and/or obligations**

#### *Rights and/or obligations subject to an exception*

- (1) This Division does not apply to your gains and losses from a \*financial arrangement for any income year to the extent that your rights and/or obligations under the arrangement are the subject of an exception under any of the following subsections.

Note: Further exceptions are also provided for in section 230-475.

#### *Leasing or property arrangement*

- (2) A right or obligation arising under:
  - (a) an \*arrangement to which Division 42A (about leases of luxury cars) of Schedule 2E to the *Income Tax Assessment Act 1936* applies; or
  - (b) an arrangement to which Division 240 of this Act (about arrangements treated as a sale and loan) applies; or
  - (c) an arrangement that relates to an asset to which Division 250 of this Act (about assets put to tax preferred use) applies; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (d) an arrangement that, in substance or effect, depends on the use of a specific asset that is:
  - (i) real property; or
  - (ii) goods or a personal chattel (other than money or a \*money equivalent); or
  - (iii) intellectual property;and gives a right to control the use of the asset; or
- (e) an arrangement that is a licence to use:
  - (i) real property; or
  - (ii) goods or a personal chattel (other than money or a money equivalent); or
  - (iii) intellectual property;is the subject of an exception.

*Interest in partnership or trust*

- (3) A right carried by an interest in a partnership or a trust, or an obligation that corresponds to such a right, is the subject of an exception if:
  - (a) there is only one class of interest in the partnership or trust; or
  - (b) the interest is an \*equity interest in the partnership or trust; or
  - (c) for a right or obligation relating to a trust—the trust is managed by a funds manager or custodian, or a responsible entity (as defined in the *Corporations Act 2001*) of a registered scheme (as so defined).
- (4) Subsection (3) does not apply if a \*fair value election, or an \*election to rely on financial reports, applies to the \*financial arrangement.

*Certain insurance policies*

- (5) A right or obligation under a \*life insurance policy is the subject of an exception unless:
  - (a) you are not a \*life insurance company that is the insurer under the policy; and
  - (b) the policy is an annuity that is a \*qualifying security.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (6) A right or obligation under a \*general insurance policy is the subject of an exception unless:
- (a) you are not a \*general insurance company; and
  - (b) the policy is a \*derivative financial arrangement.

*Certain workers' compensation arrangements*

- (7) A right or obligation in relation to a liability for workers' compensation claims to which Division 323 of Schedule J to the *Income Tax Assessment Act 1936* applies is the subject of an exception.

*Certain guarantees and indemnities*

- (8) A right or obligation under a guarantee or indemnity is the subject of an exception unless:
- (a) the \*financial arrangement is the subject of a \*fair value election or an \*election to rely on financial reports; or
  - (b) the financial arrangement is a \*derivative financial arrangement; or
  - (c) the guarantee or indemnity is given in relation to a financial arrangement.

*Personal arrangements and personal injury*

- (9) The following rights and obligations are the subject of an exception:
- (a) a right to receive, or an obligation to provide, consideration for providing personal services;
  - (b) a right, or obligation, arising from the administration of a deceased person's estate;
  - (c) a right to receive, or an obligation to provide, a gift under a deed;
  - (d) a right to receive, or an obligation to provide, a \*financial benefit by way of maintenance:
    - (i) to an individual who is or has been the \*spouse of the person liable to provide the benefit; or
    - (ii) to or for the benefit of an individual who is or has been a child of the person liable to provide the benefit; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-460

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- (iii) to or for the benefit of an individual who is or has been a child of an individual who is or has been a spouse of the person liable to provide the benefit;
  - (e) a right to receive, or an obligation to provide, a financial benefit in relation to personal injury to an individual;
  - (f) a right to receive, or an obligation to provide, a financial benefit in relation to an injury to an individual's reputation.
- (10) Without limiting paragraph (9)(e), that paragraph applies:
- (a) even if the person to whom the \*financial benefit is to be provided is not the individual who was injured; and
  - (b) even if the personal injury to the individual takes the form of:
    - (i) a wrong to the individual; or
    - (ii) illness of the individual.

Note: The person referred to in paragraph (a) may, for example, be a relative of the individual who was injured.

*Superannuation and pension benefits*

- (11) A right to receive, or an obligation to provide, \*financial benefits is the subject of an exception if the right or obligation arises from a person's membership of a superannuation or pension scheme, including:
- (a) a right of a dependant of a member to receive financial benefits or an obligation to provide financial benefits to a dependant of a member; and
  - (b) a right or obligation arising from an interest in:
    - (i) a \*complying superannuation fund or \*non-complying superannuation fund; or
    - (ii) a \*pooled superannuation trust; or
    - (iii) an \*approved deposit fund; or
    - (iv) an \*RSA.

*Interest in certain foreign companies, foreign trusts and FLPs*

- (12) A right or obligation that arises under an interest (within the meaning of Part XI of the *Income Tax Assessment Act 1936*) in a \*FIF or \*FLP is the subject of an exception.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Proceeds from certain business sales*

- (13) A right to receive, or an obligation to provide, \*financial benefits arising from the sale of:
- (a) a business; or
  - (b) shares in a company that operates a business; or
  - (c) interests in a trust that operates a business;
- is the subject of an exception if the amounts, or the values, of those benefits are contingent only on the economic performance of the business after the sale.

*Infrastructure borrowings*

- (14) A right to receive, or an obligation to provide, \*financial benefits is the subject of an exception if the right or obligation arises under an \*arrangement to which Division 16L of the *Income Tax Assessment Act 1936* applies.

*Farm Management Deposits*

- (15) A right to receive, or an obligation to provide, \*financial benefits is the subject of an exception if the right or obligation is the right or obligation of an owner of a \*farm management deposit that relates to the deposit.

*Rights and obligations to which section 121EK of the Income Tax Assessment Act 1936 applies*

- (16) A right or obligation that arises because of a payment of an amount to which section 121EK of the *Income Tax Assessment Act 1936* applies is the subject of an exception.

*Forestry managed investment scheme interests*

- (17) A right or obligation under a \*forestry interest in a \*forestry managed investment scheme in relation to which you can claim deductions under Division 394 is the subject of an exception.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Regulations may provide for exceptions*

- (18) A right or obligation of a kind specified in the regulations for the purposes of this subsection is the subject of an exception.

**230-465 Ceasing to have a financial arrangement in certain circumstances**

- (1) This section applies if:
- (a) you cease to have a \*financial arrangement (or part of a financial arrangement); and
  - (b) you make a loss from ceasing to have the arrangement (or that part of the arrangement); and
  - (c) if the arrangement is a marketable security (within the meaning of section 70B of the *Income Tax Assessment Act 1936*):
    - (i) you did not acquire the arrangement in the ordinary course of trading on a securities market (within the meaning of that section); and
    - (ii) at the time you acquired the arrangement, it was not open to you to acquire an identical financial arrangement in the ordinary course of trading on a securities market; and
  - (d) if the arrangement is a marketable security—you did not dispose of the arrangement in the course of trading on a securities market; and
  - (e) it would be concluded that you ceased to have the arrangement wholly or partly because there was an apprehension or belief that the other party or other parties to the arrangement were, or would be likely to be, unable or unwilling to discharge all their liabilities to pay amounts under the arrangement.
- (2) The amount of the loss is reduced by so much of that amount as is a loss of capital or a loss of a capital nature.
- Note:        However, the amount by which the loss is reduced is a capital loss.
- (3) In applying paragraph (1)(e), you must have regard to:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the financial position of the other party or parties to the \*financial arrangement; and
- (b) the perceptions of the financial position of the other party or parties to the arrangement; and
- (c) other relevant matters.

### **230-470 Forgiveness of commercial debts**

If a gain that you make from a \*financial arrangement arises from the forgiveness of a debt (as defined in Subdivision 245-B of Schedule 2C to the *Income Tax Assessment Act 1936*), the gain is reduced by:

- (a) if section 245-90 (about agreements to forgo capital losses or revenue reductions) of that Schedule does not apply—the debt’s net forgiven amount as defined in paragraph 245-85(2)(a) of that Schedule; or
- (b) if that section does apply—the debt’s provisional net forgiven amount as defined in paragraph 245-85(2)(b) of that Schedule.

Note: Section 51AAA (about a net capital gains limit) of the *Income Tax Assessment Act 1936* also has the effect of preventing you from deducting losses.

### **230-475 Clarifying exceptions**

#### *Exceptions*

- (1) To avoid doubt, this Division does not apply to your gains and losses from a \*financial arrangement for any income year to the extent that your rights and/or obligations are the subject of an exception under any of the following subsections.
- (2) This section is not intended to limit, expand or otherwise affect the operation of sections 230-45 to 230-55 (which tell you what is covered by the concept of *financial arrangement*) in relation to rights and/or obligations other than those dealt with in this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-480

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*Retirement village and residential or flexible care arrangements*

- (3) The following rights and obligations are the subject of an exception:
- (a) a right or obligation arising under a \*retirement village residence contract;
  - (b) a right or obligation arising under a \*retirement village services contract;
  - (c) a right or obligation arising under an \*arrangement under which \*residential care or \*flexible care is provided.
- (4) For the purposes of subsection (3):
- (a) a **retirement village residence contract** is a contract that gives rise to a right to occupy \*residential premises in a \*retirement village; and
  - (b) a **retirement village services contract** is a contract under which a resident of a retirement village is provided with general or personal services in the retirement village.

**230-480 Treatment of gains in form of franked distribution etc.**

- (1) This section applies if a gain you make from a \*financial arrangement is in the form of:
- (a) a \*franked distribution (including a franked distribution that \*flows indirectly to you); or
  - (b) a right to receive a franked distribution (including a franked distribution that will flow indirectly to you).
- (2) This Division does not apply to the gain to the extent that the \*franked distribution has a \*franked part.

**Subdivision 230-I—Other provisions**

**Table of sections**

230-485	Effect of change of residence—rules for particular methods
230-490	Effect of change of residence—disposal and reacquisition etc. after ceasing to be Australian resident where no further recognised gains or losses from arrangement
230-495	Effect of change of accounting standards

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- 230-500 Comparable foreign accounting and auditing standards
- 230-505 Financial arrangement as consideration for provision or acquisition of a thing
- 230-510 Non-arm's length dealings in relation to financial arrangement
- 230-515 Arm's length dealings in relation to financial arrangement—adjustment to gain or loss in certain situations
- 230-520 Disregard gains or losses covered by value shifting regime
- 230-525 Consolidated financial reports

### **230-485 Effect of change of residence—rules for particular methods**

- (1) The object of this section is to deal with your gains and losses for an income year in which you change residence by:
  - (a) allocating the gains and losses to your periods of Australian and foreign residence in that income year; and
  - (b) determining the assessability of the gains and the deductibility of the losses according to:
    - (i) your residency in each period; and
    - (ii) the sources of the gains and the connection of the losses with your assessable income.
  
- (2) This section applies if:
  - (a) you are a foreign resident for part of an income year (the *foreign residency period*) and an Australian resident for the other part of the income year (the *Australian residency period*); and
  - (b) section 230-490 does not apply in respect of the change of residence.

Note: See section 230-490 if you change residence, and after the change the gains and losses you make from the arrangement are not assessable or deductible under this Division.

#### *Realisation method*

- (3) Subsection (4) applies if:
  - (a) you have a \*financial arrangement at the time (the *residence change time*):
    - (i) you cease to be an Australian resident; or
    - (ii) you become an Australian resident; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) you apply the realisation method to determine the amount of a gain or loss you make from the arrangement.
- (4) You are taken for the purposes of this Division:
  - (a) to have disposed of the arrangement just before the residence change time for its fair value just before that time; and
  - (b) to have acquired the arrangement again at the residence change time for its fair value at that time.

*Accruals and hedging financial arrangement methods*

- (5) Subsection (6) applies if:
  - (a) assuming that you disregarded this section and subsection 230-40(2), you would apply the accruals or hedging financial arrangement method to determine the amount of:
    - (i) a gain included in your assessable income under section 230-15 for the income year; or
    - (ii) a loss you can deduct under section 230-15 for the income year; and
  - (b) subsection (4) does not apply in relation to any gain or loss under the arrangement.
- (6) Apply that method by apportioning the gain or loss on a reasonable basis between those periods so as to work out:
  - (a) a gain or loss from the arrangement for the foreign residency period; and
  - (b) a gain or loss from the arrangement for the Australian residency period.

*Fair value, foreign exchange retranslation and financial reports methods*

- (7) Subsection (8) applies if:
  - (a) assuming that you disregarded this section and subsection 230-40(2), you would apply the fair value or foreign exchange retranslation method or the method of relying on your financial reports to determine the amount of:
    - (i) a gain included in your assessable income under section 230-15 for the income year; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) a loss you can deduct under section 230-15 for the income year; and
  - (b) subsection (4) does not apply in relation to any gain or loss under the arrangement.
- (8) Apply that method to work out:
- (a) a gain or loss from the arrangement for the foreign residency period; and
  - (b) a gain or loss from the arrangement for the Australian residency period.

**230-490 Effect of change of residence—disposal and reacquisition etc. after ceasing to be Australian resident where no further recognised gains or losses from arrangement**

- (1) This section applies if:
- (a) you cease to be an Australian resident at a particular time (the *residence change time*); and
  - (b) you have a \*financial arrangement at the residence change time; and
  - (c) at the residence change time you expect that any gains and losses you make from the arrangement after that time will not be assessable or deductible under this Division.
- (2) You are taken for the purposes of this Division:
- (a) to have disposed of the arrangement just before that time for its fair value just before that time; and
  - (b) to have acquired the arrangement again at the residence change time for its fair value at that time.

**230-495 Effect of change of accounting standards**

- (1) This section applies if:
- (a) one of these methods apply to take account of a gain or loss you make from a \*financial arrangement:
    - (i) the fair value method provided for in Subdivision 230-C; or
    - (ii) the foreign exchange retranslation method provided for in Subdivision 230-D; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 230-500

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- (iii) the method of relying on your financial reports provided for in Subdivision 230-F; and
  - (b) there is a change in, or in the application of, the relevant standards (as mentioned in section 230-230 (fair value method), 230-280 (foreign exchange retranslation method) or 230-420 (method of relying on financial reports)) that apply in relation to the arrangement; and
  - (c) that change applies to a particular income year and later years; and
  - (d) as a result of the change, those standards require you to recognise in your statement of financial position an amount (the *equity amount*), in order to avoid the need to increase or decrease gains or losses recognised in profit or loss from the financial arrangement in respect of previous income years.
- (2) If the equity amount is positive, include in your assessable income for the particular income year mentioned in paragraph (1)(c) so much of it as relates to the \*financial arrangement mentioned in paragraph (1)(a).
- (3) If the equity amount is negative, you are entitled to a deduction for the particular income year mentioned in paragraph (1)(c) equal to so much of it as relates to the \*financial arrangement mentioned in paragraph (1)(a).

**230-500 Comparable foreign accounting and auditing standards**

The regulations may:

- (a) specify that particular standards that apply under a \*foreign law are to be taken for the purposes of this Division to be comparable to the \*accounting standards; and
- (b) specify that particular standards that apply under a foreign law are to be taken for the purposes of this Division to be comparable to the \*auditing standards.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**230-505 Financial arrangement as consideration for provision or acquisition of a thing**

- (1) This section applies if you start or cease to have a \*Division 230 financial arrangement as consideration for the provision or acquisition of a thing.
- (2) Work out the \*market value of the thing at the time at which you (in fact) provide or acquire it. For the purposes of applying this Act to you, treat the amount:
  - (a) you obtain for providing the thing; or
  - (b) you provide for acquiring the thing;as being that market value.

Note 1: The amount may be relevant, for example, for the purposes of applying the provisions of this Act dealing with capital gains, capital allowances or trading stock to the thing.

Note 2: This subsection does not affect the financial benefits received or provided under the financial arrangement from you starting or ceasing to have it (except in the circumstances described in Note 3). However:

- (a) the market value of the thing will be, or form part of, those financial benefits for the purposes of section 230-445; and
- (b) in the case of a non arm's length transaction, the amount of those financial benefits may be affected by section 230-510.

Note 3: If the thing is itself a Division 230 financial arrangement and subsection (3) does not apply, this subsection will determine the financial benefits received or provided under the financial arrangement from you starting or ceasing to have it.

- (3) Subsection (2) does not apply if:
  - (a) you start or cease to have the \*financial arrangement as mentioned in subsection (1) under an arrangement (the ***starting or ceasing arrangement***); and
  - (b) the thing is itself a \*Division 230 financial arrangement; and
  - (c) the starting or ceasing arrangement is *not* itself a Division 230 financial arrangement.

Example: An arrangement for exchanging a share subject to Subdivision 230-C for another share subject to Subdivision 230-C, where the arrangement itself is not a Division 230 financial arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4) For the purposes of this section:
- (a) treat yourself as providing a thing to another entity if:
    - (i) you have provided, or are to provide, the thing to the other entity; or
    - (ii) you cease to have, have ceased to have or are to cease to have, the thing; or
    - (iii) the other entity starts to have, has started having or is to start to have, the thing; and
  - (b) treat yourself as acquiring a thing if:
    - (i) another entity has provided, or is to provide, the thing to you; or
    - (ii) another entity ceases to have, has ceased to have or is to cease to have, the thing; or
    - (iii) you start to have, have started to have or are to start to have, the thing.
- (5) For the purposes of this section, treat part of a \*Division 230 financial arrangement as a Division 230 financial arrangement.
- (6) Without limiting subsection (1), the thing provided, or the thing acquired, need not be a tangible thing and may take the form of services, conferring a right, incurring an obligation or extinguishing or varying a right or obligation.
- (7) To avoid doubt, this section applies even if your starting or ceasing to have the \*financial arrangement mentioned in subsection (1) is only part of the consideration for the provision or acquisition of the thing.
- (8) For the purposes of this section, treat your starting or ceasing to have the \*financial arrangement mentioned in subsection (1) as consideration for the provision or acquisition of the thing if that starting or ceasing is, in substance or effect, done for the provision or acquisition of the thing.

Example: Starting to have a financial arrangement in satisfaction of an obligation, where the obligation itself was incurred as consideration for the thing.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**230-510 Non-arm's length dealings in relation to financial arrangement**

- (1) This section applies if:
- (a) a balancing adjustment is made under Subdivision 230-G in relation to a \*Division 230 financial arrangement you have; and
  - (b) if the balancing adjustment was made because of paragraph 230-435(1)(b) or (d) (cessations without transfer)—the arrangement is not a \*debt interest or loan.

*Non-arm's length transaction resulting in you starting to have the arrangement*

- (2) Subsection (3) applies if the parties to the dealing that resulted in you starting to have the arrangement were not dealing at \*arm's length in relation to the dealing.
- (3) For the purposes of this Division:
- (a) disregard the amount of the \*financial benefit (if any) that you provided or received in relation to you starting to have the arrangement; and
  - (b) instead, treat yourself as having provided or received a financial benefit in relation to you starting to have the arrangement that is equal to the amount of the financial benefit that you would have provided or received if the parties to the dealing mentioned in subsection (2) were dealing at \*arm's length in relation to the dealing.

*Non-arm's length transaction resulting in change of an amount of a financial benefit that you provided or received under the financial arrangement*

- (4) Subsection (5) applies if the parties to a dealing that resulted in a change of an amount of a \*financial benefit that you provide or receive under the \*financial arrangement were not dealing at \*arm's length in relation to the dealing.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 230-515

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- (5) For the purposes of this Division:
- (a) disregard the amount of the \*financial benefit (if any) that you provide or receive under the \*financial arrangement as a result of the dealing; and
  - (b) instead, treat yourself as providing or receiving a financial benefit under the financial arrangement as a result of the dealing that is equal to the amount of the financial benefit that you would have provided or received if the parties to the dealing were dealing at \*arm's length in relation to the dealing.

*Non-arm's length transaction resulting in balancing adjustment*

- (6) Subsection (7) applies if the parties to the dealing that resulted in the balancing adjustment mentioned in subsection (1) being made were not dealing at \*arm's length in relation to the dealing.
- (7) For the purposes of this Division:
- (a) disregard the amount of the \*financial benefit (if any) that you provide or receive in relation to the balancing adjustment; and
  - (b) instead, treat yourself as providing or receiving a financial benefit in relation to the balancing adjustment that is equal to the amount of the financial benefit that you would have provided or received if the parties to the dealing mentioned in subsection (6) were dealing at \*arm's length in relation to the dealing.

**230-515 Arm's length dealings in relation to financial arrangement—adjustment to gain or loss in certain situations**

- (1) This section applies if:
- (a) disregarding this Division, a provision mentioned in subsection (2) makes an adjustment to an amount (including a nil amount) (the *relevant amount*); and
  - (b) the relevant amount is relevant in determining the amount of a gain or loss you make from a \*Division 230 financial arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The provisions are as follows:
  - (a) section 52A of the *Income Tax Assessment Act 1936*;
  - (b) section 73B of the *Income Tax Assessment Act 1936*;
  - (c) Division 16J of Part III of the *Income Tax Assessment Act 1936*;
  - (d) Division 16K of Part III of the *Income Tax Assessment Act 1936*;
  - (e) subsection 245-65(2) in Schedule 2C to the *Income Tax Assessment Act 1936*;
  - (f) section 775-40 of the *Income Tax Assessment Act 1997*.
- (3) In determining the amount of the gain or loss, treat the relevant amount as having been adjusted by the provision mentioned in subsection (2).
- (4) However, if the circumstances that give rise to the adjustment result in section 230-510 having the effect of altering the amount of the gain or loss, do not treat the relevant amount as having been adjusted under subsection (3) to the extent of that alteration.

#### **230-520 Disregard gains or losses covered by value shifting regime**

- (1) Disregard a gain or loss under this Division from a \*financial arrangement to the extent that it is attributable to:
  - (a) a shifting of value that has consequences under Division 723; or
  - (b) a \*value shift that has consequences under Division 725; or
  - (c) an \*indirect value shift that has consequences under Division 727; or
  - (d) a shifting of value that has consequences analogous to those under Division 723, 725 or 727 under a repealed provision of this Act or of the *Income Tax Assessment Act 1936*.
- (2) Determine whether a shifting of value has the consequences mentioned in paragraph (1)(a) or (d) on the assumption that a \*realisation event in respect of all or part of the \*financial arrangement happens in the income year for the gain or loss.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **230-525 Consolidated financial reports**

For the purposes of this Division, treat a financial report prepared by another entity as being prepared by you if:

- (a) the other entity is a \*connected entity of yours; and
- (b) the report is a consolidated financial report that deals with both your affairs and the affairs of the connected entity; and
- (c) the report properly reflects your affairs.

### **Subdivision 230-J—Additional operation of Division**

#### **Table of sections**

230-530 Additional operation of Division

#### **230-530 Additional operation of Division**

##### *Foreign currency*

- (1) This Division also applies to foreign currency as if the currency were a right that constituted a \*financial arrangement.

##### *Non-equity shares*

- (2) This Division also applies to a \*non-equity share in a company as if the share were a right that constituted a \*financial arrangement.

##### *Commodities held by traders*

- (3) This Division also applies to a commodity that you hold as if the commodity were a right that constituted a \*financial arrangement if:
  - (a) you are an entity that trades or deals both in:
    - (i) that commodity; and
    - (ii) financial arrangements whose values change in response to changes in the price or value of that commodity; and
  - (b) you hold that commodity for the purposes of dealing in the commodity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) a \*fair value election or an \*election to rely on financial reports applies to financial arrangements that you start to have when you start to have the commodity; and
- (d) the commodity is an asset that you are required (whether or not as a result of a choice you make) by:
  - (i) the \*accounting standards; or
  - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards that apply to the preparation of the financial report under a \*foreign law;to classify or designate, in your financial reports, as at fair value through profit or loss.

*Offsetting commodity contracts held by traders*

- (4) This Division also applies to a contract to which you are a party as if the contract were a \*financial arrangement if:
  - (a) you have a right to receive or an obligation to provide a commodity under the contract; and
  - (b) you have a practice of dealing in the commodity through the performance of offsetting contracts to receive and provide the commodity; and
  - (c) you do not have, as your sole or dominant purpose for entering into the contract, the purpose of receiving or delivering the commodity as part of your expected purchase, sale or usage requirements; and
  - (d) a \*fair value election or an \*election to rely on financial reports applies to financial arrangements that you start to have when you enter into the contract; and
  - (e) the contract is an asset or liability that you are required (whether or not as a result of a choice you make) by:
    - (i) the \*accounting standards; or
    - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards that apply to the preparation of the financial report under a \*foreign law;to classify or designate, in your financial reports, as at fair value through profit or loss.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Division 240—Arrangements treated as a sale and loan

### Table of Subdivisions

#### Guide to Division 240

- 240-A Application and scope of Division
- 240-B The notional sale and notional loan
- 240-C Amounts to be included in notional seller's assessable income
- 240-D Deductions allowable to notional buyer
- 240-E Notional interest and arrangement payments
- 240-F The end of the arrangement
- 240-G Adjustments if total amount assessed to notional seller differs from amount of finance charge
- 240-H Application of Division 16E to certain arrangements
- 240-I Provisions applying to hire purchase agreements

### Guide to Division 240

#### 240-1 What this Division is about

For income tax purposes, some arrangements (such as hire purchase agreements) are recharacterised as a sale of property, combined with a loan, by the notional seller to the notional buyer, to finance the purchase price.

#### 240-3 How the recharacterisation affects the notional seller

##### *Effect of notional sale*

- (1) The consideration for the notional sale is either the price stated as the cost or value of the property or its arm's length value. If the notional seller is disposing of the property as trading stock, the normal consequences of disposing of trading stock follow. In particular, the notional seller will be assessed on the sale price.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) Where the property is not trading stock the notional seller's assessable income will include any profit made by the notional seller on the notional sale or on the sale of the property after a notional re-acquisition.

*Effect of notional loan*

- (3) The notional seller's assessable income will include notional interest over the period of the loan.

*Other effects*

- (4) These effects displace the income tax consequences that would otherwise arise from the arrangement. For example, the actual payments to the notional seller are not included in its assessable income. Also, the notional seller loses the right to deduct amounts under Division 40 (about capital allowances).

### **240-7 How the recharacterisation affects the notional buyer**

*Effect of notional purchase*

- (1) The cost of the acquisition is either the price stated as the cost or value of the property or its arm's length value. If the notional buyer is acquiring the property as trading stock, the normal consequences of acquiring trading stock follow. In particular, the notional buyer can usually deduct the purchase price.
- (2) If the property is not trading stock, the notional buyer may be able to deduct amounts for the expenditure under Division 40 (about capital allowances).

*Effect of notional loan*

- (3) The notional buyer may be able to deduct notional interest payments over the period of the loan.

*Other effects*

- (4) These effects displace the income tax consequences that would otherwise arise from the arrangement. For example, the notional buyer cannot deduct the actual payments to the notional seller.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Subdivision 240-A—Application and scope of Division

### Table of sections

#### Operative provisions

240-10	Application of this Division
240-15	Scope of Division

### Operative provisions

#### 240-10 Application of this Division

An \*arrangement is treated as a notional sale and \*notional loan if:

- (a) the arrangement is listed in the table below; and
- (b) the arrangement relates to the kind of property listed in the table; and
- (c) any conditions listed in the table are satisfied.

Special provisions that apply to particular arrangements are also listed in the table.

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#### This Division applies to:

	<b>*Arrangements of this kind:</b>	<b>That relate to this kind of property:</b>	<b>If these conditions are satisfied:</b>	<b>Special provisions:</b>
1	*Hire purchase agreement	Any goods	None	See Subdivision 240-I

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#### 240-15 Scope of Division

This Division has effect for the purposes of this Act and for the purposes of the *Income Tax Assessment Act 1936* other than:

- (a) Parts 3-1 and 3-3 of this Act (capital gains tax); and
- (b) Division 11A of Part III of the *Income Tax Assessment Act 1936* (certain payments to non-residents etc.).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 240-B—The notional sale and notional loan**

### **Table of sections**

#### **Operative provisions**

- 240-17 Who is the notional seller and the notional buyer?  
240-20 Notional sale of property by notional seller and notional acquisition of property by notional buyer  
240-25 Notional loan by notional seller to notional buyer

### **Operative provisions**

#### **240-17 Who is the notional seller and the notional buyer?**

- (1) An entity is the *notional seller* if it is a party to the \*arrangement and:
- (a) actually owns the property; or
  - (b) is the owner of the property because of a previous operation of this Division.
- (2) An entity is the *notional buyer* if it is a party to the \*arrangement and, under the arrangement, has the \*right to use the property.

Example: If the arrangement is a hire purchase agreement, the finance provider will be the notional seller and the hirer will be the notional buyer.

#### **240-20 Notional sale of property by notional seller and notional acquisition of property by notional buyer**

- (1) The \*notional seller is taken to have disposed of the property by way of sale to the \*notional buyer, and the notional buyer is taken to have acquired it, at the start of the \*arrangement.
- (2) The \*notional buyer is taken to own the property until:
- (a) the \*arrangement ends; or
  - (b) the notional buyer becomes the \*notional seller under a later arrangement to which this Division applies.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**240-25 Notional loan by notional seller to notional buyer**

- (1) On entering into the \*arrangement, the \*notional seller is taken to have made a loan (the *notional loan*) to the \*notional buyer.
- (2) The notional loan is for a period:
  - (a) starting at the start of the \*arrangement; and
  - (b) ending on the day on which the arrangement is to cease to have effect or, if the arrangement is of indefinite duration, on the day on which it would be reasonable to conclude, having regard to the terms and conditions of the arrangement, that the arrangement will cease to have effect.
- (3) The notional loan is of an amount (the *notional loan principal*) equal to the consideration for the sale of the property less any amount paid, or credited by the \*notional seller as having been paid, by the \*notional buyer to the notional seller, at or before the start of the \*arrangement, for the cost of the property.

Note: Section 240-80 affects the amount of the notional loan principal where the arrangement is an extension or renewal of another arrangement.

- (4) The notional loan is subject to payment of a charge (the *finance charge*).
- (5) The consideration for the sale of the property by the \*notional seller, and the cost of the acquisition of the property by the \*notional buyer, are each taken to have been:
  - (a) if an amount is stated to be the cost or value of the property for the purposes of the \*arrangement and the notional seller and the notional buyer were dealing with each other at \*arm's length in connection with the arrangement—the amount so stated; or
  - (b) otherwise—the amount that could reasonably have been expected to have been paid by the notional buyer for the purchase of the property if:
    - (i) the notional seller had actually sold the property to the notional buyer at the start of the arrangement; and
    - (ii) the notional seller and the notional buyer were dealing with each other at arm's length in connection with the sale.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (6) The \*notional loan principal is taken to be repaid, and the \*finance charge is taken to be paid, by the making of the payments under the \*arrangement.

### **Subdivision 240-C—Amounts to be included in notional seller's assessable income**

#### **Guide to Subdivision 240-C**

#### **240-30 What this Subdivision is about**

This Subdivision provides for the inclusion in the notional seller's assessable income of:

- (a) amounts (notional interest) on account of the finance charge for the notional loan that the notional seller is taken to have made to the notional buyer; and
- (b) any profit made by the notional seller:
  - (i) on the notional sale of the property to the notional buyer; or
  - (ii) on a sale of the property after any notional re-acquisition of the property by the notional seller.

#### **Table of sections**

##### **Operative provisions**

240-35	Amounts to be included in notional seller's assessable income
240-40	Arrangement payments not to be included in notional seller's assessable income

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### 240-35 Amounts to be included in notional seller's assessable income

#### *Notional interest*

- (1) The \*notional seller's assessable income of an income year includes the \*notional interest for \*arrangement payment periods, and parts of arrangement payment periods, in the income year.

#### *Profit on notional sale*

- (2) If the property is not \*trading stock of the \*notional seller and the consideration for the notional sale of the property exceeds the cost of the acquisition of the property by the notional seller, the excess is included in the notional seller's assessable income of the income year of the notional sale.

#### *Profit on actual sale after notional re-acquisition*

- (3) If:
  - (a) the \*notional seller is taken under this Division to have re-acquired the property from the \*notional buyer; and
  - (b) the notional seller afterwards sells the property; and
  - (c) the consideration for the sale exceeds the cost of the re-acquisition;the excess is included in the notional seller's assessable income of the income year in which the sale occurred.

### 240-40 Arrangement payments not to be included in notional seller's assessable income

- (1) The \*arrangement payments that the \*notional seller receives, or is entitled to receive, under the \*arrangement:
  - (a) are not to be included in the \*notional seller's assessable income of any income year; but
  - (b) are not taken to be \*exempt income of the notional seller.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) However, those \*arrangement payments are taken into account in calculating \*notional interest that is included in the \*notional seller's assessable income under section 240-35.
- (3) A loss or outgoing incurred by the \*notional seller in deriving any such \*arrangement payments is not taken to be a loss or outgoing incurred by the notional seller in relation to gaining or producing \*exempt income.

## **Subdivision 240-D—Deductions allowable to notional buyer**

### **Guide to Subdivision 240-D**

#### **240-45 What this Subdivision is about**

This Subdivision provides that the notional buyer may, in certain circumstances, be entitled to deductions for the notional interest for the notional loan that the notional seller is taken to have made to the notional buyer.

#### **Table of sections**

##### **Operative provisions**

- 240-50 Extent to which deductions are allowable to notional buyer
- 240-55 Arrangement payments not to be deductions

#### **Operative provisions**

##### **240-50 Extent to which deductions are allowable to notional buyer**

- (1) The \*notional buyer is only entitled to deduct \*notional interest for an income year to the extent that the notional buyer would, apart from this Division, have been entitled to deduct \*arrangement payments for that income year if no part of those payments were capital in nature.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 240-55

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- (2) The \*notional buyer is entitled to deduct \*notional interest for \*arrangement payment periods, and parts of arrangement payment periods, in the income year.

**240-55 Arrangement payments not to be deductions**

The \*notional buyer is not entitled to deduct \*arrangement payments that the \*notional buyer makes under the \*arrangement, but those payments are taken into account in calculating \*notional interest that may be deducted under section 240-50.

**Subdivision 240-E—Notional interest and arrangement payments**

**Table of sections**

**Operative provisions**

240-60	Notional interest
240-65	Arrangement payments
240-70	Arrangement payment periods

**Operative provisions**

**240-60 Notional interest**

- (1) The \**notional interest* for an \*arrangement payment period is worked out as follows:

**Calculating \*notional interest**

- Step 1. Add the \*notional interest from previous \*arrangement payment periods to the \*notional loan principal.
- Step 2. Subtract any \*arrangement payments that have already been made or that are due but that have not been made. The result is the *outstanding notional loan principal* as at the start of the \*arrangement payment period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Step 3. Work out the ***implicit interest rate***. It is the rate of compound interest for the \*arrangement payment period at which the \*notional loan principal equals the sum of:
- (a) the present value of the \*arrangement payments payable by the \*notional buyer under the \*arrangement; and
  - (b) the present value of any \*termination amounts.
- Step 4. Multiply the outstanding \*notional loan principal by the implicit interest rate. The result is the ***notional interest*** for the \*arrangement payment period.

- (2) If only part of an \*arrangement payment period occurs during an income year, the \*notional interest for that part of the arrangement payment period is so much of the notional interest for that arrangement payment period as may appropriately be related to that income year in accordance with generally accepted accounting principles.
- (3) In calculating the implicit interest rate, if any of the relevant amounts are not known at the start of the \*arrangement, a reasonable estimate of the amount is to be made and is to be used for the purposes of calculating the implicit interest rate for each income year of the \*notional seller.
- (4) If a reasonable estimate cannot be made at that time, an estimate of the amount is to be made at the end of each income year of the \*notional seller for the purposes of calculating the implicit interest rate for each income year of the notional seller.

### **240-65 Arrangement payments**

An ***arrangement payment*** is an amount that the \*notional buyer is required to pay under the \*arrangement but does not include:

- (a) an amount in the nature of a penalty payable for failure to make a payment on time; or
- (b) a \*termination amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 240-70

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**240-70 Arrangement payment periods**

- (1) An *\*arrangement payment period* is a period for which a payment under the *\*arrangement* is allocated or expressed to be payable.
- (2) However, if a period exceeds 6 months, the period is not an *\*arrangement payment period* but each of the following parts of the period is a separate arrangement payment period:
  - (a) the part of the period beginning at the start of that period and ending 6 months later;
  - (b) each part of the period:
    - (i) beginning immediately after a part of the period that is an arrangement payment period under paragraph (a) or under a previous application of this paragraph; and
    - (ii) ending 6 months after the start of that later part or at the end of the period, whichever first occurs.

**Subdivision 240-F—The end of the arrangement**

**Table of sections**

**Operative provisions**

240-75	When is the end of the arrangement?
240-78	Termination amounts
240-80	What happens if the arrangement is extended or renewed
240-85	What happens if an amount is paid by or on behalf of the notional buyer to acquire the property
240-90	What happens if the notional buyer ceases to have the right to use the property

**Operative provisions**

**240-75 When is the end of the arrangement?**

- (1) If the *\*arrangement* is stated to cease to have effect at a particular time, it is taken for the purposes of this Division to end (even if it is extended or renewed) at the earlier of:
  - (a) that time; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the time at which the arrangement ceases to have effect (whether because the arrangement is terminated or for any other reason).

Note: Section 240-80 deals with extensions and renewals.

- (2) An \*arrangement is taken to have ended if it is extended or renewed.
- (3) If the \*arrangement is of indefinite duration, it ends at the time at which the arrangement ceases to have effect even if the \*arrangement is renewed.

Note: Section 240-80 deals with extensions and renewals.

- (4) An \*arrangement is taken to have ended if it is reasonable to conclude, having regard to the terms and conditions of the \*arrangement, that the arrangement has ceased to have effect.
- (5) An \*arrangement is also taken to have ended if the property has been lost or destroyed.

#### **240-78 Termination amounts**

A *termination amount* is an amount payable because an \*arrangement ends and includes:

- (a) if, at the end of the arrangement, the \*notional buyer acquires the property from the \*notional seller—an amount payable to the notional seller for the acquisition; or
- (b) if, at the end of the arrangement, the property is lost or destroyed—any amounts paid to the notional seller (whether by the notional buyer or another entity) as a result of the loss or destruction of the property; or
- (c) otherwise—the value of the property at the end of the arrangement.

#### **240-80 What happens if the arrangement is extended or renewed**

- (1) This section sets out what happens if, after the end of the \*arrangement, the \*notional buyer and \*notional seller extend or renew the \*arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 240-85

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- (2) This Division applies as if the original \*arrangement has ended and the extended arrangement or renewed arrangement is a separate arrangement (the *new arrangement*).
- (3) There is not, however, taken to be any disposal or acquisition as a result of the original arrangement ending or of the new arrangement starting and the \*notional buyer does not cease to own the property.
- (4) Also, the \*notional loan principal for the new loan is:
  - (a) if the \*arrangement as extended or renewed states an amount as the cost or value of the property for the purposes of the extension or renewal and the \*notional seller and the \*notional buyer were dealing with each other at \*arm's length in connection with the extension or renewal—the amount so stated; or
  - (b) otherwise—the amount that could reasonably have been expected to have been paid by the notional buyer for the purchase of the property if:
    - (i) the notional seller had actually sold the property to the notional buyer when the arrangement was extended or renewed; and
    - (ii) the notional seller and notional buyer were dealing with each other at arm's length in connection with the sale.
- (5) Subdivision 240-G applies to the \*notional loan for the original arrangement. For that purpose, the \*notional loan principal for the new arrangement is taken to be a \*termination amount paid to the \*notional seller under the original arrangement.

**240-85 What happens if an amount is paid by or on behalf of the notional buyer to acquire the property**

If, at or after the end of the \*arrangement, an amount is paid to the \*notional seller by, or on behalf of, the \*notional buyer to acquire the property, the following provisions have effect:

- (a) the amount paid is not included in the notional seller's assessable income;
- (b) the notional buyer cannot deduct the payment;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the notional buyer is taken to continue to own the property;
- (d) the transfer to the notional buyer of legal title to the property is not taken to be a disposal of the property by the notional seller.

**240-90 What happens if the notional buyer ceases to have the right to use the property**

- (1) This section applies if, at the end of the \*arrangement:
  - (a) the arrangement is not extended or renewed in the way mentioned in subsection 240-80(1); and
  - (b) no amount is paid to the \*notional seller by, or on behalf of, the \*notional buyer to acquire the property; and
  - (c) the property is not lost or destroyed.
- (2) The property is taken to have been disposed of by the \*notional buyer by way of sale back to the \*notional seller, and to have been acquired by the \*notional seller, at the end of the \*arrangement.
- (3) The consideration for the sale of the property by the \*notional buyer, and the cost of the acquisition of the property by the \*notional seller, are each taken to be equal to the \*market value of the property at the end of the \*arrangement.
- (4) Subsection (5) applies where the property is a \*car and if it:
  - (a) had been bought from the \*notional seller, when this Division first applied to an \*arrangement in respect of the car, by the \*notional buyer for a price equal to the \*notional loan principal; and
  - (b) had been first used by the notional buyer for any purpose in the \*financial year in which that time occurred;the cost of the car, for the purpose of working out its decline in value for that person under Division 40, would have been limited by section 40-230.
- (5) Where an associate of the \*notional buyer acquires the \*car, the \*cost of the car for the purposes of the application of Division 40 to the associate is taken to be whichever is the lesser of:
  - (a) the sum of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 240-100

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- (i) the amount that would have been the \*adjustable value of the car at that time for the purposes of the application of that Division to the notional buyer if the notional buyer were not taken under this Division to have disposed of the car; and
  - (ii) any amount that is included in the notional buyer's assessable income under section 40-285 because the notional buyer is taken to have disposed of the car; or
- (b) the cost of the acquisition of the car by the associate.

**Subdivision 240-G—Adjustments if total amount assessed to notional seller differs from amount of finance charge**

**Guide to Subdivision 240-G**

**240-100 What this Subdivision is about**

This Subdivision provides for adjustments if the sum of the amounts included in the notional seller's assessable income are greater or less than the finance charge, worked out at the end of the arrangement, for the notional loan.

**Table of sections**

**Operative provisions**

- 240-105 Adjustments for notional seller
- 240-110 Adjustments for notional buyer

**Operative provisions**

**240-105 Adjustments for notional seller**

- (1) This section applies at the end of the \*arrangement.
- (2) If the sum of:
  - (a) all amounts (other than \*termination amounts) that were paid or payable to the \*notional seller under the \*arrangement; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) any termination amounts paid or payable to the notional seller;

exceeds the amount worked out using the formula in subsection (4), the excess is included in the notional seller's assessable income of the income year in which the arrangement ends.

Note: Subsection 240-80(5) provides that the amount of a notional loan that is taken to be made by an extended or renewed arrangement is a termination amount paid under the previous arrangement.

(3) If the amount worked out using the formula in subsection (4) exceeds:

- (a) all amounts (other than \*termination amounts) that were paid or payable to the \*notional seller under the \*arrangement; and
- (b) any termination amounts paid or payable to the notional seller;

the notional seller is entitled to deduct the excess in the income year in which the arrangement ends.

Note: Subsection 240-80(5) provides that the amount of a notional loan that is taken to be made by an extended or renewed arrangement is a termination amount paid under the previous arrangement.

(4) The formula for the purposes of subsections (2) and (3) is:

\*Notional loan principal + Assessed notional interest  
where:

*assessed notional interest* means the \*notional interest that has been or is to be included in the \*notional seller's assessable income of any income year.

### **240-110 Adjustments for notional buyer**

(1) If:

- (a) an amount is included in the \*notional seller's assessable income of an income year under subsection 240-105(2); or
- (b) an amount would have been so included if the notional seller had been subject to tax on assessable income;

the \*notional buyer is entitled to deduct a corresponding amount in the notional buyer's income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) If:
  - (a) the \*notional seller is entitled to deduct an amount for an income year under subsection 240-105(3); or
  - (b) the notional seller would have been so entitled if the \*notional seller had been subject to tax on assessable income; a corresponding amount is included in the notional buyer's assessable income for the notional buyer's income year.
- (3) The \*notional buyer is entitled to a deduction, and is required to include an amount in his or her assessable income only to the extent (if any) that the notional buyer would, apart from this Division, have been entitled to deduct \*arrangement payments if no part of those payments were capital in nature.

### **Subdivision H—Application of Division 16E to certain arrangements**

#### **240-112 Division 16E applies to certain arrangements**

- (1) Division 16E of Part III of the *Income Tax Assessment Act 1936* applies in relation to an arrangement (the ***assignment arrangement***) between the notional seller and another person (the ***holder***) to transfer the right to payments (the ***Division 240 payments***) under an arrangement that is treated as a sale and loan by this Division (the ***sale and loan arrangement***).
- (2) In applying Division 16E, the following assumptions are to be made:
  - (a) the assignment arrangement is the qualifying security;
  - (b) the notional seller is the issuer;
  - (c) the qualifying security is issued when the assignment arrangement is entered into;
  - (d) the issue price is consideration provided to the notional seller under the assignment arrangement;
  - (e) the Division 240 payments are payments made by the notional seller under the assignment arrangement;
  - (f) no part of the payments represent periodic interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) This Subdivision does not apply if the assignment arrangement gives rise to a termination of the sale and loan arrangement for the purposes of this Division.
- (4) To avoid doubt, Division 6A of Part III of the *Income Tax Assessment Act 1936* does not apply to an assignment arrangement to which this Subdivision applies.

### **Subdivision 240-I—Provisions applying to hire purchase agreements**

#### **Table of sections**

##### **Operative provisions**

240-115 Another person, or no person taken to own property in certain cases

#### **Operative provisions**

##### **240-115 Another person, or no person taken to own property in certain cases**

- (1) This section sets out special modifications of the effect of this Division that apply in relation to a \*hire purchase agreement unless:
  - (a) the notional buyer would have been the owner or the \*quasi-owner of the property if the \*arrangement had been a sale of the property; and
  - (b) it is reasonably likely that the right, obligation or contingent obligation to acquire the property will be exercised by, or in respect of, the notional buyer.

Note: An example of a contingent obligation is a put option.
- (2) The modifications also apply if the \*notional buyer:
  - (a) disposes of his or her interest in the property; or
  - (b) enters into a lease covered by Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936* under which he or she leases the property to another person.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Modifications*

- (3) For the purpose of the \*capital allowance provisions, if, apart from the operation of this Division, an entity other than the \*notional seller would own the property that is the subject of an agreement covered by this section, that entity is taken to be the owner of the property.
- (4) For the purpose of the \*capital allowance provisions, if, apart from the operation of this Division, the \*notional seller would own the property that is the subject of an agreement covered by this section, no entity is taken to be the owner of the property.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 243—Limited recourse debt**

### **Table of Subdivisions**

	Guide to Division 243
243-A	Circumstances in which Division operates
243-B	Working out the excessive deductions
243-C	Amounts included in assessable income and deductions
243-D	Special provisions

### **Guide to Division 243**

#### **243-10 What this Division is about**

This Division tells you when you must include an additional amount in your assessable income at the termination of a limited recourse debt arrangement. It also tells you what the additional amount is.

Basically, the Division applies where the capital allowance deductions that have been obtained for expenditure that is funded by the debt and the deductions are excessive having regard to the amount of the debt that was repaid.

The reason for the adjustment is to ensure that, where you have not been fully at risk in relation to an amount of expenditure, you do not get a net deduction if you fail to pay that amount.

#### **Subdivision 243-A—Circumstances in which Division operates**

##### **Table of sections**

###### **Operative provisions**

243-15	When does this Division apply?
243-20	What is limited recourse debt?

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 243-15

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- 243-25 When is a debt arrangement terminated?  
243-30 What is the financed property and the debt property?

## **Operative provisions**

### **243-15 When does this Division apply?**

- (1) This Division applies if:
- (a) \*limited recourse debt has been used to wholly or partly finance or refinance expenditure; and
  - (b) at the time that the debt \*arrangement is terminated, the debt has not been paid in full by the debtor; and
  - (c) the debtor can deduct an amount as a \*capital allowance for the income year in which the termination occurs, or has deducted or can deduct an amount for an earlier income year, in respect of the expenditure or the \*financed property.

Note: This Division does not apply to certain limited recourse debts that are used to refinance limited recourse debt to which this Division has applied (see subsection 243-50(4)).

- (2) However, unless the net \*capital allowance deductions have been excessive having regard to the amount of the debt that remains unpaid (see section 243-35), no amount is included in the debtor's assessable income under this Division although future deductions may be reduced.
- (3) In working out if the debt has been paid in full, and in working out the unpaid amount of the debt, the following amounts are to be treated as if they were not payments in respect of the debt:
- (a) any reduction in the debt as a result of the \*financed property being surrendered or returned to the creditor at the termination of the debt;
  - (b) any payment to reduce the debt that is funded directly or indirectly by \*non-arm's length limited recourse debt or by proceeds from the disposal of the debtor's interest in the financed property.

However, any amounts accrued that are interest, \*notional interest or in the nature of interest are taken not to be unpaid.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) In working out if the debt has been paid in full, and in working out the unpaid amount of the debt, payments are to be attributed first to the payment of any accrued amounts that are interest, \*notional interest or in the nature of interest.
- (5) A \*notional loan is taken to be debt that has been used to wholly or partly finance or refinance expenditure.

Note: Notional loans arise under Division 240.

### 243-20 What is limited recourse debt?

- (1) A **limited recourse debt** is an obligation imposed by law on an entity (the **debtor**) to pay an amount to another entity (the **creditor**) where the rights of the creditor as against the debtor in the event of default in payment of the debt or of interest are limited wholly or predominantly to any or all of the following:
  - (a) rights (including the right to money payable) in relation to any or all of the following:
    - (i) the \*debt property or the use of the debt property;
    - (ii) goods produced, supplied, carried, transmitted or delivered, or services provided, by means of the debt property;
    - (iii) the loss or disposal of the whole or a part of the debt property or of the debtor's interest in the debt property;
  - (b) rights in respect of a mortgage or other security over the debt property or other property;
  - (c) rights that arise out of any \*arrangement relating to the financial obligations of an end-user of the \*financed property towards the debtor, and are financial obligations in relation to the financed property.
- (2) An obligation imposed by law on an entity (the **debtor**) to pay an amount to another entity (the **creditor**) is also a **limited recourse debt** if it is reasonable to conclude that the rights of the creditor as against the debtor in the event of default in payment of the debt or of interest are capable of being limited in the way mentioned in subsection (1). In reaching this conclusion, have regard to:
  - (a) the assets of the debtor (other than assets that are indemnities or guarantees provided in relation to the debt);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 243-20

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- (b) any \*arrangement to which the debtor is a party;
  - (c) whether all of the assets of the debtor would be available for the purpose of the discharge of the debt (other than assets that are security for other debts of the debtor or any other entity);
  - (d) whether the debtor and creditor are dealing at \*arm's length in relation to the debt.
- (3) An obligation imposed by law on an entity (the *debtor*) to pay an amount to another entity (the *creditor*) is also a *limited recourse debt* if there is no \*debt property and it is reasonable to conclude that the rights of the creditor as against the debtor in the event of default in payment of the debt or of interest are capable of being limited. In reaching this conclusion, have regard to:
- (a) the assets of the debtor (other than assets that are indemnities or guarantees provided in relation to the debt);
  - (b) any \*arrangement to which the debtor is a party;
  - (c) whether all of the assets of the debtor would be available for the purpose of the discharge of the debt (other than assets that are security for other debts of the debtor or any other entity);
  - (d) whether the debtor and creditor are dealing at \*arm's length in relation to the debt.
- (4) A \*notional loan under a \*hire purchase agreement is also a *limited recourse debt*.
- Note: Notional loans arise under Division 240.
- (5) However, an obligation that is covered by subsection (1) is not a limited recourse debt if the creditor's recourse is not in practice limited due to the creditor's rights in respect of a mortgage or other security over property of the debtor (other than the financed property) the value of which exceeds, or is likely to exceed, the amount of the debt.
- (6) Also, an obligation that is covered by subsection (1), (2) or (3) is not a limited recourse debt if, having regard to all relevant circumstances, it would be unreasonable for the obligation to be treated as limited recourse debt.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (7) A \*limited recourse debt is a *non-arm's length limited recourse debt* if the debtor and creditor do not deal with each other at arm's length in relation to the debt.

### **243-25 When is a debt arrangement terminated?**

- (1) A debt arrangement is taken to have terminated if:
- (a) it is actually terminated; or
  - (b) the debtor's obligation to repay the debt is waived, novated or otherwise varied so as to reduce, transfer or extinguish the debt; or
  - (c) an agreement is entered into to waive, novate or otherwise vary the debtor's obligation to repay the debt so as to reduce, transfer or extinguish the debt; or
  - (d) the creditor ceases to have an entitlement to recover the debt from the debtor (other than as a result of an arm's length assignment of some or all of the creditor's rights under the debt arrangement); or
  - (e) the debtor ceases to be the owner or the \*quasi-owner of some or all of the \*debt property because that property is surrendered to the creditor because of the debtor's failure to pay the whole or a part of the debt; or
  - (f) the debtor ceases to be the owner of a beneficial interest in some or all of the debt property because the interest is surrendered to the creditor because of the debtor's failure to pay the whole or a part of the debt; or
  - (g) the debt becomes a bad debt.
- (2) However, a debt arrangement that is a \*notional loan is not taken to have terminated merely because it has been renewed or extended.
- Note: Notional loans arise under Division 240. Under that Division, they are taken to have ended if they are renewed or extended.
- (3) Where a debt is terminated under paragraph (1)(b) or (c) as a result of the debt being reduced, the remaining debt is taken to be a new debt to which section 243-15 applies.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 243-30 What is the financed property and the debt property?

(1) Property is the *financed property* if the expenditure referred to in paragraph 243-15(1)(a) is on the property, is on the acquisition of the property, results in the creation of the property or is otherwise connected with the property.

(2) If the debt agreement is a \*notional loan, the property that is the subject of the agreement is the *financed property*.

Note: Notional loans arise under Division 240.

(3) Property is the *debt property* if:

(a) it is the \*financed property; or

(b) the property is provided as security for the debt.

### Subdivision 243-B—Working out the excessive deductions

#### Table of sections

##### Operative provisions

243-35 Working out the excessive deductions

#### Operative provisions

##### 243-35 Working out the excessive deductions

(1) The \*capital allowance deductions have been excessive having regard to the amount of the debt that remains unpaid if the amount worked out under subsection (2) exceeds the amount worked out under subsection (4).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) This is how to work out the total net \*capital allowance deductions:

**Working out the total net capital allowance deductions**

- Step 1. Add up all of the debtor's \*capital allowance deductions in respect of the expenditure or the \*financed property (including deductions because of balancing adjustments) for the income year in which the termination occurs or an earlier income year.
- Step 2. Deduct from that any amount that is included in the assessable income of the debtor of any income year by virtue of a provision of this Act (other than this Division) as a result of the disposal of the \*financed property the effect of which is to reverse a deduction covered by Step 1.
- Step 3. Deduct from the result an amount equal to the sum of any amounts included in the entity's assessable income as a result of an earlier application of this Division to the debt.
- Step 4. Add to the result an amount equal to the sum of any deductions to which the entity is entitled under section 243-45 (repayments of the original debt after termination) or 243-50 (repayments of the replacement debt) because of payments in respect of the debt.

- (3) The reference in step 2 of the method statement in subsection (2) to an amount that is included in the assessable income of a taxpayer as a result of the disposal of the \*financed property includes a reference to an amount that is included under section 26AG of the *Income Tax Assessment Act 1936* as a result of the disposal of the financed property.

Note: Division 20 deals with amounts included to reverse the effect of past deductions.

- (4) This is how to work out the total net capital allowance deductions that would otherwise be allowable taking into account the amount of the debt that is unpaid:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Working out the total net capital allowance deductions that would otherwise be allowable**

Work out the amount that would be worked out under subsection (2) if the deductions and the amounts included in assessable income had been calculated using the following assumptions:

- (1) The original expenditure in respect of which deductions were calculated was reduced by the amount of the debt that was unpaid by the debtor when the debt was terminated. (In calculating the amount unpaid the following are to be disregarded:
  - (a) any reduction in the amount as a result of the \*financed property being surrendered or returned to the creditor at the termination of the debt;
  - (b) any reduction in the amount to the extent that it is funded directly or indirectly by \*non-arm's length limited recourse debt or by the consideration for the disposal of the debtor's interest in the financed property.)
- (2) Deductions for income years after the income year in which the termination occurred were also taken into account.
- (3) The original expenditure in respect of which deductions were calculated was increased by any amount that is paid by the debtor as consideration for another person assuming a liability under the debt. (This assumption does not apply to the extent that the consideration is funded directly or indirectly by \*non-arm's length limited recourse debt or by the consideration for the disposal of the debtor's interest in the \*financed property.)
- (4) Step 2 were omitted from subsection (2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 243-C—Amounts included in assessable income and deductions**

### **Table of sections**

#### **Operative provisions**

243-40	Amount included in debtor's assessable income
243-45	Deduction for later payments in respect of debt
243-50	Deduction for payments for replacement debt
243-55	Effect of Division on later capital allowance deductions
243-57	Effect of Division on later capital allowance balancing adjustments
243-58	Adjustment where debt only partially used for expenditure

### **Operative provisions**

#### **243-40 Amount included in debtor's assessable income**

The debtor's assessable income for the income year in which the termination occurs is to include the excess referred to in subsection 243-35(1).

Note: Section 243-60 applies in relation to certain partnership debts.

#### **243-45 Deduction for later payments in respect of debt**

- (1) This section applies if:
  - (a) an amount was included in the debtor's assessable income under section 243-40 or a deduction was reduced under section 243-55; and
  - (b) the debtor makes a payment to the creditor, after the termination of the debt arrangement, in respect of the debt (other than an amount to the extent to which it is a payment of interest, of \*notional interest or in the nature of interest).
- (2) This is how to work out the amount of the deduction:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Working out the amount of the deduction**

- Step 1. Work out the amount that would be worked out under subsection 243-35(2) if the debt were terminated immediately before the payment.
- Step 2. Work out the amount that would have been worked out under subsection 243-35(4) at that time if the payment had been taken into account.
- Step 3. The *amount of the deduction* is the amount (if any) by which the amount worked out under Step 2 exceeds the amount worked out under Step 1.

- (3) The amount can be deducted for the income year in which the payment is made.

*Limit on deductions*

- (4) The total amounts deducted under this section in respect of a debt, and under section 243-50 in respect of a replacement debt, cannot exceed the sum of:
- (a) any amounts included in the debtor's assessable income under this Division in respect of the original debt; and
  - (b) any amount by which deductions in respect of the original debt were reduced under section 243-55.

**243-50 Deduction for payments for replacement debt**

*Payments where debt refinanced*

- (1) This section applies if:
- (a) an amount was included in the debtor's assessable income under section 243-40 or a deduction was reduced under section 243-55; and
  - (b) an amount funded by a \*non-arm's length limited recourse debt (the *replacement debt*) was disregarded in calculations under subsection 243-35(4); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the debtor makes a payment, after the termination of the original debt arrangement, in respect of the replacement debt (other than to the extent to which it is a payment of interest, of \*notional interest or in the nature of interest).
- (2) This is how to work out the amount of the deduction:

**Working out the amount of the deduction**

- Step 1. Work out the amount that would be worked out under subsection 243-35(2) if the replacement debt were terminated immediately before the payment.
- Step 2. Work out the amount that would have been worked out under subsection 243-35(4) at that time if the payment had been made in respect of the original debt and it had been taken into account.
- Step 3. The *amount of the deduction* is the amount (if any) by which the amount worked out under Step 2 exceeds the amount worked out under Step 1.

- (3) The amount can be deducted for the income year in which the payment is made.

*Division not to apply to termination of replacement debt*

- (4) This Division does not apply to termination of the replacement debt referred to in paragraph (1)(b).

*Limit on deductions*

- (5) The total amounts deducted under section 243-45 in respect of the original debt, or under this section in respect of the replacement debt, cannot exceed the sum of:
- (a) any amounts included in the debtor's assessable income under this Division in respect of the original debt; and
  - (b) any amount by which deductions in respect of the original debt were reduced under section 243-55.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**243-55 Effect of Division on later capital allowance deductions**

- (1) This section applies where this Division (other than section 243-65) has applied in relation to a debt and the debtor is entitled to a \*capital allowance deduction in respect of the expenditure or the \*financed property in relation to a time or period after the termination of the debt.
- (2) The \*capital allowance deduction is reduced if the amount that would have been worked out under subsection 243-35(2) would have exceeded the amount worked out under subsection 243-35(4) if the following assumptions were applied in both subsections:

**Assumptions to be applied**

- (1) That the debt was terminated at the time, or at the end of the period, referred to in subsection (1) of this section.
- (2) That the amount unpaid at the time, or at the end of the period, is reduced by any amounts paid under a replacement debt.
- (3) The debtor's \*capital allowance deductions in respect of the expenditure or the \*financed property were increased by the amount of the capital allowance deduction referred to in subsection (1) of this section.

- (3) The deduction is to be reduced by the amount of the excess.

**243-57 Effect of Division on later capital allowance balancing adjustments**

- (1) This section applies where this Division (other than section 243-65) has applied in relation to a debt and an amount is later included in the assessable income of an entity by virtue of a provision of this Act (other than this Division) as a result of the disposal of the \*financed property the effect of which is to reverse a deduction covered by Step 1 in subsection 243-35(2).
- (2) Any amount that would be included in the debtor's assessable income is reduced if the amount that would have been worked out

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

under subsection 243-35(4) would have exceeded the amount worked out under subsection 243-35(2) if the following assumptions were applied in both subsections:

**Assumptions to be applied**

- (1) That the debt was terminated at the time of the disposal of the \*financed property, referred to in subsection (1) of this section.
- (2) The amount in Step 2 in subsection 243-35(2) were increased by the amount that would otherwise be included in the debtor's assessable income.
- (3) The amount worked out under subsection 243-35(4) were reduced by any amount by which:
  - (a) the amount arising as a result of the disposal that is taken into account for the purposes of the provision mentioned in subsection (1);exceeds:
  - (b) the unpaid amount of the debt immediately before the time of the disposal of the \*financed property, referred to in subsection (1).

(3) The amount is to be reduced by the amount of the excess.

**243-58 Adjustment where debt only partially used for expenditure**

If the debt is only partially used to finance the expenditure, or the property, in respect of which the \*capital allowance deductions referred to in Step 1 in subsection 243-35(2) are allowed, the amount of any deduction, any reduction in a deduction or any amount included in assessable income is to be so much as is reasonable taking into account the proportion of the debt that is used for that purpose.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 243-D—Special provisions**

### **Table of sections**

#### **Operative provisions**

243-60	Application of Division to partnerships
243-65	Application where partner reduces liability
243-70	Application of Division to companies ceasing to be 100% subsidiary
243-75	Application of Division where debt forgiveness rules also apply

### **Operative provisions**

#### **243-60 Application of Division to partnerships**

This Division applies to a partnership in respect of the partnership's debts and in respect of debts of a partner, and references to a debtor include a reference to a partnership.

#### **243-65 Application where partner reduces liability**

- (1) This section applies to a debt in relation to a partner in a partnership if:
  - (a) in connection with an \*arrangement, the partner's liability to pay the debt is reduced or eliminated and the partner's interest in the partnership ceases or is varied or transferred; and
  - (b) an excess would have been worked out under subsection 243-35(1) if, at the time when the debt is reduced or eliminated, the debt had been terminated and remained unpaid and this section had not applied.
- (2) If this section applies to a debt in relation to a partner in a partnership, an amount is to be included in his or her assessable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) This is how to work out the amount to be included:

**Working out the amount included**

- Step 1. Work out which income years the partner was a member of the partnership and the partnership was entitled to a \*capital allowance deduction in respect of the expenditure or the \*financed property (including deductions because of balancing adjustments).
- Step 2. For each of those income years, work out the proportion of net income of the partnership or the partnership loss (as the case requires) that was included in the assessable income of the partner or which the partner could deduct.
- Step 3. For each of those income years, multiply the \*capital allowance deductions in respect of the expenditure or the \*financed property (including deductions because of balancing adjustments) of the partnership by the corresponding proportion worked out under Step 2. Sum all of the amounts.
- Step 4. Divide the sum by the total of the \*capital allowance deductions in respect of the expenditure or the \*financed property (including deductions because of balancing adjustments) of the partnership for all of those income years.
- Step 5. Work out the amount that would have been included in the partnership's assessable income under section 243-40 if the debt had been terminated and remained unpaid and this section had not applied.
- Step 6. Multiply the amount worked out in Step 5 by the factor worked out in Step 4. The result is the amount to be included in the partner's assessable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**243-70 Application of Division to companies ceasing to be 100% subsidiary**

- (1) This section applies to a company if:
  - (a) the company ceases to be a \*100% subsidiary in relation to at least one other company; and
  - (b) at that time, the company is the debtor for a \*limited recourse debt that has not been paid in full by the company; and
  - (c) the creditor's rights under the debt are transferred or assigned to another entity.
- (2) If this section applies, this Division applies as if the debt were terminated, and refinanced with \*non-arm's length limited recourse debt, at the time the company ceased to be a \*100% subsidiary of that other company.

**243-75 Application of Division where debt forgiveness rules also apply**

- (1) This section is to remove doubt about how this Division and Schedule 2C to the *Income Tax Assessment Act 1936* apply where both apply to the same debt.
- (2) Where both apply:
  - (a) this Division is to be applied first and is to be applied disregarding any operation of that Schedule; and
  - (b) any amounts included in assessable income under this Division are taken into account under paragraph 245-85(1)(a) of that Schedule.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 247—Capital protected borrowings

### Guide to Division 247

#### 247-1 What this Division is about

Capital protection provided under a relevant capital protected borrowing to the extent that it is not provided by an explicit put option is treated (for the borrower) as if it were a put option.

An amount attributable to capital protection under any relevant capital protected borrowing is treated (for the borrower) as a payment for a put option.

#### Table of sections

##### Operative provisions

247-5	Object of Division
247-10	What <i>capital protected borrowing</i> and <i>capital protection</i> are
247-15	Application of this Division
247-20	Treating capital protection as a put option
247-25	Number of put options
247-30	Exercise or expiry of option

#### Operative provisions

##### 247-5 Object of Division

The object of this Division is to ensure that amounts for \*capital protection under all relevant \*capital protected borrowings are treated (for the borrower) under this Act as a payment for a put option.

##### 247-10 What *capital protected borrowing* and *capital protection* are

- (1) An \*arrangement under which a \*borrowing is made, or credit is provided, is a ***capital protected borrowing*** if the borrower is

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 247-15

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wholly or partly protected against a fall in the \*market value of a thing (the *protected thing*) to the extent that:

- (a) the borrower uses the amount borrowed or credit provided to acquire the protected thing; or
  - (b) the borrower uses the protected thing as security for the borrowing or provision of credit.
- (2) That protection is called *capital protection*.

**247-15 Application of this Division**

- (1) This Division applies to a \*capital protected borrowing only if the protected thing is a beneficial interest in:
  - (a) a \*share, a unit in a unit trust or a stapled security; or
  - (b) an entity that holds a beneficial interest in a share, unit in a unit trust or stapled security either directly, or indirectly through one or more interposed entities.
- (2) This Division applies only to borrowers under \*capital protected borrowings.
- (3) This Division does not apply to a \*capital protected borrowing under which a \*share or stapled security is acquired under an \*employee share scheme.
- (4) This Division does not apply to a \*capital protected borrowing entered into before 1 July 2007 (except to the extent that it is extended on or after that day) unless the \*share, unit in a unit trust or stapled security is listed for quotation in the official list of an \*approved stock exchange.
- (5) This Division does not apply to a \*capital protected borrowing entered into on or after 1 July 2007 if:
  - (a) the protected thing is a beneficial interest in:
    - (i) a \*share, unit or stapled security that is not listed for quotation in the official list of an \*approved stock exchange; or
    - (ii) an entity that holds a beneficial interest in a share, unit in a unit trust or stapled security either directly, or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

indirectly through one or more interposed entities, that is not so listed; and

- (b) one of these conditions is satisfied:
- (i) for a non-listed share—the company is not a \*widely held company;
  - (ii) for a non-listed unit—the trust is not a widely held unit trust as defined in section 272-105 in Schedule 2F to the *Income Tax Assessment Act 1936*;
  - (iii) for a non-listed stapled security—any company involved is not a widely held company and any trust involved is not such a widely held unit trust.

### **247-20 Treating capital protection as a put option**

- (1) This section applies to a borrower if:
- (a) the borrower has an excess using the method statement in subsection (3) for a \*capital protected borrowing entered into on or after 1 July 2007; or
  - (b) the borrower has an amount that is reasonably attributable to the \*capital protection as mentioned in subsection (2) for a capital protected borrowing, or an extension of a capital protected borrowing, entered into at or after 9.30 am, by legal time in the Australian Capital Territory, on 16 April 2003 and before 1 July 2007.
- (2) For paragraph (1)(b), the amount that is reasonably attributable to the \*capital protection is worked out under Division 247 of the *Income Tax (Transitional Provisions) Act 1997*.
- (3) This is the method statement.

*Method statement*

Step 1. Work out the total amount incurred by the borrower under or in respect of the \*capital protected borrowing for the income year, ignoring amounts that are not in substance for \*capital protection or interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- Step 2. Work out the total interest that would have been incurred for the income year on a \*borrowing or provision of credit of the same amount as under the \*capital protected borrowing at the rate applicable under subsection (4) or (5).
- Step 3. If the step 1 amount exceeds the step 2 amount, the excess is reasonably attributable to the \*capital protection for the income year.

Example: Amounts that would be ignored under step 1 include amounts that are in substance the repayment of a loan or credit, the payment of an application fee or brokerage commission and the payment of stamp duty or other tax.

- (4) If the \*capital protected borrowing is at a fixed rate for all or part of the term of the \*borrowing, use the Reserve Bank of Australia's Indicator Rate for Personal Unsecured Loans—Variable Rate (the *benchmark rate*) at the time the first of the amounts referred to in step 1 of the method statement in subsection (3) was incurred during the term of the borrowing or the relevant part of the term.
- (5) If the \*capital protected borrowing is at a variable rate for all or part of the term of the \*borrowing, use the average of the benchmark rates published by the Reserve Bank of Australia during the term of the borrowing or the relevant part of the term.
- (6) If this section applies to a borrower, this Act applies as if:
- (a) the borrower's excess from the method statement in subsection (3); or
  - (b) the amount that is reasonably attributable to \*capital protection as mentioned in paragraph (1)(b);
- (reduced by any amount the borrower incurred under or in respect of the \*capital protected borrowing for an explicit put option) were incurred only for a put option granted by the lender or by another entity under the \*arrangement.

### 247-25 Number of put options

- (1) If a \*capital protected borrowing specifies more than one occasion on which the \*capital protection can be invoked, this Act applies as

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

if there were a separate put option for each of those occasions. So much of the amount to which subsection 247-20(6) applies as is reasonably attributable to each option is taken to have been incurred for that option.

- (2) However, if a borrower may invoke the \*capital protection under a \*capital protected borrowing at any time up to the end of a period, or only at the end of a period, for which there is capital protection, this Act applies as if there were a single put option for that period.

### **247-30 Exercise or expiry of option**

- (1) If the \*capital protection under a \*capital protected borrowing is invoked:
- (a) the borrower is taken to have exercised the put option; and
  - (b) any interest in a \*share, unit in a unit trust or stapled security that is acquired by the lender or another entity under the \*arrangement as a result of that capital protection being invoked is taken to have been disposed of by the borrower as a result of the exercise of the option.
- (2) If the \*capital protection under a \*capital protected borrowing is not invoked on or before the last occasion on which it could have been, the put option is taken to have expired.

Note: If a borrower under a capital protected borrowing holds the protected things on capital account, the exercise or expiry of the put option may give rise to a capital gain or capital loss: see sections 104-25 (CGT event C2) and 134-1 (exercise of options).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 250—Assets put to tax preferred use**

### **Table of Subdivisions**

	Guide to Division 250
250-A	Objects
250-B	When this Division applies to you and an asset
250-C	Denial of, or reduction in, capital allowance deductions
250-D	Deemed loan treatment of financial benefits provided for tax preferred use
250-E	Taxation of deemed loan
250-F	Treatment of asset when Division ceases to apply to the asset
250-G	Objections against determinations and decisions by the Commissioner

### **Guide to Division 250**

#### **250-1 What this Division is about**

This Division denies or reduces certain capital allowance deductions that would otherwise be available to you in relation to an asset if the asset is put to a tax preferred use in certain circumstances.

If the capital allowance deductions are denied or reduced, certain financial benefits in relation to the tax preferred use of the asset are assessed only to the extent of a notional gain component. This component is worked out on the basis of treating the arrangements under which the asset is put to a tax preferred use, and financial benefits are provided in relation to that tax preferred use, as a loan. Subdivision 250-E then applies to determine the amounts that are to be assessed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 250-A—Objects

### Table of sections

250-5 Main objects

### 250-5 Main objects

The main objects of this Division are:

- (a) to deny or reduce your \*capital allowance deductions in respect of an asset if the asset is put to a \*tax preferred use and you have insufficient economic interest in the asset; and
- (b) if your capital allowance deductions are denied or reduced, to treat the \*arrangement for the tax preferred use of the asset as a loan that is taxed as a financial arrangement (on a compounding accruals basis).

## Subdivision 250-B—When this Division applies to you and an asset

### Table of sections

#### Overall test

250-10 When this Division applies to you and an asset  
250-15 General test  
250-20 First exclusion—small business entities  
250-25 Second exclusion—financial benefits under minimum value limit  
250-30 Third exclusion—certain short term or low value arrangements  
250-35 Exceptions to section 250-30  
250-40 Fourth exclusion—sum of present values of financial benefits less that amount otherwise assessable  
250-45 Fifth exclusion—Commissioner determination

#### Tax preferred use of asset

250-50 *End user* of an asset  
250-55 *Tax preferred end user*  
250-60 *Tax preferred use* of an asset  
250-65 *Arrangement period* for tax preferred use

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 250-10

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- 250-70 New tax preferred use at end of arrangement period if tax preferred use continues
- 250-75 What constitutes a separate asset for the purposes of this Division
- 250-80 Treatment of particular arrangements in the same way as leases

**Financial benefits in relation to tax preferred use**

- 250-85 Financial benefits in relation to tax preferred use of an asset
- 250-90 Financial benefit provided directly or indirectly
- 250-95 Expected financial benefits in relation to an asset put to tax preferred use
- 250-100 Present value of financial benefit that has already been provided

**Discount rate to be used in working out present values**

- 250-105 Discount rate to be used in working out present values

**Predominant economic interest**

- 250-110 Predominant economic interest
- 250-115 Limited recourse debt test
- 250-120 Right to acquire asset test
- 250-125 Effectively non-cancellable, long term arrangement test
- 250-130 Meaning of *effectively non-cancellable* arrangement
- 250-135 Level of expected financial benefits test
- 250-140 When to retest predominant economic interest under section 250-135

**Overall test**

**250-10 When this Division applies to you and an asset**

This Division applies to you and an asset at a particular time if:

- (a) the general test in section 250-15 is satisfied in relation to you and the asset; and
- (b) none of the exclusions in sections 250-20, 250-25, 250-30, 250-40 and 250-45 apply.

**250-15 General test**

This Division applies to you and an asset at a particular time if:

- (a) the asset is being \*put to a tax preferred use; and
- (b) the \*arrangement period for the \*tax preferred use of the asset is greater than 12 months; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) \*financial benefits in relation to the tax preferred use of the asset have been, will be or can reasonably be expected to be, \*provided to you (or a \*connected entity) by:
  - (i) a \*tax preferred end user (or a connected entity); or
  - (ii) any \*tax preferred entity (or a connected entity); or
  - (iii) any entity that is a foreign resident; and
- (d) disregarding this Division, you would be entitled to a \*capital allowance in relation to:
  - (i) a decline in the value of the asset; or
  - (ii) expenditure in relation to the asset; and
- (e) you lack a \*predominant economic interest in the asset at that time.

### **250-20 First exclusion—small business entities**

This Division does not apply to you and an asset if:

- (a) you are a \*small business entity for the income year in which the \*arrangement period for the \*tax preferred use of the asset starts; and
- (b) you choose to deduct amounts under Subdivision 328-D for the asset for that income year.

### **250-25 Second exclusion—financial benefits under minimum value limit**

- (1) This Division does not apply to you and an asset that is being \*put to a tax preferred use under a particular \*arrangement if, at the start of the \*arrangement period, the total of the nominal values of all the \*financial benefits that have been, or will be or can reasonably be expected to be, provided to you (or a \*connected entity):
  - (a) by \*members of the tax preferred sector; and
  - (b) in relation to the \*tax preferred use of the asset or any other asset that is being, or is to be, put to a tax preferred use under the arrangement;does not exceed \$5 million.
- (2) The amount referred to in subsection (1) is indexed annually.

Note: Subdivision 960-M shows you how to index amounts.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**250-30 Third exclusion—certain short term or low value arrangements**

*Certain short term or low value arrangements generally excluded*

- (1) This Division does not apply to you and an asset that is being \*put to a tax preferred use under a particular \*arrangement if:
- (a) the \*arrangement period for the \*tax preferred use of the asset does not exceed:
    - (i) 5 years if the asset is real property and the tax preferred use of the asset is a lease; or
    - (ii) 3 years in any other case; or
  - (b) at the start of the arrangement period, the total of the nominal values of all the \*financial benefits that have been, will be or can reasonably be expected to be, provided to you (or a \*connected entity):
    - (i) by \*members of the tax preferred sector; and
    - (ii) in relation to the tax preferred use of the asset or any other asset that is being, or is to be, put to a tax preferred use under the arrangement;  
does not exceed:
      - (iii) \$50 million if the asset is real property and the tax preferred use of the asset is a lease; or
      - (iv) \$30 million in any other case; or
  - (c) at the start of the arrangement period, the total of the values of all the assets that are put to a tax preferred use under the arrangement does not exceed:
    - (i) \$40 million if the asset is real property and the tax preferred use of the asset is a lease; or
    - (ii) \$20 million in any other case.

This subsection has effect subject to section 250-35.

- (2) The amounts referred to in paragraphs (1)(b) and (c) are indexed annually.

Note: Subdivision 960-M shows you how to index amounts.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **250-35 Exceptions to section 250-30**

#### *Debt interests*

- (1) Section 250-30 does not apply if the \*arrangement (either alone or together with any arrangement in relation to the \*tax preferred use of the asset or the provision of \*financial benefits in relation to the tax preferred use of the asset) is a \*debt interest.
- (2) In applying subsection (1), disregard subsection 974-130(4).

#### *Member of tax preferred sector having certain rights in relation to the asset*

- (3) Section 250-30 does not apply if:
  - (a) a \*member of the tax preferred sector has:
    - (i) a right, obligation or contingent obligation to purchase or acquire the asset or a legal or equitable interest in the asset; or
    - (ii) a right to require the transfer of the asset or a legal or equitable interest in the asset; or
    - (iii) a residual or reversionary interest in the asset that will arise or become exercisable at or after the end of the \*arrangement period; and
  - (b) the consideration for the purchase, acquisition or transfer of the right, obligation or interest is not fixed as the \*market value of the asset at the time of the purchase, acquisition or transfer.

To avoid doubt, this subsection does not apply to the asset merely because your interest in the asset is one that ceases to exist after the passage of a particular period of time.

#### *Member of tax preferred sector providing financing*

- (4) Section 250-30 does not apply if a \*member of the tax preferred sector provides financing, or support for financing, in relation to your interest in the asset (including by way of a loan, a guarantee, an indemnity, a security, hedging or undertaking to provide \*financial benefits in the event of the termination of an \*arrangement).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 250-35

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*Finance leases, non-cancellable operating leases, service concessions and similar arrangements*

- (5) Section 250-30 does not apply if an \*arrangement in relation to the \*tax preferred use of the asset, or the provision of \*financial benefits in relation to the tax preferred use of the asset, is or involves:

- (a) a finance lease; or
- (b) a non-cancellable operating lease; or
- (c) a service concession or similar arrangement;

that generally accepted accounting principles, as in force at the start of the \*arrangement period, require to be included as an asset or a liability in your balance sheet.

*Financial benefits irregular, not based on comparable market-based rates or not reflecting value of tax preferred use of asset*

- (6) Section 250-30 does not apply if the \*financial benefits that have been, or are to be provided, to you (or a \*connected entity) by \*members of the tax preferred sector in relation to the \*tax preferred use of the asset:

- (a) are not provided on a regular periodic basis (and at least annually); or
- (b) are not based on comparable market-based rates; or
- (c) do not reflect the value of the tax preferred use of the asset.

*Special rules if tax preferred use is a lease or hire of the asset*

- (7) If the \*tax preferred use of the asset is a lease or hire of the asset (or the use of the asset under a lease or hire arrangement), section 250-30 does not apply if:
- (a) the asset is so specialised that the \*end user could not carry out one or more of its functions effectively without the asset; and
  - (b) you would be unlikely to be able to re-lease, re-hire or resell the asset to another person who is not a \*member of the tax preferred end user group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: For particular arrangements that are treated as leases, see section 250-80.

*Special rules if tax preferred use is not a lease or hire of the asset*

- (8) If the \*tax preferred use of the asset is not the lease or hire of the asset (or the use of the asset under a lease or hire arrangement), section 250-30 does not apply if:
- (a) a \*member of the tax preferred sector has a right, if particular circumstances occur, to manage, or to assume control over, the asset (other than temporarily for the purpose of ensuring public health or safety, protecting the environment or continuing the supply of an essential service); or
  - (b) the asset is so specialised that it is unlikely that it could effectively be put to any use other than the tax preferred use; or
  - (c) neither you (nor a \*connected entity) has effective day to day control and physical possession of the asset.

Note: For particular arrangements that are treated as leases, see section 250-80.

#### **250-40 Fourth exclusion—sum of present values of financial benefits less than amount otherwise assessable**

- (1) This Division does not apply to you and an asset that is being \*put to a tax preferred use under a particular \*arrangement if, when that \*tax preferred use of the asset starts, the Division 250 assessable amount is less than the alternative assessable amount.
- (2) For the purposes of subsection (1), the ***Division 250 assessable amount*** is the sum of the present values of all the amounts that would be likely to be included in your assessable income under this Division in relation to the \*tax preferred use of the asset if this Division applied to you and the asset.
- (3) This is how to work out the ***alternative assessable amount*** for the purposes of subsection (1):

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Method statement*

- Step 1. Add up the present values of the amounts that would be included in your assessable income in relation to the \*financial benefits \*provided in relation to the tax preferred use of the asset during the \*arrangement period if this Division did not apply to you and the asset.
- Step 2. Add up the present values of the amounts that you would be able to deduct in relation to the asset, or expenditure in relation to the asset, under Division 40 or Division 43 in relation to the \*arrangement period if this Division did not apply to you and the asset.
- Step 3. Deduct the amount obtained in Step 2 from the amount obtained in Step 1. The result is the *alternative assessable amount*.

- (4) To avoid doubt, the amounts referred to in subsections (2) and (3) are all the amounts that would be likely to be included in your assessable income, or deducted, for all the income years during the whole, or a part, of which the asset is \*put to the tax preferred use.
- (5) The point in time to be used in determining, for the purposes of this section:
- (a) the present value of an amount that is included in your assessable income for an income year; or
  - (b) the present value of an amount that you would be able to deduct for an income year;
- is the end of the income year.

**250-45 Fifth exclusion—Commissioner determination**

This Division does not apply to you and an asset at a particular time if:

- (a) you request the Commissioner to make a determination under this subsection; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the Commissioner determines that it is unreasonable that the Division should apply to you and the asset at that time, having regard to:
  - (i) the circumstances because of which this Division would apply to you and the asset; and
  - (ii) any other relevant circumstances.

## **Tax preferred use of asset**

### **250-50 *End user of an asset***

- (1) An entity (other than you) is an ***end user*** of an asset if the entity (or a \*connected entity):
  - (a) uses, or effectively controls the use of, the asset; or
  - (b) will use, or effectively control the use of, the asset; or
  - (c) is able to use, or effectively control the use of, the asset; or
  - (d) will be able to use, or effectively control the use of, the asset.
- (2) The control referred to in subsection (1) may be direct or indirect.
- (3) For the purposes of subsection (1), disregard any temporary control of the asset that is for the purpose of ensuring public health or safety, protecting the environment or continuing the supply of an essential service.
- (4) To avoid doubt, an entity is taken to be an ***end user*** of an asset if the entity (or a \*connected entity) holds rights as a lessee under a lease of the asset.

Note: For particular arrangements that are treated as leases, see section 250-80.

### **250-55 *Tax preferred end user***

An \*end user of an asset is a ***tax preferred end user*** if:

- (a) the end user (or a \*connected entity) is a \*tax preferred entity;  
or
- (b) the end user is an entity that is a foreign resident.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**250-60 Tax preferred use of an asset**

- (1) An asset is *put to a tax preferred use* at a particular time if:
- (a) an \*end user (or a \*connected entity) holds, at that time, rights as lessee under a lease of the asset; and
  - (b) either or both of the following subparagraphs is satisfied at that time:
    - (i) the asset is, or is to be, used by or on behalf of an end user who is a \*tax preferred end user because of paragraph 250-55(a) (tax preferred entity);
    - (ii) the asset is, or is to be, used wholly or principally outside Australia and an end user of the asset is a tax preferred end user because of paragraph 250-55(b) (non-resident).

If this subsection applies, the *tax preferred use* of the asset is the lease referred to in paragraph (a).

Note: For particular arrangements that are treated as leases, see section 250-80.

- (2) An asset is also *put to a tax preferred use* at a particular time if:
- (a) at that time the asset is, or is to be, used (whether or not by you) wholly or partly in connection with:
    - (i) the production, supply, carriage, transmission or delivery of goods; or
    - (ii) the provision of services or facilities; and
  - (b) either or both of the following subparagraphs is satisfied at that time:
    - (i) some or all of the goods, services or facilities are, or are to be, produced for or supplied, carried, transmitted or delivered to or for an \*end user who is a \*tax preferred end user because of paragraph 250-55(a) (tax preferred entity) but is not an \*exempt foreign government agency;
    - (ii) the asset is, or is to be, used wholly or principally outside Australia and an end user of the asset is a tax preferred end user because of paragraph 250-55(b) (foreign resident).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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If this subsection applies, the *tax preferred use* of the asset is the production, supply, carriage, transmission, delivery or provision referred to in paragraph (a).

- (3) To avoid doubt, the *facilities* referred to in subsection (2) include:
- (a) hospital or medical facilities; or
  - (b) prison facilities; or
  - (c) educational facilities; or
  - (d) \*land transport facilities; or
  - (e) other transport facilities; or
  - (f) the supply of water, gas or electricity; or
  - (g) housing or accommodation; or
  - (h) premises from which to operate a \*business or other undertaking.
- (4) If the asset is being \*put to a tax preferred use:
- (a) the *members of the tax preferred end user group* are:
    - (i) the \*tax preferred end user; and
    - (ii) the \*connected entities of the tax preferred end user; and
  - (b) the *members of the tax preferred sector* are:
    - (i) the tax preferred end user (and connected entities); and
    - (ii) any \*tax preferred entity (or a connected entity); and
    - (iii) any entity that is a foreign resident.

### **250-65 Arrangement period for tax preferred use**

#### *Start of the arrangement period*

- (1) The *arrangement period* for a particular \*tax preferred use of an asset starts when that tax preferred use of the asset starts.

#### *End of the arrangement period*

- (2) Subject to subsection (3), the *arrangement period* for a particular \*tax preferred use of an asset is taken to end on the day that is the date on which the tax preferred use of the asset may reasonably be expected, or is likely, to end.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 250-70

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- (3) The *arrangement period* for the \*tax preferred use of the asset ends when this Division ceases to apply to you and the asset if that happens before the day referred to in subsection (2).
- (4) In determining when a particular \*tax preferred use of an asset is likely to end:
  - (a) regard must be had to:
    - (i) the terms of, and any other circumstances relating to, any \*arrangement dealing with that tax preferred use of the asset; and
    - (ii) the terms of, and any other circumstances relating to, any arrangement dealing with the \*provision of \*financial benefits in relation to that tax preferred use of the asset; and
  - (b) it must be assumed that any right that an entity has to renew or extend such an arrangement will not be exercised (unless it is reasonable to assume that the right will be exercised because of the commercial consequences for the entity (or a \*connected entity) of not exercising the right).

*Tax preferred uses of asset by entity and connected entity*

- (5) For the purposes of this section:
  - (a) the \*tax preferred use of an asset by an entity; and
  - (b) the tax preferred use of the asset by a \*connected entity of that entity;are taken to constitute a single tax preferred use of the asset.

**250-70 New tax preferred use at end of arrangement period if tax preferred use continues**

If:

- (a) this Division applies to you and an asset because the asset is \*put to a tax preferred use; and
- (b) the \*arrangement period for the \*tax preferred use of the asset ends on a particular date (the *termination date*); and
- (c) the asset continues to be put to the tax preferred use after the termination date;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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the tax preferred use of the asset after the termination date is taken to be a separate and distinct tax preferred use of the asset from the tax preferred use of the asset before the termination date.

Note: This means, among other things, that there is a new arrangement period for the tax preferred use after the termination date and that the arrangement is retested under section 250-15 against circumstances as they stand immediately after the termination date.

### **250-75 What constitutes a separate asset for the purposes of this Division**

- (1) This Division applies to:
  - (a) an improvement to land; or
  - (b) a fixture on land;whether the improvement or fixture is removable or not, as if it were an asset separate from the land.
- (2) Whether a particular composite item is itself an asset or whether its components are separate assets is a question of fact and degree which can only be determined in the light of all the circumstances of the particular case.

Example 1: A car is made up of many separate components, but usually the car is an asset rather than each component.

Example 2: A floating restaurant consists of many separate components (like the ship itself, stoves, fridges, furniture, crockery and cutlery), but usually these components are treated as separate assets.
- (3) This Division applies to a renewal or extension of an asset that is a right as if the renewal or extension were a continuation of the original right.
- (4) This Division applies to an asset (the *underlying asset*) in which:
  - (a) you have an interest; and
  - (b) one or more other entities also have an interest;as if your interest in the underlying asset were itself the underlying asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **250-80 Treatment of particular arrangements in the same way as leases**

This Division applies to an \*arrangement that:

- (a) in substance or effect, depends on the use of a specific asset that is:
  - (i) real property; or
  - (ii) goods or a personal chattel (other than money or a money equivalent); and
- (b) gives a right to control the use of the asset (other than temporarily for the purpose of ensuring public health or safety, protecting the environment or continuing the supply of an essential service); and
- (c) is not a lease;

in the same way as it applies to a lease.

Note: Even if this section applies to treat an arrangement in relation to an asset as a lease, the requirements in section 250-50 still need to be satisfied before an entity can be an end user of the asset.

## **Financial benefits in relation to tax preferred use**

### **250-85 Financial benefits in relation to tax preferred use of an asset**

- (1) For the purposes of this Division, the \*financial benefits *provided in relation to a tax preferred use of an asset* include (but are not limited to):
  - (a) a financial benefit provided in relation to:
    - (i) bringing the asset into a state, condition or location in which it can be \*put to the tax preferred use; or
    - (ii) the start of the \*tax preferred use of the asset; and
  - (b) a financial benefit provided in relation to the end of the tax preferred use of the asset; and
  - (c) a financial benefit provided in relation to the termination or expiration of an \*arrangement that deals with:
    - (i) the tax preferred use of the asset; or
    - (ii) the provision of financial benefits in relation to the tax preferred use of the asset; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) a financial benefit provided in relation to the purchase or acquisition of the asset by, or transfer of the asset to, the \*tax preferred end user (or a \*connected entity).
- (2) Without limiting paragraph (1)(b), if the asset has a \*guaranteed residual value:
- (a) the amount of the guaranteed residual value is taken to be a \*financial benefit ***provided in relation to the tax preferred use of the asset***; and
- (b) that financial benefit is taken to be provided when the relevant payment is made in relation to the guaranteed residual value.
- (3) The asset has a ***guaranteed residual value*** if there is an \*arrangement that provides to the effect that if:
- (a) on or after the end of the \*arrangement period, you (or a \*connected entity) sell or otherwise dispose of the asset to any person; and
- (b) you (or a connected entity) receives in respect of the sale or disposal:
- (i) no consideration; or
- (ii) consideration that is less than an amount (the ***guaranteed amount***) specified in, or ascertainable under, the provision;
- a \*member of the tax preferred sector will pay to you (or a connected entity), or to someone else for your benefit (or for the benefit of a connected entity), an amount equal to:
- (c) the guaranteed amount if subparagraph (b)(i) applies; or
- (d) the amount by which the guaranteed amount exceeds the consideration if subparagraph (b)(ii) applies.
- The amount of the guaranteed residual value is taken to be the guaranteed amount.
- (4) If:
- (a) an asset is \*put to a tax preferred use; and
- (b) an entity is an \*end user of the asset because the entity manages the asset or the use to which the asset is put; any \*financial benefit that the entity (or a \*connected entity) provides that is calculated by reference to the receipts, revenue or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 250-85

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income generated by the use of the asset is also taken to be a financial benefit ***provided in relation to the tax preferred use of the asset.***

- (5) For the purposes of this Division (other than this subsection), a \*financial benefit provided by a \*member of the tax preferred sector is taken not to be ***provided in relation to the tax preferred use of an asset*** to the extent to which the financial benefit merely passes on, or represents:
- (a) financial benefits provided in relation to the use of the asset;  
or
  - (b) something derived from the use of the asset;
- by someone who is not a member of the tax preferred sector.
- (6) For the purposes of this Division, disregard a \*financial benefit \*provided in relation to the tax preferred use of the asset to the extent to which it consists solely of routine maintenance of the asset.
- (7) For the purposes of this Division, if a \*financial benefit is provided in relation to the use of a number of assets, a separate financial benefit of an amount or value that is reasonably attributable to each asset is taken to be provided in relation to each asset.
- (8) To avoid doubt, a \*financial benefit may be ***provided in relation to a tax preferred use of an asset*** even though it is provided before the \*tax preferred use of the asset starts.
- (9) For the purposes of this Division:
- (a) a \*financial benefit that is not an amount:
    - (i) is taken to become due and payable when the entity providing the financial benefit becomes liable to provide the financial benefit; and
    - (ii) is taken to be paid when it is provided; and
  - (b) a financial benefit that is paid without becoming due and payable is taken to have become due and payable on the day on which it was paid.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **250-90 Financial benefit provided directly or indirectly**

For the purposes of this Division, a person (the *provider*) is taken to provide a \*financial benefit to a person (the *recipient*) in relation to a \*tax preferred use of an asset whether the financial benefit is provided to the recipient:

- (a) directly; or
- (b) indirectly (including indirectly through an entity that is not a \*connected entity of the recipient and is not a connected entity of the provider).

### **250-95 Expected financial benefits in relation to an asset put to tax preferred use**

For the purposes this Division, the *expected financial benefits* at a particular time in relation to an asset that is \*put to a tax preferred use are the \*financial benefits that, at that time:

- (a) have been; or
- (b) will, assuming normal operating conditions, be; or
- (c) can, assuming normal operating conditions, reasonably be expected to be;

\*provided in relation to the tax preferred use of the asset by a \*member of the tax preferred sector to someone who is not a member of the tax preferred sector.

Note: Paragraphs 250-85(1)(b), (c) and (d) provide for certain benefits provided in relation to the end of the tax preferred use of the asset or in relation to the purchase, disposal or transfer of the asset to be treated as financial benefits provided in relation to the tax preferred use of the asset.

### **250-100 Present value of financial benefit that has already been provided**

For the purposes of this Division, the *present value* of a \*financial benefit at a particular time is the nominal amount or value of the financial benefit if the financial benefit has been provided before that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Discount rate to be used in working out present values

### 250-105 Discount rate to be used in working out present values

- (1) For the purposes of section 250-40, the discount rate to be used in working out the present value of a future amount is:
  - (a) the average, expressed as a decimal fraction, of the assessed secondary market yields in respect of 10-year non-rebate Treasury bonds published by the Reserve Bank during the \*financial year in which the relevant \*arrangement period starts; or
  - (b) if no assessed secondary market yield in respect of bonds of that kind was published by the Reserve Bank during the year—the decimal fraction determined by the Treasurer for the purposes of the definition of long-term bond rate in section 2 of the *Petroleum Resource Rent Tax Assessment Act 1987* in relation to the financial year in which the relevant arrangement period starts.
- (2) For the purposes of section 250-135 and Subdivisions 250-C and 250-D, the discount rate to be used in working out the present value of a future amount is a rate that reflects a constant periodic rate of return (worked out on a compounding basis) on the investment in:
  - (a) the asset referred to in subparagraph 250-15(d)(i) if that subparagraph applies; or
  - (b) the expenditure referred to in paragraph 250-15(d)(ii) if that subparagraph applies;that is implicit in the \*arrangements under which the asset is \*put to a tax preferred use and \*financial benefits are \*provided in relation to that tax preferred use.

## Predominant economic interest

### 250-110 Predominant economic interest

You lack a *predominant economic interest* in an asset at a particular time only if one or more of the following sections apply to you and the asset at that time:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) section 250-115 (limited recourse debt test);
- (b) section 250-120 (right to acquire asset test);
- (c) section 250-125 (effectively non-cancellable, long term arrangement test);
- (d) section 250-135 (level of expected financial benefits test).

### **250-115 Limited recourse debt test**

- (1) You lack a *predominant economic interest* in an asset at a particular time if more than the allowable percentage of the cost of your acquiring or constructing the asset is financed (directly or indirectly) by a \*limited recourse debt or debts.
- (2) For the purposes of subsection (1):
  - (a) the amount of a \*limited recourse debt is to be reduced by the value of any \*debt property (other than the \*financed property) that is provided as security for the debt; and
  - (b) if the limited recourse debt finances the acquisition or construction of 2 or more assets, only the amount of the debt that is reasonably attributable to the asset referred to in subsection (1) is to be taken into account.
- (3) For the purposes of subsection (1), the allowable percentage is:
  - (a) 80% if the asset is taken to be \*put to a tax preferred use because of subparagraph 250-60(1)(b)(i) or (2)(b)(i) (end use by \*tax preferred entities); or
  - (b) 55% if the asset is taken to be put to a tax preferred use because of subparagraph 250-60(1)(b)(ii) or (2)(b)(ii) (end use by foreign residents).
- (4) This section does not apply to the asset if:
  - (a) you are a \*corporate tax entity; and
  - (b) the \*tax preferred use of the asset is not the lease or hire of the asset (and is not the use of the asset under a lease or hire arrangement); and
  - (c) the asset is \*put to the tax preferred use wholly or principally in Australia; and
  - (d) no \*member of the tax preferred sector provides financing, or support for financing, in relation to your interest in the asset

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 250-120

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(including by way of a loan, a guarantee, an indemnity, a security, hedging or undertaking to provide \*financial benefits in the event of the termination of an \*arrangement).

- (5) Paragraph (4)(b) does not apply if:
- (a) the asset is real property (or an interest in real property); and
  - (b) the \*tax preferred use of the asset is a lease; and
  - (c) the space within the property that is occupied by tenants who are \*members of the tax preferred sector is less than half of the total space within the property that is either occupied by tenants or available to be occupied by tenants.
- (6) This section also does not apply to the asset if:
- (a) you hold the asset as a trustee; and
  - (b) the asset is real property (or an interest in real property); and
  - (c) the \*tax preferred use of the asset is a lease; and
  - (d) the space within the property that is occupied by tenants who are \*members of the tax preferred sector is less than half of the total space within the property that is either occupied by tenants or available to be occupied by tenants; and
  - (e) the asset is \*put to the tax preferred use wholly or principally in Australia; and
  - (f) no member of the tax preferred sector provides financing, or support for financing, in relation to your interest in the asset (including by way of a loan, a guarantee, an indemnity, a security, hedging or undertaking to provide \*financial benefits in the event of the termination of an \*arrangement).

**250-120 Right to acquire asset test**

- (1) You lack a *predominant economic interest* in an asset at a particular time if, at that time:
- (a) the asset is to be transferred to a \*member of the tax preferred sector after the end of the \*arrangement period; and
  - (b) the consideration for the transfer is not fixed as the \*market value of the asset at the time of the transfer.
- (2) You also lack a *predominant economic interest* in an asset at a particular time if, at that time:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) a \*member of the tax preferred end user group has, or will have:
  - (i) a right, obligation or contingent obligation to purchase or acquire the asset or a legal or equitable interest in the asset; or
  - (ii) a right to require the transfer of the asset or a legal or equitable interest in the asset; and
- (b) the consideration for the purchase, acquisition or transfer is not fixed as the \*market value of the asset at the time of the purchase, acquisition or transfer.

To avoid doubt, this section does not apply to the asset merely because your interest in the asset is one that ceases to exist after the passage of a particular period of time.

### **250-125 Effectively non-cancellable, long term arrangement test**

- (1) You lack a *predominant economic interest* in an asset at a particular time if:
  - (a) any \*arrangement that relates to:
    - (i) the \*tax preferred use of the asset; or
    - (ii) the \*financial benefits to be \*provided by the \*members of the tax preferred sector in relation to the tax preferred use of the asset;is \*effectively non-cancellable (see section 250-130); and
  - (b) the \*arrangement period for the tax preferred use of the asset is:
    - (i) greater than 30 years; or
    - (ii) if the arrangement period is less than or equal to 30 years—75% or more of that part of the asset's \*effective life that remains when the tax preferred use of the asset starts.
- (2) Disregard section 40-102 in working out the asset's \*effective life for the purposes of subparagraph (1)(b)(ii).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 250-130 Meaning of *effectively non-cancellable* arrangement

- (1) An \*arrangement that relates to \*financial benefits to be \*provided by a \*member of the tax preferred sector in relation to the tax preferred use of an asset is ***effectively non-cancellable*** if:
  - (a) the arrangement can be cancelled only with:
    - (i) your permission; or
    - (ii) the permission of a \*connected entity of yours; or
    - (iii) an agent or entity acting on your behalf (or on behalf of a connected entity of yours); or
  - (b) the arrangement can be cancelled without the permission of an entity referred to in paragraph (a) but, if the arrangement were cancelled, the member of the tax preferred sector or another member of the tax preferred sector:
    - (i) would be required to enter into a new arrangement for the \*provision of financial benefits in relation to the tax preferred use of the asset; or
    - (ii) would incur a penalty and the magnitude of the penalty would be such as to discourage cancellation.
- (2) For these purposes, if a \*member of the tax preferred sector defaults under an \*arrangement and the arrangement is cancelled, the arrangement is to be taken to have been cancelled without the permission of an entity referred to in paragraph (1)(a).

### 250-135 Level of expected financial benefits test

#### *Effective guarantee or indemnity for value of asset*

- (1) You lack a ***predominant economic interest*** in an asset at a particular time if the asset has a \*guaranteed residual value at that time.

#### *Likely financial benefits exceeding 70% limit*

- (2) You also lack a ***predominant economic interest*** in an asset at a particular time if, at that time:
  - (a) the \*arrangement under which the asset is \*put to the tax preferred use (either alone or together with any other

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

arrangement in relation to the \*tax preferred use of the asset or the \*provision of \*financial benefits in relation to the tax preferred use of the asset) is a \*debt interest; or

- (b) the sum of the present values of the \*expected financial benefits that \*members of the tax preferred sector have provided, or are or are reasonably likely to provide, to you (or a \*connected entity) in relation to the tax preferred use of the asset exceeds 70% of:
- (i) the \*market value of the asset if subparagraph 250-15(d)(i) applies; or
  - (ii) so much of the market value of the asset as is attributable to the expenditure referred to subparagraph 250-15(d)(ii) if that subparagraph applies.

### **250-140 When to retest predominant economic interest under section 250-135**

*Purpose for applying section*

- (1) This section applies for the purposes of working out whether this Division applies to you and to an asset that is \*put to a tax preferred use.

*No need to keep retesting if section 250-135 does not apply at start of tax preferred use of asset*

- (2) If section 250-135 does not apply to you and the asset at the time when the \*tax preferred use of the asset starts, that section is taken, subject to subsection (4), to continue not to apply to you and the asset.

Note: This subsection means that if section 250-135 does not apply to the arrangement when the tax preferred use of the asset starts, the arrangement does not need to be retested against section 250-135 until a change of the kind referred to in subsection (4) occurs.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 250-140

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*No need to keep retesting if section 250-135 does not apply when you do something to increase value of expected financial benefits*

- (3) If:
- (a) you (or a \*connected entity), or a \*member of the tax preferred sector, do something, or omit to do something, at a particular time that increases the value of the \*expected financial benefits in relation to the \*tax preferred use of the asset; and
  - (b) section 250-135 does not apply to the asset at that time;
- that section is taken, subject to subsection (4), to continue not to apply to you and the asset.

Note: This subsection means that if the arrangement is retested against section 250-135 at a particular time and section 250-135 does not apply to the arrangement on that retesting, the arrangement does not need to be again retested against section 250-135 until a change of the kind referred to in subsection (4) occurs.

*Retesting when you do something to increase the value of expected financial benefits*

- (4) Subsection (2) or (3) ceases to apply to you and the asset if you (or a \*connected entity), or a \*member of the tax preferred sector, do something, or omit to do something, that increases the value of the \*expected financial benefits in relation to the \*tax preferred use of the asset.

*Certain financial benefits ignored when retesting*

- (5) For the purposes of reapplying section 250-135 to the asset, disregard \*financial benefits provided before subsection (2) or (3) of this section ceased to apply to the asset.

Note: If:

- (a) subsection (2) or (3) ceases to apply to the asset at a particular time under this subsection; and
- (b) the asset is retested at that time against section 250-135; and
- (c) on the retesting, that section is found to apply to the asset at that time;

subsection (3) will start to apply to the asset again from that time because paragraph (3)(b) will have been satisfied.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Clarification that retesting only required if you do something to increase value of expected benefits*

- (6) To avoid doubt, subsection (2) or (3) does not cease to apply merely because the value of the \*expected financial benefits in relation to the asset increase because of something other than action taken, or an omission made, by you (or a \*connected entity) or a \*member of the tax preferred sector.

Note: This subsection means that retesting under subsection (4) is not triggered by an increase in the value of expected financial benefits that happens because of external circumstances (circumstances external to activities and omissions of yours, your connected entities and members of the tax preferred sector).

### **Subdivision 250-C—Denial of, or reduction in, capital allowance deductions**

#### **Table of sections**

250-145	Denial of capital allowance deductions
250-150	Apportionment rule

#### **250-145 Denial of capital allowance deductions**

- (1) If this Division applies to you and an asset at a particular time, any condition that needs to be satisfied for you to be able to deduct an amount under a \*capital allowance provision in relation to:
- (a) a decline in the value of the asset; or
  - (b) expenditure in relation to the asset;
- is taken not to be satisfied at that time.
- (2) This section has effect subject to section 250-150.

#### **250-150 Apportionment rule**

- (1) This section applies if:
- (a) this Division applies to you and an asset that is \*put to a tax preferred use; and
  - (b) it is reasonable to expect that, during the \*arrangement period for the \*tax preferred use of the asset, particular \*financial benefits will be provided to you (or a \*connected entity); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 250-150

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- (c) it is reasonable to expect that those financial benefits:
  - (i) will be provided in relation to a use of the asset that is not that tax preferred use and is not a private use; or
  - (ii) will be \*provided in relation to that tax preferred use of the asset but will not be attributable, directly or indirectly, to financial benefits that are provided by \*members of the tax preferred sector; and
- (d) the amount or value of those financial benefits is known or can reasonably be estimated; and
- (e) you choose to have this section apply to the asset.

In applying paragraph (c), disregard financial benefits that are provided under an \*arrangement that is a \*debt interest.

- (2) A choice under paragraph (1)(e) in relation to an asset:
  - (a) must be made before the due date for you to lodge your \*income tax return for the income year in which the \*arrangement period for the \*tax preferred use of the asset starts; and
  - (b) must be made for the whole of the arrangement period for the tax preferred use of the asset; and
  - (c) must extend to all assets that are, or are to be, \*put to a tax preferred use under the \*arrangement under which the asset is put to that use; and
  - (d) is irrevocable.

The choice may extend to an asset referred to in paragraph (c) even if it is likely that paragraphs (1)(b) and (c) will not apply to that asset.

- (3) If this section applies, section 250-145 applies to you and the asset only to the extent of the \*disallowed capital allowance percentage.
- (4) Subject to subsection (6), the ***disallowed capital allowance percentage*** is the following ratio (expressed as a percentage):

$$\frac{\text{Sum of present values of financial benefits that are subject to deemed loan treatment}}{\text{Market value of asset}}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (5) The Commissioner may, before the due date for you to lodge your \*income tax return for the income year to which the \*arrangement period for the \*tax preferred use of the asset starts, approve an alternative method for working out the \*disallowed capital allowance percentage for you and the asset.
- (6) If the Commissioner approves an alternative method under subsection (5), the *disallowed capital allowance percentage* is the percentage worked out in accordance with that alternative method.

### **Subdivision 250-D—Deemed loan treatment of financial benefits provided for tax preferred use**

#### **Table of sections**

250-155	Arrangement treated as loan
250-160	Financial benefits that are <i>subject to deemed loan treatment</i>
250-180	<i>End value</i> of asset
250-185	Financial benefits subject to deemed loan treatment not assessed

#### **250-155 Arrangement treated as loan**

*Loan with characteristics provided for in this section taken to exist*

- (1) If this Division applies to you and an asset at a particular time in an income year, a \*financial arrangement in the form of a loan (with the characteristics provided for in this section) is taken to exist at that time for the purposes of working out your taxable income for that income year.

Note: See Subdivision 250-E for the taxation treatment of the financial arrangement.

*Lender*

- (2) You are taken to be the lender in relation to the loan.

*Amount lent and unpaid at the start of the arrangement period*

- (3) The amount worked out under subsection (4) is taken to be the amount that you have lent, and that the borrower has not repaid, at the start of the \*arrangement period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 250-155

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- (4) The amount is worked out by taking:
- (a) the amount that, at the start of the \*arrangement period, is:
    - (i) the \*adjustable value of the asset if subparagraph 250-15(d)(i) applies; or
    - (ii) the amount worked out under subsection (5) if subparagraph 250-15(d)(ii) applies; or
  - (b) if section 250-150 applies—the amount that, at the start of the arrangement period, is the \*disallowed capital allowance percentage of:
    - (i) the adjustable value of the asset if subparagraph 250-15(d)(i) applies; or
    - (ii) the amount worked out under subsection (5) if subparagraph 250-15(d)(ii) applies;
 and deducting the sum of all \*financial benefits that are \*subject to deemed loan treatment and that have become due and payable before the start of the arrangement period.
- (5) If subparagraph 250-15(d)(ii) applies, the amount worked out under this subsection for the purposes of subsection (4) is:

Item	If the expenditure referred to in that subparagraph is ...	the amount is ...
1	capital expenditure under Division 40	the amount of the capital expenditure in respect of which a deduction has not been allowed (disregarding this Division) under the relevant Subdivision of Division 40
2	capital expenditure under Division 43	the *undeducted construction expenditure in relation to the capital expenditure

*Amounts paid to you by borrower under the loan*

- (6) Any \*financial benefit that:
- (a) a person provides; and
  - (b) is \*subject to deemed loan treatment;
- is taken to be an amount that the borrower pays you under the loan.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note 1: Section 250-160 tells you which financial benefits are subject to the deemed loan treatment.

Note 2: These benefits may be ones that are provided either to you or to a connected entity.

*Period of the loan*

- (7) The \*arrangement period is taken to be the period of the loan.

*Applying Subdivision 250-E to the loan*

- (8) For the purposes of applying Subdivision 250-E to the loan:
- (a) you are taken to have an overall gain from the loan and that overall gain is taken to be sufficiently certain at the time when you start to have the loan; and
  - (b) the amount of that overall gain is taken to be the sum of the \*financial benefits that are \*subject to the deemed loan treatment less the amount worked out under subsection (4); and
  - (c) you are taken:
    - (i) to start to have the loan at the start of the \*arrangement period; and
    - (ii) to cease to have the loan at the end of the arrangement period; and
  - (d) any right that you (or a connected entity) have to a financial benefit that is subject to deemed loan treatment is taken to be a right that you have under the loan; and
  - (e) if a \*connected entity transfers to another person a right to a financial benefit subject to deemed loan treatment:
    - (i) you are taken to transfer the right to that other person; and
    - (ii) any consideration that the connected entity receives in relation to the transfer is taken to be consideration that you receive in relation to the transfer; and
  - (f) if a right that a connected entity has to a financial benefit subject to deemed loan treatment ceases and the connected entity receives consideration in relation to that cessation—you are taken to receive that consideration in relation to the cessation; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 250-160

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- (g) you are taken to start to have the loan, or to cease to have the loan, as consideration for something if you start to have the rights to the financial benefits that are subject to deemed loan treatment, or cease to have those rights, as consideration for that thing; and
  - (h) in applying sections 250-265 to 250-275:
    - (i) the amount that you are taken, under subsections (3), (4) and (5), to have lent are the only financial benefits that you provide under the loan; and
    - (ii) the financial benefits you have received under the loan are taken to include financial benefits that are subject to deemed loan treatment that a person is, at the end of the arrangement period, liable to provide to you.
- (9) If, under subsection 250-160(2), a particular percentage of a reasonable estimate of the \*end value of the asset was taken to be a \*financial benefit that is \*subject to the deemed loan treatment, subsection 250-275(1) applies to the loan at the end of the \*arrangement period as if you had received under the loan a financial benefit equal to the relevant percentage of the end value of the asset.

**250-160 Financial benefits that are *subject to deemed loan treatment***

*General rule*

- (1) Subject to subsections (3) and (4), a \*financial benefit is ***subject to deemed loan treatment*** if:
- (a) the financial benefit:
    - (i) has been; or
    - (ii) will, assuming normal operating conditions, be; or
    - (iii) can, assuming normal operating conditions, reasonably be expected to be;provided to you (or a \*connected entity); and
  - (b) the financial benefit has been, will be or can reasonably be expected to be \*provided directly or indirectly by a \*member of the tax preferred sector in relation to the \*tax preferred use of the asset; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the right to receive, or the obligation to provide, the financial benefit is \*cash settleable; and
- (d) the financial benefit has not been, will not be or can be expected not to be provided by one of your connected entities.

Note: Paragraph (d) stops a financial benefit passing between you and any of your connected entities from being counted twice.

*End value also taken to be financial benefit subject to deemed loan treatment*

- (2) The relevant percentage of a reasonable estimate of the \*end value of the asset is also taken to be a \*financial benefit that is **subject to deemed loan treatment** if:
  - (a) the asset is not to be purchased or acquired by, or transferred to, a \*member of the tax preferred sector at the end of the \*arrangement period under a legally enforceable \*arrangement; or
  - (b) the asset:
    - (i) is, or is to become, a \*privatised asset; or
    - (ii) would be, or would become, a privatised asset if it were a \*depreciating asset; or
    - (iii) would be a privatised asset if the asset were a depreciating asset and paragraphs 58-5(2)(a) and 58-5(4)(a) were not limited to acquisitions of depreciating assets that occurred on or after 1 July 2001.

The relevant percentage is the \*disallowed capital allowance percentage if section 250-150 applies. Otherwise it is 100%.

Note: See section 250-180 for how to work out the end value of the asset.

*Financial benefits only subject to deemed loan treatment to the extent to which they represent a return on investment*

- (3) The \*financial benefit is **subject to deemed loan treatment** only to the extent to which it reasonably represents a return of, or on, an investment in the asset (as distinct, for example, from representing consideration for the provision of services or the recovery of production costs), having regard to:
  - (a) the \*market value of the asset; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 250-180

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- (b) the discount rate applicable under subsection 250-105(2); and
- (c) your costs in relation to funding your interest in the asset;  
and
- (d) any other relevant matter.

The regulations may provide rules to be applied in determining the extent to which a financial benefit reasonably represents a return of or on an investment in the asset.

*Only financial benefits provided after Division starts applying to you and the asset*

- (4) If the \*tax preferred use of the asset starts before this Division starts applying to you and the asset, only \*financial benefits provided after this Division starts applying to you and the asset are **subject to deemed loan treatment**.

**250-180 End value of asset**

- (1) The **end value** of an asset is worked out in accordance with this section.
- (2) If the asset has a \*guaranteed residual value, the **end value** of the asset is:
  - (a) the amount of the guaranteed residual amount if subparagraph 250-15(d)(i) applies; or
  - (b) so much of the amount referred to in paragraph (a) as is attributable to the expenditure referred to in subparagraph 250-15(d)(ii) if that subparagraph applies.
- (3) If the asset does not have a \*guaranteed residual value and is a \*depreciating asset, the **end value** of the asset is:
  - (a) if subparagraph 250-15(d)(i) applies—the amount that would have been the \*adjustable value of the asset at the end of the \*arrangement period if:
    - (i) this Division had not applied to you and the asset; and
    - (ii) the decline in the asset's value were worked out on the basis of the asset's \*effective life and using the \*prime cost method; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) if subparagraph 250-15(d)(ii) applies—so much of the amount referred to in paragraph (a) as is attributable to the expenditure referred to in that subparagraph.
- (4) Disregard section 40-102 in working out the asset's \*effective life for the purposes of subparagraph (3)(a)(ii).
- (5) If neither subsection (2) nor subsection (3) applies and an estimate of the value of the asset is recognised for accounting purposes, the **end value** of the asset is:
  - (a) the value of the relevant asset at the end of the \*arrangement period that would be recognised for accounting purposes if subparagraph 250-15(d)(i) applies; or
  - (b) so much of the value of referred to in paragraph (a) as is attributable to the expenditure referred to subparagraph 250-15(d)(ii) if that subparagraph applies.

The **end value** must not, however, exceed the amount worked out under subsections 250-155(4) and (5) (amount taken to have been lent).

- (6) If none of subsections (2), (3) and (5) apply to the asset, the **end value** of the asset is:
  - (a) a reasonable estimate of the \*market value of the asset at the end of the \*arrangement period if subparagraph 250-15(d)(i) applies; or
  - (b) so much of the estimate referred to in paragraph (a) as is attributable to the expenditure referred to in subparagraph 250-15(d)(ii) if that subparagraph applies.

The **end value** must not, however, exceed the amount worked out under subsections 250-155(4) and (5) (amount taken to have been lent).

### **250-185 Financial benefits subject to deemed loan treatment not assessed**

A \*financial benefit is not included in your assessable income if the financial benefit:

- (a) is \*provided to you in relation to the tax preferred use of the asset; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) is provided directly or indirectly by a \*member of the tax preferred sector; and

(c) is \*subject to deemed loan treatment.

The financial benefit is not assessable income and is not \*exempt income.

## **Subdivision 250-E—Taxation of deemed loan**

### **Table of sections**

#### **Guide to Subdivision 250-E**

250-190 What this Subdivision is about

#### **Application and objects of Subdivision**

250-195 Application of Subdivision

250-200 Objects of this Subdivision

#### **Tax treatment of gains and losses from financial arrangements**

250-205 Gains are assessable and losses deductible

250-210 Gain or loss to be taken into account only once under this Act

#### **Method to be applied to take account of gain or loss**

250-215 Methods for taking gain or loss into account

#### **General rules**

250-220 Consistency in working out gains or losses (integrity measure)

250-225 Rights and obligations include contingent rights and obligations

#### **The accruals method**

250-230 Application of accruals method

250-235 Overview of the accruals method

250-240 Applying accruals method to work out period over which gain or loss is to be spread

250-245 How gain or loss is spread

250-250 Allocating gain or loss to income years

250-255 When to re-estimate

250-260 Re-estimation if balancing adjustment on partial disposal

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Balancing adjustment**

- 250-265 When balancing adjustment made
- 250-270 Exception for subsidiary member leaving consolidated group
- 250-275 Balancing adjustment

**Other provisions**

- 250-280 Financial arrangement received or provided as consideration

**Guide to Subdivision 250-E**

**250-190 What this Subdivision is about**

This Subdivision is about the tax treatment of gains and losses from the financial arrangement that you are taken to have under section 250-155.

You recognise gains and losses from the financial arrangement, as appropriate, over the life of the financial arrangement and ignore distinctions between income and capital. You use a compounding accruals method to recognise the gain or loss.

A change in circumstances may cause a re-estimation of gains and losses that the accruals method is being applied to.

A balancing adjustment is made if you transfer particular rights or obligations or particular rights or obligations cease.

**Application and objects of Subdivision**

**250-195 Application of Subdivision**

This Subdivision applies for the purposes of working out the amount of the gain or loss that is to be included in your assessable income or allowed as a deduction in relation to the \*financial arrangement that is taken to exist under section 250-155.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **250-200 Objects of this Subdivision**

The objects of this Subdivision are:

- (a) to properly recognise gains and losses from the \*financial arrangement by allocating them to appropriate periods of time; and
- (b) to minimise tax deferral.

## **Tax treatment of gains and losses from financial arrangements**

### **250-205 Gains are assessable and losses deductible**

#### *Gains*

- (1) Your assessable income includes a gain you make from the \*financial arrangement.

#### *Losses*

- (2) You can deduct a loss you make from the \*financial arrangement, but only to the extent that:
  - (a) you make it in gaining or producing your assessable income; or
  - (b) you necessarily make it in carrying on a \*business for the purpose of gaining or producing your assessable income.

### **250-210 Gain or loss to be taken into account only once under this Act**

#### *Purpose of this section*

- (1) The purpose of this section is to ensure that your gains that are assessable under this Subdivision, and your losses that are deductible under this Subdivision, are taken into account only once under this Act in working out your taxable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Gain or loss*

- (2) If a gain or loss is, or is to be, included in your assessable income or allowable as a deduction to you for an income year under this Subdivision, the gain or loss is not to be (to any extent):
- (a) included in your assessable income; or
  - (b) allowable as a deduction to you;
- under any other provisions of this Act for the same or any other income year.

*Associated financial benefits*

- (3) If the amount or value of a \*financial benefit is taken into account in working out whether you make, or the amount of, a gain or loss that is, or is to be, included in your assessable income or allowable as a deduction for you for an income year under this Subdivision, the benefit is not to be (to any extent):
- (a) included in your assessable income; or
  - (b) allowable as a deduction to you;
- under any other provision of this Act for the same or any other income year.

**Method to be applied to take account of gain or loss**

**250-215 Methods for taking gain or loss into account**

The methods that can be applied to take account of a gain or loss you make from the \*financial arrangement you have are:

- (a) the accruals method provided for in sections 250-235 to 250-255; or
- (b) a balancing adjustment provided for in sections 250-265 to 250-275.

A gain or loss is not taken into account under the method referred to in paragraph (a) to the extent to which the gain or loss is taken into account under sections 250-265 to 250-275.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## General rules

### **250-220 Consistency in working out gains or losses (integrity measure)**

*Object of section*

- (1) The object of this section is to stop you obtaining an inappropriate tax benefit from not working out your gains and losses in a consistent manner.

*Consistent treatment for particular financial arrangement*

- (2) If:
  - (a) this Subdivision provides that a particular method applies to gains or losses you make from the \*financial arrangement; and
  - (b) that method allows you to choose the particular manner in which you apply that method;you must use that manner consistently for the arrangement for all income years.

*Consistent treatment for financial arrangements of essentially the same nature*

- (3) If:
  - (a) this Subdivision provides that a particular method applies to gains or losses you make from 2 or more \*financial arrangements; and
  - (b) that method allows you to choose the particular manner in which you apply that method;you must use that same manner consistently for all of those financial arrangements that are essentially of the same nature.

### **250-225 Rights and obligations include contingent rights and obligations**

To avoid doubt:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) a right is treated as a right for the purposes of this Division even it is subject to a contingency; and
- (b) an obligation is treated as an obligation for the purpose of this Division even if it is subject to a contingency.

## **The accruals method**

### **250-230 Application of accruals method**

The accruals method provided for in sections 250-235 to 250-255 applies to a gain or loss you make from the \*financial arrangement if:

- (a) the gain or loss is an overall gain or loss from the arrangement; and
- (b) the gain or loss is sufficiently certain at the time when you start to have the arrangement.

### **250-235 Overview of the accruals method**

If the accruals method applies to a gain or loss you make from the \*financial arrangement:

- (a) you use section 250-240 to work out the period over which the gain or loss is to be spread; and
- (b) you use section 250-245 to work out how to allocate the gain or loss to particular intervals within the period over which the gain or loss is to be spread; and
- (c) if an interval to which part of the gain or loss is allocated straddles 2 income years, you use section 250-250 to work out how to allocate that part of the gain or loss allocated between those 2 income years.

### **250-240 Applying accruals method to work out period over which gain or loss is to be spread**

If you have a sufficiently certain overall gain or loss from the \*financial arrangement, the period over which the gain or loss is to be spread is the period that:

- (a) starts when you start to have the arrangement; and
- (b) ends when you will cease to have the arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

In applying paragraph (b), you must assume that you will continue to have the arrangement for the rest of its life.

### **250-245 How gain or loss is spread**

#### *How to spread gain or loss*

- (1) This section tells you how to spread a gain or loss to which the accruals method applies.

#### *Compounding accruals or approximation*

- (2) The gain or loss is to be spread using:
  - (a) compounding accruals (with the intervals to which parts of the gain or loss are allocated complying with subsection (3));  
or
  - (b) a method whose results approximate those obtained using the method referred to in paragraph (a) (having regard to the length of the period over which the gain or loss is to be spread).

#### *Intervals to which parts of gain or loss allocated*

- (3) The intervals to which parts of the gain or loss are allocated must:
  - (a) not exceed 12 months; and
  - (b) all be of the same length.

Paragraph (b) does not apply to the first and last intervals. These may be shorter than the other intervals.

#### *Assumption of continuing hold arrangement for the rest of its life*

- (4) The gain or loss is to be spread assuming that you will continue to have the \*financial arrangement for the rest of its life.

### **250-250 Allocating gain or loss to income years**

- (1) You are taken, for the purposes of section 250-205, to make, for an income year, a gain or loss equal to a part of a gain or loss if:
  - (a) that part of the gain or loss is allocated to an interval under section 250-245; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) that interval falls wholly within that income year.
- (2) If:
  - (a) a part of a gain or loss is allocated to an interval under section 250-245; and
  - (b) that interval straddles 2 income years;you are taken, for purposes of section 250-205, to make a gain or loss equal to so much of that part of the gain or loss as is allocated between those income years on a reasonable basis.
- (3) If:
  - (a) a \*consolidated group or \*MEC group has a \*financial arrangement; and
  - (b) a subsidiary member of the group ceases to be a member of the group at a particular time (the *exit time*); and
  - (c) immediately after the exit time, the subsidiary member has the financial arrangement;an income year of the group is taken, for the purposes of applying this section to the group and the financial arrangement, to end at the exit time.

### **250-255 When to re-estimate**

#### *When re-estimation necessary*

- (1) You re-estimate a gain or loss from the \*financial arrangement under subsection (4) if circumstances arise that materially affect:
  - (a) the amount or value; or
  - (b) the timing;of \*financial benefits that were taken into account in working out the amount of the gain or loss. You must re-estimate the gain or loss as soon as reasonably practicable after you become aware of the circumstances referred to in paragraph (b).
- (2) Without limiting subsection (1), the following are circumstances of the kind referred to in paragraph (1)(b):
  - (a) a material change in market conditions that are relevant to the amount or value of the \*financial benefits to be received or provided under the \*financial arrangement;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) cash flows that were previously estimated becoming known and the difference between the cash flows that become known and the cash flows that were previously estimated is not insignificant;
  - (c) a right to, or a part of a right to, a financial benefit under the arrangement is written off as a bad debt.
- (3) You do not re-estimate a gain or loss from a \*financial arrangement under subsection (4) merely because of any one or more of the following:
- (a) a change in the credit rating, or the creditworthiness, of a party or parties to the financial arrangement;
  - (b) the impairment (within the meaning of the \*accounting standards) of the arrangement or a debt that forms part of the arrangement.

*Nature of re-estimation*

- (4) Making a re-estimation in relation to a gain or loss under this subsection involves:
- (a) a fresh determination of the amount of the gain or loss; and
  - (b) a reapplication of the accruals method to the redetermined gain or loss to make a fresh allocation of the part of the redetermined gain or loss that has not already been allocated to intervals ending before the re-estimation is made to intervals ending after the re-estimation is made.

*Basis for re-estimation*

- (5) You may make the fresh allocation of the gain or loss under subsection (4) on either of the following bases:
- (a) by maintaining the rate of return being used and adjusting the amount to which you apply the rate of return to the present value of the estimated future cash flows discounted at the maintained rate of return;
  - (b) adjusting the rate of return and maintaining the amount to which you apply the rate of return.

The object to be achieved by both bases is allow you to bring the remainder of the gain or loss based on the new estimates properly

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

to account over the remainder of the period over which you spread the gain or loss.

- (6) If you adopt a particular basis under subsection (5) for a gain or loss from the \*financial arrangement, you must use the same basis for all the re-estimations you make under this section in relation to your gains and losses from all your financial arrangements.

*Balancing adjustment if rate of return maintained*

- (7) If you make a fresh allocation of the gain or loss on the basis referred to in paragraph (5)(a), you must make the following balancing adjustment:
- (a) if you re-estimate a gain and the amount to which you apply the rate of return increases—you make a gain from the \*financial arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;
  - (b) if you re-estimate a gain and the amount to which you apply the rate of return decreases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the decrease;
  - (c) if you re-estimate a loss and the amount to which you apply the rate of return increases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;
  - (d) if you re-estimate a loss and the amount to which you apply the rate of return decreases—you make a gain from the arrangement, the income year in which you make the re-estimation, equal to the amount of the decrease.

**250-260 Re-estimation if balancing adjustment on partial disposal**

*Re-estimation if balancing adjustment on partial disposal*

- (1) You also re-estimate a gain or loss from a \*financial arrangement under subsection (2) if a balancing adjustment is made in relation to the financial arrangement under sections 250-265 to 250-275 because you transfer to another person:
- (a) a proportionate share of all of your rights and/or obligations under a \*financial arrangement; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) a right or obligation that you have under a financial arrangement to a specifically identified \*financial benefit; or
- (c) a proportionate share of a right or obligation that you have under a financial arrangement to a specifically identified financial benefit.

You must re-estimate the gain or loss as soon as reasonably practicable after the transfer occurs.

*Nature of re-estimation*

- (2) Making a re-estimation in relation to a gain or loss under this subsection involves:
  - (a) a fresh determination of the amount of the gain or loss disregarding:
    - (i) \*financial benefits; and
    - (ii) amounts of the gain or loss that have already been allocated to intervals ending before the re-estimation is made;to the extent to which they are reasonably attributable to the proportionate share, or the right or obligation, referred to in paragraph (1)(b); and
  - (b) a reapplication of the accruals method to the redetermined gain or loss to make a fresh allocation of the part of that gain or loss that has not already been allocated to intervals ending before the re-estimation is made to intervals ending after the re-estimation is made.

*Basis for re-estimation*

- (3) You make the fresh allocation of the gain or loss under subsection (2) by maintaining the rate of return being used and adjusting the amount to which you apply the rate of return to the present value of the estimated future cash flows discounted at the maintained rate of return. The object to be achieved by the fresh allocation is allow you to bring the remainder of the redetermined gain or loss properly to account over the remainder of the period over which you spread the gain or loss.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Balancing adjustment

### 250-265 When balancing adjustment made

#### *When balancing adjustment made*

- (1) A balancing adjustment is made under section 250-275 if:
  - (a) you transfer to another person all of your rights and/or obligations under the \*financial arrangement; or
  - (b) all of your rights and/or obligations under the financial arrangement otherwise substantially cease; or
  - (c) you transfer to another person:
    - (i) a proportionate share of all of your rights and/or obligations under the financial arrangement; or
    - (ii) a right or obligation that you have under the financial arrangement to a specifically identified \*financial benefit; or
    - (iii) a proportionate share of a right or obligation that you have under the financial arrangement to a specifically identified financial benefit.

#### *Modifications for arrangements that are assets*

- (2) The following modifications are made if the \*financial arrangement is an asset of yours at the time the event referred to in subsection (1) occurs:
  - (a) paragraphs (1)(a) and (c) do not apply unless the effect of the transfer is to transfer to the other person substantially all the risks and rewards of ownership of the interest transferred;
  - (b) for the purposes of applying section 250-275 to the arrangement, you are treated as transferring a right under the arrangement to another person if:
    - (i) you retain the right but assume a new obligation; and
    - (ii) your assumption of the new obligation has the same effect, in substance, as transferring the right to another person; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 250-270

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- (iii) the new obligation arises only to the extent to which the right to \*financial benefits under the financial arrangement is satisfied; and
- (iv) you cannot sell or pledge the right (other than as security in relation to the new obligation); and
- (v) you must, under the new obligation, provide financial benefits you receive in relation to the right to the person to whom you owe the new obligation without delay.

**250-270 Exception for subsidiary member leaving consolidated group**

A balancing adjustment is not made under section 250-275 in relation to a subsidiary member of a \*consolidated group or a \*MEC group that has the \*financial arrangement ceasing to be a member of the group.

**250-275 Balancing adjustment**

*Complete cessation or transfer*

- (1) Use the following method statement to make the balancing adjustment if paragraph 250-265(1)(a) or (b) applies:

*Method statement for balancing adjustment*

Step 1. Add up the following:

- (a) the total of all the \*financial benefits provided to you under the \*financial arrangement;
- (b) the amount or value of any other consideration you receive in relation to the transfer or cessation referred to in subsection 250-265(1);
- (c) the total of the amounts that have been allowed to you as deductions, because of circumstances that have occurred before the transfer or cessation, for losses from the arrangement;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) the total of the other amounts that would have been allowed to you as deductions, because of circumstances that have occurred before the transfer or cessation, for losses from the arrangement if all your losses from the arrangement were allowable as deductions.

Step 2. Add up the following:

- (a) the total of all the \*financial benefits you have provided under the \*financial arrangement;
- (b) the amount or value of any other consideration you provide in relation to the transfer or cessation referred to in subsection 250-265(1);
- (c) the total of the amounts that have been included in your assessable income, because of circumstances that have occurred before the transfer or cessation, as gains from the arrangement;
- (d) the total of the other amounts that would have been included in your assessable income, because of circumstances that have occurred before the transfer or cessation, as gains from the arrangement if all your gains from the arrangement were assessable.

Step 3. Compare the amount obtained under Step 1 (the ***Step 1 amount***) with the amount obtained under Step 2 (the ***Step 2 amount***). If the Step 1 amount exceeds the Step 2 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a gain you make from the \*financial arrangement for the purposes of this Subdivision. If the Step 2 amount exceeds the Step 1 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a loss that you make from the arrangement. If the Step 1 amount and the Step 2 amount are equal, no balancing adjustment is made.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Proportionate transfer of all rights and/or obligations under financial arrangement*

- (2) If subparagraph 250-265(1)(c)(i) applies, you make the balancing adjustment by applying the method statement in subsection (1) but reduce:
- (a) the amounts referred to in paragraphs (a), (c) and (d) in step 1; and
  - (b) the amounts referred to in paragraphs (a), (c) and (d) in step 2;
- by applying the proportion referred to in subparagraph 250-265(1)(c)(i) to them.

*Transfer of specifically identified right or obligation under financial arrangement*

- (3) If subparagraph 250-265(1)(c)(ii) applies, you make the balancing adjustment by applying the method statement in subsection (1) as if the references to:
- (a) the amounts referred to in paragraphs (a), (c) and (d) in step 1; and
  - (b) the amounts referred to in paragraphs (a), (c) and (d) in step 2;
- were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 250-265(1)(c)(ii).

*Proportionate transfer of specifically identified right or obligation under financial arrangement*

- (4) If subparagraph 250-265(1)(c)(iii) applies, you make the balancing adjustment by applying the method statement:
- (a) as if the references to:
    - (i) the amounts referred to in paragraphs (a), (c) and (d) in step 1; and
    - (ii) the amounts referred to in paragraphs (a), (c) and (d) in step 2;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 250-265(1)(c)(iii); and

- (b) by reducing those amounts by applying the proportion referred to in subparagraph 250-265(1)(c)(iii) to them.

*Attribution must reflect appropriate and commercially accepted valuation principles*

- (5) Any attribution made under subsection (3) or paragraph (4)(a) must reflect appropriate and commercially accepted valuation principles that properly take into account:
  - (a) the nature of the rights and obligations under the \*financial arrangement; and
  - (b) the risks associated with each \*financial benefit, right and obligation under the arrangement; and
  - (c) the time value of money.

*Income year for which gain or loss is made*

- (6) The gain or loss you are taken to make under subsection (1), (2), (3) or (4) is a gain or loss for the income year in which the event referred to in subsection 250-265(1) occurs.

## **Other provisions**

### **250-280 Financial arrangement received or provided as consideration**

- (1) If:
  - (a) this Subdivision applies in relation to your gains and losses from the \*financial arrangement; and
  - (b) you start to have the financial arrangement (or a part of the financial arrangement) as consideration (or as part of the consideration) for:
    - (i) something (the *thing provided*) that you provided, or are to provide, to someone else; or
    - (ii) something (the *thing acquired*) that someone else has provided, or is to provide, to you; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 250-280

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(c) the thing provided or the thing acquired is not money; the amount of the benefit (or that part of the benefit) that you obtained for the thing provided, or gave for the thing acquired, is taken, for the purposes of applying this Act to you, to be the \*market value of the financial arrangement (or that part of the financial arrangement) at the time when you start to have the financial arrangement.

Note 1: This amount may be relevant, for example, for the purposes of applying the provisions of this Act dealing with capital gains, capital allowances or trading stock to the thing provided or the thing acquired.

Note 2: The market value is to be used instead of the nominal value of the financial benefits to be provided under the financial arrangement.

(2) If subsection (1) applies, you are taken to have received, or provided, as consideration for starting to have the \*financial arrangement (or the part of the financial arrangement), \*financial benefits whose value is equal to the market value of the financial arrangement (or that part of the financial arrangement) at the time when you started to have the financial arrangement.

(3) If, but for this subsection:

- (a) subsection (2) would apply to your starting to have a \*financial arrangement; and
- (b) subsection (1) or (4) would also apply to your starting to have the financial arrangement;

subsection (2) applies to your starting to have the financial arrangement and subsection (1) or (4) does not.

(4) If:

- (a) this Subdivision applies in relation to your gains and losses from the \*financial arrangement; and
- (b) you cease to have the financial arrangement (or a part of the financial arrangement) as consideration (or as part of the consideration) for:
  - (i) something (the *thing acquired*) that someone else provides, or is to provide, to you; or
  - (ii) something (the *thing provided*) that you provided, or are to provide, to someone else; and
- (c) the thing acquired or the thing provided is not money;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the amount of the benefit (or that part of the benefit) that you provided for the thing acquired, or obtained for the thing provided, is taken, for the purposes of applying this Act to you, to be the \*market value of the financial arrangement (or that part of the financial arrangement) at the time when you cease to have the financial arrangement (or that part of the financial arrangement).

Note 1: This amount may be relevant, for example, for the purposes of applying the provisions of this Act dealing with capital gains, capital allowances or trading stock to the thing acquired or the thing provided.

Note 2: The market value is to be used instead of the nominal value of the financial benefits to be provided under the financial arrangement.

- (5) If subsection (4) applies, you are taken to have provided, or received, as consideration for ceasing to have the \*financial arrangement (or the part of the financial arrangement), \*financial benefits whose value is equal to the market value of the financial arrangement (or that part of the financial arrangement) at the time when you ceased to have the financial arrangement.
- (6) If, but for this subsection:
- (a) subsection (5) would apply to your ceasing to have a \*financial arrangement; and
  - (b) subsection (1) or (4) would also apply to your ceasing to have the financial arrangement;
- subsection (5) applies to your ceasing to have the financial arrangement and subsection (1) or (4) does not.
- (7) Without limiting subsections (1) and (4), the thing provided, or the thing acquired, need not be a tangible thing and may take the form of services, conferring a right, incurring an obligation or extinguishing or varying a right or obligation.

### **Subdivision 250-F—Treatment of asset when Division ceases to apply to the asset**

#### **Table of sections**

250-285	Treatment of asset after Division ceases to apply to the asset
250-290	Balancing adjustment under Subdivision 40-D in some circumstances

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**250-285 Treatment of asset after Division ceases to apply to the asset**

- (1) For the purposes of Division 40, if:
- (a) this Division applies to you and an asset; and
  - (b) the \*arrangement period for the \*tax preferred use of the asset ends at a particular time; and
  - (c) the asset would have had an \*adjustable value at that time, for the purposes of Division 40, if this Division had never applied to the asset;

the adjustable value of the asset, immediately after the end of the arrangement period, is taken to be equal to the amount worked out using the following method statement:

*Method statement*

- Step 1. Work out whether section 250-150 applies.
- Step 2. If section 250-150 does not apply, the amount is the \*end value of the asset at the end of the arrangement period.
- Step 3. If section 250-150 does apply, the amount is worked out by:
- (a) multiplying the \*end value of the asset at the end of the \*arrangement period by the \*disallowed capital percentage; and
  - (b) then multiplying the adjustable value of the asset at the end of the arrangement period (worked out under section 40-85) by 100% minus the disallowed capital percentage); and
  - (c) then adding the amount obtained under paragraph (a) and the amount obtained under paragraph (b).

- (2) If:
- (a) this Division applies to you and an asset; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the \*arrangement period for the \*tax preferred use of the asset ends; and
- (c) a net amount is included in your assessable income in relation to the \*financial benefits that are \*subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

the \*cost base, and the \*reduced cost base, of the asset are each taken to be reduced at the end of the arrangement period by an amount equal to the difference between:

- (d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and
- (e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

(3) If:

- (a) this Division applies to you and an asset; and
- (b) the \*arrangement period for the \*tax preferred use of the asset ends; and
- (c) a net amount is allowed to you as a deduction in relation to the \*financial benefits that are \*subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

the \*cost base, and the \*reduced cost base, of the asset are each taken to be reduced at the end of the arrangement period by an amount equal to the sum of:

- (d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and
- (e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

(4) If:

- (a) this Division applies to you and an asset; and
- (b) the \*arrangement period for the \*tax preferred use of the asset ends; and
- (c) a net amount is included in your assessable income in relation to the \*financial benefits that are \*subject to the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 250-290

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deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

then, in determining the profit or loss on the sale of the asset, a deduction equal to the difference between the following is taken to have been allowed for expenditure by you in connection with the asset:

- (d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and
- (e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

(5) If:

- (a) this Division applies to you and an asset; and
- (b) the \*arrangement period for the \*tax preferred use of the asset ends; and
- (c) a net amount is allowed to you as a deduction in relation to the \*financial benefits that are \*subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

then, in determining the profit or loss on the sale of the asset, a deduction equal to the sum of the following is taken to have been allowed for expenditure by you in connection with the asset:

- (d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and
- (e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

(6) In applying paragraphs (2)(d), (3)(d), (4)(d) and (5)(d), disregard subsection 250-160(2) (reasonable estimate of end value treated as financial benefit subject to deemed loan treatment).

**250-290 Balancing adjustment under Subdivision 40-D in some circumstances**

(1) This section applies if:

- (a) this Division applies to you and an asset; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the \*arrangement period for the \*tax preferred use of the asset ends because a particular event happens; and
  - (c) the event would have been a \*balancing adjustment event for the asset for the purposes of Subdivision 40-D if this Division had not applied to you and the asset when the event happened.
- (2) A balancing adjustment is made under Subdivision 40-D as if:
- (a) the event were a \*balancing adjustment event for the asset; and
  - (b) the \*adjustable value of the asset, just before the event happened, were the adjustable value worked out under subsection 250-285(1); and
  - (c) sections 40-290 and 40-292 did not apply.

### **Subdivision 250-G—Objections against determinations and decisions by the Commissioner**

#### **Table of sections**

250-295 Objections against determinations and decisions by the Commissioner

#### **250-295 Objections against determinations and decisions by the Commissioner**

- (1) This section applies to a determination by the Commissioner under section 250-45.
- (2) This section also applies to a decision by the Commissioner under subsection 250-150(5).
- (3) A person who is dissatisfied with a determination or decision to which this section applies may object against the determination or decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 253—Financial claims scheme for account-holders with insolvent ADIs**

### **Table of Subdivisions**

253-A Tax treatment of entitlements under financial claims scheme

### **Subdivision 253-A—Tax treatment of entitlements under financial claims scheme**

#### **Guide to Subdivision 253-A**

##### **253-1 What this Subdivision is about**

This Act applies to a payment of an entitlement under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* as if the payment were made by the ADI under the agreement for the account concerned.

Special rules prevent the arising and payment of such an entitlement from creating inappropriate capital gains or losses affecting assessable income.

### **Table of sections**

#### **Operative provisions**

- |        |  |
|--------|--|
| 253-5  | Payment of entitlement under financial claims scheme treated as payment from ADI                                 |
| 253-10 | Disposal of rights against ADI to APRA and meeting of financial claims scheme entitlement have no CGT effects    |
| 253-15 | Cost base of financial claims scheme entitlement and any remaining part of account that gave rise to entitlement |

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### **253-5 Payment of entitlement under financial claims scheme treated as payment from ADI**

- (1) This Act applies to you as if an amount paid to you, or applied for your benefit, to meet your entitlement under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* connected with an account with an \*ADI had been paid to you by the ADI under the terms and conditions of the agreement for keeping the account.

Note: This section has effect subject to more detailed provisions about:

- (a) entitlements relating to retirement savings accounts (see section 306-25); and
  - (b) entitlements relating to farm management deposits (see Subdivision 393-D in Schedule 2G to the *Income Tax Assessment Act 1936*).
- (2) To avoid doubt, subsection (1) does not affect the operation of Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: Division 21 in Schedule 1 to the *Taxation Administration Act 1953* contains special provisions about how Part 2-5 in that Schedule operates in relation to the meeting of entitlements under Division 2AA of Part II of the *Banking Act 1959*.

### **253-10 Disposal of rights against ADI to APRA and meeting of financial claims scheme entitlement have no CGT effects**

Disregard a \*capital gain or \*capital loss you make:

- (a) because of the operation of section 16AI of the *Banking Act 1959*; or
- (b) because your entitlement under Subdivision C of Division 2AA of Part II of that Act is met.

Note: Section 16AI of the *Banking Act 1959* reduces the right of an account-holder who has a protected account with a declared ADI to be paid an amount by the ADI, by the account-holder's entitlement under Subdivision C of Division 2AA of Part II of that Act to be paid an amount by APRA in connection with the account.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**253-15 Cost base of financial claims scheme entitlement and any remaining part of account that gave rise to entitlement**

- (1) This section applies if an entitlement arises under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* in connection with an account-holder's account with an \*ADI.
- (2) The \*cost base and \*reduced cost base of the \*CGT asset consisting of the entitlement are each the amount of the entitlement.
- (3) The \*cost base of the \*CGT asset representing the part (if any) of the account-holder's right to be paid an amount by the \*ADI in connection with the account that remains after the reduction of that right by section 16AI of the *Banking Act 1959* (by the amount of the entitlement) is the difference (if any) between:
  - (a) the cost base of the right as it was immediately before the reduction; and
  - (b) the amount of the entitlement.The \*reduced cost base is worked out similarly.
- (4) This section has effect despite:
  - (a) Division 110 (Cost base and reduced cost base); and
  - (b) subsections 112-30(2), (3), (4) and (5) (which are about apportioning a \*cost base if a \*CGT event happens to only part of a \*CGT asset).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Part 3-30—Superannuation**

### **Division 280—Guide to the superannuation provisions**

#### **Table of sections**

280-1	Effect of this Division
280-5	Overview

#### **Contributions phase**

280-10	Contributions phase—deductibility
280-15	Contributions phase—limits on superannuation tax concessions

#### **Investment phase**

280-20	Investment phase
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#### **Benefits phase**

280-25	Benefits phase—different types of superannuation benefit
280-30	Benefits phase—taxation varies with age of recipient and type of benefit
280-35	Benefits phase—roll-overs

#### **The regulatory scheme outside this Act**

280-40	Other relevant legislative schemes
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#### **280-1 Effect of this Division**

- (1) This Division is a \*Guide.
- (2) Tax concessions in this Part are intended to encourage Australians to save in order to make provision for their retirement, recognising that superannuation investments, and the income from them, are quarantined for retirement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## 280-5 Overview

- (1) There are 3 phases in the tax treatment of superannuation, as follows:
  - (a) the contributions phase;
  - (b) the investment phase;
  - (c) the benefits phase.
- (2) In the contributions phase, contributions are made to a superannuation plan in respect of a member of the plan.
- (3) In the investment phase, these contributions are invested by the superannuation provider.
- (4) In the benefits phase, these contributions, plus earnings from investing them, are usually paid as benefits to the member when he or she retires after reaching preservation age. In the event of death, the benefits are usually paid to the member's dependants.
- (5) There is also a regulatory scheme outside this Act that is relevant to the taxation treatment of superannuation. For example, other Acts set out prudential and operating standards for superannuation providers.

## Contributions phase

### 280-10 Contributions phase—deductibility

#### *Contributions that can be deducted*

- (1) Employers can usually deduct contributions they make in respect of their employees. Individuals can usually deduct contributions they make in respect of themselves if less than 10% of their total assessable income (plus reportable fringe benefits) for the income year is attributable to employment or similar activities.

#### *Other contributions cannot be deducted*

- (2) Other contributions cannot be deducted. These include personal contributions made by individuals whose employment income is 10% or more of their total income, and contributions made by

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

others in respect of them (such as contributions by a spouse or family member, or Government co-contributions).

### **280-15 Contributions phase—limits on superannuation tax concessions**

- (1) There is a limit to contributions that can be made in respect of an individual in a year that receive favourable tax treatment. This limit takes the form of a tax on excessive contributions, and neutralises the favourable tax treatment arising from the excessive contributions.
- (2) If concessional contributions exceed an indexed cap, the individual concerned is taxed on the excess. This tax liability can be met by releasing money from his or her superannuation interests.
- (3) If non-concessional contributions (including any excess for the purposes of the first cap) exceed a second indexed cap, the individual is taxed on the excess. The second cap is equivalent to three times the first cap. The payment of this tax liability must be accompanied by releasing money equivalent to the liability from his or her superannuation interests.

### **Investment phase**

#### **280-20 Investment phase**

- (1) Contributions that can be deducted are assessable income of the superannuation provider. Contributions that cannot be deducted are not assessable income of the superannuation provider. (There are some exceptions.)
- (2) Earnings on the investment of amounts in a superannuation plan are assessable income of the superannuation provider.
- (3) The superannuation provider's taxable income is generally taxed at the concessional rate of 15%.
- (4) However, superannuation providers pay no tax on earnings from the assets that support the payment of benefits in the form of income streams, once the income streams have commenced.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Benefits phase

### 280-25 Benefits phase—different types of superannuation benefit

Superannuation benefits can be drawn down as lump sums, income streams (such as pensions or annuities), or combinations of both. Different tax treatment may apply depending on whether a lump sum or income stream is paid.

### 280-30 Benefits phase—taxation varies with age of recipient and type of benefit

- (1) The taxation of superannuation benefits depends primarily on the age of the member.
- (2) If the member is aged 60 or over, superannuation benefits (both lump sums and income streams) are tax free if the benefits have already been subject to tax in the fund (that is, where the benefits comprise a taxed element). This covers the great majority of superannuation members.
- (3) Where a superannuation benefit contains an amount that has not been subject to tax in the fund (an untaxed element), this element is subject to tax for those aged 60 or over, though at concessional rates. This is relevant generally to those people (for example, public servants), who are members of a superannuation fund established by the Australian Government or a state government.
- (4) If the member is less than 60, superannuation benefits may receive concessional taxation treatment, though the treatment is less concessional than for those aged 60 and over.
- (5) Superannuation benefits may also include a “tax free component”; this component of the benefit is always paid tax free.
- (6) Additional tax concessions may apply when superannuation benefits are paid after a member’s death.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **280-35 Benefits phase—roll-overs**

A member can “roll over” their superannuation benefits from one complying superannuation plan to another, or between different interests in the same plan. This is usually done to keep the benefits invested in the superannuation system, or to convert a lump sum to a superannuation income stream. No tax is generally payable until the benefits are finally drawn down.

### **The regulatory scheme outside this Act**

#### **280-40 Other relevant legislative schemes**

- (1) The *Superannuation Industry (Supervision) Act 1993* and the *Retirement Savings Accounts Act 1997* regulate the prudential and operating standards for superannuation providers. Concessional tax treatment is generally available only if providers comply with these standards.
- (2) Other legislative schemes relevant to superannuation include the following:
  - (a) the *Superannuation Guarantee (Administration) Act 1992*, which requires that employers provide a minimum level of superannuation contributions for each of their eligible employees;
  - (b) the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*, which provides for Government co-contributions to low income earners’ superannuation;
  - (c) the *Small Superannuation Accounts Act 1995*, which provides a facility to accept payments of superannuation guarantee shortfalls;
  - (d) the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, which provides for the payment of unclaimed superannuation money, and the maintenance of a register of lost members.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Division 285—General concepts relating to superannuation**

### **285-5 Transfers of property**

- (1) Any of the following payments covered by this Part can be or include a transfer of property:
  - (a) a contribution;
  - (b) a \*superannuation lump sum.
- (2) The amount of the payment is or includes the \*market value of the property.
- (3) The \*market value is reduced by the value of any consideration given for the transfer of the property.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 290—Contributions to superannuation funds**

### **Table of Subdivisions**

	Guide to Division 290
290-A	General rules
290-B	Deduction of employer contributions and other employment-connected contributions
290-C	Deducting personal contributions
290-D	Tax offsets for spouse contributions

### **Guide to Division 290**

#### **290-1 What this Division is about**

This Division sets out the rules for deductions and tax offsets for superannuation contributions.

#### **Subdivision 290-A—General rules**

##### **Table of sections**

290-5	Non-application to roll-over superannuation benefits etc.
290-10	No deductions other than under this Division

#### **290-5 Non-application to roll-over superannuation benefits etc.**

This Division does not apply to a contribution that is any of the following:

- (a) a \*roll-over superannuation benefit;
- (b) a \*superannuation lump sum that is paid from a \*foreign superannuation fund;
- (c) an amount transferred to a \*complying superannuation fund or an \*RSA from a scheme for the payment of benefits in the nature of superannuation upon retirement or death that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 290-10

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- (i) is not, and never has been, an \*Australian superannuation fund or a \*foreign superannuation fund; and
- (ii) was not established in Australia; and
- (iii) is not centrally managed or controlled in Australia;
- (d) a payment from an \*FHSA required under the *First Home Saver Accounts Act 2008*;
- (e) a \*Government FHSA contribution.

**290-10 No deductions other than under this Division**

- (1) You cannot deduct under this Act an amount you pay as a contribution to a \*complying superannuation fund or \*RSA, except as provided by this Division.
- (2) You cannot deduct under this Act an amount you pay as a contribution to a \*non-complying superannuation fund, except as provided by this Division.

Note: Under Subdivision 290-B (Deduction of employer contributions and other employment-connected contributions), you may be able to deduct contributions you make to a non-complying fund that you believe to be a complying fund.

**Subdivision 290-B—Deduction of employer contributions and other employment-connected contributions**

**Table of sections**

**Deducting employer contributions**

- 290-60 Employer contributions deductible
- 290-65 Application to employees etc.

**Conditions for deducting an employer contribution**

- 290-70 Employment activity conditions
- 290-75 Complying fund conditions
- 290-80 Age related conditions

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **Other employment-connected deductions**

- 290-85 Contributions for former employees etc.
- 290-90 Controlling interest deductions
- 290-95 Amounts offset against superannuation guarantee charge

### **Returned contributions**

- 290-100 Returned contributions assessable

## **Deducting employer contributions**

### **290-60 Employer contributions deductible**

- (1) You can deduct a contribution you make to a \*superannuation fund, or an \*RSA, for the purpose of providing \*superannuation benefits for another person who is your employee when the contribution is made (regardless whether the benefits are payable to a \*SIS dependant of the employee if the employee dies before or after becoming entitled to receive the benefits).

Note: Other provisions of this Act and the *Income Tax Assessment Act 1936* may reduce, increase or deny the deduction in certain circumstances. For example, see sections 85-25 and 86-75 of this Act.

- (2) However, the conditions in sections 290-70, 290-75 and 290-80 must also be satisfied for you to deduct the contribution.
- (3) You can deduct the contribution only for the income year in which you made the contribution.
- (4) You cannot deduct the contribution if it is an amount paid by you, as mentioned in regulations under the *Family Law Act 1975*, to a regulated superannuation fund (within the meaning of that Act), or to an \*RSA, to be held for the benefit of your \*non-member spouse in satisfaction of his or her entitlement in respect of the \*superannuation interest concerned.

### **290-65 Application to employees etc.**

- (1) At a time when an individual is an employee of an entity within the expanded meaning of *employee* given by section 12 of the *Superannuation Guarantee (Administration) Act 1992*, this

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 290-70

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Subdivision applies as if the individual were an employee of the entity.

- (2) For the purposes of this Subdivision:
- (a) in relation to a contribution by a partnership in respect of an employee of the partnership—treat the employee as an employee of the partnership; and
  - (b) in relation to a contribution by a partner in a partnership in respect of an employee of the partnership—treat the employee as an employee of the partner.

### Conditions for deducting an employer contribution

#### 290-70 Employment activity conditions

To deduct the contribution, the employee must be:

- (aa) your employee (within the expanded meaning of employee given by section 12 of the *Superannuation Guarantee (Administration) Act 1992*); or
- (a) engaged in producing your assessable income; or
- (b) an Australian resident who is engaged in your business.

#### 290-75 Complying fund conditions

- (1) If the contribution was made to a \*superannuation fund, at least one of these conditions must be satisfied:
- (a) the fund was a \*complying superannuation fund for the income year of the fund in which you made the contribution;
  - (b) at the time you made the contribution, you had reasonable grounds to believe that the fund was a complying superannuation fund for that income year;
  - (c) at or before the time you made the contribution, you obtained a written statement (given by or on behalf of the trustee of the fund) that the fund:
    - (i) was a resident regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) was not subject to a direction under section 63 of that Act (which prevents a fund from accepting employer contributions).
- (2) However, the condition in paragraph (1)(b) or (c) cannot be satisfied if, when the contribution was made:
- (a) you were:
    - (i) the trustee or the manager of the fund; or
    - (ii) an \*associate of the trustee or the manager of the fund; and
  - (b) you had reasonable grounds to believe that:
    - (i) the fund was not a resident regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); or
    - (ii) the fund was operating in contravention of a regulatory provision (within the meaning of section 38A of that Act).
- (3) For the purposes of subparagraph (2)(b)(ii), a contravention of the *Superannuation Industry (Supervision) Act 1993* or regulations made under it is to be ignored unless the contravention is:
- (a) an offence; or
  - (b) a contravention of a civil penalty provision of that Act or those regulations.
- (4) For the purposes of subparagraph (2)(b)(ii), it is sufficient if a contravention is established on the balance of probabilities.

### **290-80 Age related conditions**

- (1) To deduct the contribution, either:
- (a) you must have made the contribution on or before the day that is 28 days after the end of the month in which the employee turns 75; or
  - (b) you must have been required to make the contribution by an industrial award, determination or notional agreement preserving State awards (within the meaning of the *Fair Work (Transitional Provisions and Consequential*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



*Amendments) Act 2009*) that is in force under an \*Australian law.

- (2) If only paragraph (1)(b) applies, you can deduct only the amount of the contribution that is required by the industrial award, determination or notional agreement preserving State awards.

Note: An industrial agreement, such as an enterprise agreement within the meaning of the *Fair Work Act 2009*, or a similar agreement made under a State law, is not an award or determination.

- (3) For the purposes of this section, a reference to a determination does not include a reference to a workplace determination made under the *Fair Work Act 2009* or the *Workplace Relations Act 1996*.

## **Other employment-connected deductions**

### **290-85 Contributions for former employees etc.**

- (1) Section 290-60 applies as modified by this section if a contribution you make in respect of another person:
- (a) reduces your charge percentage under sections 22 or 23 of the *Superannuation Guarantee (Administration) Act 1992* in respect of the other person because of section 15B of that Act; or
  - (b) is a one-off payment in lieu of salary or wages that relate to a period of service during which the other person was your employee; or
  - (c) is a payment in lieu of salary or wages that relate to a period of service during which the other person was your employee, and is made within 2 months after the person stopped being your employee.
- (1A) Section 290-60 also applies as modified by this section if:
- (a) you make a contribution in respect of another person at a time; and
  - (b) the other person had been employed by a company or other entity before that time; and
  - (c) section 290-90 would apply in relation to the contribution if the other person were employed by the company or entity at that time; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) the contribution:
  - (i) reduces the company's or entity's charge percentage under section 22 or 23 of the *Superannuation Guarantee (Administration) Act 1992* in respect of the other person because of section 15B of that Act; or
  - (ii) is a one-off payment in lieu of salary or wages that relate to a period of service during which the other person was the company's or entity's employee; or
  - (iii) is a payment in lieu of salary or wages that relate to a period of service during which the other person was the company's or entity's employee, and is made within 2 months after the person stopped being the company's or entity's employee.
- (2) Treat the other person as your employee for the purposes of subsection 290-60(1).
- (3) Despite subsection 290-60(2):
  - (a) if subsection (1) applies—the condition in section 290-70 must be satisfied at the most recent time when the other person was your employee (apart from subsection (2) of this section); or
  - (b) if subsection (1A) applies:
    - (i) the condition in section 290-70 need not be satisfied; and
    - (ii) instead, the condition in subsection 290-90(4) must be satisfied at the most recent time when the other person was the company's or entity's employee.

### **290-90 Controlling interest deductions**

- (1) Section 290-60 applies as modified by this section if you make a contribution in respect of another person at a time, and at that time:
  - (a) the other person is an employee of a company in which you have a controlling interest; or
  - (b) you are connected to the other person in the circumstances set out in subsection (5); or
  - (c) you are a company connected to the other person in the circumstances described in subsection (6).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 290-90

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- (2) Treat the other person as your employee at that time for the purposes of subsection 290-60(1).

Note 1: A deduction may be denied by section 85-25 if the employee is your associate.

Note 2: Section 86-60 (read together with section 86-75) limits the extent to which superannuation contributions by personal service entities are deductions.

- (3) Despite subsection 290-60(2), for you to deduct the contribution the condition in subsection (4) needs to be satisfied instead of the condition in section 290-70.

- (4) The other person must be:

- (aa) an employee (within the expanded meaning of employee given by section 12 of the *Superannuation Guarantee (Administration) Act 1992*) of the other person's employer; or
- (a) engaged in producing the assessable income of the other person's employer; or
- (b) an Australian resident engaged in the business of the other person's employer.

- (5) For the purposes of paragraph (1)(b), the circumstances are:

- (a) you are the beneficial owner of shares in a company of which the other person is an employee, but you do not have a controlling interest in the company; and
- (b) you are at \*arm's length with the other person in relation to the contribution; and
- (c) neither the other person, nor a \*relative of the other person:
  - (i) has set apart an amount as a fund, or has made a contribution to a fund, for the purpose of providing \*superannuation benefits for you or a relative of yours; or
  - (ii) has made an \*arrangement under which the other person or relative will or may do so.

*Company controlling interest deductions*

- (6) For the purposes of paragraph (1)(c), the circumstances are:

- (a) the other person is an employee of an entity that has a controlling interest in the company; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) an entity that has a controlling interest in the company also has a controlling interest in a company of which the other person is an employee.

### **290-95 Amounts offset against superannuation guarantee charge**

You cannot deduct a contribution under this Act if you elect under subsection 23A(1) of the *Superannuation Guarantee (Administration) Act 1992* that the contribution be offset against your liability to pay superannuation guarantee charge.

Note: You cannot deduct a charge imposed by the *Superannuation Guarantee Charge Act 1992*: see section 26-95.

## **Returned contributions**

### **290-100 Returned contributions assessable**

- (1) Your assessable income includes a payment, or the value of a benefit, you receive in the income year so far as it reasonably represents the direct or indirect return of:
- (a) a contribution for which you or another entity have deducted or can deduct an amount for any income year; or
  - (b) earnings on a contribution of that kind.

Note: An example of an indirect return of a contribution is if the fund to which it was made transfers to another fund assets that include the contribution, and the other fund returns the contribution to the person who made it.

- (2) Subsection (1) does not apply if you receive the payment, or the value of the benefit, as a \*superannuation benefit.

## **Subdivision 290-C—Deducting personal contributions**

### **Table of sections**

290-150 Personal contributions deductible

#### **Conditions for deducting a personal contribution**

290-155 Complying superannuation fund condition

290-160 Maximum earnings as employee condition

290-165 Age-related conditions

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 290-150

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- 290-170 Notice of intent to deduct conditions
- 290-175 Deduction limited by amount specified in notice
- 290-180 Notice may be varied but not revoked or withdrawn

**290-150 Personal contributions deductible**

- (1) You can deduct a contribution you make to a \*superannuation fund, or an \*RSA, for the purpose of providing \*superannuation benefits for yourself (regardless whether the benefits are payable to your \*SIS dependants if you die before or after becoming entitled to receive the benefits).

Note: Other provisions of this Act and the *Income Tax Assessment Act 1936* may reduce, increase or deny the deduction in certain circumstances. For example, see section 26-55 of this Act.

- (2) However, the conditions in sections 290-155, 290-160 (if applicable), 290-165 and 290-170 must also be satisfied for you to deduct the contribution.
- (3) You can deduct the contribution only for the income year in which you made the contribution.
- (4) If the contribution is attributable in whole or part to a \*capital gain from a \*CGT event:
  - (a) if you disregarded all or part of the capital gain from the CGT event under subsection 152-305(1) and you were under 55 just before you made the choice mentioned in that subsection—you cannot deduct the contribution to the extent that it is attributable to the capital gain; or
  - (b) if a company or trust disregarded all or part of the capital gain from the CGT event under subsection 152-305(2) and you were under 55 just before the contribution was made—you cannot deduct the contribution to the extent that it is attributable to the capital gain.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Conditions for deducting a personal contribution

### 290-155 Complying superannuation fund condition

If the contribution is made to a \*superannuation fund, it must be a \*complying superannuation fund for the income year of the fund in which you made the contribution.

### 290-160 Maximum earnings as employee condition

- (1) This section applies if:
  - (a) in the income year in which you make the contribution, you engage in any of these activities:
    - (i) holding an office or appointment;
    - (ii) performing functions or duties;
    - (iii) engaging in work;
    - (iv) doing acts or things; and
  - (b) the activities result in you being treated as an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992* (assuming that subsection 12(11) of that Act had not been enacted).
- (2) To deduct the contribution, less than 10% of the total of the following must be attributable to the activities:
  - (a) your assessable income for the income year;
  - (b) your \*reportable fringe benefits total for the income year;
  - (c) the total of your \*reportable employer superannuation contributions for the income year.

### 290-165 Age-related conditions

- (1) If you were under the age of 18 at the end of the income year in which you made the contribution, you must have \*derived income in the income year:
  - (a) from the carrying on of a \*business; or
  - (b) attributable to activities covered by subsection 290-160(1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 290-170

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- (2) In any other case, you must have made the contribution on or before the day that is 28 days after the end of the month in which you turn 75.

**290-170 Notice of intent to deduct conditions**

*Deductibility of contributions*

- (1) To deduct the contribution, or a part of the contribution:
- (a) you must give to the trustee of the fund or the \*RSA provider a valid notice, in the \*approved form, of your intention to claim the deduction; and
  - (b) the notice must be given before:
    - (i) if you have lodged your \*income tax return for the income year in which the contribution was made on a day before the end of the next income year—the end of that day; or
    - (ii) otherwise—the end of the next income year; and
  - (c) the trustee or provider must have given you an acknowledgment of receipt of the notice.

*Validity of notices*

- (2) The notice is not valid if at least one of these conditions is satisfied:
- (a) the notice is not in respect of the contribution;
  - (b) the notice includes all or a part of an amount covered by a previous notice;
  - (c) when you gave the notice:
    - (i) you were not a member of the fund or the holder of the \*RSA; or
    - (ii) the trustee or \*RSA provider no longer holds the contribution; or
    - (iii) the trustee or RSA provider has begun to pay a \*superannuation income stream based in whole or part on the contribution;
  - (d) before you gave the notice:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (i) you had made a contributions-splitting application (within the meaning given by the regulations) in relation to the contribution; and
- (ii) the trustee or RSA provider had not rejected the application.

*Acknowledgment of notice*

- (3) The trustee or provider must, without delay, give you an acknowledgment of a valid notice, subject to subsection (4).
- (4) The trustee or provider may refuse to give you an acknowledgment of receipt of a valid notice if the \*value of the \*superannuation interest into which the contribution is made, at the end of the day on which the trustee or \*RSA provider received the notice, is less than the tax that would be payable in respect of your contribution (or part of the contribution) if the trustee or provider were to acknowledge receipt of the notice.

**290-175 Deduction limited by amount specified in notice**

You cannot deduct more for the contribution (or a part of the contribution) than the amount stated in the notice.

**290-180 Notice may be varied but not revoked or withdrawn**

- (1) You cannot revoke or withdraw a valid notice in relation to the contribution (or a part of the contribution).
- (2) You can vary a valid notice, but only so as to reduce the amount stated in relation to the contribution (including to nil). You do so by giving notice to the trustee or the \*RSA provider in the \*approved form.
- (3) However, you cannot vary a valid notice after:
  - (a) if you have lodged your \*income tax return for the income year in which the contribution was made on a day before the end of the next income year—the end of that day; or
  - (b) otherwise—the end of the next income year.
- (3A) The variation is not effective if, when you make it:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 290-230

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- (a) you were not a member of the fund or the holder of the \*RSA; or
  - (b) the trustee or \*RSA provider no longer holds the contribution; or
  - (c) the trustee or RSA provider has begun to pay a \*superannuation income stream based in whole or part on the contribution.
- (4) Subsection (3) does not apply to a variation if:
- (a) you claimed a deduction for the contribution (or a part of the contribution); and
  - (b) the deduction is not allowable (in whole or in part); and
  - (c) the variation reduces the amount stated in relation to the contribution by the amount not allowable as a deduction.

**Subdivision 290-D—Tax offsets for spouse contributions**

**Table of sections**

290-230	Offset for spouse contribution
290-235	Limit on amount of tax offsets
290-240	Tax file number

**290-230 Offset for spouse contribution**

- (1) You are entitled to a \*tax offset for an income year for a contribution you make in the income year to a \*superannuation fund, or an \*RSA, for the purpose of providing \*superannuation benefits for your \*spouse (regardless whether the benefits are payable to your spouse's \*SIS dependants if your spouse dies before or after becoming entitled to receive the benefits).
- (2) You are entitled to the \*tax offset only if:
  - (a) he or she was your \*spouse when you made the contribution; and
  - (b) both you and your spouse were Australian residents when you made the contribution; and
  - (c) the total of your spouse's:
    - (i) assessable income; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) \*reportable fringe benefits total; and
  - (iii) \*reportable employer superannuation contributions; for the income year is less than \$13,800; and
  - (d) you have not deducted and cannot deduct an amount for the contribution under section 290-60 (employer contributions); and
  - (e) if the contribution is made to a \*superannuation fund—it is a \*complying superannuation fund for the income year of the fund in which you make the contribution.
- (3) You are *not* entitled to the \*tax offset if, when you make the contribution, you are living separately and apart from your \*spouse on a permanent basis.
- (4) You are *not* entitled to the \*tax offset for an amount paid by you, as mentioned in regulations under the *Family Law Act 1975*, to a regulated superannuation fund (within the meaning of that Act), or to an \*RSA, to be held for the benefit of your \*non-member spouse in satisfaction of his or her entitlement in respect of the \*superannuation interest concerned.

### **290-235 Limit on amount of tax offsets**

- (1) The total of the amounts of \*tax offset to which you are entitled for contributions you make for an income year cannot exceed 18% of the lesser of the following:
- (a) \$3,000 reduced by the amount (if any) by which the total mentioned in paragraph 290-230(2)(c) for the income year exceeds \$10,800;
  - (b) the sum of the \*spouse contributions you make in the income year.
- (2) The maximum \*tax offset to which you are entitled for an income year is \$540, even if you are entitled to a tax offset for more than 1 \*spouse.

### **290-240 Tax file number**

If you are entitled to the \*tax offset for the contribution, you may, with your \*spouse's consent, quote your spouse's \*tax file number

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-30** Superannuation

**Division 290** Contributions to superannuation funds

Section 290-240

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to the trustee (or \*RSA provider) of the \*superannuation fund (or \*RSA) to which the contribution is made.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 292—Excess contributions tax**

### **Table of Subdivisions**

	Guide to Division 292
292-A	Object of this Division
292-B	Excess concessional contributions tax
292-C	Excess non-concessional contributions tax
292-D	Modifications for defined benefit interests
292-E	Excess contributions tax assessments
292-F	Amending excess contributions tax assessments
292-G	Collection and recovery
292-H	Other provisions

### **Guide to Division 292**

#### **292-1 What this Division is about**

This Division limits the superannuation contributions made in a financial year for a person that receive concessional tax treatment.

### **Subdivision 292-A—Object of this Division**

#### **Table of sections**

292-5	Object of this Division
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#### **292-5 Object of this Division**

The object of this Division is to ensure that the amount of concessional tax \*superannuation benefits that a person receives results from superannuation contributions that have been made gradually over the course of the person's life.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Subdivision 292-B—Excess concessional contributions tax

### 292-10 What this Subdivision is about

This Subdivision defines *concessional contributions* and *excess concessional contributions*, and sets liability to pay excess concessional contributions tax.

### Table of sections

#### Operative provisions

292-15	Liability for excess concessional contributions tax
292-20	Your <i>excess concessional contributions</i> for a financial year
292-25	Your <i>concessional contributions</i> for a financial year

### Operative provisions

#### 292-15 Liability for excess concessional contributions tax

You are liable to pay \*excess concessional contributions tax imposed by the *Superannuation (Excess Concessional Contributions Tax) Act 2007* if you have \*excess concessional contributions for a \*financial year.

Note: The amount of the tax is set out in that Act.

#### 292-20 Your *excess concessional contributions* for a financial year

- (1) You have *excess concessional contributions* for a \*financial year if the amount of your \*concessional contributions for the year exceeds your \*concessional contributions cap for the year. The amount of the excess concessional contributions is the amount of the excess.
- (2) Your *concessional contributions cap* is:
  - (a) for the 2007-2008 \*financial year—\$50,000; or
  - (b) for the 2008-2009 financial year—\$50,000; or
  - (c) for the 2009-2010 financial year—\$25,000; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) for the 2010-2011 financial year or a later financial year—the amount worked out by indexing annually the amount mentioned in paragraph (c).

Note 1: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the amount of the cap: see section 960-285.

Note 2: For transitional rules about the period from 1 July 2007 to 30 June 2012, see section 292-20 of the *Income Tax (Transitional Provisions) Act 1997*.

### **292-25 Your concessional contributions for a financial year**

- (1) The amount of your *concessional contributions* for a \*financial year is the sum of:
- (a) each contribution covered under subsection (2); and
  - (b) each amount covered under subsection (3).

Note: For rules about defined benefit interests, see Subdivision 292-D.

- (2) A contribution is covered under this subsection if:
- (a) it is made in the \*financial year to a \*complying superannuation plan in respect of you; and
  - (b) it is included in the assessable income of the \*superannuation provider in relation to the plan; and
  - (c) it is *not* any of the following:
    - (i) an amount mentioned in subsection 295-200(2);
    - (ii) an amount mentioned in item 2 of the table in subsection 295-190(1);
    - (iii) a contribution made to a \*constitutionally protected fund.
- (3) An amount in a \*complying superannuation plan is covered under this subsection if it is allocated by the \*superannuation provider in relation to the plan for you for the year in accordance with conditions specified in the regulations.
- (4) Disregard Subdivision 295-D for the purposes of paragraph (2)(b).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 292-C—Excess non-concessional contributions tax

### 292-75 What this Subdivision is about

This Subdivision defines *non-concessional contributions* and *excess non-concessional contributions*, and sets liability to pay excess non-concessional contributions tax.

### Table of sections

#### Operative provisions

292-80	Liability for excess non-concessional contributions tax
292-85	Your <i>excess non-concessional contributions</i> for a financial year
292-90	Your <i>non-concessional contributions</i> for a financial year
292-95	Contributions arising from structured settlements or orders for personal injuries
292-100	Contribution relating to some CGT small business concessions
292-105	CGT cap amount

### Operative provisions

#### 292-80 Liability for excess non-concessional contributions tax

You are liable to pay \*excess non-concessional contributions tax imposed by the *Superannuation (Excess Non-concessional Contributions Tax) Act 2007* if you have \*excess non-concessional contributions for a \*financial year.

Note: The amount of the tax is set out in that Act.

#### 292-85 Your *excess non-concessional contributions* for a financial year

- (1) You have *excess non-concessional contributions* for a \*financial year if the amount of your \*non-concessional contributions for the year exceeds your \*non-concessional contributions cap for the year. The amount of the excess non-concessional contributions is the amount of the excess.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) Your ***non-concessional contributions cap*** is:
- (a) for the 2007-2008 \*financial year—the amount that is 3 times your \*concessional contributions cap for the year; and
  - (b) for the 2008-2009 financial year—the amount that is 3 times your concessional contributions cap for the year; and
  - (c) for the 2009-2010 financial year or a later financial year—the amount that is 6 times your concessional contributions cap for the year.
- (3) However, subsection (4) applies instead of subsection (2) in determining your ***non-concessional contributions cap*** for a \*financial year (the ***first year***) if:
- (a) your \*non-concessional contributions for the first year exceed the amount mentioned in subsection (2) for that year; and
  - (b) you are under 65 years at any time in the first year; and
  - (c) a previous operation of subsection (4) does not determine your non-concessional contributions cap for the first year.
- (4) Work out your ***non-concessional contributions cap*** for the first year and for the following 2 \*financial years (the ***second year*** and ***third year***) as follows:
- (a) your cap for the first year is 3 times the amount mentioned in subsection (2) for the first year;
  - (b) your cap for the second year is:
    - (i) if your \*non-concessional contributions for the first year fall short of your cap for the first year (worked out under paragraph (a))—the shortfall; or
    - (ii) otherwise—nil;
  - (c) your cap for the third year is:
    - (i) if your \*non-concessional contributions for the second year fall short of your cap for the second year (worked out under paragraph (b))—the shortfall; or
    - (ii) otherwise—nil.

**292-90 Your *non-concessional contributions* for a financial year**

- (1) The amount of your ***non-concessional contributions*** for a \*financial year is the sum of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 292-90

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- (a) each contribution covered under subsection (2); and
  - (aa) each amount covered under subsection (4); and
  - (b) the amount of your \*excess concessional contributions (if any) for the financial year.
- (2) A contribution is covered under this subsection if:
- (a) it is made in the \*financial year to a \*complying superannuation plan in respect of you; and
  - (b) it is *not* included in the assessable income of the \*superannuation provider in relation to the \*superannuation plan; and
  - (c) it is *not* any of the following:
    - (i) a Government co-contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*;
    - (ii) a contribution covered under section 292-95 (payments that relate to structured settlements or orders for personal injuries);
    - (iii) a contribution covered under section 292-100 (certain CGT-related payments), to the extent that it does not exceed your \*CGT cap amount when it is made;
    - (iv) a contribution made to a \*constitutionally protected fund (other than a contribution included in the \*contributions segment of your \*superannuation interest in the fund);
    - (v) contributions not included in the assessable income of the superannuation provider in relation to the superannuation plan because of a choice made under section 295-180;
    - (vi) a contribution that is a \*roll-over superannuation benefit.
- (3) Disregard Subdivision 295-D for the purposes of paragraph (2)(b).
- (4) An amount is covered under this subsection if it is any of the following:
- (a) an amount in a \*complying superannuation plan that is allocated by the \*superannuation provider in relation to that plan for you for the year in accordance with conditions specified in the regulations;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the amount of any contribution made to that plan in respect of you in the year that is covered by a valid and acknowledged notice under section 290-170, to the extent that it is not allowable as a deduction for the person making the contribution;
- (c) the sum of each contribution made to that plan in respect of you at a time on or after 10 May 2006 when that plan was not a complying superannuation plan (other than a contribution covered under this paragraph in relation to a previous financial year).

### **292-95 Contributions arising from structured settlements or orders for personal injuries**

- (1) A contribution is covered under this section if:
  - (a) the contribution arises from:
    - (i) the settlement of a claim that satisfies the conditions in subsection (3); or
    - (ii) the settlement of a claim in relation to a personal injury suffered by you under a law of the Commonwealth or of a State or Territory relating to workers compensation; or
    - (iii) the order of a court that satisfies the conditions in subsection (4); and
  - (b) the contribution is made within 90 days after the later of the following:
    - (i) the day of receipt of the payment from which the contribution is made; or
    - (ii) in relation to subparagraph (a)(i) or (iii)—the day mentioned in subsection (2); and
  - (c) 2 legally qualified medical practitioners have certified that, because of the personal injury, it is unlikely that you can ever be \*gainfully employed in a capacity for which you are reasonably qualified because of education, experience or training; and
  - (d) no later than the time the contribution is made to a \*superannuation plan, you or your \*legal personal representative notify the \*superannuation provider in relation

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 292-95

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to the plan, in the \*approved form, that this section is to apply to the contribution.

- (2) For the purposes of subparagraph (1)(b)(ii), the day is:
  - (a) for a settlement mentioned in subparagraph (a)(i):
    - (i) the day on which the agreement mentioned in paragraph (3)(c) was entered into; or
    - (ii) if that agreement depends, for its effectiveness, on being approved (however described) by an order of a court, or on being embodied in a consent order made by a court—the day on which that order was made; or
  - (b) for an order mentioned in subparagraph (1)(a)(iii)—the day on which the order was made.
- (3) For the purposes of subparagraph (1)(a)(i), the conditions are as follows:
  - (a) the claim:
    - (i) is for compensation or damages for, or in respect of, personal injury suffered by you; and
    - (ii) is made by you or your \*legal personal representative;
  - (b) the claim is based on the commission of a wrong, or on a right created by statute;
  - (c) the settlement takes the form of a written agreement between the parties to the claim (whether or not that agreement is approved by an order of a court, or is embodied in a consent order made by a court).
- (4) For the purposes of subparagraph (1)(a)(iii), the conditions are as follows:
  - (a) the order is made in respect of a claim that:
    - (i) is for compensation or damages for, or in respect of, personal injury suffered by you; and
    - (ii) is made by you or your \*legal personal representative;
  - (b) the claim is based on the commission of a wrong, or on a right created by statute;
  - (c) the order is not an order approving or endorsing an agreement as mentioned in paragraph (3)(c).
- (5) If a claim is both:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) for compensation or damages for personal injury suffered by you; and
  - (b) for some other remedy (for example, compensation or damages for loss of, or damage to, property);
- subsections (3) and (4) apply to the claim, but only to the extent that it relates to the compensation or damages referred to in paragraph (a), and only to amounts that, in the settlement agreement, or in the order, are identified as being solely in payment of that compensation or those damages.

### **292-100 Contribution relating to some CGT small business concessions**

- (1) A contribution is covered under this section if:
  - (a) the contribution is made by you to a \*complying superannuation plan in respect of you in a \*financial year; and
  - (b) the requirement in subsection (2), (4), (7) or (8) is met; and
  - (c) you choose, in accordance with subsection (9), to apply this section to an amount that is all or part of the contribution.
- (2) The requirement in this subsection is met if:
  - (a) the contribution is equal to all or part of the \*capital proceeds from a \*CGT event for which you can disregard any \*capital gain under section 152-105 (or would be able to do so, assuming that a capital gain arose from the event); and
  - (b) the contribution is made on or before the later of the following days:
    - (i) the day you are required to lodge your \*income tax return for the income year in which the CGT event happened;
    - (ii) 30 days after the day you receive the capital proceeds.
- (3) For the purposes of paragraph (2)(a), ignore the requirement in paragraph 152-105(b) if you are permanently incapacitated at the time of the \*CGT event but were not permanently incapacitated at the time the relevant \*CGT asset was acquired.
- (4) The requirement in this subsection is met if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) just before a \*CGT event, you were a \*CGT concession stakeholder of an entity that could, under section 152-110, disregard any \*capital gain arising from the CGT event (or would be able to do so, assuming that a capital gain arose from the event); and
  - (b) the entity makes a payment to you within 2 years after the CGT event; and
  - (c) the contribution is equal to all or part of your stakeholder's participation percentage (within the meaning of subsection 152-125(2)) of the \*capital proceeds from the CGT event (but not exceeding the amount of the payment mentioned in paragraph (b)); and
  - (d) the contribution is made within 30 days after the payment mentioned in paragraph (b).
- (5) In determining whether the conditions in subsection (2) or (4) are satisfied for a \*CGT event in relation to a \*pre-CGT asset, treat the asset as a \*post-CGT asset.
- (6) For the purposes of paragraph (4)(a), ignore the requirement in paragraph 152-110(1)(b) if a \*significant individual was permanently incapacitated at the time of the \*CGT event but was not permanently incapacitated when the relevant \*CGT asset was acquired.
- (7) The requirement in this subsection is met if:
- (a) the contribution is equal to all or part of the \*capital gain from a \*CGT event that you disregarded under subsection 152-305(1); and
  - (b) the contribution is made on or before the later of the following days:
    - (i) the day you are required to lodge your \*income tax return for the income year in which the CGT event happened;
    - (ii) 30 days after the day you receive the \*capital proceeds from the CGT event.
- (8) The requirement in this subsection is met if:
- (a) just before a \*CGT event, you were a \*CGT concession stakeholder of an entity that could, under subsection

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- 152-305(2), disregard all or part of a \*capital gain arising from the CGT event; and
- (b) the entity makes a payment to you that satisfies the conditions in section 152-325; and
  - (c) the contribution is equal to all or part of the capital gain arising from the CGT event (but not exceeding the amount of the payment mentioned in paragraph (b)); and
  - (d) the contribution is made within 30 days after the payment mentioned in paragraph (b).
- (9) To make a choice for the purposes of paragraph (1)(c), you must:
- (a) make the choice in the \*approved form; and
  - (b) give it to the \*superannuation provider in relation to the \*complying superannuation plan on or before the time when the contribution is made.

### **292-105 CGT cap amount**

- (1) Your **CGT cap amount** at the start of the 2007-2008 \*financial year is \$1,000,000.

Note: For transitional rules about contributions made in the period from 10 May 2006 to 30 June 2007, see section 292-80 of the *Income Tax (Transitional Provisions) Act 1997*.

#### *Reductions and increases*

- (2) If a contribution covered by section 292-100 is made in respect of you at a time, reduce your **CGT cap amount** just after that time:
- (a) if the contribution falls short of your \*CGT cap amount at that time—by the amount of the contribution; or
  - (b) otherwise—to nil.
- (3) At the start of each \*financial year after the 2007-2008 financial year, increase your **CGT cap amount** by the amount (if any) by which the index amount for that financial year exceeds the index amount for the previous financial year.
- (4) For the purposes of subsection (3), the index amount for the 2007-2008 \*financial year is \$1,000,000. The index amount is then indexed annually.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 292-155

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Note: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the index amount: see section 960-285.

## Subdivision 292-D—Modifications for defined benefit interests

### 292-155 What this Subdivision is about

This Subdivision modifies the meaning of *concessional contributions* relating to defined benefit interests.

### Table of sections

#### Operative provisions

292-160	Application
292-165	Concessional contributions—special rules for defined benefit interests
292-170	<i>Notional taxed contributions</i>
292-175	<i>Defined benefit interest</i>

### Operative provisions

#### 292-160 Application

- (1) This Subdivision applies if, in a \*financial year, you have:
  - (a) a \*superannuation interest that is or includes a \*defined benefit interest; or
  - (b) more than one superannuation interest that is or includes a defined benefit interest.
- (2) However, this Subdivision does not apply in relation to a \*superannuation interest in a \*constitutionally protected fund.

#### 292-165 Concessional contributions—special rules for defined benefit interests

Despite section 292-25, the amount of your *concessional contributions* for the \*financial year is the sum of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the contributions covered by subsection 292-25(2), and the amounts covered by subsection 292-25(3), to the extent to which they do *not* relate to the \*defined benefit interest or interests; and
- (b) your \*notional taxed contributions for the financial year in respect of the defined benefit interest or interests.

**292-170 Notional taxed contributions**

- (1) Your *notional taxed contributions* for a \*financial year in respect of a \*defined benefit interest has the meaning given by the regulations.
- (2) Regulations made for the purposes of subsection (1) may provide for a method of determining the amount of the *notional taxed contributions*.
- (3) Regulations made for the purposes of subsection (1) may define the \*notional taxed contributions, and the amount of notional taxed contributions, in different ways depending on any of the following matters:
  - (a) the person who has the \*superannuation interest that is or includes the \*defined benefit interest;
  - (b) the \*superannuation plan in which the superannuation interest exists;
  - (c) the \*superannuation provider in relation to the superannuation plan;
  - (d) any other matter.
- (4) Regulations made for the purposes of subsection (1) may specify circumstances in which the amount of \*notional taxed contributions for a \*financial year is nil.
- (5) Subsections (2), (3) and (4) do not limit the regulations that may be made for the purposes of this section.
- (6) Despite subsection (1), your *notional taxed contributions* for the \*financial year in respect of the \*defined benefit interest are equal to your \*concessional contributions cap for the financial year if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 292-170

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- (a) this Subdivision applies in relation to you because you have a defined benefit interest in a financial year; and
  - (b) disregarding this subsection and subsection (8), the notional taxed contributions for the financial year in respect of the defined benefit interest exceed your concessional contributions cap for the financial year; and
  - (c) either:
    - (i) you held the defined benefit interest in a \*superannuation fund on 5 September 2006; or
    - (ii) all the requirements in subsection (7) are satisfied; and
  - (d) the conditions (if any) specified in the regulations are satisfied.
- (7) For the purposes of subparagraph (6)(c)(ii), the requirements are as follows:
- (a) you held a \*defined benefit interest (the *original interest*) in a \*superannuation fund (the *original fund*) on 5 September 2006;
  - (b) the defined benefit interest mentioned in paragraph (6)(a) (the *current interest*) is in a different superannuation fund (the *current fund*);
  - (c) the entire \*value of the original interest:
    - (i) was transferred directly to the current interest after 5 September 2006; or
    - (ii) was transferred to another superannuation interest after 5 September 2006, and was later transferred to the current interest (whether directly or through a series of transfers between superannuation interests);
  - (d) your rights to accrue future benefits under the current interest are equivalent to your rights to accrue future benefits under the original interest;
  - (e) either:
    - (i) the notional taxed contributions mentioned in paragraph (6)(b) do not exceed what they would have been if the transfer mentioned in paragraph (c) had not taken place; or
    - (ii) the conditions (if any) specified in the regulations are satisfied;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (f) the conditions (if any) specified in the regulations are satisfied.
- (8) Despite subsection (1), your **notional taxed contributions** for the \*financial year in respect of the \*defined benefit interest are equal to your \*concessional contributions cap for the financial year if:
  - (a) this Subdivision applies in relation to you because you have a defined benefit interest in a financial year; and
  - (b) disregarding this subsection, the notional taxed contributions for the financial year in respect of the defined benefit interest exceed your concessional contributions cap for the financial year; and
  - (c) either:
    - (i) you held the defined benefit interest in a \*superannuation fund on 12 May 2009; or
    - (ii) all the requirements in subsection (9) are satisfied; and
  - (d) the conditions (if any) specified in the regulations are satisfied; and
  - (e) the financial year is the 2009-2010 financial year or a later financial year.
- (9) For the purposes of subparagraph (8)(c)(ii), the requirements are as follows:
  - (a) you held a \*defined benefit interest (the **original interest**) in a \*superannuation fund (the **original fund**) on 12 May 2009;
  - (b) the defined benefit interest mentioned in paragraph (8)(a) (the **current interest**) is in a different superannuation fund (the **current fund**);
  - (c) the entire \*value of the original interest:
    - (i) was transferred directly to the current interest after 12 May 2009; or
    - (ii) was transferred to another \*superannuation interest after 12 May 2009, and was later transferred to the current interest (whether directly or through a series of transfers between superannuation interests);
  - (d) your rights to accrue future benefits under the current interest are equivalent to your rights to accrue future benefits under the original interest;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 292-175

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- (e) either:
  - (i) the notional taxed contributions mentioned in paragraph (8)(b) do not exceed what they would have been if the transfer mentioned in paragraph (c) had not taken place; or
  - (ii) the conditions (if any) specified in the regulations are satisfied;
- (f) the conditions (if any) specified in the regulations are satisfied.

**292-175 Defined benefit interest**

- (1) An individual's \*superannuation interest is a ***defined benefit interest*** to the extent that it defines the individual's entitlement to \*superannuation benefits payable from the interest by reference to one or more of the following matters:
  - (a) the individual's salary, or allowance in the nature of salary, at a particular date or averaged over a period;
  - (b) another individual's salary, or allowance in the nature of salary, at a particular date or averaged over a period;
  - (c) a specified amount;
  - (d) specified conversion factors.
- (2) However, an individual's \*superannuation interest is *not* a ***defined benefit interest*** if it defines that entitlement solely by reference to one or more of the following:
  - (a) \*disability superannuation benefits;
  - (b) \*superannuation death benefits;
  - (c) payments of amounts mentioned in paragraph 307-10(a) (temporary disability payments).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 292-E—Excess contributions tax assessments**

### **Guide to Subdivision 292-E**

#### **292-225 What this Subdivision is about**

The Commissioner may make an assessment of a person's liability to pay excess contributions tax, and the excess contributions on which that liability is based.

#### **Table of sections**

##### **Operative provisions**

292-230	Commissioner must make an <i>excess contributions tax assessment</i>
292-235	Part-year assessment
292-240	Validity of assessment
292-245	Objections
292-250	Evidence

#### **Operative provisions**

##### **292-230 Commissioner must make an *excess contributions tax assessment***

- (1) The Commissioner must make an assessment (an *excess contributions tax assessment*) of:
  - (a) if a person has \*excess concessional contributions for a \*financial year—the amount of the excess concessional contributions; and
  - (b) the amount (if any) of \*excess concessional contributions tax which the person is liable to pay in relation to the financial year.
- (2) The Commissioner must make an assessment (also an *excess contributions tax assessment*) of:
  - (a) if a person has \*excess non-concessional contributions for a financial year—the amount of the excess non-concessional contributions; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 292-235

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- (b) the amount (if any) of \*excess non-concessional contributions tax which the person is liable to pay in relation to the financial year.
- (3) The Commissioner must give the person notice in writing of an \*excess contributions tax assessment as soon as practicable after making the assessment.
- (4) The notice may be included in a notice of any other assessment under this Act (including an assessment under this section).

**292-235 Part-year assessment**

- (1) The Commissioner may, at any time during a \*financial year (the *actual financial year*), make an assessment of the matters mentioned in subsection 292-230(1) for a person for a particular period within that year as if the beginning and end of that period were the beginning and end of a financial year.
- (2) This Division applies, for the purposes of that assessment, as if:
  - (a) the start and end of the period were the start and end of a \*financial year; and
  - (b) the assessment were an *excess contributions tax assessment* for that financial year.
- (3) If the Commissioner makes an assessment under subsection (1), he or she must make an assessment under section 292-230 in relation to the actual financial year as soon as possible after the end of that year.
- (4) However, the Commissioner does not need to make an assessment mentioned in subsection (3) if he or she is satisfied that the assessment would not differ in a material way from the assessment under subsection (1).

**292-240 Validity of assessment**

The validity of an \*excess contributions tax assessment is not affected because any of the provisions of this Act have not been complied with.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **292-245 Objections**

If a person is dissatisfied with an \*excess contributions tax assessment made in relation to the person, the person may object against the assessment in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

## **292-250 Evidence**

Section 177 of the *Income Tax Assessment Act 1936* applies as if a reference in that section to an assessment or a notice of assessment included a reference to an \*excess contributions tax assessment or a notice of an excess contributions tax assessment, as required.

## **Subdivision 292-F—Amending excess contributions tax assessments**

### **Guide to Subdivision 292-F**

#### **292-300 What this Subdivision is about**

The Commissioner may amend excess contributions tax assessments within certain time limits.
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#### **Table of sections**

##### **Operative provisions**

292-305	Amendments within 4 years of the original assessment
292-310	Amended assessments are treated as excess contributions tax assessments
292-315	Later amendments—on request
292-320	Later amendments—fraud or evasion
292-325	Further amendment of an amended particular
292-330	Amendment on review etc.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### 292-305 Amendments within 4 years of the original assessment

- (1) The Commissioner may amend an \*excess contributions tax assessment for a person for a \*financial year at any time during the period of 4 years after the \*original excess contributions tax assessment day for the person for that year.
- (2) The *original excess contributions tax assessment day* for a person for a \*financial year is the day on which the Commissioner gives the first \*excess contributions tax assessment to the person for the financial year.

### 292-310 Amended assessments are treated as excess contributions tax assessments

- (1) Once an amended \*excess contributions tax assessment for a person for a \*financial year is made, it is taken to be an *excess contributions tax assessment* for the person for the year.
- (2) If the Commissioner amends a person's \*excess contributions tax assessment, the Commissioner must give the person notice in writing of the amendment as soon as practicable after making the amendment.
- (3) The notice may be included in a notice of any other assessment under this Act.

### 292-315 Later amendments—on request

The Commissioner may amend an \*excess contributions tax assessment for a person for a \*financial year after the end of the period of 4 years after the \*original excess contributions tax assessment day for the person for the year if, within that 4 year period:

- (a) the person applies for the amendment in the \*approved form; and
- (b) the person gives the Commissioner all the information necessary for making the amendment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**292-320 Later amendments—fraud or evasion**

- (1) If:
- (a) a person (or a \*superannuation provider covered under subsection (2)) does not make a full and true disclosure to the Commissioner of the information necessary for an \*excess contributions tax assessment for the person for a \*financial year; and
  - (b) in making the assessment, the Commissioner makes an under-assessment; and
  - (c) the Commissioner is of the opinion that the under-assessment is due to fraud or evasion;
- the Commissioner may amend the assessment at any time.
- (2) A \*superannuation provider is covered under this subsection if any of the following conditions are satisfied:
- (a) contributions have been made to a \*superannuation plan of the provider on behalf of the person in the \*financial year;
  - (b) an amount is included in the person's \*concessional contributions for the financial year under subsection 292-25(3) because the superannuation provider allocated it to the person;
  - (c) \*notional taxed contributions are included in the person's concessional contributions for the financial year under section 292-165 because of the person's \*defined benefit interest in a superannuation plan of the provider.

**292-325 Further amendment of an amended particular**

- If:
- (a) an \*excess contributions tax assessment has been amended (the *earlier amendment*) in any particular; and
  - (b) the Commissioner is of the opinion that it would be just to further amend the assessment in that particular;
- the Commissioner may do so within a period of 4 years after the earlier amendment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**292-330 Amendment on review etc.**

Nothing in this Subdivision prevents the amendment of an \*excess contributions tax assessment:

- (a) to give effect to a decision on a review or appeal; or
- (b) as a result of an objection or pending an appeal or review.

Note: A person may make a complaint to the Superannuation Complaints Tribunal under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993* if the person is dissatisfied with a statement given to the Commissioner by a superannuation provider under section 390-5 in Schedule 1 to the *Taxation Administration Act 1953*.

**Subdivision 292-G—Collection and recovery**

**Guide to Subdivision 292-G**

**292-380 What this Subdivision is about**

Excess contributions tax is due and payable at the end of 21 days after notice of assessment and the general interest charge applies to unpaid amounts. Money may be released from a superannuation plan to pay the tax.

**Table of sections**

**Operative provisions**

292-385	Due date for payment of excess contributions tax
292-390	General interest charge
292-395	Refunds of amounts overpaid
292-400	Security for payment of tax
292-405	Release authority
292-410	Giving a release authority to a superannuation provider
292-415	Superannuation provider given release authority must pay amount

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Operative provisions

### 292-385 Due date for payment of excess contributions tax

\*Excess contributions tax assessed for a person for a \*financial year is due and payable at the end of 21 days after the Commissioner gives the person notice of the \*excess contributions tax assessment.

### 292-390 General interest charge

If \*excess contributions tax or \*shortfall interest charge payable by a person remains unpaid after the time by which it is due and payable, the person is liable to pay the \*general interest charge on the unpaid amount for each day in the period that:

- (a) starts at the beginning of the day on which the excess contributions tax or shortfall interest charge was due to be paid; and
- (b) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:
  - (i) the excess contributions tax or shortfall interest charge;
  - (ii) general interest charge on any of the excess contributions tax or shortfall interest charge.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

### 292-395 Refunds of amounts overpaid

Section 172 of the *Income Tax Assessment Act 1936* applies for the purposes of this Part as if references in that section to tax included references to \*excess contributions tax.

### 292-400 Security for payment of tax

In section 213 of the *Income Tax Assessment Act 1936* (under which the Commissioner may require security for the payment of income tax), a reference to income tax includes a reference to \*excess contributions tax.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **292-405 Release authority**

- (1) As soon as practicable after making an \*excess contributions tax assessment for a person, the Commissioner must give the person the following, in accordance with this section:
  - (a) if the person is liable to pay an amount of \*excess concessional contributions tax in accordance with the assessment—a release authority in respect of the amount;
  - (b) if the person is liable to pay an amount of \*excess non-concessional contributions tax in accordance with the assessment—a release authority in respect of the amount.
- (2) A release authority must:
  - (a) state the amount of \*excess concessional contributions tax or \*excess non-concessional contributions tax (whichever is applicable) that the person is liable to pay as a result of the assessment; and
  - (b) be dated; and
  - (c) contain any other information that the Commissioner considers relevant.

### **292-410 Giving a release authority to a superannuation provider**

- (1) The person may give the release authority to a \*superannuation provider that holds a \*superannuation interest (other than a \*defined benefit interest) for the person in a \*complying superannuation plan within 90 days after the date of the release authority.

Note: Excess contributions tax is due and payable at the end of 21 days after notice of assessment: see section 292-385.

- (2) However, if:
  - (a) the release authority is for \*excess non-concessional contributions tax; and
  - (b) a \*superannuation provider holds a \*superannuation interest for the person in a \*complying superannuation plan (other than a \*defined benefit interest);the person must give the release authority to a superannuation provider holding a superannuation interest for the person in a

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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complying superannuation plan (other than a defined benefit interest) within 21 days after the date of the release authority.

Note: Section 288-90 in Schedule 1 to the *Taxation Administration Act 1953* provides for an administrative penalty for failing to comply with this subsection.

- (3) Subsection (4) applies if:
- (a) the release authority is for \*excess non-concessional contributions tax; and
  - (b) a \*superannuation provider holds a \*superannuation interest for the person (other than a \*defined benefit interest); and
  - (c) any of the following conditions are satisfied:
    - (i) the person does not give the release authority to a superannuation provider holding a superannuation interest for the person in a \*complying superannuation plan within 90 days after the date of the release authority in accordance with subsection (1);
    - (ii) if the person has made one or more requests as mentioned in paragraph 292-415(1)(a) in relation to the release authority within 90 days after the date of the release authority—the total of the amounts (if any) paid by superannuation providers in relation to the release authority falls short of the amount of the excess non-concessional contributions tax stated in the release authority;
    - (iii) the total of the \*values of every superannuation interest (other than a defined benefit interest) held for the person by a superannuation provider to which the release authority is given falls short of the amount of the excess non-concessional contributions tax stated in the release authority.
- (4) If the conditions in subsection (3) are satisfied, the Commissioner may give the release authority to one or more \*superannuation providers that hold a \*superannuation interest (other than a \*defined benefit interest) for the person.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**292-415 Superannuation provider given release authority must pay amount**

- (1) A \*superannuation provider that has been given a release authority in accordance with section 292-410 must pay to the person or the Commissioner within 30 days after receiving the release authority the least of the following amounts:
- (a) if the person or Commissioner requests the superannuation provider, in writing, to pay a specified amount in relation to the release authority—that amount;
  - (b) the amount of \*excess concessional contributions tax or \*excess non-concessional contributions tax (whichever is applicable) stated in the release authority;
  - (c) the sum of the \*values of every \*superannuation interest (other than a \*defined benefit interest) held by the superannuation provider for the person in:
    - (i) for a release authority given under subsection 292-410(1)—\*complying superannuation plans; or
    - (ii) for a release authority given under subsection 292-410(4)—\*superannuation plans.
- Note 1: Section 288-95 in Schedule 1 to the *Taxation Administration Act 1953* provides for an administrative penalty for failing to comply with this subsection.
- Note 2: Section 288-100 in Schedule 1 to the *Taxation Administration Act 1953* provides that the person giving the release authority to the superannuation provider can be liable to an administrative penalty if excess amounts are paid in relation to the release authority.
- Note 3: For reporting obligations on the superannuation provider in these circumstances, see section 390-65 in Schedule 1 to the *Taxation Administration Act 1953*.
- Note 4: For the taxation treatment of the payment, see section 304-15.
- (2) The payment must be made out of one or more \*superannuation interests (other than a \*defined benefit interest) held by the \*superannuation provider for the person in:
- (a) for a release authority given under subsection 292-410(1)—\*complying superannuation plans; or
  - (b) for a release authority given under subsection 292-410(4)—\*superannuation plans.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) If the payment is made to the Commissioner, it is taken to be made in satisfaction (in whole or part) of the person's liability for \*excess concessional contributions tax or \*excess non-concessional contributions tax stated in the release authority.
- (4) If:
  - (a) the release authority was given by the Commissioner in accordance with subsection 292-410(4); and
  - (b) the payment is made to the Commissioner;the Commissioner must, as soon as possible, give the person written notice that the payment has been made.
- (5) Section 307-125 (the proportioning rule) does not apply to a payment made as required under this section.

### **Subdivision 292-H—Other provisions**

#### **Table of sections**

292-465	Commissioner's discretion to disregard contributions etc. in relation to a financial year
292-470	Power of Commissioner to obtain information

#### **292-465 Commissioner's discretion to disregard contributions etc. in relation to a financial year**

- (1) If you make an application in accordance with subsection (2), the Commissioner may make a written determination that, for the purposes of this Division:
  - (a) all or part of your \*concessional contributions for a \*financial year is to be disregarded, or allocated instead for the purposes of another financial year specified in the determination; and
  - (b) all or part of your \*non-concessional contributions for a financial year is to be disregarded, or allocated instead for the purposes of another financial year specified in the determination.
- (2) You may apply to the Commissioner in the \*approved form for a determination under subsection (1). The application can only be made within:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 292-470

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- (a) the period:
    - (i) starting on the day you receive an \*excess contributions tax assessment for the \*financial year; and
    - (ii) ending 60 days after that day; or
  - (b) a longer period allowed by the Commissioner.
- (3) The Commissioner may make the determination only if he or she considers that:
- (a) there are special circumstances; and
  - (b) making the determination is consistent with the object of this Division.
- (4) In making the determination the Commissioner may have regard to the matters in subsections (5) and (6) and any other relevant matters.
- (5) The Commissioner may have regard to whether a contribution made in the relevant \*financial year would more appropriately be allocated towards another financial year instead.
- (6) The Commissioner may have regard to whether it was reasonably foreseeable, when a relevant contribution was made, that you would have \*excess concessional contributions or \*excess non-concessional contributions for the relevant \*financial year, and in particular:
- (a) if the relevant contribution is made in respect of you by another person—the terms of any agreement or arrangement between you and that person as to the amount and timing of the contribution; and
  - (b) the extent to which you had control over the making of the contribution.
- (7) The Commissioner must give you a copy of the determination.

**292-470 Power of Commissioner to obtain information**

Section 264 of the *Income Tax Assessment Act 1936* applies for the purposes of this Division as if the reference in paragraph (1)(b) of that section to a person's income or assessment were a reference to

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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a matter relevant to the administration or operation of this Division.

Note: For superannuation providers' reporting obligations see Division 390 in Schedule 1 to the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 295—Taxation of superannuation entities**

### **Table of Subdivisions**

	Guide to Division 295
295-A	Provisions of general operation
295-B	Modifications of provisions of this Act
295-C	Contributions included
295-D	Contributions excluded
295-E	Other income amounts
295-F	Exempt income
295-G	Deductions
295-H	Components of taxable income
295-I	No-TFN contributions
295-J	Tax offset for no-TFN contributions income (TFN quoted within 4 years)

### **Guide to Division 295**

#### **295-1 What this Division is about**

This Division sets out special rules about the taxation of superannuation entities.

It sets out how to calculate the taxable income of those entities and to identify the components of that taxable income for the purpose of applying the appropriate tax rate.

It sets out how to calculate the no-TFN contributions income of relevant entities for an income year for the purpose of applying the appropriate tax rate.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 295-A—Provisions of general operation**

### **Table of sections**

295-5	Entities to which Division applies
295-10	How to work out the tax payable by superannuation entities
295-15	Division does not impose a tax on property of a State
295-20	Exempting laws ineffective
295-25	Assessments on basis of anticipated SIS Act notice
295-30	Effect of revocation etc. of SIS Act notices
295-35	Acronyms used in tables

### **295-5 Entities to which Division applies**

- (1) This Division applies to these entities:
  - (a) a \*complying superannuation fund;
  - (b) a \*non-complying superannuation fund;
  - (c) a \*complying approved deposit fund;
  - (d) a \*non-complying approved deposit fund;
  - (e) a \*pooled superannuation trust;whether they are established by an \*Australian law, by a public authority constituted by or under such a law or in some other way.
- (2) The \*superannuation provider in relation to an entity referred to in paragraph (1)(a) to (d) is liable to pay tax on the taxable income of the entity.

Note: A superannuation provider in relation to an entity referred to in paragraphs (1)(a) and (b) or in relation to an RSA is liable to pay tax on the no-TFN contributions income of the entity: see section 295-605.
- (3) The trustee of a \*pooled superannuation trust is liable to pay tax on the taxable income of the trust.
- (4) This Division also applies to an \*RSA provider that is not a \*life insurance company.

Note 1: Division 320 deals with RSA providers that are life insurance companies.

Note 2: However, Subdivisions 295-I and 295-J apply to RSA providers that are life insurance companies: see section 320-155.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 295-10 How to work out the tax payable by superannuation entities

- (1) Use this method for \*superannuation funds, \*approved deposit funds and \*pooled superannuation trusts:

*Method statement*

- Step 1. For a \*superannuation fund, work out the \*no-TFN contributions income. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to that income.
- Step 2. Work out the entity's assessable income and deductions taking account of the special rules in this Division. The special rules modify some provisions of this Act. They also include amounts in assessable income, allow deductions and exempt amounts from income tax.
- Step 3. Work out the entity's taxable income as if its trustee:
- (a) were an Australian resident (except where paragraph (b) applies); or
  - (b) for a \*non-complying superannuation fund that is a \*foreign superannuation fund for the income year—were not an Australian resident.
- Step 4. Work out the \*low tax component and \*non-arm's length component of the taxable income of a \*complying superannuation fund, \*complying approved deposit fund or \*pooled superannuation trust.
- Step 5. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to the components, or to the taxable income of a \*non-complying superannuation fund or \*non-complying approved deposit fund.
- Step 6. Subtract the entity's \*tax offsets from the step 5 amount or, for a \*superannuation fund, from the sum of the fund's step 1 and step 5 amounts.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(2) Use this method for \*RSA providers:

*Method statement*

- Step 1. Work out the entity's \*no-TFN contributions income. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to that income.
- Step 2. Work out the entity's assessable income and deductions taking account of the special rules in this Division.
- Step 3. Work out the \*RSA component and \*standard component of the entity's taxable income.
- Step 4. If the entity is also an \*FHSA provider, work out the \*FHSA component of the entity's taxable income.
- Step 5. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to the components. The \*RSA component and the \*FHSA component are taxed at a concessional rate.
- Step 6. Subtract the entity's \*tax offsets from the sum of the entity's step 1 and step 5 amounts.

**295-15 Division does not impose a tax on property of a State**

This Division does not impose a tax on property of any kind belonging to a State (within the meaning of section 114 of the Constitution).

**295-20 Exempting laws ineffective**

A \*Commonwealth law (other than this Act) does not have the effect of exempting the trustee of an entity to which this Division applies from the liability to pay tax unless it does so expressly.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 295-25

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**295-25 Assessments on basis of anticipated SIS Act notice**

- (1) The Commissioner may make an assessment for a fund or trust that is not a \*complying superannuation fund, \*complying approved deposit fund or \*pooled superannuation trust for the income year as if it were such an entity if the Commissioner considers it likely that a notice will be given under section 40 of the *Superannuation Industry (Supervision) Act 1993* having the effect that it will become such an entity.
- (2) However, the grounds for making an assessment under subsection (1) are taken never to have existed if:
  - (a) the Commissioner becomes satisfied that the notice will not be given; or
  - (b) \*APRA does not receive the documents referred to in subsection 36(1) of the *Superannuation Industry (Supervision) Act 1993* about the fund or trust before the end of 12 months after the assessment is made.

**295-30 Effect of revocation etc. of SIS Act notices**

This Division has effect as if a notice given under section 342 of the *Superannuation Industry (Supervision) Act 1993* (about pre-1 July 88 funding credits) or under regulations made for the purposes of that section had never been given if:

- (a) the notice is revoked; or
- (b) the decision to give the notice is set aside.

**295-35 Acronyms used in tables**

In tables in this Division, these acronyms are used for these entities:

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Acronyms used in tables		
Item	Entity	Acronym
1	*Complying superannuation fund	CSF
2	*Non-complying superannuation fund	N-CSF
3	*Complying approved deposit fund	CADF

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Acronyms used in tables**

Item	Entity	Acronym
4	*Non-complying approved deposit fund	N-CADF
5	*Pooled superannuation trust	PST

**Subdivision 295-B—Modifications of provisions of this Act**

**Table of sections**

295-85	CGT to be primary code for calculating gains or losses
295-90	CGT rules for pre-30 June 1988 assets
295-95	Deductions related to contributions
295-100	Deductions for investing in PSTs and life policies
295-105	Distributions to PST unitholders

**295-85 CGT to be primary code for calculating gains or losses**

- (1) The modifications in subsection (2) apply if a \*CGT event happens involving a \*CGT asset that was owned by one of these entities just before the time of the event:
  - (a) a \*complying superannuation fund;
  - (b) a \*complying approved deposit fund;
  - (c) a \*pooled superannuation trust.
- (2) These provisions do not apply to the \*CGT event:
  - (a) sections 6-5 (about \*ordinary income), 8-1 (about amounts you can deduct), and 15-15 and 25-40 (about profit-making undertakings or plans);
  - (aa) section 230-15 (about financial arrangements);
  - (b) sections 25A and 52 of the *Income Tax Assessment Act 1936* (about profit-making undertakings or schemes).

*Exceptions*

- (3) The provisions referred to in subsection (2) can apply to the \*CGT event if:
  - (a) any \*capital gain or \*capital loss from the event is attributable to currency exchange rate fluctuations; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 295-90

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- (b) the \*CGT asset is one of these:
- (i) debenture stock, a bond, \*debenture, certificate of entitlement, bill of exchange, promissory note or other security;
  - (ii) a deposit with a bank, building society or other financial institution;
  - (iii) a loan (secured or not);
  - (iv) some other contract under which an entity is liable to pay an amount (whether the liability is secured or not).
- (4) The provisions referred to in subsection (2) can also apply to the \*CGT event if a \*capital gain or \*capital loss from the event is disregarded because of one of the provisions in this table:

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<b>Where gain or loss disregarded because of CGT provision</b>		
<b>Item</b>	<b>Provision</b>	<b>Brief description</b>
1	Paragraph 104-15(4)(a)	Title in a CGT asset does not pass when a hire purchase or similar agreement ends
2	Section 118-5	Cars, motor cycles and valour decorations
3	Section 118-10	Collectables and personal use assets
4	Section 118-13	Shares in a PDF
5	Section 118-25	Trading stock
6	Section 118-30	Film copyright
7	Section 118-35	Research and development
8	Section 118-55	Foreign currency hedging gains and losses
9	Section 118-60	Certain gifts
10	Section 118-300	Insurance policies
11	Section 118-305	Superannuation
12	Section 118-310	CGT event happens to right to, or part of, RSA

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**295-90 CGT rules for pre-30 June 1988 assets**

- (1) This section applies to the trustee of:
- (a) a \*complying superannuation fund; or
  - (b) a \*complying approved deposit fund; or
  - (c) a \*pooled superannuation trust.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) Parts 3-1 and 3-3 (about capital gains and losses) apply to a \*CGT asset that:
- (a) the trustee or a former trustee owned at the end of 30 June 1988; and
  - (b) the trustee owned at the commencement of this section; as if the trustee had \*acquired the asset on 30 June 1988.

- (3) Subsection (2) does not affect how to work out the asset's \*cost base or \*reduced cost base.

Note: See Subdivision 295-B of the *Income Tax (Transitional Provisions) Act 1997* for rules about cost base.

- (4) Subsection 104-30(5) applies to an option granted by the trustee as if the reference in that subsection to 20 September 1985 were a reference to 1 July 1988.

### **295-95 Deductions related to contributions**

- (1) Provisions of this Act about deducting amounts apply to these entities as if all contributions made to them were included in their assessable income:
- (a) \*complying superannuation funds;
  - (b) \*non-complying superannuation funds that are \*Australian superannuation funds;
  - (c) \*complying approved deposit funds;
  - (d) \*non-complying approved deposit funds;
  - (e) \*RSA providers.

Note 1: This means that the entities can deduct amounts incurred in obtaining the contributions.

Note 2: Examples of contributions that are not assessable are:

- contributions which the contributor cannot deduct;
- contributions excluded from assessable income under Subdivision 295-D.

- (2) A \*superannuation fund is an ***Australian superannuation fund*** at a time, and for the income year in which that time occurs, if:
- (a) the fund was established in Australia, or any asset of the fund is situated in Australia at that time; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 295-100

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- (b) at that time, the central management and control of the fund is ordinarily in Australia; and
  - (c) at that time either the fund had no member covered by subsection (3) (an *active member*) or at least 50% of:
    - (i) the total \*market value of the fund's assets attributable to \*superannuation interests held by active members; or
    - (ii) the sum of the amounts that would be payable to or in respect of active members if they voluntarily ceased to be members;  
is attributable to superannuation interests held by active members who are Australian residents.
- (3) A member is covered by this subsection at a time if the member is:
- (a) a contributor to the fund at that time; or
  - (b) an individual on whose behalf contributions have been made, other than an individual:
    - (i) who is a foreign resident; and
    - (ii) who is not a contributor at that time; and
    - (iii) for whom contributions made to the fund on the individual's behalf after the individual became a foreign resident are only payments in respect of a time when the individual was an Australian resident.
- (4) To avoid doubt, the central management and control of a \*superannuation fund is ordinarily in Australia at a time even if that central management and control is temporarily outside Australia for a period of not more than 2 years.

**295-100 Deductions for investing in PSTs and life policies**

- (1) Provisions of this Act about deducting amounts apply to \*complying superannuation funds and \*complying approved deposit funds as if \*ordinary income and \*statutory income received from these investments were included in their assessable income:
- (a) units in a \*pooled superannuation trust;
  - (b) \*life insurance policies issued by a \*life insurance company;
  - (c) an interest in a trust whose assets consist only of life insurance policies issued by a life insurance company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: Income from these investments is not assessable: see for example sections 295-105 and 118-350.

- (2) A \*complying superannuation fund cannot deduct an amount (otherwise than under section 295-465) for fees or charges incurred for:
- (a) \*complying superannuation/FHSA life insurance policies; or
  - (b) \*exempt life insurance policies; or
  - (c) units in a \*pooled superannuation trust that are \*segregated current pension assets of the fund.

### **295-105 Distributions to PST unitholders**

The assessable income of a \*complying superannuation fund, \*complying approved deposit fund or \*pooled superannuation trust does not include amounts \*derived by the entity because it holds units in a \*pooled superannuation trust.

Note: These entities will not be subject to any tax liability when they dispose of the units: see subsection 295-85(2) and section 118-350.

## **Subdivision 295-C—Contributions included**

### **Guide to Subdivision 295-C**

#### **295-155 What this Subdivision is about**

There are basically 3 types of assessable contributions:

- (a) those made by a contributor (for example, an employer) on behalf of someone else (for example, an employee); and
- (b) those made on the contributor's own behalf for which the contributor is entitled to a deduction; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) those transferred from a foreign superannuation fund to an Australian superannuation fund.

There are some additions and exceptions.

## **Table of sections**

### **Contributions and payments**

- 295-160 Contributions and payments
- 295-165 Exception—spouse contributions
- 295-170 Exception—Government co-contributions and contributions for a child
- 295-171 Exception—payments from FHSAs and Government FHSA contributions
- 295-173 Exception—trustee contributions
- 295-175 Exception—payments by a member spouse
- 295-180 Exception—choice to exclude certain contributions
- 295-185 Exception—temporary residents

### **Personal contributions and roll-over amounts**

- 295-190 Personal contributions and roll-over amounts
- 295-195 Exclusion of personal contributions

### **Transfers from foreign funds**

- 295-200 Transfers from foreign superannuation funds

### **Application of tables to RSA providers**

- 295-205 Application of tables to RSA providers

### **Former constitutionally protected funds**

- 295-210 Former constitutionally protected funds

## **Contributions and payments**

### **295-160 Contributions and payments**

The assessable income of an entity includes contributions or payments as set out in this table for the income year in which the contributions or payments are received.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: For an explanation of the acronyms used, see section 295-35.

<b>Contributions and payments included in assessable income</b>		
<b>Item</b>	<b>Assessable income of this entity:</b>	<b>Includes:</b>
1	CSF N-CSF that is an *Australian superannuation fund for the income year *RSA provider	Contribution to provide *superannuation benefits for someone else (except a contribution that is a *roll-over superannuation benefit)
2	N-CSF that is a *foreign superannuation fund for the income year	Contribution to provide *superannuation benefits for someone else to the extent that it relates to a period when that person was: (a) an Australian resident; or (b) a foreign resident who *derives *withholding payments covered by subsection 900-12(3) (except a contribution that is a *roll-over superannuation benefit)
3	CSF CADF *RSA provider	Payment under section 65 of the <i>Superannuation Guarantee (Administration) Act 1992</i>
4	CSF *RSA provider	Payment under section 61 or 61A of the <i>Small Superannuation Accounts Act 1995</i>

### **295-165 Exception—spouse contributions**

- (1) Item 1 of the table in section 295-160 does not include in assessable income a contribution made by an individual to a \*complying superannuation fund or an \*RSA:
- (a) to provide \*superannuation benefits for the individual's \*spouse (regardless whether the benefits are payable to the individual's spouse's \*SIS dependants if the individual's spouse dies before or after becoming entitled to receive the benefits); and
  - (b) that the individual cannot deduct under Subdivision 290-B.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 295-170

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- (2) Paragraph (1)(a) does not apply to \*superannuation benefits for a \*spouse living permanently separately and apart from the individual.

**295-170 Exception—Government co-contributions and contributions for a child**

- (1) Item 1 of the table in section 295-160 does not include in assessable income a contribution:
- (a) that is a Government co-contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*; or
  - (b) for the benefit of a person under 18 that is not made by or on behalf of the person's employer.
- (2) Item 4 of the table in section 295-160 does not include in assessable income a payment to the extent to which it represents a Government co-contribution or co-contributions made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.

**295-171 Exception—payments from FHSAs and Government FHSA contributions**

Item 1 of the table in section 295-160 does not include in assessable income a contribution that is:

- (a) a payment from an \*FHSA required under the *First Home Saver Accounts Act 2008*; or
- (b) a \*Government FHSA contribution.

**295-173 Exception—trustee contributions**

Item 1 of the table in section 295-160 does not include in assessable income a contribution made by an entity that, when the contribution was made, was:

- (a) the trustee of a \*complying superannuation fund, a \*complying approved deposit fund or a \*pooled superannuation trust; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the trustee of an exempt life assurance fund (within the meaning of Division 6C of Part III of the *Income Tax Assessment Act 1936*).

**295-175 Exception—payments by a member spouse**

Contributions are not included in assessable income under section 295-160 if they are an amount paid by a member spouse, as mentioned in regulations under the *Family Law Act 1975*, to a regulated superannuation fund (within the meaning of that Act), or to an \*RSA provider, to be held for the benefit of the \*non-member spouse in satisfaction of the non-member spouse's entitlement in respect of the \*superannuation interest concerned.

**295-180 Exception—choice to exclude certain contributions**

- (1) Item 1 of the table in section 295-160 does not include an amount in the assessable income of a \*public sector superannuation scheme for an income year to the extent that the trustee chooses that it not be included.
- (2) The entity that made the contributions must consent to the choice.  
Note: Making this choice effectively shifts the liability for tax on the contributions to the recipient of the benefit. The benefit is treated as an element untaxed in the fund: see Subdivision 301-C.
- (3) However, the choice cannot be made for an income year for an amount that exceeds the sum of amounts covered by notices given by the trustee under section 307-285 for \*superannuation benefits paid in the income year.
- (4) A choice under this section cannot be revoked or withdrawn.
- (5) A choice under this section cannot be made in relation to a \*public sector superannuation scheme that comes into operation after 5 September 2006.

**295-185 Exception—temporary residents**

Item 2 of the table in section 295-160 does not include a contribution in the assessable income of an entity if the individual

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 295-190

(for whom it was made) is a \*temporary resident at the end of the income year to which the contribution relates.

**Personal contributions and roll-over amounts**

**295-190 Personal contributions and roll-over amounts**

- (1) The assessable income of an entity includes amounts as set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

<b>Personal contributions and roll-over amounts included in assessable income</b>		
<b>Item</b>	<b>Assessable income of this entity:</b>	<b>Includes:</b>
1	CSF *RSA provider	A contribution covered by a valid and acknowledged notice under section 290-170
2	CSF CADF N-CADF *RSA provider	A *roll-over superannuation benefit that an individual is taken to receive under section 307-15 to the extent that: (a) it consists of an *element untaxed in the fund; and (b) is not an *excess untaxed roll-over amount for that individual
3	CSF CADF *RSA provider	The *taxable component of a directed termination payment (within the meaning of section 82-10F of the <i>Income Tax (Transitional Provisions) Act 1997</i> )

- (1A) Item 2 of the table in subsection (1) does not apply to a \*roll-over superannuation benefit that is a \*departing Australia superannuation payment made under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.
- (2) A contribution referred to in item 1 is included in the income year in which it is received if the notice is received by the \*superannuation provider by the day the provider lodges its \*income tax return for that income year.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) Otherwise it is included in the income year in which the notice is received.
- (4) A payment referred to in item 2 or 3 is included in the income year in which it is received by the \*superannuation provider.

### **295-195 Exclusion of personal contributions**

#### *Variation notice received before return lodged*

- (1) A contribution is not included in the assessable income of a \*complying superannuation fund or \*RSA provider to the extent that it has been reduced by a notice under section 290-180 if the notice is received by the \*superannuation provider before it has lodged its \*income tax return for the income year in which the contribution was made.

#### *Variation notice received after return lodged*

- (2) A contribution is not included in the assessable income of a \*complying superannuation fund or \*RSA provider for the income year in which the contribution was made to the extent that it has been reduced by a notice under section 290-180 if:
  - (a) the notice is received by the \*superannuation provider after it has lodged its \*income tax return for the income year; and
  - (b) the provider exercises the option mentioned in subsection (3).
- (3) An amount referred to in subsection (2) may, at the option of the provider, be excluded from the assessable income of the fund or \*RSA provider for the income year referred to in subsection (2) if excluding it would result in a greater reduction in tax for that year than the reduction that would occur for the income year in which the notice is received if a deduction were allowed under item 2 of the table in subsection 295-490(1).

Note: The exclusion is an alternative to the fund deducting the amount under item 2 of the table in subsection 295-490(1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Transfers from foreign funds**

### **295-200 Transfers from foreign superannuation funds**

- (1) The assessable income of a fund that is an \*Australian superannuation fund for the income year includes an amount transferred to the fund from a fund that was a \*foreign superannuation fund for the income year in relation to a member of the foreign fund to the extent that the amount transferred exceeds amounts vested in the member at the time of the transfer.
- (2) The assessable income of a fund that is a \*complying superannuation fund for the income year includes so much of an amount transferred to the fund from a fund that was a \*foreign superannuation fund for the income year as is specified in a choice made by a former member of the foreign fund under section 305-80.
- (3) The amount is included in the income year in which the transfer happens.
- (4) This section also applies to an amount transferred from a scheme for the payment of benefits in the nature of superannuation upon retirement or death that:
  - (a) is not, and never has been, an \*Australian superannuation fund or a \*foreign superannuation fund; and
  - (b) was not established in Australia; and
  - (c) is not centrally managed or controlled in Australia.

## **Application of tables to RSA providers**

### **295-205 Application of tables to RSA providers**

The tables in this Subdivision apply to \*RSA providers only to the extent that amounts are paid to \*RSAs they provide.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Former constitutionally protected funds

### 295-210 Former constitutionally protected funds

- (1) This section applies to a \*complying superannuation fund for an income year if the fund ceased to be a \*constitutionally protected fund during the year or at the end of the previous year.
- (2) The assessable income of the fund for the income year includes the sum of the \*roll-over superannuation benefits to the extent that they consist of the \*element untaxed in the fund of the \*taxable component that would be included in that assessable income if all contributions and earnings accumulated in the fund when the fund ceased to be a \*constitutionally protected fund:
  - (a) had been paid out of the fund immediately before it ceased to be a constitutionally protected fund; and
  - (b) were paid to the fund as roll-over superannuation benefits immediately after that time.

### Subdivision 295-D—Contributions excluded

#### Table of sections

295-260	Transfer of liability to investment vehicle
295-265	Application of pre-1 July 88 funding credits
295-270	Anticipated funding credits

### 295-260 Transfer of liability to investment vehicle

- (1) The \*superannuation provider in relation to a \*complying superannuation fund or a \*complying approved deposit fund (the *transferor*) may reduce the amount that would otherwise be included in the fund's assessable income for an income year under Subdivision 295-C by agreement with another entity (the *transferee*) in which it holds investments.

*What the transferee must be*

- (2) The transferee must be a \*life insurance company or a \*pooled superannuation trust.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 295-260

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Note: Amounts transferred are included in the transferee's assessable income: see section 295-320 (for PSTs) and paragraph 320-15(1)(i) (for life insurance companies).

*Agreement requirements*

- (3) The transferor may make one agreement only for an income year with a particular transferee.
- (4) An agreement:
  - (a) must be in writing, and must be signed by or for the transferor and transferee; and
  - (b) must be made by the day the transferor lodges its \*income tax return for its income year to which the agreement relates; and
  - (c) cannot be revoked.

*Limits on transfer*

- (5) The total amount covered by the agreements cannot exceed the amount that would otherwise be included in the transferor's assessable income under Subdivision 295-C for that income year.
- (6) The amount covered by an agreement with a particular transferee cannot exceed this amount:

$$\frac{\text{Greatest equity value}}{\text{Transferor's low tax component tax rate}}$$

where:

***greatest equity value*** is the greatest of these amounts during the transferor's income year:

- (a) if the transferee is a \*pooled superannuation trust—the \*market value of the transferor's investment in units in the trust;
- (b) if not—the market value of the transferor's investment in:
  - (i) \*life insurance policies issued by the transferee; or
  - (ii) a trust whose assets consist only of life insurance policies issued by the transferee.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*transferor's low tax component tax rate* is the rate of tax imposed on the \*low tax component of the fund's taxable income for the income year.

### **295-265 Application of pre-1 July 88 funding credits**

*Choice to reduce contributions included in assessable income*

- (1) The \*superannuation provider in relation to a \*complying superannuation fund can choose to reduce the amount of contributions that would otherwise be included in the fund's assessable income for an income year under item 1 of the table in section 295-160 if it has pre-1 July 88 funding credits available for the income year.

*When funding credits are available*

- (2) Use this method to work out whether a fund has pre-1 July 88 funding credits available for an income year:

*Method statement*

Step 1. Identify the amount of pre-1 July 88 funding credits unused at the end of the previous income year.

Step 2. Index that amount.

Note: Subdivision 960-M shows you how to index amounts.

Step 3. Add any pre-1 July 88 funding credits transferred to the fund in the income year under regulations made for the purposes of subsection 342(7) of the *Superannuation Industry (Supervision) Act 1993*.

Step 4. Deduct from the step 3 amount:

- (a) pre-1 July 88 funding credits transferred from the fund in the income year under regulations made for the purposes of subsection 342(7) of that Act; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) amounts specified in a notice given to the \*superannuation provider in relation to the fund under subsection 342(6) of that Act for the income year.

Step 5. The result is the pre-1 July 88 funding credits available to the fund for the income year.

That amount, reduced by any amount specified in a choice made under subsection (1) for the income year, is the amount of pre-1 July 88 funding credits unused at the end of the income year.

Note 1: Regulations under subsection 342(7) of the SIS Act allow APRA to approve transfers of pre-1 July 88 funding credits between funds.

Note 2: Subsection 342(6) of that Act covers the situation where the fund's rules are changed to produce a reduction in pre-1 July 88 funding credits and the trustee notifies APRA of the change.

- (3) If a notice is given to the \*superannuation provider in relation to the fund under subsection 342(2) of the *Superannuation Industry (Supervision) Act 1993* granting the trustee a pre-1 July 88 funding credit, this section applies as if the pre-1 July 88 funding credit had arisen at the beginning of the income year in which 1 July 1988 occurred.
- (4) However, if a notice is given to the \*superannuation provider in relation to the fund under subsection 342(4) of the *Superannuation Industry (Supervision) Act 1993* for the income year, the fund has no pre-1 July 88 funding credits.

Note: Subsection 342(4) of that Act covers the situation where the fund's rules are changed to produce a reduction in pre-1 July 88 funding credits and the provider fails to notify APRA of the change.

*Limit on choice*

- (5) The total amount covered by the choice cannot exceed the pre-1 July 88 funding credits available to the fund for the income year.
- (6) The total amount covered by the choice also cannot exceed the amount of contributions that would otherwise be included in the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

fund's assessable income for the income year under item 1 of the table in section 295-160 that are used to fund liabilities that accrued before 1 July 1988.

- (7) The regulations may prescribe either or both of the following:
  - (a) the manner in which the \*superannuation provider in relation to a \*superannuation fund is to work out the amount applicable to the fund under subsection (6) for an income year;
  - (b) methods (other than the method specified in subsection (6)) of working out how the provider of a superannuation fund can apply pre-1 July 88 funding credits.
- (8) Methods prescribed under paragraph (7)(b) may be applicable to particular \*superannuation funds or to a class or classes of superannuation funds.

### **295-270 Anticipated funding credits**

- (1) Subsection (2) has effect if the \*superannuation provider in relation to a \*complying superannuation fund expects a notice to be given under subsection 342(2) of the *Superannuation Industry (Supervision) Act 1993* or under regulations made for the purposes of subsection 342(7) of that Act to the effect that pre-1 July 88 funding credits of a particular amount will be available to the fund for the income year.
- (2) Section 295-265 applies to the fund as if pre-1 July 88 funding credits of the anticipated amount were available to the fund for the income year (in addition to any other pre-1 July 88 funding credits available to the fund for the year).
- (3) However, section 295-265 applies to the fund for the income year as if pre-1 July 88 funding credits of the anticipated amount were not available to the fund for the income year if:
  - (a) it becomes clear that the expected notice will not be given or that the specified amount of pre-1 July 88 funding credits will not be available; or
  - (b) \*APRA does not receive the things referred to in subsection 342(3) of the *Superannuation Industry (Supervision) Act*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 295-320

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1993 (for a notice expected under subsection 342(2) of that Act) or the things required to be given under regulations made for the purposes of subsection 342(7) of that Act (for a notice under those regulations) before the earlier of:

- (i) the end of 12 months after the fund's assessment is made for the income year; and
- (ii) the time the things are required to be given by the regulations.

**Subdivision 295-E—Other income amounts**

**Table of sections**

**Amounts included**

- 295-320 Other amounts included in assessable income
- 295-325 Previously complying funds
- 295-330 Previously foreign funds

**Amounts excluded**

- 295-335 Amounts excluded from assessable income

**Amounts included**

**295-320 Other amounts included in assessable income**

The assessable income of an entity includes the amounts as set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

<b>Amounts included in assessable income</b>			
<b>Item</b>	<b>Assessable income of this entity:</b>	<b>Includes:</b>	<b>For the income year:</b>
1	PST	Amount transferred to it by a CSF or CADF under section 295-260	Of the PST that includes the last day of the transferor's income year to which the agreement

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Amounts included in assessable income</b>			
<b>Item</b>	<b>Assessable income of this entity:</b>	<b>Includes:</b>	<b>For the income year:</b>
			relates
2	N-CSF that was a CSF for the previous income year	*Ordinary income and *statutory income from previous years worked out under section 295-325	Following the income year in which it was a CSF
3	CSF; or N-CSF that is an *Australian superannuation fund for the income year and that was a *foreign superannuation fund for the previous income year	*Ordinary income and *statutory income from previous years worked out under section 295-330	Following the income year in which it was a foreign superannuation fund
4	CSF	The part of a rebate or refund of an insurance premium that is attributable to an amount deducted under an item of the table in subsection 295-465(1)	In which the rebate or refund is received
5	*RSA provider	The part of a rebate or refund of an insurance premium that is attributable to an amount deducted under section 295-475	In which the rebate or refund is received

### **295-325 Previously complying funds**

The amount of \*ordinary income and \*statutory income from previous years included in the assessable income of a fund in an income year under item 2 of the table in section 295-320 is:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 295-330

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Sum of the \*market values of the fund's assets just before the start of the income year – Sum of the part of the \*crystallised undeducted contributions that relates to the period after 30 June 1983 and the \*contributions segment for current members at that time so far as they have not been, and cannot be, deducted

**295-330 Previously foreign funds**

The amount of \*ordinary income and \*statutory income from previous years included in the assessable income of a fund in an income year under item 3 of the table in section 295-320 is:

Sum of the \*market values of the fund's assets just before the start of the income year – Amount in the fund at that time representing contributions made by current members

**Amounts excluded**

**295-335 Amounts excluded from assessable income**

The assessable income of an entity does not include the amounts set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

<b>Amounts excluded from assessable income</b>		
<b>Item</b>	<b>This entity:</b>	<b>Does not include this in assessable income:</b>
1	CSF CADF PST	A bonus on a *life insurance policy (except a reversionary bonus)
2	PST	Amount attributable to amounts received from a *constitutionally protected fund
3	*RSA provider	A bonus on a *life insurance policy that is an *RSA (except a reversionary bonus)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Subdivision 295-F—Exempt income

### Table of sections

295-385	Income from assets set aside to meet current pension liabilities
295-390	Income from other assets used to meet current pension liabilities
295-395	Meaning of <i>segregated non-current assets</i>
295-400	Income of a PST attributable to current pension liabilities
295-405	Other exempt income
295-410	Amount credited to RSA

### 295-385 Income from assets set aside to meet current pension liabilities

- (1) The \*ordinary income and \*statutory income of a \*complying superannuation fund for an income year is exempt from income tax to the extent that:
- (a) it would otherwise be assessable income; and
  - (b) it is from \*segregated current pension assets.

#### *Exception*

- (2) Subsection (1) does not apply to:
- (a) \*non-arm's length income; or
  - (b) amounts included in assessable income under Subdivision 295-C.

#### *Meaning of segregated current pension assets*

- (3) Assets of a \*complying superannuation fund are *segregated current pension assets* at a time if:
- (a) the assets are invested, held in reserve or otherwise dealt with at that time solely to enable the fund to discharge all or part of its liabilities (contingent or not) in respect of \*superannuation income stream benefits that are payable by the fund at that time; and
  - (b) the trustee of the fund obtains an \*actuary's certificate before the date for lodgment of the fund's \*income tax return for the income year to the effect that the assets and the earnings that the actuary expects will be made from them would provide

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 295-390

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the amount required to discharge in full those liabilities, or that part of those liabilities, as they fall due.

- (4) Assets of a \*complying superannuation fund are also *segregated current pension assets* of the fund at a time if the assets are invested, held in reserve or otherwise being dealt with at that time for the sole purpose of enabling the fund to discharge all or part of its liabilities (contingent or not), as they become due, in respect of \*superannuation income stream benefits:
  - (a) that are payable by the fund at that time; and
  - (b) prescribed by the regulations for the purposes of this section.
- (5) Subsection (4) does not apply unless, at all times during the income year, the liabilities of the fund (contingent or not) to pay \*superannuation income stream benefits payable by the fund were liabilities in respect of superannuation income stream benefits that are prescribed by the regulations for the purposes of this section.
- (6) However, assets of a \*complying superannuation fund that are supporting a \*superannuation income stream benefit that is prescribed by the regulations for the purposes of this section are not *segregated current pension assets* to the extent that the \*market value of the assets exceeds the account balance supporting the benefit.

**295-390 Income from other assets used to meet current pension liabilities**

- (1) A proportion of the \*ordinary income and \*statutory income of a \*complying superannuation fund that would otherwise be assessable income is exempt from income tax under this section. The proportion is worked out under subsection (3).

*Exception*

- (2) Subsection (1) does not apply to:
  - (a) \*non-arm's length income; or
  - (b) amounts included in assessable income under Subdivision 295-C; or
  - (c) income \*derived from \*segregated non-current assets; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) income that is exempt from income tax under section 295-385.

*Formula*

- (3) The proportion is:

$$\frac{\text{Average value of current pension liabilities}}{\text{Average value of superannuation liabilities}}$$

where:

***average value of current pension liabilities*** is the average value for the income year of the fund's current liabilities (contingent or not) in respect of \*superannuation income stream benefits that are payable by the fund in that year. This does not include liabilities for which \*segregated current pension assets are held.

***average value of superannuation liabilities*** is the average value for the income year of the fund's current and future liabilities (contingent or not) in respect of \*superannuation benefits in respect of which contributions have, or were liable to have, been made. This does not include liabilities for which \*segregated current pension assets or \*segregated non-current assets are held.

*Actuary's certificate*

- (4) The value of particular liabilities of the fund at a particular time is the amount of the fund's assets, together with future contributions in respect of the benefits concerned and expected earnings on the assets and contributions after that time, that would provide the amount required to discharge those liabilities as they fall due. This must be specified in an \*actuary's certificate obtained by the trustee of the fund before the date for lodgment of the fund's \*income tax return for the income year.
- (5) The expected earnings are worked out at the rate the actuary expects will be the rate of the fund's earnings on its assets (except \*segregated current pension assets or \*segregated non-current assets).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 295-395

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*Superannuation liabilities where no current certificate*

- (6) The superannuation liabilities do not have to be valued by an actuary for the income year if the fund has no \*segregated current pension assets or \*segregated non-current assets for the income year. Instead, the value can be worked out using this formula:

$$\frac{\text{Last value of superannuation liabilities}}{\text{Last value of assets}} \times \text{Current value of assets}$$

where:

**current value of assets** is the value of all of the fund's assets at a time in the income year, as specified in an \*actuary's certificate obtained by the trustee of the fund before the date for lodgment of the fund's \*income tax return for the income year.

**last value of assets** is the most recent value of all of the fund's assets specified in an \*actuary's certificate.

**last value of superannuation liabilities** is the value, at the time of that most recent valuation, of the fund's superannuation liabilities specified in an \*actuary's certificate.

Note: This allows a fund to avoid the expense of an actuarial valuation of its superannuation liabilities, except in those years that a valuation is required by the SIS Act in order for the fund to continue to be complying.

- (7) Subsections (4), (5) and (6) do not apply in working out the amounts to be used in the formula in subsection (3) if, at all times during the income year, the liabilities of the fund in respect of \*superannuation income stream benefits payable at those times were liabilities in respect of superannuation income stream benefits that are prescribed by the regulations for the purposes of this subsection.

**295-395 Meaning of *segregated non-current assets***

- (1) Assets of a \*complying superannuation fund are ***segregated non-current assets*** at a time in an income year if:
- (a) the assets are invested, held in reserve or otherwise dealt with at that time solely to enable the fund to discharge all or part

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

of its current and future liabilities (contingent or not) to pay benefits in respect of which contributions have, or were liable to have, been made; and

- (b) the trustee of the fund obtains an \*actuary's certificate before the date for lodgment of the fund's \*income tax return for the income year to the effect that the amount of the assets, together with any future contributions, and the earnings that the actuary expects will be made from them will provide the amount required to discharge in full those liabilities, or that part of those liabilities, as they fall due.
- (2) The liabilities referred to in paragraph (1)(a) do not include liabilities (contingent or not) in respect of \*superannuation income stream benefits payable by the fund at that time.

### **295-400 Income of a PST attributable to current pension liabilities**

- (1) This proportion of the \*ordinary income and \*statutory income that would otherwise be assessable income of a \*pooled superannuation trust is \*exempt income:

$$\frac{\text{Average number of units in the trust during the income year that are *segregated current pension assets of unitholders that are *complying superannuation funds}}{\text{Average number of units in the trust during the income year}}$$

#### *Exceptions*

- (2) Subsection (1) does not apply to:
- (a) \*non-arm's length income; or
  - (b) amounts included in assessable income under item 1 of the table in section 295-320.

#### *Alternative exemption*

- (3) However, the trustee of the \*pooled superannuation trust can choose that a different amount be \*exempt income of the trust under this section if a percentage of the assessable income of the trust would have been exempt income under section 295-385 or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 295-405

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295-390 if it had been \*derived instead by the unitholders in the trust in proportion to their holdings.

- (4) That percentage of the trust's \*ordinary income and \*statutory income is then \*exempt income.

**295-405 Other exempt income**

The \*ordinary income or \*statutory income of an entity is exempt from income tax as set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

<b>*Exempt income</b>		
<b>Item</b>	<b>For this entity:</b>	<b>This is exempt:</b>
1	CSF N-CSF CADF N-CADF	A grant of financial assistance under Part 23 of the <i>Superannuation Industry (Supervision) Act 1993</i>
2	*RSA provider	Amount credited to the *RSA where a pension (within the meaning of the <i>Retirement Savings Accounts Act 1997</i> ) was paid from the RSA for all of the period in the income year that the RSA existed
3	*RSA provider	Part of an amount credited to the *RSA (worked out under section 295-410) where a pension (within the meaning of the <i>Retirement Savings Accounts Act 1997</i> ) was paid from the RSA for part of the period in the income year that the RSA existed

**295-410 Amount credited to RSA**

For item 3 of the table in section 295-405, the part of the amount credited to the \*RSA that is \*exempt income is worked out by:

- (a) multiplying the amount by the number of days in the income year for which the pension (within the meaning of the *Retirement Savings Accounts Act 1997*) was paid; and
- (b) dividing the result by the number of days in the income year that the RSA existed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Subdivision 295-G—Deductions

### Table of sections

#### Death or disability benefits

- 295-460 Benefits for which deductions are available
- 295-465 Complying funds—deductions for insurance premiums
- 295-470 Complying funds—deductions for future liability to pay benefits
- 295-475 RSA providers—deductions for insurance premiums
- 295-480 Meaning of *whole of life policy* and *endowment policy*

#### Increased amount of superannuation lump sum death benefits

- 295-485 Deductions for increased amount of superannuation lump sum death benefit

#### Other deductions

- 295-490 Other deductions

#### Certain amounts cannot be deducted

- 295-495 Amounts that cannot be deducted

## Death or disability benefits

### 295-460 Benefits for which deductions are available

Sections 295-465 (about deductions for complying funds for insurance premiums), 295-470 (about deductions for complying funds for future liability to pay benefits) and 295-475 (about deductions for \*RSA providers for insurance premiums) apply to these benefits:

- (a) a \*superannuation death benefit;
- (b) a \*disability superannuation benefit;
- (c) a benefit consisting of an amount payable to a person under an income stream because of the person's temporary inability to engage in \*gainful employment, that is payable for no longer than:
  - (i) 2 years; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 295-465

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- (ii) if an approval under section 62 of the *Superannuation Industry (Supervision) Act 1993* is in force for benefits of that kind and the approval specifies a longer maximum period—that longer period; or
- (iii) if there is no such approval in force—a longer period allowed by the Commissioner.

Note 1: The fund can deduct amounts in relation to these benefits under either section 295-465 or 295-470, but not both.

Note 2: The taxable component of the superannuation lump sums will contain an element untaxed in the fund: see section 307-290.

**295-465 Complying funds—deductions for insurance premiums**

- (1) A \*complying superannuation fund can deduct the proportions specified in this table of premiums it pays for insurance policies that are (wholly or partly) for current or contingent liabilities of the fund to provide benefits referred to in section 295-460 for its members. It can deduct the amounts for the income year in which the premiums are paid.

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**Deductions of \*complying superannuation funds**

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**Item      The fund can deduct this amount:**

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1	30% of the premium for a *whole of life policy if all individuals whose lives are insured are members of the fund
2	10% of the premium for an *endowment policy if all individuals whose lives are insured are members of the fund
3	30% of the part of an insurance policy premium (for a policy that is not a *whole of life policy or an *endowment policy) that is specified in the policy as being for a distinct part of the policy, if that part would have been a whole of life policy had it been a separate policy
4	10% of the part of an insurance policy premium (for a policy that is not a *whole of life policy or an *endowment policy) that is specified in the policy as being for a distinct part of the policy, if that part would have been an endowment policy had it been a separate policy
5	The part of a premium that is specified in the policy as being wholly for the liability to provide benefits referred to in section 295-460
6	So much of other insurance policy premiums as are attributable to the liability to provide benefits referred to in section 295-460

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: If the fund receives a rebate or refund of an insurance premium, the amount may be included in its assessable income: see table item 4 in section 295-320.

- (2) A \*complying superannuation fund can also deduct the amount it could reasonably be expected to pay in an \*arm's length transaction to obtain an insurance policy to cover it for that part of its current or contingent liabilities to provide benefits referred to in section 295-460 for which it does not have insurance coverage. It can deduct the amount for the income year when it has the liability.

*Actuary's certificate*

- (3) The trustee must obtain an \*actuary's certificate before the date for lodgment of the fund's \*income tax return for the income year in order to deduct an amount referred to in item 6 of the table or in subsection (2).

*Choice not to deduct amounts under this section*

- (4) The trustee may choose not to deduct amounts under this section for an income year and to deduct instead (under section 295-470) amounts based on the fund's future liability to pay the benefits.
- (5) The choice applies also to future income years unless the Commissioner decides that it should not.

**295-470 Complying funds—deductions for future liability to pay benefits**

- (1) A \*complying superannuation fund can deduct an amount under this section for an income year if:
- (a) the trustee of the fund makes a choice under subsection 295-465(4) and the choice applies to the income year; and
  - (b) the trustee pays:
    - (i) a benefit referred to in paragraph 295-460(a) or (b) for the income year in consequence of the termination of a member's employment; or
    - (ii) a benefit referred to in paragraph 295-460(c).
- (2) The amount the fund can deduct is:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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$$\text{Benefit amount} \times \frac{\text{Future service days}}{\text{Total service days}}$$

where:

**benefit amount** is:

- (a) for a benefit that is a \*superannuation lump sum—the amount of the lump sum; or
- (b) for a benefit that is a \*superannuation income stream—the \*value of the \*superannuation interest supporting the income stream; or
- (c) for a benefit referred to in paragraph 295-460(c)—the total of the amounts paid during the income year.

**future service days** is the number of days in the period starting when:

- (a) the termination happened; or
- (b) for a benefit referred to in paragraph 295-460(c)—the member became unable to engage in \*gainful employment; and ending on the member's \*last retirement day.

**total service days** is the sum of future service days and the number of days in:

- (a) for a benefit that is a \*superannuation lump sum—the \*service period for the superannuation lump sum; or
  - (b) for another benefit—the period ending on the first day of the period to which the first payment of the benefit relates and starting on the earliest of:
    - (i) the day on which the member joined the relevant \*superannuation fund; and
    - (ii) the first day of the period of employment to which the benefit relates (including a qualifying period before the member could join the fund and any period when the member was not a member of the fund); and
    - (iii) the day applicable under subsection (3).
- (3) The applicable day is the first day of the \*service period for a \*superannuation lump sum that is a \*roll-over superannuation

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

benefit if all or part of the \*value of the other benefit is attributable to the roll-over superannuation benefit.

### **295-475 RSA providers—deductions for insurance premiums**

An \*RSA provider can deduct premiums it pays for insurance policies that are wholly for its liability to provide benefits referred to in section 295-460 for its \*RSA holders. It can deduct the amounts for the income year in which the premiums are paid.

Note: If the RSA provider receives a rebate or refund of an insurance premium, the amount may be included in its assessable income: see table item 5 in section 295-320.

### **295-480 Meaning of *whole of life policy* and *endowment policy***

- (1) A *whole of life policy* is an insurance policy:
  - (a) that includes an investment component; and
  - (b) the premiums for which are not dissected; and
  - (c) where the sum insured (and any bonuses) are payable on:
    - (i) the death of the individual insured; or
    - (ii) the earlier of the death of the individual insured and the individual attaining the age specified in the policy (being at least the age of 85).
  
- (2) An *endowment policy* is an insurance policy:
  - (a) that includes an investment component; and
  - (b) the premiums for which are not dissected; and
  - (c) where the sum insured (and any bonuses) are payable on:
    - (i) a day specified in, or worked out under, the policy; or
    - (ii) the death of the individual insured if that happens before that day;but does not include a \*whole of life policy.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Increased amount of superannuation lump sum death benefits

### 295-485 Deductions for increased amount of superannuation lump sum death benefit

- (1) An entity that is a \*complying superannuation fund, or a \*complying approved deposit fund, and has been since 1 July 1988 (or since it came into existence if that was later) can deduct an amount under this section if:
- (a) it pays a \*superannuation lump sum because of the death of a person to the trustee of the deceased's estate or an individual who was a \*spouse, former spouse or \*child of the deceased at the time of death or payment; and
  - (b) it increases the lump sum by an amount, or does not reduce the lump sum by an amount (the *tax saving amount*) so that the amount of the lump sum is the amount that the fund could have paid if no tax were payable on amounts included in assessable income under Subdivision 295-C.

Note: Paragraph (1)(b) has effect as if the reference to amounts included in assessable income under Subdivision 295-C included a reference to amounts included in assessable income under former section 274 of the *Income Tax Assessment Act 1936*: see section 295-485 of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) The fund can deduct the amount in the income year in which the lump sum is paid.
- (3) The amount the fund can deduct is:

$$\frac{\text{Tax saving amount}}{\text{Low tax component rate}}$$

where:

*low tax component rate* is the rate of tax imposed on the \*low tax component of the fund's taxable income for the income year.

Note: The deduction is designed to compensate the fund for the tax payable on the contributions that are used to fund the lump sum.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) The amount the fund can deduct for a \*superannuation lump sum paid because of the death of a person to the trustee of the deceased's estate is so much of the subsection (3) amount as is appropriate having regard to the extent to which individuals referred to in paragraph (1)(a) can reasonably be expected to benefit from the estate.

## Other deductions

### 295-490 Other deductions

- (1) An entity can deduct amounts as set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

<b>Other deductions</b>			
<b>Item</b>	<b>This entity:</b>	<b>Can deduct:</b>	<b>For the income year in which:</b>
1	CSF N-CSF CADF N-CADF PST	An amount included in the entity's assessable income under Subdivision 295-C that is a *fringe benefit	The contribution is included in assessable income
2	CSF *RSA provider	Contributions to the extent they have been reduced by a notice under section 290-180 received by the *superannuation provider after it lodged its *income tax return for the income year in which the contributions were made, but only if the provider has <i>not</i> exercised the option mentioned in subsection 295-195(3)	The notice is received
3	CSF N-CSF CADF N-CADF	A levy imposed by regulations under section 6 of the <i>Superannuation (Financial Assistance Funding) Levy Act 1993</i>	The levy is incurred

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 295-495

<b>Other deductions</b>			
<b>Item</b>	<b>This entity:</b>	<b>Can deduct:</b>	<b>For the income year in which:</b>
4	Entity that is a N-CSF and has been since 1 July 1988, or since it came into existence if that was later	An amount paid to an entity who includes it in assessable income under section 290-100	It is included in the entity's assessable income

- (2) A fund cannot deduct an amount under item 3 of the table for a levy imposed by regulations under section 6 of the *Superannuation (Financial Assistance Funding) Levy Act 1993* to the extent that:
- (a) the levy is remitted; or
  - (b) there is a refund or other application of an overpayment of the levy.
- (3) No other provision of this Act affects a fund's income tax liability in relation to the levy.

**Certain amounts cannot be deducted**

**295-495 Amounts that cannot be deducted**

These entities cannot deduct anything for these amounts:

Note: For an explanation of the acronyms used, see section 295-35.

<b>Amounts that cannot be deducted</b>		
<b>Item</b>	<b>This entity</b>	<b>Cannot deduct anything for:</b>
1	CSF	*Superannuation benefits
2	N-CSF	*Superannuation benefits (except amounts paid as mentioned in item 4 of the table in section 295-490)
3	*RSA provider	*Superannuation benefits paid from, or amounts withdrawn from, *RSAs
4	*RSA provider	Amounts credited to *RSAs
4A	*RSA provider	Amounts credited to *FHSAs

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Amounts that cannot be deducted**

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Item	This entity	Cannot deduct anything for:
	that is also an *FHSA provider	
5	CSF N-CSF CADF N-CADF	A repayment of a grant of financial assistance under Part 23 of the <i>Superannuation Industry (Supervision) Act 1993</i>

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**Subdivision 295-H—Components of taxable income**

**Table of sections**

295-545	Components of taxable income—complying superannuation funds, complying ADFs and PSTs
295-550	Meaning of <i>non-arm's length income</i>
295-555	Components of taxable income—RSA providers

**295-545 Components of taxable income—complying superannuation funds, complying ADFs and PSTs**

- (1) The taxable income of these entities is split into a \*non-arm's length component and a \*low tax component:
- (a) \*complying superannuation funds;
  - (b) \*complying approved deposit funds;
  - (c) \*pooled superannuation trusts.

Note: A concessional rate applies to the low tax component, while the non-arm's length component is taxed at the highest marginal rate. The rates are set out in the *Income Tax Rates Act 1986*.

- (2) The *non-arm's length component* for an income year is the entity's \*non-arm's length income for that year less any deductions to the extent that they are attributable to that income.
- (3) The *low tax component* is any remaining part of the entity's taxable income for the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**295-550 Meaning of *non-arm's length income***

- (1) An amount of \*ordinary income or \*statutory income is ***non-arm's length income*** of a \*complying superannuation fund, a \*complying approved deposit fund or a \*pooled superannuation trust (other than an amount to which subsection (2) applies or an amount \*derived by the entity in the capacity of beneficiary of a trust) if:
  - (a) it is derived from a \*scheme the parties to which were not dealing with each other at \*arm's length in relation to the scheme; and
  - (b) that amount is more than the amount that the entity might have been expected to derive if those parties had been dealing with each other at arm's length in relation to the scheme.
- (2) An amount of \*ordinary income or \*statutory income is also ***non-arm's length income*** of the entity if it is:
  - (a) a \*dividend paid to the entity by a \*private company; or
  - (b) ordinary income or statutory income that is reasonably attributable to such a dividend;unless the amount is consistent with an \*arm's length dealing.
- (3) In deciding whether an amount is consistent with an \*arm's length dealing under subsection (2), have regard to:
  - (a) the value of \*shares in the company that are assets of the entity; and
  - (b) the cost to the entity of the shares on which the \*dividend was paid; and
  - (c) the rate of that dividend; and
  - (d) whether the company has paid a dividend on other shares in the company and, if so, the rate of that dividend; and
  - (e) whether the company has issued any shares to the entity in satisfaction of a dividend paid by the company (or part of it) and, if so, the circumstances of the issue; and
  - (f) any other relevant matters.
- (4) Income \*derived by the entity as a beneficiary of a trust, other than because of holding a fixed entitlement to the income, is ***non-arm's length income*** of the entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (5) Other income \*derived by the entity as a beneficiary of a trust through holding a fixed entitlement to the income of the trust is ***non-arm's length income*** of the entity if:
- (a) the entity acquired the entitlement under a \*scheme, or the income was derived under a scheme, the parties to which were not dealing with each other at \*arm's length; and
  - (b) the amount of the income is more than the amount that the entity might have been expected to derive if those parties had been dealing with each other at arm's length.
- (6) This section:
- (a) applies to a \*non-share equity interest in the same way as it applies to a \*share; and
  - (b) applies to an \*equity holder in a company in the same way as it applies to a shareholder in the company; and
  - (c) applies to a \*non-share dividend in the same way as it applies to a \*dividend.

### **295-555 Components of taxable income—RSA providers**

- (1) The taxable income of an \*RSA provider is split into:
- (a) an \*RSA component; and
  - (b) if the RSA provider is also an \*FHSA provider—an \*FHSA component; and
  - (c) a \*standard component.

Note: The RSA component and the FHSA component (if applicable) are taxed at the same concessional rate that applies to the low tax component of complying superannuation funds, complying approved deposit funds and pooled superannuation trusts (see section 23 of the *Income Tax Rates Act 1986*). The standard component is taxed at the standard company rate.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The **RSA component** for an income year is worked out in this way:

*Method statement*

- Step 1. Add these amounts included in the provider's assessable income for the income year:
- (a) amounts included under Subdivision 295-C; and
  - (b) other amounts credited during the year to \*RSAs that it provides.
- Step 2. Subtract from the step 1 amount amounts paid from those \*RSAs (except benefits for the RSA holders or tax).
- Step 3. The result is the **RSA component**.

- (3) However, if the sum of the \*RSA component and the \*FHSA component (if any) is more than the \*RSA provider's taxable income:
- (a) the provider's taxable income is equal to that sum; and
  - (b) this Act applies to the provider as if it had a \*tax loss for the income year of an amount that would have been that loss if the RSA component and the FHSA component (if any) were not \*ordinary income or \*statutory income.
- (4) The **standard component** is the remaining part (if any) of the \*RSA provider's taxable income for the income year after subtracting the \*RSA component and the \*FHSA component (if any).

### Subdivision 295-I—No-TFN contributions

#### Table of sections

295-605	Liability for tax on no-TFN contributions income
295-610	No-TFN contributions income
295-615	Meaning of <i>quoted (for superannuation purposes)</i>
295-620	No reduction under Subdivision 295-D
295-625	Assessments

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **295-605 Liability for tax on no-TFN contributions income**

- (1) A \*superannuation provider in relation to a \*complying superannuation fund is liable to pay tax on the \*no-TFN contributions income of the fund for an income year.
- (2) A \*superannuation provider in relation to a \*non-complying superannuation fund is liable to pay tax on the \*no-TFN contributions income of the fund for an income year.
- (3) An \*RSA provider is liable to pay tax on its \*no-TFN contributions income for an income year.

Note 1: The tax is imposed by the *Income Tax Act 1986*.

Note 2: The no-TFN contributions income is subject to a special rate of tax under the *Income Tax Rates Act 1986*.

Note 3: The Commissioner may make an assessment of the amount of income tax on the no-TFN contributions income: see section 169 of the *Income Tax Assessment Act 1936*.

### **295-610 No-TFN contributions income**

- (1) An amount included by Subdivision 295-C in the assessable income of a \*complying superannuation fund, a \*non-complying superannuation fund or an \*RSA provider for an income year is ***no-TFN contributions income*** for the year if:
  - (a) it is included by that Subdivision in the assessable income of the income year of the fund or RSA provider in which 1 July 2007 occurs, or a later income year; and
  - (b) it is a contribution made to the fund or \*RSA on or after 1 July 2007 to provide \*superannuation benefits for an individual; and
  - (c) by the end of the income year, the individual has not \*quoted (for superannuation purposes) his or her \*tax file number to the \*superannuation provider.

#### *Exception*

- (2) However, an amount is not ***no-TFN contributions income*** if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 295-615

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- (a) the contribution was made in relation to a \*superannuation interest or an \*RSA of the individual that existed prior to 1 July 2007; and
- (b) the total contributions made in relation to the superannuation interest or RSA for the income year that are included in assessable income under Subdivision 295-C did not exceed \$1,000.

**295-615 Meaning of *quoted (for superannuation purposes)***

- (1) An individual has *quoted (for superannuation purposes)* a \*tax file number to an entity at a time if the individual:
  - (a) quotes his or her tax file number to the entity at that time; or
  - (b) is taken by the *Superannuation Industry (Supervision) Act 1993*, the *Retirement Savings Accounts Act 1997*, the *First Home Saver Accounts Act 2008* or this Act to quote his or her tax file number to the entity at that time;in connection with the operation or the possible future operation of one or more of the following Acts:
  - (c) the Superannuation Acts (within the meaning of Part 25A of the *Superannuation Industry (Supervision) Act 1993*);
  - (d) the *Retirement Savings Accounts Act 1997*;
  - (e) the *First Home Saver Accounts Act 2008*.
- (2) An individual is taken to have *quoted (for superannuation purposes)* a \*tax file number to an entity at a time if the Commissioner gives notice of the individual's tax file number to the entity at that time.

**295-620 No reduction under Subdivision 295-D**

There is no reduction of the amount of \*no-TFN contributions income by Subdivision 295-D.

Note: Subdivision 295-D can reduce an amount that would otherwise be included in assessable income. It does not reduce the amount of *no-TFN contributions income*. An amount is still no-TFN contributions income even if, because of Subdivision 295-D, the amount (or part of it) is not included in assessable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **295-625 Assessments**

- (1) If the Commissioner makes an assessment of the amount of income tax on the \*no-TFN contributions income, notice of the assessment may be included in a notice of any other assessment under this Act.

#### *Self-assessment*

- (2) If the conditions in subsection (3) are met, the Commissioner is taken to have made an assessment of a kind set out in subsection (4).
- (3) The conditions are:
- (a) one of the following gives the Commissioner an \*income tax return for an income year on a particular day (the **return day**):
    - (i) a \*superannuation provider in relation to a \*complying superannuation fund;
    - (ii) a superannuation provider in relation to a \*non-complying superannuation fund;
    - (iii) an \*RSA provider; and
  - (b) the return is the first income tax return given by the provider for the year; and
  - (c) the Commissioner has not already made an assessment of a kind set out in subsection (4) for the provider for the year.
- (4) The assessment is taken to have been made for the provider for the income year on the return day, and to be an assessment, in accordance with the information stated in the return, of the amount of income tax payable on the \*no-TFN contributions income (if any) of the provider (or to be an assessment that no tax is payable).
- (5) The return is taken to be notice of the assessment signed by the Commissioner and given to the provider on the return day.

Note: The return may also be taken to be a notice of another assessment: see section 166A of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Subdivision 295-J—Tax offset for no-TFN contributions  
income (TFN quoted within 4 years)**

**Table of sections**

295-675	Entitlement to a tax offset
295-680	Amount of the tax offset

**295-675 Entitlement to a tax offset**

- (1) A \*superannuation provider in relation to a \*superannuation fund or an \*RSA provider is entitled to a \*tax offset for an income year (the *current year*) commencing on or after 1 July 2007 for amounts of tax that count towards the offset for the provider for the current year.
- (2) An amount of tax counts towards the offset for the provider for the current year if:
  - (a) the tax was payable by the provider in one of the most recent 3 income years ending before the current year; and
  - (b) the tax was payable on an amount of \*no-TFN contributions income of the fund or \*RSA provider; and
  - (c) the amount of no-TFN contributions income was a contribution made to the fund or provider to provide \*superannuation benefits for an individual who, in the current year, has \*quoted (for superannuation purposes) his or her \*tax file number to the provider for the first time.

Note: In certain circumstances the superannuation provider or RSA provider can get a refund of the tax offset under Division 67.

**295-680 Amount of the tax offset**

The amount of the \*tax offset is the sum of each amount of tax that counts towards the offset for the provider for the current year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 301—Superannuation member benefits paid from complying plans etc.**

### **Table of Subdivisions**

	Guide to Division 301
301-A	Application
301-B	Member benefits: general rules
301-C	Member benefits: elements untaxed in fund
301-D	Departing Australia superannuation payments
301-E	Superannuation lump sum member benefits less than \$200

### **Guide to Division 301**

#### **301-1 What this Division is about**

This Division sets out the tax treatment of superannuation benefits received by members of complying plans etc. This treatment varies depending on the age of the member when they receive the benefit. This Division also sets out the tax treatment of departing Australia superannuation payments and certain payments less than \$200.

### **Subdivision 301-A—Application**

#### **Table of sections**

301-5	Division applies to superannuation member benefits paid from complying plans etc.
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#### **301-5 Division applies to superannuation member benefits paid from complying plans etc.**

This Division applies to:

- (a) \*superannuation member benefits that are paid from a \*complying superannuation plan; and
- (b) \*superannuation guarantee payments; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-30** Superannuation

**Division 301** Superannuation member benefits paid from complying plans etc.

Section 301-10

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- (c) \*small superannuation account payments; and
- (d) \*unclaimed money payments; and
- (e) \*superannuation co-contribution benefit payments; and
- (f) \*superannuation annuity payments.

Note: For the tax treatment of superannuation death benefits paid from complying plans, see Division 302. Superannuation benefits paid from superannuation plans that are not complying superannuation plans are dealt with in Division 305.

**Subdivision 301-B—Member benefits: general rules**

**Table of sections**

**Member benefits—recipient aged 60 or above**

301-10 All superannuation benefits are tax free

**Member benefits—recipient aged over preservation age and under 60**

301-15 Tax free status of tax free component

301-20 Superannuation lump sum—taxable component taxed at 0% up to low rate cap amount, 15% on remainder

301-25 Superannuation income stream—taxable component attracts 15% offset

**Member benefits—recipient aged under preservation age**

301-30 Tax free status of tax free component

301-35 Superannuation lump sum—taxable component taxed at 20%

301-40 Superannuation income stream—taxable component is assessable income, 15% offset for disability benefit

**Member benefits—recipient aged 60 or above**

**301-10 All superannuation benefits are tax free**

If you are 60 years or over when you receive a \*superannuation benefit, the benefit is not assessable income and is not \*exempt income.

Note 1: Your superannuation benefit may be a superannuation lump sum or a superannuation income stream benefit: see sections 307-65 and 307-70.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 2: If your superannuation benefit includes an element untaxed in the fund, see Subdivision 301-C.

## **Member benefits—recipient aged over preservation age and under 60**

### **301-15 Tax free status of tax free component**

If you are under 60 years but have reached your \*preservation age when you receive a \*superannuation benefit, the \*tax free component of the benefit is not assessable income and is not \*exempt income.

Note 1: Your superannuation benefit may be a superannuation lump sum or a superannuation income stream benefit: see sections 307-65 and 307-70).

Note 2: For *tax free component*, see Subdivision 307-C.

### **301-20 Superannuation lump sum—taxable component taxed at 0% up to low rate cap amount, 15% on remainder**

(1) If you are under 60 years but have reached your \*preservation age when you receive a \*superannuation lump sum, the \*taxable component of the lump sum is assessable income.

Note 1: For *taxable component*, see Subdivision 307-C.

Note 2: If your lump sum includes an element untaxed in the fund, see Subdivision 301-C.

(2) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount mentioned in subsection (3) does not exceed 0%.

(3) The amount is so much of the total of the \*taxable components included in your assessable income for the income year under subsection (1) as does not exceed your \*low rate cap amount (see section 307-345) for the income year.

(4) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount mentioned in subsection (5) does not exceed 15%.

(5) The amount is so much of the total of the \*taxable components included in your assessable income for an income year under

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 301-25

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subsection (1) as exceeds your \*low rate cap amount for the income year.

Note: This amount will be nil if the total of the taxable components falls short of your low rate cap amount for the income year.

**301-25 Superannuation income stream—taxable component attracts 15% offset**

- (1) If you are under 60 years but have reached your \*preservation age when you receive a \*superannuation income stream benefit, the \*taxable component of the benefit is assessable income.
- (2) You are entitled to a \*tax offset equal to 15% of the \*taxable component of the benefit.

Note 1: For *taxable component*, see Subdivision 307-C.

Note 2: If your superannuation income stream benefit includes an element untaxed in the fund, see Subdivision 301-C.

**Member benefits—recipient aged under preservation age**

**301-30 Tax free status of tax free component**

If you are under your \*preservation age when you receive a \*superannuation benefit, the \*tax free component of the benefit is not assessable income and is not \*exempt income.

Note 1: Your superannuation benefit may be a superannuation lump sum or a superannuation income stream benefit: see sections 307-65 and 307-70.

Note 2: For *tax free component*, see Subdivision 307-C.

**301-35 Superannuation lump sum—taxable component taxed at 20%**

- (1) If you are under your \*preservation age when you receive a \*superannuation lump sum, the \*taxable component of the lump sum is assessable income.

Note: For *taxable component*, see Subdivision 307-C.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) You are entitled to a \*tax offset that ensures that the rate of income tax on the \*taxable component of the lump sum does not exceed 20%.

Note: If your lump sum includes an element untaxed in the fund, see Subdivision 301-C.

### **301-40 Superannuation income stream—taxable component is assessable income, 15% offset for disability benefit**

- (1) If you are under your \*preservation age when you receive a \*superannuation income stream benefit, the \*taxable component of the benefit is assessable income.

Note: For *taxable component*, see Subdivision 307-C.

#### *Offset for disability benefit*

- (2) If the benefit is a \*superannuation income stream benefit and a \*disability superannuation benefit, you are entitled to a \*tax offset equal to 15% of the \*taxable component of the benefit.

### **Subdivision 301-C—Member benefits: elements untaxed in fund**

#### **Table of sections**

301-90 Tax free component and element taxed in fund dealt with under Subdivision 301-B, but element untaxed in the fund dealt with under this Subdivision

#### **Member benefits (element untaxed in fund)—recipient aged 60 or above**

301-95 Superannuation lump sum—element untaxed in fund taxed at 15% up to untaxed plan cap amount, top rate on remainder

301-100 Superannuation income stream—element untaxed in fund attracts 10% offset

#### **Member benefits (element untaxed in fund)—recipient aged over preservation age and under 60**

301-105 Superannuation lump sum—element untaxed in fund taxed at 15% up to low rate cap amount, 30% up to untaxed plan cap amount, top rate on remainder

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-30** Superannuation

**Division 301** Superannuation member benefits paid from complying plans etc.

Section 301-90

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301-110 Superannuation income stream—element untaxed in fund is assessable income

**Member benefits (element untaxed in fund)—recipient aged under preservation age**

301-115 Superannuation lump sum—element untaxed in fund taxed at 30% up to untaxed plan cap amount, top rate on remainder

301-120 Superannuation income stream—element untaxed in fund is assessable income

**Miscellaneous**

301-125 Unclaimed money payments by the Commissioner

**301-90 Tax free component and element taxed in fund dealt with under Subdivision 301-B, but element untaxed in the fund dealt with under this Subdivision**

If you receive a \*superannuation benefit that includes an \*element untaxed in the fund:

- (a) the \*tax free component (if any) of the benefit is treated in the same way as the tax free component of a superannuation benefit under Subdivision 301-B; and
- (b) the \*element taxed in the fund (if any) included in the benefit is treated in the same way as the taxable component of a superannuation benefit under Subdivision 301-B; and
- (c) the element untaxed in the fund is treated in accordance with this Subdivision.

**Member benefits (element untaxed in fund)—recipient aged 60 or above**

**301-95 Superannuation lump sum—element untaxed in fund taxed at 15% up to untaxed plan cap amount, top rate on remainder**

- (1) If you are 60 years or over when you receive a \*superannuation lump sum from a \*superannuation plan, the \*element untaxed in the fund of the lump sum is assessable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount mentioned in subsection (3) does not exceed 15%.

Note: The remainder of the element untaxed in the fund is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (3) The amount is so much of the \*element untaxed in the fund as does not exceed your \*untaxed plan cap amount for the \*superannuation plan at the time you receive the benefit.

### **301-100 Superannuation income stream—element untaxed in fund attracts 10% offset**

- (1) If you are 60 years or over when you receive a \*superannuation income stream benefit, the \*element untaxed in the fund of the benefit is assessable income.
- (2) You are entitled to a \*tax offset equal to 10% of the \*element untaxed in the fund of the benefit.

### **Member benefits (element untaxed in fund)—recipient aged over preservation age and under 60**

### **301-105 Superannuation lump sum—element untaxed in fund taxed at 15% up to low rate cap amount, 30% up to untaxed plan cap amount, top rate on remainder**

- (1) If you are under 60 years but have reached your \*preservation age when you receive a \*superannuation lump sum from a \*superannuation plan, the \*element untaxed in the fund of the lump sum is assessable income.
- (2) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount worked out under subsection (3) does not exceed 30%.
- (3) The amount is so much of the \*element untaxed in the fund as does not exceed your \*untaxed plan cap amount for the \*superannuation plan at the time you receive the benefit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 301-110

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Note: To the extent that the element untaxed in the fund exceeds the amount worked out under this subsection, it is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (4) If you are entitled to one or more \*tax offsets under subsection (2) for \*superannuation benefits that you receive in an income year, you are entitled to a tax offset that ensures that the rate of income tax on the amount worked out under subsection (5) does not exceed 15%.
- (5) The amount is so much of the total of the one or more amounts worked out under subsection (3) as does not exceed your \*low rate cap amount for the income year.
- (6) If you are also entitled to a \*tax offset under subsection 301-20(2) for the income year, reduce your \*low rate cap amount for the purposes of subsection (5) of this section for the income year by the amount mentioned in subsection 301-20(3).

**301-110 Superannuation income stream—element untaxed in fund is assessable income**

If you are under 60 years but have reached your \*preservation age when you receive a \*superannuation income stream benefit, the \*element untaxed in the fund of the benefit is assessable income.

**Member benefits (element untaxed in fund)—recipient aged under preservation age**

**301-115 Superannuation lump sum—element untaxed in fund taxed at 30% up to untaxed plan cap amount, top rate on remainder**

- (1) If you are under your \*preservation age when you receive a \*superannuation lump sum from a \*superannuation plan, the \*element untaxed in the fund of the lump sum is assessable income.
- (2) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount mentioned in subsection (3) does not exceed 30%.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: The remainder of the element untaxed in the fund is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (3) The amount is so much of the \*element untaxed in the fund as does not exceed your \*untaxed plan cap amount for the \*superannuation plan at the time you receive the benefit.

### **301-120 Superannuation income stream—element untaxed in fund is assessable income**

If you are under your \*preservation age when you receive a \*superannuation income stream benefit, the \*element untaxed in the fund of the benefit is assessable income.

## **Miscellaneous**

### **301-125 Unclaimed money payments by the Commissioner**

For the purposes of this Subdivision, treat a \*superannuation lump sum paid by the Commissioner under subsection 17(2) or section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* as if it were paid from a \*superannuation plan.

## **Subdivision 301-D—Departing Australia superannuation payments**

### **Table of sections**

301-170	<i>Departing Australia superannuation payments</i>
301-175	Treatment of departing Australia superannuation benefits

### **301-170 *Departing Australia superannuation payments***

- (1) A \*superannuation lump sum is a *departing Australia superannuation payment* if it:
- (a) is paid to a person who has departed Australia; and
  - (b) is paid:
    - (i) in accordance with regulations under the *Superannuation Industry (Supervision) Act 1993* or the *Retirement Savings Accounts Act 1997* that are specified

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 301-175

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- in regulations made for the purposes of this definition;  
or
- (ii) in accordance with section 67A of the *Small Superannuation Accounts Act 1995*; or
  - (iii) by an exempt public sector superannuation scheme (within the meaning of section 10 of the *Superannuation Industry (Supervision) Act 1993*) and is made in accordance with rules of the fund that are substantially similar to the regulations specified as mentioned in subparagraph (i).
- (2) Also, a \*superannuation lump sum is a ***departing Australia superannuation payment*** if it is paid under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.
- (3) Despite subsection (2), a \*superannuation lump sum paid under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* because a person has been identified in a notice under section 20C of that Act is not a ***departing Australia superannuation payment*** if, when it is paid, the Commissioner is satisfied that:
- (a) the person has not been, under the *Migration Act 1958*, the holder of a temporary visa that ceased to be in effect at least 6 months ago; or
  - (b) the person has been the holder of such a visa but has not left Australia (within the meaning of that Act) at least 6 months ago but after starting to be the holder of the visa.
- (4) Despite subsection (2), a \*superannuation lump sum that is paid under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* and is prescribed by the regulations for the purposes of this subsection is not a ***departing Australia superannuation payment***.

**301-175 Treatment of departing Australia superannuation benefits**

- (1) Despite anything else in this Division, if you receive a \*superannuation benefit that is a \*departing Australia superannuation payment, the benefit is not assessable income and is not \*exempt income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) However, you are liable to pay income tax on that payment at the rate declared by the Parliament in respect of \*departing Australia superannuation payments.

Note 1: The tax is imposed in the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007* and the amount of the tax is set out in that Act.

Note 2: See the *Taxation Administration Act 1953* for provisions dealing with the payment of the tax.

### **Subdivision 301-E—Superannuation lump sum member benefits less than \$200**

#### **Table of sections**

301-225 Superannuation lump sum member benefits less than \$200 are tax free

#### **301-225 Superannuation lump sum member benefits less than \$200 are tax free**

Despite anything else in this Division (apart from Subdivision 301-D), a \*superannuation member benefit that you receive is not assessable income and is not \*exempt income if:

- (a) the benefit is a \*superannuation lump sum; and
- (b) the amount of the benefit is less than \$200; and
- (c) the \*value of the \*superannuation interest from which the benefit is paid is nil just after the benefit is paid; and
- (d) the requirements (if any) specified in the regulations in relation to the benefit are satisfied.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 302—Superannuation death benefits paid from complying plans etc.**

### **Table of Subdivisions**

	Guide to Division 302
302-A	Application
302-B	Death benefits to dependant
302-C	Death benefits to non-dependant
302-D	Definitions relating to dependants

### **Guide to Division 302**

#### **302-1 What this Division is about**

This Division sets out the tax treatment of superannuation death benefits received by members of complying plans etc. This treatment varies depending on the age of the deceased when they died (and in some cases on the age of the recipient of the benefit).

### **Subdivision 302-A—Application**

#### **Table of sections**

302-5	Division applies to superannuation death benefits paid from complying plans etc.
302-10	Superannuation death benefits paid to trustee of deceased estate

#### **302-5 Division applies to superannuation death benefits paid from complying plans etc.**

This Division applies to \*superannuation death benefits that:

- (a) are paid from a \*complying superannuation plan; or
- (b) are \*superannuation guarantee payments, \*small superannuation account payments, \*unclaimed money

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

payments, \*superannuation co-contribution benefit payments or \*superannuation annuity payments.

Note: For the tax treatment of superannuation member benefits paid from complying plans, see Division 301. Superannuation benefits paid from superannuation plans that are not complying superannuation plans are dealt with in Division 305.

### **302-10 Superannuation death benefits paid to trustee of deceased estate**

- (1) This section applies to you if:
  - (a) you are the trustee of a deceased estate; and
  - (b) you receive a \*superannuation death benefit in your capacity as trustee.
- (2) To the extent that 1 or more beneficiaries of the estate who were \*death benefits dependants of the deceased have benefited, or may be expected to benefit, from the \*superannuation death benefit:
  - (a) the benefit is treated as if it had been paid to you as a person who was a death benefits dependant of the deceased; and
  - (b) the benefit is taken to be income to which no beneficiary is presently entitled.
- (3) To the extent that 1 or more beneficiaries of the estate who were *not* \*death benefits dependants of the deceased have benefited, or may be expected to benefit, from the \*superannuation death benefit:
  - (a) the benefit is treated as if it had been paid to you as a person who was *not* a death benefits dependant of the deceased; and
  - (b) the benefit is taken to be income to which no beneficiary is presently entitled.

### **Subdivision 302-B—Death benefits to dependant**

#### **Table of sections**

##### **Lump sum death benefits to dependants are tax free**

302-60 All of superannuation lump sum is tax free

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 302-60

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**Superannuation income stream—either deceased died aged 60 or above or dependant aged 60 or above**

302-65 Superannuation income stream benefits are tax free

**Superannuation income stream—deceased died aged under 60 and dependant aged under 60**

302-70 Superannuation income stream—tax free status of tax free component

302-75 Superannuation income stream—taxable component attracts 15% offset

**Death benefits to dependant—elements untaxed in fund**

302-80 Treatment of element untaxed in the fund of superannuation income stream death benefit to dependant

302-85 Deceased died aged 60 or above or dependant aged 60 years or above—superannuation income stream—element untaxed in fund attracts 10% offset

302-90 Deceased died aged under 60 and dependant aged under 60—superannuation income stream—element untaxed in fund is assessable income

**Lump sum death benefits to dependants are tax free**

**302-60 All of superannuation lump sum is tax free**

A \*superannuation lump sum that you receive because of the death of a person of whom you are a \*death benefits dependant is not assessable income and is not \*exempt income.

**Superannuation income stream—either deceased died aged 60 or above or dependant aged 60 or above**

**302-65 Superannuation income stream benefits are tax free**

A \*superannuation income stream benefit that you receive because of the death of a person of whom you are a \*death benefits dependant is not assessable income and is not \*exempt income in either or both of the following cases:

- (a) you are 60 years or over when you receive the benefit;
- (b) the deceased died aged 60 or over.

Note: If your superannuation income stream benefit includes an element untaxed in the fund, see section 302-85.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Superannuation income stream—deceased died aged under 60 and dependant aged under 60**

### **302-70 Superannuation income stream—tax free status of tax free component**

The \*tax free component of a \*superannuation income stream benefit that you receive because of the death of a person of whom you are a \*death benefits dependant is not assessable income and is not \*exempt income if:

- (a) you are under 60 when you receive the benefit; and
- (b) the deceased died aged under 60.

Note: For *tax free component*, see Subdivision 307-C.

### **302-75 Superannuation income stream—taxable component attracts 15% offset**

- (1) The \*taxable component of a \*superannuation income stream benefit that you receive because of the death of a person of whom you are a \*death benefits dependant is assessable income if:
  - (a) you are under 60 when you receive the benefit; and
  - (b) the deceased died aged under 60.

Note: For *taxable component*, see Subdivision 307-C.

- (2) You are entitled to a \*tax offset equal to 15% of the \*taxable component of the benefit.

## **Death benefits to dependant—elements untaxed in fund**

### **302-80 Treatment of element untaxed in the fund of superannuation income stream death benefit to dependant**

If a \*superannuation income stream benefit that you receive because of the death of a person of whom you are a \*death benefits dependant includes an \*element untaxed in the fund:

- (a) the \*tax free component (if any) of the benefit is treated in the same way as the tax free component of a superannuation income stream benefit under section 302-65 or 302-70; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 302-85

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- (b) the \*element taxed in the fund (if any) of the benefit is treated in the same way as the \*taxable component of a superannuation income stream benefit under section 302-65 or 302-75; and
- (c) the element untaxed in the fund is treated in accordance with section 302-85 or 302-90.

**302-85 Deceased died aged 60 or above or dependant aged 60 years or above—superannuation income stream: element untaxed in fund attracts 10% offset**

- (1) The \*element untaxed in the fund of a \*superannuation income stream benefit that you receive because of the death of a person of whom you are a \*death benefits dependant is assessable income in either or both of the following cases:
  - (a) you are 60 years or over when you receive the benefit;
  - (b) the deceased died aged 60 or above.
- (2) You are entitled to a \*tax offset equal to 10% of the \*element untaxed in the fund of the benefit.

**302-90 Deceased died aged under 60 and dependant aged under 60—superannuation income stream: element untaxed in fund is assessable income**

The \*element untaxed in the fund of a \*superannuation income stream benefit that you receive because of the death of a person of whom you are a \*death benefits dependant is assessable income if:

- (a) you are aged under 60 when you receive the benefit; and
- (b) the deceased died aged under 60.

**Subdivision 302-C—Death benefits to non-dependant**

**Table of sections**

**Superannuation lump sum**

302-140 Superannuation lump sum—tax free status of tax free component

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

302-145 Superannuation lump sum—element taxed in the fund taxed at 15%,  
element untaxed in the fund taxed at 30%

## Superannuation lump sum

### 302-140 Superannuation lump sum—tax free status of tax free component

The \*tax free component of a \*superannuation lump sum that you receive because of the death of a person of whom you are *not* a \*death benefits dependant is not assessable income and is not \*exempt income.

Note: For *tax free component*, see Subdivision 307-C.

### 302-145 Superannuation lump sum—element taxed in the fund taxed at 15%, element untaxed in the fund taxed at 30%

- (1) If you receive a \*superannuation lump sum because of the death of a person of whom you are *not* a \*death benefits dependant, the \*taxable component of the lump sum is assessable income.

Note: For *taxable component*, see Subdivision 307-C.

- (2) You are entitled to a \*tax offset that ensures that the rate of income tax on the \*element taxed in the fund of the lump sum does not exceed 15%.
- (3) You are entitled to a \*tax offset that ensures that the rate of income tax on the \*element untaxed in the fund of the lump sum does not exceed 30%.

## Subdivision 302-D—Definitions relating to dependants

### Table of sections

302-195 Meaning of *death benefits dependant*  
302-200 What is an *interdependency relationship*?

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**302-195 Meaning of *death benefits dependant***

- (1) A *death benefits dependant*, of a person who has died, is:
  - (a) the deceased person's \*spouse or former spouse; or
  - (b) the deceased person's \*child, aged less than 18; or
  - (c) any other person with whom the deceased person had an interdependency relationship under section 302-200 just before he or she died; or
  - (d) any other person who was a dependant of the deceased person just before he or she died.
- (2) For the purposes of this Division, treat an individual who receives a \*superannuation lump sum because of the death of another person as a *death benefits dependant* of the deceased person in relation to the lump sum if the deceased person \*died in the line of duty (see subsection (3)) as:
  - (a) a member of the Defence Force; or
  - (b) a member of the Australian Federal Police or the police force of a State or Territory; or
  - (c) a protective service officer (within the meaning of the *Australian Federal Police Act 1979*).
- (3) For the purposes of subsection (2), a person *died in the line of duty* if the person died in the circumstances specified in the regulations.

**302-200 What is an *interdependency relationship*?**

- (1) Two persons (whether or not related by family) have an *interdependency relationship* under this section if:
  - (a) they have a close personal relationship; and
  - (b) they live together; and
  - (c) one or each of them provides the other with financial support; and
  - (d) one or each of them provides the other with domestic support and personal care.
- (2) In addition, 2 persons (whether or not related by family) also have an *interdependency relationship* under this section if:
  - (a) they have a close personal relationship; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) they do not satisfy one or more of the requirements of an interdependency relationship mentioned in paragraphs (1)(b), (c) and (d); and
  - (c) the reason they do not satisfy those requirements is that either or both of them suffer from a physical, intellectual or psychiatric disability.
- (3) The regulations may specify:
- (a) matters that are, or are not, to be taken into account in determining under subsection (1) or (2) whether 2 persons have an *interdependency relationship* under this section; and
  - (b) circumstances in which 2 persons have, or do not have, an *interdependency relationship* under this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 303—Superannuation benefits paid in special circumstances**

### **Table of sections**

303-5	Commutation of income stream if you are under 25 etc.
303-10	Superannuation lump sum member benefit paid to member having a terminal medical condition

### **303-5 Commutation of income stream if you are under 25 etc.**

- (1) A \*superannuation lump sum that you receive from a \*complying superannuation plan is not assessable income and is not \*exempt income if:
  - (a) the superannuation lump sum arises from the commutation of a \*superannuation income stream; and
  - (b) any of these conditions are satisfied:
    - (i) you are under 25 when you receive the superannuation lump sum;
    - (ii) the commutation takes place because you turn 25;
    - (iii) you are permanently disabled when you receive the superannuation lump sum; and
  - (c) you had received one or more \*superannuation income stream benefits from the superannuation income stream before the commutation because of the death of a person of whom you are a \*death benefits dependant.
- (2) Subsection (1) applies despite Divisions 301 and 302.

### **303-10 Superannuation lump sum member benefit paid to member having a terminal medical condition**

- (1) This section applies to a \*superannuation member benefit that:
  - (a) is a \*superannuation lump sum; and
  - (b) is:
    - (i) paid from a \*complying superannuation plan; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) a \*superannuation guarantee payment, a \*small superannuation account payment, an \*unclaimed money payment, a \*superannuation co-contribution benefit payment or a \*superannuation annuity payment.
- (2) The lump sum is not assessable income and is not \*exempt income if a \*terminal medical condition exists in relation to you when you receive the lump sum or within 90 days after you receive it.

Note: For a lump sum you receive in the 2007-08 financial year, the period of 90 days may be extended until 30 June 2008: see section 303-10 of the *Income Tax (Transitional Provisions) Act 1997*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 304—Superannuation benefits in breach of legislative requirements etc.**

### **Guide to Division 304**

#### **304-1 What this Division is about**

This Division overrides the tax treatment in Divisions 301 and 302 if payments from complying superannuation plans etc. are in breach of payment and other rules.

#### **Table of sections**

##### **Operative provisions**

304-5	Application
304-10	Superannuation benefits in breach of legislative requirements etc.
304-15	Excess payments from release authorities

#### **Operative provisions**

##### **304-5 Application**

This Division applies despite Divisions 301, 302 and 303.

##### **304-10 Superannuation benefits in breach of legislative requirements etc.**

- (1) Include in your assessable income the amount of a \*superannuation benefit if:
  - (a) any of the following applies:
    - (i) you received the benefit from a \*complying superannuation fund or from a \*superannuation fund that was previously a complying superannuation fund;
    - (ii) the benefit is attributable to the assets of a complying superannuation fund or from a superannuation fund that was previously a complying superannuation fund; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) any of the following applies:
  - (i) the fund was not (when you received the benefit) maintained as required by section 62 of the *Superannuation Industry (Supervision) Act 1993*;
  - (ii) you received the benefit otherwise than in accordance with payment standards prescribed under subsection 31(1) of the *Superannuation Industry (Supervision) Act 1993*.
- (2) Include in your assessable income the amount of a \*superannuation benefit if:
  - (a) any of the following applies:
    - (i) you received the benefit from a \*complying approved deposit fund or from an \*approved deposit fund that was previously a complying approved deposit fund;
    - (ii) the benefit is attributable to the assets of a complying approved deposit fund or from an approved deposit fund that was previously a complying approved deposit fund; and
  - (b) you received the benefit otherwise than in accordance with payment standards prescribed under subsection 32(1) of the *Superannuation Industry (Supervision) Act 1993*.
- (3) Include in your assessable income the amount of a \*superannuation benefit you receive from an \*RSA in breach of the *Retirement Savings Accounts Act 1997*, regulations under that Act or payment standards prescribed under subsection 38(2) of that Act.
- (4) However, you do not have to include the amount in your assessable income to the extent that the Commissioner is satisfied that it is unreasonable that it be included having regard to:
  - (a) for subsection (1) or (2)—the nature of the fund; and
  - (b) any other matters that the Commissioner considers relevant.
- (5) For the purposes of this section, treat your receipt of a benefit (other than a \*superannuation benefit) out of, or attributable to, the assets of a \*superannuation plan as your receipt of a superannuation benefit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**304-15 Excess payments from release authorities**

- (1) This section applies to a \*superannuation benefit that you receive, paid in relation to a release authority given in relation to you in accordance with section 292-410.
- (2) The \*superannuation benefit is not assessable income and is not \*exempt income to the extent that it does not exceed the amount mentioned in subsection (3).
- (3) The amount is the amount of \*excess contributions tax stated in the release authority, reduced (but not below zero) by the amount of any \*superannuation benefit that was not assessable income and not \*exempt income under a previous operation of subsection (2) in relation to the release authority.
- (4) The \*superannuation benefit is assessable income to the extent (if any) that it exceeds the amount mentioned in subsection (3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 305—Superannuation benefits paid from non-complying superannuation plans**

### **Table of Subdivisions**

Guide to Division 305

305-A Superannuation benefits from Australian non-complying superannuation funds

305-B Superannuation benefits from foreign superannuation funds

### **Guide to Division 305**

#### **305-1 What this Division is about**

This Division sets out the tax treatment of superannuation benefits received by members of non-complying plans (including foreign superannuation funds).

### **Subdivision 305-A—Superannuation benefits from Australian non-complying superannuation funds**

#### **Table of sections**

305-5 Tax treatment of superannuation benefits from certain Australian non-complying superannuation funds

#### **305-5 Tax treatment of superannuation benefits from certain Australian non-complying superannuation funds**

A \*superannuation benefit that you receive from a \*non-complying superannuation fund that is an \*Australian superannuation fund (for the income year in which the benefit is paid) is \*exempt income if:

(a) the fund:

(i) has never been a \*complying superannuation fund; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 305-55

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- (ii) last stopped being a complying superannuation fund for the income year in which 1 July 1995 occurred or a later income year; and
- (b) the fund:
  - (i) has never been a \*foreign superannuation fund; or
  - (ii) last stopped being a foreign superannuation fund for the income year in which 1 July 1995 occurred or a later income year.

**Subdivision 305-B—Superannuation benefits from foreign superannuation funds**

**Table of sections**

**Application of Subdivision**

305-55    Restriction to lump sums received from certain foreign superannuation funds

**Lump sums received within 6 months after Australian residency or termination of foreign employment etc.**

305-60    Lump sums tax free—foreign resident period

305-65    Lump sums tax free—Australian resident period

**Lump sums to which sections 305-60 and 305-65 do not apply**

305-70    Lump sums received more than 6 months after Australian residency or termination of foreign employment etc.

305-75    Lump sums—*applicable fund earnings*

305-80    Lump sums paid into complying superannuation plans—choice

**Application of Subdivision**

**305-55 Restriction to lump sums received from certain foreign superannuation funds**

- (1) This Subdivision applies if:
  - (a) you receive a \*superannuation lump sum from a \*foreign superannuation fund; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the fund is an entity mentioned in item 4 of the table in subsection 295-490(1) (which deals with deductions for superannuation entities).
- (2) This Subdivision also applies if you receive a payment, other than a pension payment, from a scheme for the payment of benefits in the nature of superannuation upon retirement or death that:
  - (a) is not, and never has been, an \*Australian superannuation fund or a \*foreign superannuation fund; and
  - (b) was not established in Australia; and
  - (c) is not centrally managed or controlled in Australia.
- (3) This Subdivision applies to a payment mentioned in subsection (2) from a scheme mentioned in that subsection in the same way as it applies to a \*superannuation lump sum from a \*foreign superannuation fund.

### **Lump sums received within 6 months after Australian residency or termination of foreign employment etc.**

#### **305-60 Lump sums tax free—foreign resident period**

A \*superannuation lump sum you receive from a \*foreign superannuation fund is not assessable income and is not \*exempt income if:

- (a) you receive it within 6 months after you become an Australian resident; and
- (b) it relates only to a period:
  - (i) when you were not an Australian resident; or
  - (ii) starting after you became an Australian resident and ending before you receive the payment; and
- (c) it does not exceed the amount in the fund that was vested in you when you received the payment.

Note: If you received the lump sum after that period of 6 months, or the lump sum exceeds the vested amount, the payment will fall within section 305-70.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**305-65 Lump sums tax free—Australian resident period**

- (1) A \*superannuation lump sum you receive is not assessable income and is not \*exempt income if:
- (a) you receive it in consequence of:
    - (i) the termination of your employment as an employee, or as the holder of an office, in a foreign country; or
    - (ii) the termination of your engagement on qualifying service on an approved project (within the meaning of section 23AF of the *Income Tax Assessment Act 1936*), in relation to a foreign country; and
  - (b) it relates only to the period of that employment, holding of office, or engagement; and
  - (c) you were an Australian resident during the period of the employment, holding of office or engagement; and
  - (d) you receive the lump sum within 6 months after the termination; and
  - (e) the lump sum is not exempt from taxation under the law of the foreign country; and
  - (f) for a period of employment or holding an office—your foreign earnings from the employment or office are exempt from income tax under section 23AG of the *Income Tax Assessment Act 1936*; and
  - (g) for a period of engagement on qualifying service on an approved project—your eligible foreign remuneration from the service is exempt from income tax under section 23AF of that Act.

Note: If you received the lump sum after that period of 6 months, the lump sum will fall within section 305-70.

- (2) For the purposes of subsection (1), treat the termination of employment, holding of office, or engagement as including:
- (a) retirement from the employment, office or engagement; and
  - (b) cessation of the employment, office or engagement because of death.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Lump sums to which sections 305-60 and 305-65 do not apply****305-70 Lump sums received more than 6 months after Australian residency or termination of foreign employment etc.***Superannuation lump sums to which section applies*

- (1) This section applies to a \*superannuation lump sum you receive from a \*foreign superannuation fund if:
  - (a) you are an Australian resident when you receive the lump sum; and
  - (b) sections 305-60 and 305-65 do not apply to the lump sum.

*Assessable part*

- (2) Include in your assessable income so much of the lump sum (excluding any amount mentioned in subsection (4)) as equals:
  - (a) your \*applicable fund earnings (worked out under section 305-75); or
  - (b) if you have made a choice under section 305-80—your applicable fund earnings, less the amount covered by the choice.

Note: Under section 305-80, if your lump sum is paid into a complying superannuation plan, you can choose to have some or all of the applicable fund earnings excluded from your assessable income. The amount you choose is included in the assessable income of the plan: see section 295-200.

*Non-assessable, non-exempt part*

- (3) The remainder of the lump sum is not assessable income and is not \*exempt income.

*Amount paid into another foreign superannuation fund*

- (4) Any part of the lump sum that is paid into another \*foreign superannuation fund is not assessable income and is not \*exempt income.

Note: However, your applicable fund earnings under section 305-75 in relation to a later lump sum payment out of the other foreign

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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superannuation fund may include an amount (*previously exempt fund earnings*) attributable to the lump sum.

**305-75 Lump sums—*applicable fund earnings***

- (1) This section applies if you need to work out an amount (your *applicable fund earnings*) in relation to a \*superannuation lump sum to which section 305-70 applies that you receive from a \*foreign superannuation fund.

*If you were an Australian resident at all times*

- (2) If you were an Australian resident at all times during the period to which the lump sum relates, the amount of your *applicable fund earnings* is the amount (not less than zero) worked out as follows:
- (a) work out the total of the following amounts:
    - (i) the part of the lump sum that is attributable to contributions made by or in respect of you on or after the day when you became a member of the fund (the *start day*);
    - (ii) the part of the lump sum (if any) that is attributable to amounts transferred into the fund from any other \*foreign superannuation fund during the period;
  - (b) subtract that total amount from the amount in the fund that was vested in you when the lump sum was paid (before any deduction for \*foreign income tax);
  - (c) add the total of all your previously exempt fund earnings (if any) covered by subsections (5) and (6).

*If you were not an Australian resident at all times*

- (3) If you become an Australian resident after the start of the period to which the lump sum relates (but before you received it) the amount of your *applicable fund earnings* is the amount (not less than zero) worked out as follows:
- (a) work out the total of the following amounts:
    - (i) the amount in the fund that was vested in you just before the day (the *start day*) you first became an Australian resident during the period;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) the part of the payment that is attributable to contributions to the fund made by or in respect of you during the remainder of the period;
  - (iii) the part of the payment (if any) that is attributable to amounts transferred into the fund from any other \*foreign superannuation fund during the remainder of the period;
- (b) subtract that total amount from the amount in the fund that was vested in you when the lump sum was paid (before any deduction for \*foreign income tax);
  - (c) multiply the resulting amount by the proportion of the total days during the period when you were an Australian resident;
  - (d) add the total of all previously exempt fund earnings (if any) covered by subsections (5) and (6).

*Previous lump sums from the fund*

- (4) If the lump sum is not the first lump sum from the fund you have received to which this section applies, for subsections (2) and (3) the **start day** is the day after you received the most recent such lump sum.

*Previously exempt fund earnings*

- (5) You have an amount of **previously exempt fund earnings** in respect of the lump sum if:
  - (a) part or all of the amount in the fund that was vested in you when the lump sum was paid (before any deduction for \*foreign income tax) is attributable to the amount; and
  - (b) the amount is attributable to a payment received from a \*foreign superannuation fund; and
  - (c) the amount would have been included in your assessable income under subsection 305-70(2) by the application of this section, but for the payment having been received by another foreign superannuation fund.
- (6) The amount of your **previously exempt fund earnings** is the amount mentioned in paragraph (5)(c) (disregarding the addition of previously exempt fund earnings under subsection (2) or (3) of this section).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**305-80 Lump sums paid into complying superannuation plans—  
choice**

- (1) This section applies if:
  - (a) section 305-70 applies to a \*superannuation lump sum that is paid from a \*foreign superannuation fund; and
  - (b) you are taken to receive the lump sum under section 307-15; and
  - (c) all of the lump sum is paid into a \*complying superannuation fund; and
  - (d) immediately after the lump sum is paid into the complying superannuation fund, you no longer have a \*superannuation interest in the foreign superannuation fund.
- (2) You may choose for all or part of your \*applicable fund earnings worked out under section 305-75 (but not exceeding the amount of the lump sum) to be included in the assessable income of the \*complying superannuation plan.

Note: Section 295-200 provides for the amount specified in the choice to be included in the assessable income of the complying superannuation plan.
- (3) Your choice:
  - (a) must be in writing; and
  - (b) must comply with the requirements (if any) specified in the regulations.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 306—Roll-overs etc.**

### **Guide to Division 306**

#### **306-1 What this Division is about**

This Division sets out the tax treatment of payments made from one superannuation plan to another superannuation plan, and of similar payments.

#### **Table of sections**

##### **Operative provisions**

306-5	Effect of a roll-over superannuation benefit
306-10	<b><i>Roll-over superannuation benefit</i></b>
306-15	Tax on <b><i>excess untaxed roll-over amounts</i></b>
306-20	Effect of payment to government of unclaimed superannuation money
306-25	Payments connected with financial claims scheme to RSAs

#### **Operative provisions**

##### **306-5 Effect of a roll-over superannuation benefit**

A \*roll-over superannuation benefit that you are taken to receive under section 307-15 is not assessable income and is not \*exempt income.

Note: Roll-over superannuation benefits are paid into a complying superannuation plan or are used to purchase a superannuation annuity on your behalf. However, you are taken to receive the benefit under subsection 307-15(1).

##### **306-10 *Roll-over superannuation benefit***

A \*superannuation benefit is a ***roll-over superannuation benefit*** if:

- (a) the benefit is a \*superannuation lump sum and a \*superannuation member benefit; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 306-15

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- (b) the benefit is *not* a superannuation benefit of a kind specified in the regulations; and
- (c) the benefit satisfies any of the following conditions:
  - (i) it is paid from a \*complying superannuation plan;
  - (ii) it is an \*unclaimed money payment;
  - (iii) it arises from the commutation of a \*superannuation annuity; and
- (d) the benefit satisfies any of the following conditions:
  - (i) it is paid to a complying superannuation plan;
  - (ii) it is paid to an entity to purchase a superannuation annuity from the entity.

Note 1: A superannuation benefit may be paid from one superannuation plan of a superannuation provider to another superannuation plan of the same provider.

Note 2: For the treatment of amounts transferred within a superannuation plan, see subsection 307-5(8).

**306-15 Tax on *excess untaxed roll-over amounts***

- (1) This section applies to a \*superannuation benefit if:
  - (a) it is a \*roll-over superannuation benefit that is paid into a \*superannuation plan; and
  - (b) you are taken to receive the benefit under section 307-15; and
  - (c) the benefit consists of, or includes, an amount that is an \*element untaxed in the fund; and
  - (d) the amount mentioned in paragraph (c) exceeds your \*untaxed plan cap amount (see section 307-350), for the superannuation plan from which the benefit is paid, just before you are taken to receive the benefit.

Note: To work out your untaxed plan cap amount in relation to an unclaimed money payment from the Commissioner, see subsection 307-350(2B).

- (1A) However, this section does not apply to a \*roll-over superannuation benefit that is transferred from one \*superannuation interest in a \*superannuation plan to another superannuation interest in the same plan.

Note 1: A superannuation benefit may be paid from one superannuation plan of a superannuation provider to another superannuation plan of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

same provider. Such a benefit may be a roll-over superannuation benefit: see section 306-10.

Note 2: For the treatment of amounts transferred within the same superannuation plan, see subsection 307-5(8).

- (2) The ***excess untaxed roll-over amount*** is the amount of the excess mentioned in paragraph (1)(d).
- (3) You are liable to pay income tax on the \*excess untaxed roll-over amount at the rate declared by the Parliament in respect of such amounts.

Note 1: The tax is imposed in the *Superannuation (Excess Untaxed Roll-over Amounts Tax) Act 2007*, and the amount of tax is set out in that Act.

Note 2: See the *Taxation Administration Act 1953* for provisions dealing with the payment of the tax.

### **306-20 Effect of payment to government of unclaimed superannuation money**

An \*unclaimed money payment that you are taken to receive under section 307-15 because it is paid in accordance with the *Superannuation (Unclaimed Money and Lost Members) Act 1999* to the Commissioner or a State or Territory authority (within the meaning of that Act) is not assessable income and is not \*exempt income.

### **306-25 Payments connected with financial claims scheme to RSAs**

- (1) This section applies if:
- (a) a person is the holder of an \*RSA (the ***old RSA***) of which an \*ADI is the \*RSA provider; and
  - (b) an entitlement of the person arises under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* in connection with the old RSA; and
  - (c) either:
    - (i) the entitlement, so far as it relates to the old RSA, is met wholly or partly by the making of a payment to another RSA (the ***new RSA***) that the person is the holder of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 306-25

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(whether or not the new RSA was established under section 16AH of the *Banking Act 1959*); or

- (ii) a liquidator of the ADI pays a distribution from the liquidation of the ADI, so far as the distribution is attributable to the old RSA, to another RSA (also the **new RSA**) that the person is the holder of (whether or not the new RSA was established under section 16AR of the *Banking Act 1959*).

(2) This Part (except this section), and the other provisions of this Act (except this section) so far as they relate to this Part, apply in relation to the payment to the new RSA as if:

- (a) the payment were made from the old RSA to the new RSA; and
- (b) the entity that made the payment (rather than the \*ADI) were the \*RSA provider of the old RSA.

Note: The effects of this include:

- (a) the payment is a superannuation member benefit of the person (because of sections 307-5 and 307-15); and
- (b) the payment is a superannuation lump sum under Subdivision 307-B (unless regulations prevent this); and
- (c) the payment is a roll-over superannuation benefit under section 306-10 (unless regulations prevent this); and
- (d) reporting obligations (such as those in section 390-10 in Schedule 1 to the *Taxation Administration Act 1953*) apply to the entity that made the payment as if it were the RSA provider of the old RSA.

(3) However, for the purposes of section 307-125, determine the \*value of the \*superannuation interest, and the amount of each of the \*tax free component and the \*taxable component of the interest:

- (a) when the entitlement arose; or
- (b) if a \*superannuation income stream benefit had been paid from the old RSA before that time—at the time the relevant \*superannuation income stream commenced.

(4) Subsection (3) has effect despite:

- (a) subsection 307-125(3) (as it applies because of subsection (2) of this section); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) paragraph 307-125(3)(a) of the *Income Tax (Transitional Provisions) Act 1997*.
- (5) This section has effect despite:
  - (a) Division 253; and
  - (b) Division 21 in Schedule 1 to the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 307—Key concepts relating to superannuation benefits

### Table of Subdivisions

	Guide to Division 307
307-A	Superannuation benefits generally
307-B	Superannuation lump sums and superannuation income stream benefits
307-C	Components of a superannuation benefit
307-D	Superannuation interests
307-E	Elements taxed and untaxed in the fund of the taxable component of superannuation benefit
307-F	Low rate cap and untaxed plan cap amounts
307-G	Other concepts

### Guide to Division 307

#### 307-1 What this Division is about

This Division defines concepts used in Divisions 301 to 306, such as *superannuation benefit*, and the *tax free component* and *taxable component* of such benefits. To work out those components, it is often necessary to work out the corresponding components of the *superannuation interest* from which the benefit is paid (see Subdivision 307-D).

This Division also defines the *element taxed in the fund* and the *element untaxed in the fund* of superannuation benefits, which are relevant to superannuation benefits paid from untaxed funds etc. (see Subdivision 307-D).

Subdivision 307-F defines the concessional limits used in Division 301 known as the low rate cap amount and untaxed plan cap amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Subdivision 307-A—Superannuation benefits generally

### Table of sections

307-5	What is a <i>superannuation benefit</i> ?
307-10	Payments that are not <i>superannuation benefits</i>
307-15	Payments for your benefit or at your direction or request

### 307-5 What is a *superannuation benefit*?

(1) A *superannuation benefit* is a payment described in the table.

<b>Types of superannuation benefits</b>			
<b>Item</b>	<b>Column 1 Superannuation benefit type</b>	<b>Column 2 Superannuation member benefit</b>	<b>Column 3 Superannuation death benefit</b>
1	<i>superannuation fund payment</i>	A payment to you from a *superannuation fund because you are a fund member.	A payment to you from a superannuation fund, after another person's death, because the other person was a fund member.
2	<i>RSA payment</i>	A payment to you from an *RSA because you are the holder of the RSA.	A payment to you from an RSA, after another person's death, because the other person was the holder of the RSA.
3	<i>approved deposit fund payment</i>	A payment to you from an *approved deposit fund because you are a depositor with the fund.	A payment to you from an approved deposit fund after another person's death, because the other person was a depositor with the fund.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 307-5

<b>Types of superannuation benefits</b>			
<b>Item</b>	<b>Column 1 Superannuation benefit type</b>	<b>Column 2 Superannuation member benefit</b>	<b>Column 3 Superannuation death benefit</b>
4	<i>small superannuation account payment</i>	A payment to you under section 63, 64, 65, 66, 67 or 67A, or subsection 76(6), of the <i>Small Superannuation Accounts Act 1995</i> . (These provisions authorise payment of money held under the Act.)	A payment to you under section 68 or subsection 76(7) of the <i>Small Superannuation Accounts Act 1995</i> . (These provisions authorise payment of money held under the Act to the legal personal representative of the deceased.)
5	<i>unclaimed money payment</i>	A payment to you under subsection 17(1) or (2), section 18, subsection 20F(1) or section 20H of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> otherwise than because of another person's death.	A payment to you under subsection 17(1) or (2) or section 18 or 20H of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> because of another person's death.
6	<i>superannuation co-contribution benefit payment</i>	A payment to you under paragraph 15(1)(c) of the <i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i> .	A payment to you under paragraph 15(1)(d) of the <i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i> .

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Types of superannuation benefits</b>			
<b>Item</b>	<b>Column 1 Superannuation benefit type</b>	<b>Column 2 Superannuation member benefit</b>	<b>Column 3 Superannuation death benefit</b>
7	<i>superannuation guarantee payment</i>	A payment to you under section 65A or 66 of the <i>Superannuation Guarantee (Administration) Act 1992</i> .  (This provides for money collected under the Act to be paid to a person who retires because of incapacity or invalidity.)	A payment to you under section 67 of the <i>Superannuation Guarantee (Administration) Act 1992</i> .  (This provides for money collected under the Act to be paid to the legal personal representative of the deceased.)
8	<i>superannuation annuity payment</i>	A payment to you: (a) from a *superannuation annuity; or (b) arising from the commutation of a superannuation annuity; because you are the annuitant.	A payment to you: (a) from a superannuation annuity; or (b) arising from the commutation of a superannuation annuity; because of the death of the annuitant.

(2) A *superannuation member benefit* is a payment described in column 2 of the table.

(3) A \*superannuation benefit is also a *superannuation member benefit* if:

- (a) the superannuation benefit arises from the commutation of a \*superannuation income stream; and
- (b) it would be a \*superannuation death benefit apart from this subsection; and
- (c) the benefit is paid after the latest of the following:

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 307-5

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- (i) 6 months after the death of the deceased person;
  - (ii) 3 months after the grant of probate of that deceased person's will or letters of administration of that deceased person's estate;
  - (iii) if the payment of the benefit is delayed because of legal action about entitlement to the benefit—6 months after the legal action ceases;
  - (iv) if the payment of the benefit is delayed because of reasonable delays in the process of identifying and making initial contact with potential recipients of the benefit—6 months after that process is completed; and
- (d) the Commissioner has *not* made a decision about the benefit under subsection (3A).
- (3A) For the purposes of paragraph (3)(d), the Commissioner may make a decision in writing that the superannuation benefit is *not* a ***superannuation member benefit*** under subsection (3), if:
- (a) both of these conditions are satisfied:
    - (i) the payment of the benefit is delayed because of legal action about entitlement to the benefit;
    - (ii) the benefit is paid more than 6 months after the legal action ceases; or
  - (b) both of these conditions are satisfied:
    - (i) the payment of the benefit is delayed because of reasonable delays in the process of identifying and making initial contact with potential recipients of the benefit;
    - (ii) the benefit is paid more than 6 months after that process is completed.
- (3B) In making a decision under subsection (3A), the Commissioner must have regard to the following matters:
- (a) whether there was any action taken to try to pay the benefit within the 6 months after the cessation of the legal action or the completion of the process, and if so, the nature of that action;
  - (b) whether there were any factors beyond the control of the entity that paid the benefit, or of the person to whom the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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benefit was paid, that prevented the payment of the benefit within those 6 months;

- (c) the circumstances of the person to whom the benefit was paid, and the actions of that person in relation to the benefit.
- (4) A ***superannuation death benefit*** is a payment described in column 3 of the table.
- (5) Subsection (6) applies if a \*contributions-splitting superannuation benefit or a \*family law superannuation payment is paid to you because another person is a member of a \*superannuation fund, holder of an \*RSA or depositor with an \*approved deposit fund, or the annuitant under a \*superannuation annuity.
- (6) For the purposes of this section (and despite section 307-15):
- (a) treat yourself as a member of the fund, holder of the \*RSA, depositor with the fund or annuitant under the \*superannuation annuity; and
  - (b) do not treat the other person as a member of the fund, holder of the RSA, depositor with the fund or annuitant under the superannuation annuity.

Note: This means that the benefit is a superannuation benefit for you but not for the other person.

- (7) A ***family law superannuation payment*** is a payment that:
- (a) is a payment of any of the following kinds:
    - (i) a payment in accordance with Part VIII B of the *Family Law Act 1975*;
    - (ii) a payment in accordance with the *Family Law (Superannuation) Regulations 2001*;
    - (iii) a payment in accordance with Part 7A of the *Superannuation Industry (Supervision) Regulations 1994*;
    - (iv) a payment in accordance with Part 4A of the *Retirement Savings Accounts Regulations 1997*;
    - (v) a payment specified in the regulations; and
  - (b) satisfies the requirements (if any) specified in the regulations.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 307-10

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*Treatment of amounts transferred within a superannuation plan*

- (8) If an amount is transferred from one \*superannuation interest in a \*superannuation plan to another superannuation interest in the same plan, treat the transfer as a payment in determining whether the transfer of the amount is a superannuation benefit or a roll-over superannuation benefit.

**307-10 Payments that are not *superannuation benefits***

A payment of any of the following kinds is *not* a ***superannuation benefit***:

- (a) an amount payable to a person under an income stream because of the person's temporary inability to engage in \*gainful employment;
- (aa) a benefit to which subsection 26AF(1) or 26AFA(1) of the *Income Tax Assessment Act 1936* applies;
- (ab) an amount required by the *Bankruptcy Act 1966* to be paid to a trustee;
- (b) an amount:
  - (i) received by you, or to which you are entitled, as the result of the commutation of a pension payable from a \*constitutionally protected fund; and
  - (ii) wholly applied in paying any superannuation contributions surcharge (as defined in section 38 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*);
- (c) an amount:
  - (i) received by you, or to which you are entitled, as the result of the commutation of a pension payable by a superannuation provider (within the meaning of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*); and
  - (ii) wholly applied in paying any superannuation contributions surcharge (as defined in section 43 of that Act);
- (d) a payment of a pension or an \*annuity from a \*foreign superannuation fund.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **307-15 Payments for your benefit or at your direction or request**

- (1) This section applies for the purposes of:
  - (a) determining whether a payment is a *superannuation benefit*; and
  - (b) determining whether a \*superannuation benefit is made to you, or received by you.
- (2) A payment is treated as being made to you, or received by you, if it is made:
  - (a) for your benefit; or
  - (b) to another person or to an entity at your direction or request.

Note: Paragraph (b) would cover, for example, a direction by you that a payment be rolled over from your original superannuation fund into another superannuation fund.

### **Subdivision 307-B—Superannuation lump sums and superannuation income stream benefits**

#### **Table of sections**

307-65	Meaning of <i>superannuation lump sum</i>
307-70	Meaning of <i>superannuation income stream</i> and <i>superannuation income stream benefit</i>

#### **307-65 Meaning of superannuation lump sum**

A *superannuation lump sum* is a \*superannuation benefit that is not a \*superannuation income stream benefit (see section 307-70).

#### **307-70 Meaning of superannuation income stream and superannuation income stream benefit**

- (1) A *superannuation income stream benefit* is a \*superannuation benefit specified in the regulations that is paid from a \*superannuation income stream.
- (2) A *superannuation income stream* has the meaning given by the regulations.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Subdivision 307-C—Components of a superannuation benefit

### Table of sections

307-120	Components of superannuation benefit
307-125	Proportioning rule
307-130	Superannuation guarantee payment consists entirely of taxable component
307-135	Superannuation co-contribution benefit payment consists entirely of tax free component
307-140	Contributions-splitting superannuation benefit consists entirely of taxable component
307-142	Components of certain unclaimed money payments
307-145	Modification for disability benefits
307-150	Modification in respect of superannuation lump sum with element untaxed in fund

### 307-120 Components of superannuation benefit

- (1) Work out the following components of a \*superannuation benefit under this Subdivision:
  - (a) the *tax free component*;
  - (b) the *taxable component*.
- (2) Work out those components under:
  - (a) if the benefit is not mentioned in paragraph (b), (c), (d) or (e)—section 307-125; or
  - (b) if the benefit is a \*superannuation guarantee payment—section 307-130; or
  - (c) if the benefit is a \*superannuation co-contribution benefit payment—section 307-135; or
  - (d) if the benefit is a \*contributions-splitting superannuation benefit—section 307-140; or
  - (e) if the benefit is a payment under subsection 17(2) or section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*—section 307-142.
- (3) Those components may be modified under sections 307-145 (which deals with certain disability benefits) and 307-150 (which deals with certain \*elements untaxed in fund).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **307-125 Proportioning rule**

- (1) The object of this section is to ensure that the \*tax free component and \*taxable component of a \*superannuation benefit are calculated by:
  - (a) first, determining the proportions of the \*value of the \*superannuation interest that those components represent; and
  - (b) next, applying those proportions to the benefit.
- (2) The \*superannuation benefit is taken to be paid in a way such that each of those components of the benefit bears the same proportion to the amount of the benefit that the corresponding component of the \*superannuation interest bears to the \*value of the superannuation interest.

Example: The amount of a superannuation lump sum is \$100. Just before the benefit is paid, the value of the superannuation interest was \$1000 (of which \$200 was the tax free component and \$800 was the taxable component). For the lump sum, the tax free component is \$20 and the taxable component is \$80.
- (3) For the purposes of subsection (2), determine the \*value of the \*superannuation interest, and the amount of each of those components of the interest, at whichever of the following times is applicable:
  - (a) if the \*superannuation benefit is a \*superannuation income stream benefit—when the relevant \*superannuation income stream commenced;
  - (b) if the superannuation benefit is a \*superannuation lump sum—just before the benefit is paid;
  - (c) despite paragraphs (a) and (b), if the superannuation benefit arises from the commutation of a superannuation income stream—when the relevant \*superannuation income stream commenced.
- (4) Subsection (2) does not apply to a \*superannuation benefit if any of the following applies:
  - (a) the regulations specify an alternative method for determining those components of the benefit;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 307-130

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- (b) a determination under subsection (5) specifies an alternative method for determining those components of the benefit;
  - (c) the Commissioner consents in writing to the use of another method for determining those components of the benefit.
- If so, use that method to determine those components of the benefit.
- (5) For the purposes of paragraph (4)(b), the Commissioner may determine, by legislative instrument, one or more alternative methods for determining those components of a \*superannuation benefit.
  - (6) If the \*superannuation benefit is an \*unclaimed money payment or a \*small superannuation account payment, for the purposes of this section:
    - (a) treat the benefit as a superannuation benefit paid from a \*superannuation interest; and
    - (b) treat the amount of the benefit as the \*value of that superannuation interest just before the time the benefit is paid.

**307-130 Superannuation guarantee payment consists entirely of taxable component**

The components of a \*superannuation benefit that is a \*superannuation guarantee payment are as follows:

- (a) the \*tax free component is nil;
- (b) the \*taxable component is the amount of the benefit.

**307-135 Superannuation co-contribution benefit payment consists entirely of tax free component**

The components of a \*superannuation benefit that is a \*superannuation co-contribution benefit payment are as follows:

- (a) the \*tax free component is the amount of the benefit;
- (b) the \*taxable component is nil.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **307-140 Contributions-splitting superannuation benefit consists entirely of taxable component**

The components of a \*superannuation benefit that is a \*contributions-splitting superannuation benefit are as follows:

- (a) the \*tax free component is nil;
- (b) the \*taxable component is the amount of the benefit.

### **307-142 Components of certain unclaimed money payments**

#### *Preliminary*

- (1) This section explains how to work out the \*tax free component, and the \*taxable component, of a \*superannuation benefit that is a payment by the Commissioner under subsection 17(2) or section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of a person.

#### *Tax free component*

- (2) Work out the \*tax free component as follows:

#### *Method statement*

Step 1. Work out the amount (the ***unclaimed amount***) (or amounts), set out in column 1 of the table in subsection (3), to which the \*superannuation benefit is attributable.

Note: A payment made under subsection 17(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* is attributable to a single unclaimed amount set out in item 1 or 2 of the table.

A payment under section 20H of that Act may be attributable to more than one unclaimed amount.

Step 2. Assume that the unclaimed amount (or each unclaimed amount), instead of being paid to the Commissioner, had been paid to the person as the payment (the ***claimed equivalent***) set out in column 2 of the table.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 307-142

Step 3. The \*tax free component of the \*superannuation benefit consists of so much of the superannuation benefit as is attributable to the amount set out in column 3 of the table for the claimed equivalent (or as is attributable to the amounts set out in that column for the claimed equivalents).

(3) This is the table mentioned in subsection (2):

<b>Tax free component</b>			
<b>Item</b>	<b>Column 1 Unclaimed amount</b>	<b>Column 2 Claimed equivalent</b>	<b>Column 3 Tax free component of claimed equivalent</b>
1	an amount paid, on or after 1 July 2007, to the Commissioner under subsection 17(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *tax free component of that superannuation benefit
2	an amount paid, before 1 July 2007, to the Commissioner under subsection 17(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person	an eligible termination payment (within the meaning of subsection 27A(1) of the <i>Income Tax Assessment Act 1936</i> , as in force just before 1 July 2007)	the total of the components, of that eligible termination payment, referred to in subsection 307-225(2) of this Act

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Tax free component</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Unclaimed amount</b>	<b>Claimed equivalent</b>	<b>Tax free component of claimed equivalent</b>
3	an amount paid to the Commissioner under subsection 20F(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person (other than an amount referred to in section 65AA of the <i>Superannuation Guarantee (Administration) Act 1992</i> )	a *superannuation benefit paid from a *superannuation plan	the *tax free component of that superannuation benefit

Note 1: Section 65AA of the *Superannuation Guarantee (Administration) Act 1992* requires certain shortfall components to be treated as amounts paid to the Commissioner under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of excluding such shortfall components from item 3 of the table in this subsection is that the taxable component includes so much of the superannuation benefit as is attributable to such a shortfall component.

Note 2: The table in this subsection does not cover interest paid by the Commissioner under subsection 20H(2A) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of this is that the taxable component includes so much of the superannuation benefit as is attributable to such interest.

*Taxable component*

- (4) The \*taxable component is so much (if any) of the \*superannuation benefit as is not the \*tax free component.

**307-145 Modification for disability benefits**

- (1) Work out the **tax free component** of the \*superannuation benefit under subsection (2) if the benefit is a \*superannuation lump sum and a \*disability superannuation benefit.

Note: This section does not apply to an unclaimed money payment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 307-150

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- (2) The **tax free component** is the sum of:
- (a) the \*tax free component of the benefit worked out apart from this section; and
  - (b) the amount worked out under subsection (3).

However, the tax free component cannot exceed the amount of the benefit.

- (3) Work out the amount by applying the following formula:

$$\text{Amount of benefit} \times \frac{\text{Days to retirement}}{\text{Service days} + \text{Days to retirement}}$$

where:

**days to retirement** is the number of days from the day on which the person stopped being capable of being \*gainfully employed to his or her \*last retirement day.

**service days** is the number of days in the \*service period for the lump sum.

- (4) The balance of the \*superannuation benefit is the **taxable component** of the benefit.

**307-150 Modification in respect of superannuation lump sum with element untaxed in fund**

- (1) This section applies to a \*superannuation lump sum if:
- (a) it is not a \*roll-over superannuation benefit; or
  - (b) it is a roll-over superannuation benefit that includes an \*element untaxed in the fund, all or part of which will be included in the assessable income of the \*superannuation provider in relation to the \*superannuation fund into which the benefit is paid.
- (2) However, this section applies to the \*superannuation lump sum only to the extent that it is attributable to a \*superannuation interest that existed just before 1 July 2007.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) If the \*superannuation lump sum includes an \*element untaxed in the fund:
- (a) increase the \*tax free component of the benefit by the amount that is the lesser of these amounts:
    - (i) the amount worked out under subsection (4); and
    - (ii) the amount of the element untaxed in the fund (apart from this section); and
  - (b) reduce the element untaxed in the fund by the lesser of those amounts.
- (4) Work out the amount by applying the following formula:

$$\text{Original tax free component and untaxed element} \times \frac{\text{Number of days in the *service period for the lump sum that occurred before 1 July 1983}}{\text{Number of days in the *service period for the lump sum}}$$

where:

***original tax free component and untaxed element*** is the sum of:

- (a) the \*tax free component of the \*superannuation benefit (apart from this section); and
  - (b) the \*element untaxed in the fund of the superannuation benefit (apart from this section).
- (5) If the benefit is in part attributable to a \*crystallised pre-July 83 amount, in working out the \*tax free component of the \*superannuation benefit (apart from this section) for the purposes of subsection (4), disregard the amount of the benefit that is attributable to the \*crystallised segment of the \*superannuation interest from which the benefit is paid.

## Subdivision 307-D—Superannuation interests

### Table of sections

307-200	Regulations relating to meaning of superannuation interests
307-205	<b>Value</b> of superannuation interest
307-210	<b>Tax free component</b> of superannuation interest
307-215	<b>Taxable component</b> of superannuation interest

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 307-200

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307-220 What is the *contributions segment*?

307-225 What is the *crystallised segment*?

**307-200 Regulations relating to meaning of superannuation interests**

- (1) In the circumstances specified in the regulations, treat a *superannuation interest* as two or more superannuation interests in the way specified in the regulations.
- (2) In the circumstances specified in the regulations, treat 2 or more *superannuation interests* as one superannuation interest in the way specified in the regulations.
- (3) Regulations for the purposes of this section may specify a way of treating a \*superannuation interest in relation to one or more of the following aspects of the interest:
  - (a) the \*tax free component (and the \*contributions segment and \*crystallised segment relating to that component);
  - (b) the \*taxable component;
  - (c) the \*element taxed in the fund of the taxable component;
  - (d) the \*element untaxed in the fund of the taxable component.
- (4) Regulations for the purposes of subsection (1) may specify a way of allocating an amount relating to a \*superannuation interest treated as two or more superannuation interests in accordance with those regulations to those interests.
- (5) Subsections (3) and (4) do not limit the regulations that may be made for the purposes of this section.

**307-205 Value of superannuation interest**

The *value* of a \*superannuation interest at a particular time is:

- (a) if the regulations specify a method for determining the value of the superannuation interest—that value; or
- (b) otherwise—the total amount of all the \*superannuation lump sums that could be payable from the interest at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **307-210 Tax free component of superannuation interest**

The *tax free component* of a \*superannuation interest is so much of the \*value of the interest as consists of:

- (a) the \*contributions segment of the interest; and
- (b) the \*crystallised segment of the interest.

Note: If superannuation benefits have been paid from the superannuation interest, the amount of the tax free component of the interest will be reduced by the tax free components of those superannuation benefits: see section 307-125.

### **307-215 Taxable component of superannuation interest**

The *taxable component* of a \*superannuation interest is the \*value of the interest less the \*tax free component of the interest.

### **307-220 What is the contributions segment?**

- (1) The *contributions segment* of a \*superannuation interest is so much of the \*value of the interest as consists of contributions made after 30 June 2007, to the extent that they have not been and will not be included in the assessable income of the \*superannuation provider in relation to the \*superannuation plan in which the interest is held.
- (2) For the purposes of this section:
  - (a) in determining whether contributions are included in the contributions segment under subsection (1):
    - (i) disregard the \*taxable component of a \*roll-over superannuation benefit paid into the interest; and
    - (ii) for a \*superannuation plan that is a \*constitutionally protected fund—treat the superannuation plan as if it were not a constitutionally protected fund; and
  - (b) disregard section 295-180 and Subdivision 295-D.
- (3) For the purposes of subparagraph (2)(a)(i), treat the \*excess untaxed roll-over amount (if any) of the \*roll-over superannuation benefit as part of the \*tax free component of the benefit instead of the \*taxable component of the benefit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) Subparagraph (2)(a)(i) does not apply to a \*roll-over superannuation benefit that is a \*departing Australia superannuation payment made under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Note 1: The whole departing Australia superannuation payment is included in the contributions segment of the superannuation interest, as none of the payment has been or will be included in the superannuation provider's assessable income.

Note 2: Including the whole payment in that segment, and thus the tax free component, of the superannuation interest ensures that the amount of the payment, which is taxed by the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*, does not attract more tax when paid as a superannuation benefit from the interest.

### 307-225 What is the *crystallised segment*?

- (1) To work out the *crystallised segment* of a \*superannuation interest, first assume that:
- (a) an eligible termination payment had been made in respect of the holder of the interest just before 1 July 2007; and
  - (b) the amount of the eligible termination payment had been equal to the \*value of the interest at that time.
- (2) The *crystallised segment* of the \*superannuation interest is so much of the \*value of the interest as consists of the total of the following components of the eligible termination payment:
- (a) the concessional component;
  - (b) the post-June 1994 invalidity component;
  - (c) the undeducted contributions;
  - (d) the CGT exempt component;
  - (e) the pre-July 83 component.
- (3) For the purposes of paragraph (2)(e), disregard the \*value of the interest just before 1 July 2007 to the extent that it would consist, apart from this subsection, of the \*element untaxed in the fund of the \*taxable component of a \*superannuation benefit constituted by the eligible termination payment.
- (4) In this section, the following terms have the same meaning as in subsection 27A(1) of the *Income Tax Assessment Act 1936* (as in force just before 1 July 2007):

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) *concessional component*;
- (b) *post-June 1994 invalidity component*;
- (c) *undeducted contributions*;
- (d) *CGT exempt component*;
- (e) *pre-July 83 component*;
- (f) *eligible termination payment*.

### **Subdivision 307-E—Elements taxed and untaxed in the fund of the taxable component of superannuation benefit**

#### **Table of sections**

307-275	<i>Element taxed in the fund and element untaxed in the fund</i> of superannuation benefits
307-280	Superannuation benefits from constitutionally protected funds etc.
307-285	Trustee can choose to convert element taxed in the fund to element untaxed in the fund
307-290	Taxed and untaxed elements of death benefit superannuation lump sums
307-295	Superannuation benefits from public sector superannuation schemes may include untaxed element
307-300	Certain unclaimed money payments

#### **307-275 *Element taxed in the fund and element untaxed in the fund of superannuation benefits***

- (1) The \*taxable component of a \*superannuation benefit consists of an *element taxed in the fund* or an *element untaxed in the fund*, or both.
- (2) The \*taxable component of a \*superannuation benefit consists wholly of an *element taxed in the fund* except as provided in a later section of this Subdivision.
- (3) Despite subsection (2), the \*taxable component of any of the following kinds of \*superannuation benefit consists wholly of an *element untaxed in the fund*:
  - (a) a \*small superannuation account payment;
  - (b) a \*superannuation guarantee payment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**307-280 Superannuation benefits from constitutionally protected funds etc.**

- (1) The \*taxable component of a \*superannuation benefit paid from a \*superannuation fund that is a \*constitutionally protected fund consists wholly of an *element untaxed in the fund*.
- (2) Despite subsection (1), if:
  - (a) the benefit is a \*superannuation lump sum; and
  - (b) the benefit is attributable to one or more \*roll-over superannuation benefits that consisted of, or included, an \*element taxed in the fund;the \*taxable component of the benefit has an *element taxed in the fund* equal to the total of those elements taxed in the fund.
- (3) The \*taxable component of a \*superannuation income stream benefit consists wholly of an *element untaxed in the fund* if it is paid from a \*superannuation fund that was a \*constitutionally protected fund on the first day of the period to which the \*superannuation income stream relates.

**307-285 Trustee can choose to convert element taxed in the fund to element untaxed in the fund**

- (1) If:
  - (a) you receive a \*superannuation benefit from a \*public sector superannuation scheme; and
  - (b) the trustee of the scheme gives you written notice specifying an amount as the \*element untaxed in the fund of the \*taxable component of the benefit; and
  - (c) the notice is given within the time and in the manner approved by the Commissioner in writing; and
  - (d) the scheme came into operation on or before 5 September 2006;the taxable component consists of an *element untaxed in the fund* equal to the specified amount.
- (2) The trustee of the scheme can give only one notice under subsection (1) in relation to a particular \*superannuation lump sum.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **307-290 Taxed and untaxed elements of death benefit superannuation lump sums**

- (1) This section applies to a \*superannuation death benefit that is a \*superannuation lump sum, in relation to which a deduction has been, or is to be, claimed under section 295-465 or 295-470.

Note 1: Those sections allow deductions for insurance premiums that have been paid, and for liability for future benefits.

Note 2: Deductions made under former section 279 or 279B of the *Income Tax Assessment Act 1936* are treated for the purposes of this section as having been made under section 295-465 or 295-470 (see section 307-290 of the *Income Tax (Transitional Provisions) Act 1997*).

- (2) The \*taxable component of the \*superannuation lump sum includes an *element taxed in the fund* worked out as follows:
- (a) first, work out the amount under the formula in subsection (3);
  - (b) next, reduce that amount (but not below zero) by the \*tax free component (if any) of the superannuation lump sum.
- (3) For the purposes of paragraph (2)(a), the formula is:

$$\text{*superannuation lump sum} \times \frac{\text{Service days}}{\text{Service days} + \text{Days to retirement}}$$

*days to retirement* is the number of days from the day on which the deceased died to the deceased's \*last retirement day.

*service days* is the number of days in the \*service period for the lump sum.

- (4) The *element untaxed in the fund* of the \*taxable component is the balance of the taxable component.

### **307-295 Superannuation benefits from public sector superannuation schemes may include untaxed element**

- (1) This section applies to a \*superannuation benefit that is paid from a \*public sector superannuation scheme that is not a \*constitutionally protected fund.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 307-295

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- (2) If the \*superannuation benefit paid is not sourced to any extent from contributions made into a \*superannuation fund or earnings on such contributions, the \*taxable component of the superannuation benefit consists wholly of an ***element untaxed in the fund***.
- (3) If the benefit is a \*superannuation lump sum that is partly sourced from contributions made into a \*superannuation fund or earnings on such contributions, the ***element taxed in the fund*** and the ***element untaxed in the fund*** of the \*taxable component of the benefit are worked out as follows:

*Method statement*

- Step 1. Subdivide the \*taxable component of the \*superannuation lump sum (the ***original benefit***) into 2 notional superannuation lump sums as follows:
  - (a) the amount sourced from contributions made into a \*superannuation fund or earnings on such contributions (the ***fund benefit***);
  - (b) the remainder of the taxable component of the lump sum (the ***non-fund benefit***).
- Step 2. The fund benefit consists of an ***element taxed in the fund***, an ***element untaxed in the fund***, or both, as worked out under this Subdivision.
- Step 3. The non-fund benefit consists wholly of an ***element untaxed in the fund***.
- Step 4. The ***element taxed in the fund*** of the original benefit equals the element taxed in the fund of the fund benefit.
- Step 5. The ***element untaxed in the fund*** of the original benefit is the sum of the elements untaxed in the fund worked out under steps 2 and 3.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **307-300 Certain unclaimed money payments**

#### *Preliminary*

- (1) This section explains how to work out the \*element taxed in the fund, and the \*element untaxed in the fund, of the \*taxable component of a \*superannuation benefit that is a payment by the Commissioner under subsection 17(2) or section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

#### *Element taxed in the fund*

- (2) Work out the ***element taxed in the fund*** as follows:

#### *Method statement*

Step 1. Work out the amount (the ***unclaimed amount***) (or amounts), set out in column 1 of the table in subsection (3), to which the \*taxable component is attributable.

Note: A payment made under subsection 17(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* is attributable to a single unclaimed amount set out in item 1 or 2 of the table.

A payment under section 20H of that Act may be attributable to more than one unclaimed amount.

Step 2. Assume that the unclaimed amount (or each unclaimed amount), instead of being paid to the Commissioner, had been paid to the person as the payment (the ***claimed equivalent***) set out in column 2 of the table.

Step 3. The ***element taxed in the fund*** of the \*taxable component consists of so much of the taxable component as is attributable to the amount set out in column 3 of the table for the claimed equivalent (or as is attributable to the amounts set out in that column for the claimed equivalents).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-30** Superannuation

**Division 307** Key concepts relating to superannuation benefits

Section 307-300

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(3) This is the table mentioned in subsection (2):

<b>Element taxed in the fund</b>			
<b>Item</b>	<b>Column 1 Unclaimed amount</b>	<b>Column 2 Claimed equivalent</b>	<b>Column 3 Taxed element of claimed equivalent</b>
1	an amount paid, on or after 1 July 2007, to the Commissioner under subsection 17(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit
2	an amount paid, before 1 July 2007, to the Commissioner under subsection 17(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person	an eligible termination payment (within the meaning of subsection 27A(1) of the <i>Income Tax Assessment Act 1936</i> , as in force just before 1 July 2007)	the taxed element of the post-June 83 component of that eligible termination payment under Subdivision AA of Division 2 of Part III of the <i>Income Tax Assessment Act 1936</i> , as in force just before 1 July 2007
3	an amount paid to the Commissioner under subsection 20F(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person (other than an amount referred to in section 65AA of the <i>Superannuation Guarantee (Administration) Act 1992</i> )	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit

Note 1: Section 65AA of the *Superannuation Guarantee (Administration) Act 1992* requires certain shortfall components to be treated as amounts paid to the Commissioner under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of excluding such shortfall components from item 3 of the table in this subsection is that the element untaxed in the fund includes

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

so much of the superannuation benefit as is attributable to such a shortfall component.

Note 2: The table in this subsection does not cover interest paid by the Commissioner under subsection 20H(2A) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of this is that the element untaxed in the fund of the taxable component includes so much of the superannuation benefit as is attributable to such interest.

*Element untaxed in the fund*

- (4) The ***element untaxed in the fund*** of the \*taxable component is so much (if any) of the taxable component as is not the element taxed in the fund.

### **Subdivision 307-F—Low rate cap and untaxed plan cap amounts**

#### **Table of sections**

307-345	<i>Low rate cap amount</i>
307-350	<i>Untaxed plan cap amount</i>

#### **307-345 Low rate cap amount**

*Starting amount*

- (1) Your ***low rate cap amount*** for the 2007-2008 income year is \$140,000.

Note: However, if you became entitled to a rebate under the corresponding provision of the *Income Tax Assessment Act 1936*, see section 307-345 of the *Income Tax (Transitional Provisions) Act 1997*.

*Reductions and increases*

- (2) If you receive one or more \*superannuation member benefits that are \*superannuation lump sums in an income year, reduce your ***low rate cap amount*** for the next income year (but not below zero) by the total of the amounts that:
- (a) are included in your assessable income for the first year in respect of those lump sums; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 307-350

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- (b) are counted towards your entitlement to a \*tax offset under subsection 301-20(2) or 301-105(4) for the first year.
- (3) At the start of each income year after the 2007-2008 income year, increase your **low rate cap amount** by the amount (if any) by which the index amount for that income year exceeds the index amount for the previous income year.
- (4) For the purposes of subsection (3), the index amount for the 2007-2008 income year is \$140,000. The index amount is then indexed annually.

Note: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the index amount: see section 960-285.

**307-350** *Untaxed plan cap amount*

- (1) Your **untaxed plan cap amount** for a \*superannuation plan at the start of the 2007-2008 income year is \$1,000,000.

*Reductions and increases*

- (2) If you receive one or more \*superannuation member benefits including an \*element untaxed in the fund from a \*superannuation plan at a time, reduce your **untaxed plan cap amount** just after that time:
  - (a) if the total of the elements untaxed in the fund falls short of your \*untaxed plan cap amount at that time—by the amount of the benefit or of the total of the benefits; or
  - (b) otherwise—to nil.
- (2A) For the purposes of subsection (2), disregard subsection 307-5(8).
- (2B) For the purposes of the application of this section in relation to \*superannuation lump sums paid by the Commissioner under subsection 17(2) and section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, treat all such lump sums as if they were paid from a single \*superannuation plan.
- (3) At the start of each income year after the 2007-2008 income year, increase your **untaxed plan cap amount** for the \*superannuation

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

plan by the amount (if any) by which the index amount for that income year exceeds the index amount for the previous income year.

- (4) For the purposes of subsection (3), the index amount for the 2007-2008 income year is \$1,000,000. The index amount is then indexed annually.

Note: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the index amount: see section 960-285.

### Subdivision 307-G—Other concepts

#### Table of sections

307-400 Meaning of *service period* for a superannuation lump sum

#### 307-400 Meaning of *service period* for a superannuation lump sum

- (1) The *service period* for a \*superannuation lump sum consists of each day that is in the period worked out under the table or a period covered by subsection (2).

<b>Service period for superannuation lump sum types</b>		
<b>Item</b>	<b>For this superannuation lump sum type:</b>	<b>The <i>service period</i> includes:</b>
1	*Superannuation fund payment	The following: (a) if some or all of the *superannuation lump sum accrued while you were, or the deceased was, a member of the *superannuation fund—the period of membership; (b) if some or all of the superannuation lump sum accrued while you were, or the deceased was, employed (or you or the deceased held office)—each period of employment (or of holding office) to which the lump sum relates.
2	*approved deposit fund payment	The period starting when you or the deceased first made a deposit to the *approved deposit fund and ending when the payment is made.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



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**Service period for superannuation lump sum types**

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<b>Item</b>	<b>For this superannuation lump sum type:</b>	<b>The <i>service period</i> includes:</b>
3	*RSA payment	The following: (a) if some or all of the *superannuation lump sum accrued while you were, or the deceased was, the holder of the *RSA—the period during which you were, or the deceased was, the holder of the RSA; (b) if some or all of the superannuation lump sum accrued while you were, or the deceased was, employed (or you or the deceased held office)—each period of employment (or of holding office) to which the lump sum relates.

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- (2) The *service period* for the \*superannuation lump sum (the *later lump sum*) also includes each day that is in the \*service period for an earlier superannuation lump sum if some or all of the later lump sum is attributable, directly or indirectly, to some or all of the earlier lump sum through the payment of one or more \*roll-over superannuation benefits.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Part 3-32—Co-operatives and mutual entities**

### **Division 315—Demutualisation of private health insurers**

#### **Table of Subdivisions**

	Guide to Division 315
315-A	Capital gains and losses connected with a demutualisation of a private health insurer to be disregarded
315-B	Cost base of certain shares and rights in private health insurers
315-C	Lost policy holders trust
315-D	Special cost base rules for certain shares and rights in holding companies
315-E	Special CGT rule for legal personal representatives and beneficiaries
315-F	Non-CGT consequences of demutualisation

#### **Guide to Division 315**

##### **315-1 What this Division is about**

This Division sets out the taxation consequences of the demutualisation of private health insurers.

Policy holders, demutualising health insurers and certain other entities can disregard capital gains and losses arising under a demutualisation (see Subdivision 315-A).

Shares and rights issued under the demutualisation are given a cost base based on the market value of the demutualising health insurer at the time of issue (see Subdivisions 315-B and 315-D).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Assets held by a lost policy holders trust are given roll-over relief if transferred to the lost policy holder, or if the lost policy holder becomes absolutely entitled to them. Otherwise the trustee of the lost policy holders trust is taxed on any capital gains (see Subdivision 315-C).

A legal personal representative can disregard capital gains and losses made when passing an asset to a beneficiary of a policy holder's estate (see Subdivision 315-E).

Shares, rights or cash received under a demutualisation are not assessable income and not exempt income (see Subdivision 315-F).

**Subdivision 315-A—Capital gains and losses connected with a demutualisation of a private health insurer to be disregarded**

**Table of sections**

**Rules for policy holders**

- 315-5 Policy holders to disregard capital gains and losses related to demutualisation of private health insurer
- 315-10 Effect on the legal personal representative or beneficiary
- 315-15 Demutualisations to which this Division applies
- 315-20 What assets are covered

**Rules for demutualising health insurer**

- 315-25 Demutualising health insurers to disregard capital gains and losses related to demutualisation

**Rules for other entities**

- 315-30 Other entities to disregard capital gains and losses related to demutualisation

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Rules for policy holders

### **315-5 Policy holders to disregard capital gains and losses related to demutualisation of private health insurer**

Disregard a \*capital gain or \*capital loss of an individual from a \*CGT event that happens in relation to a \*CGT asset if:

- (a) the CGT event happens under a demutualisation to which this Division applies; and
- (b) the individual is, or has been, a policy holder (within the meaning of the *Private Health Insurance Act 2007*) of, or another person insured through, the demutualising entity (the *demutualising health insurer*); and
- (c) the CGT asset is covered by section 315-20.

### **315-10 Effect on the legal personal representative or beneficiary**

Disregard a \*capital gain or \*capital loss of an entity from a \*CGT event that happens in relation to a \*CGT asset if:

- (a) the CGT asset forms part of the estate of a deceased individual who is mentioned in paragraph 315-5(b); and
- (b) the entity is the deceased individual's \*legal personal representative or a beneficiary in the deceased individual's estate; and
- (c) the CGT asset devolves to the entity or \*passes to the entity; and
- (d) the CGT event happens under a demutualisation to which this Division applies; and
- (e) the CGT asset is covered by section 315-20.

### **315-15 Demutualisations to which this Division applies**

This Division applies to a demutualisation of an entity if:

- (a) the entity:
  - (i) is an entity to which item 6.3 of the table in section 50-30 applies; and
  - (ii) is not registered under Part 3 of the *Life Insurance Act 1995*; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 315-20

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(iii) does not have capital divided into shares; and

Note: Item 6.3 of the table in section 50-30 applies to a private health insurer within the meaning of the *Private Health Insurance Act 2007* that is not carried on for the profit or gain of its individual members.

(b) an application by the entity to convert to being registered as a for profit insurer (within the meaning of the *Private Health Insurance Act 2007*) is approved under subsection 126-42(5) of that Act; and

(c) consistently with the conversion scheme mentioned in paragraph 126-42(2)(b) of that Act, the entity becomes registered as a for profit insurer (within the meaning of that Act).

**315-20 What assets are covered**

These \*CGT assets are covered:

- (a) an interest in the demutualising health insurer as a policy holder;
- (b) a membership interest in the demutualising health insurer;
- (c) a right or interest of another kind in the demutualising health insurer;
- (d) a right or interest of another kind that arises under the demutualisation.

**Rules for demutualising health insurer**

**315-25 Demutualising health insurers to disregard capital gains and losses related to demutualisation**

Disregard a \*capital gain or \*capital loss of an entity from a \*CGT event if:

- (a) the CGT event happened under a demutualisation to which this Division applies; and
- (b) the entity is the demutualising health insurer.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Rules for other entities

### 315-30 Other entities to disregard capital gains and losses related to demutualisation

Disregard a \*capital gain or \*capital loss of an entity from a \*CGT event if:

- (a) the entity is established solely for the purpose of participating in a demutualisation to which this Division applies; and
- (b) the entity is not a trust covered by Subdivision 315-C (about lost policy holders); and
- (c) the CGT event:
  - (i) happened under a demutualisation to which this Division applies; and
  - (ii) happened before or at the same time as the allocation or distribution (in the form of shares or cash) of the accumulated surplus of the demutualising health insurer; and
  - (iii) was connected to that allocation or distribution.

Note: The allocation or distribution of the accumulated surplus could happen through an arrangement involving more than one transaction.

### Subdivision 315-B—Cost base of certain shares and rights in private health insurers

#### Table of sections

315-80	Cost base and acquisition time of demutualisation assets
315-85	Demutualisation asset
315-90	Participating policy holders

### 315-80 Cost base and acquisition time of demutualisation assets

#### *Cost base adjustment*

- (1) The first element of the \*cost base and \*reduced cost base of a \*CGT asset is its \*market value on the day it is issued if:
  - (a) the asset is covered by section 315-85 (a *demutualisation asset*); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 315-85

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- (b) the asset is issued to an entity (a *participating policy holder*) covered by section 315-90.

Note: There is an exception to this rule in Subdivision 315-D where the asset is a share or right in a holding company with other assets.

*Acquisition rule*

- (2) The participating policy holder is taken to have \*acquired the demutualisation asset at the time it is issued.

**315-85 Demutualisation asset**

- (1) This section covers an asset if:
  - (a) the asset is:
    - (i) a share in the demutualising health insurer; or
    - (ii) a right to \*acquire a share in the demutualising health insurer; or
    - (iii) a share in an entity that owns all of the shares in the demutualising health insurer; or
    - (iv) a right to acquire a share in an entity mentioned in subparagraph (iii); and
  - (b) the share or right is issued under a demutualisation to which this Division applies; and
  - (c) the share or right is issued in connection with:
    - (i) the variation or abrogation of rights attaching to or consisting of a \*CGT asset covered by section 315-20; or
    - (ii) the conversion, cancellation, extinguishment or redemption of such a CGT asset.

*Exclusion for rights with an exercise price*

- (2) Despite subsection (1), this section does not cover a right to \*acquire a share in an entity if the holder of the right must pay an amount to exercise the right.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Exclusion where assets not issued simultaneously*

- (3) Despite subsection (1), an asset is not covered by this section unless all of the assets covered by subsection (1) for the demutualisation in question are issued:
- (a) at the same time; and
  - (b) to an entity that is either:
    - (i) a participating policy holder (see section 315-90); or
    - (ii) the trustee of a trust covered by Subdivision 315-C (about the lost policy holders trust).

### **315-90 Participating policy holders**

- (1) This section covers an individual who:
- (a) is, or has been, a policy holder (within the meaning of the *Private Health Insurance Act 2007*) of, or another person insured through, the demutualising health insurer; and
  - (b) is entitled, under the demutualisation, to an allocation of demutualisation assets.
- (2) This section also covers an entity who became entitled to an allocation of demutualisation assets because of the death of an individual mentioned in subsection (1).

### **Subdivision 315-C—Lost policy holders trust**

#### **Table of sections**

315-140	Lost policy holders trust
315-145	CGT treatment of demutualisation assets in lost policy holders trust
315-150	Roll-over where assets transferred to lost policy holder
315-155	Trustee assessed if assets dealt with not for benefit of lost policy holder
315-160	Subdivision 126-E does not apply to lost policy holders trust

### **315-140 Lost policy holders trust**

This Subdivision covers a trust (a *lost policy holders trust*) in relation to a demutualisation to which this Division applies if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 315-145

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- (a) the conversion scheme mentioned in paragraph 126-42(2)(b) of the *Private Health Insurance Act 2007* for the demutualisation provides for the trust; and
- (b) under the demutualisation, demutualisation assets (see section 315-85) are issued to the trustee of the trust; and
- (c) the trust exists solely for the purpose of holding shares or rights to \*acquire shares on behalf of:
  - (i) individuals (*lost policy holders*) who are, or have been, policy holders (within the meaning of the *Private Health Insurance Act 2007*) of, or other persons insured through, the demutualising health insurer; or
  - (ii) if the lost policy holder has died—the \*legal personal representative of the lost policy holder or a beneficiary in the estate of the lost policy holder.

Example: An example of an individual on whose behalf the trust might hold assets would be an individual who has not completed a formal step required for them to be issued with demutualisation assets directly. Another example might be an individual living overseas.

### 315-145 CGT treatment of demutualisation assets in lost policy holders trust

#### *Cost base adjustment*

- (1) The first element of the \*cost base and \*reduced cost base of a demutualisation asset issued to the trustee of a lost policy holders trust is its \*market value on the day it is issued.

Note: There is an exception to this rule in Subdivision 315-D where the asset is a share or right in a holding company with other assets.

#### *Acquisition rule*

- (2) The trustee is taken to have \*acquired the demutualisation asset at the time it is issued.

### 315-150 Roll-over where assets transferred to lost policy holder

- (1) This section applies in relation to a \*CGT event if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the CGT event happens in relation to an asset held by the trustee of a lost policy holders trust on behalf of a lost policy holder; and
- (b) the CGT event happens because the lost policy holder (or, if the lost policy holder has died, the \*legal personal representative of the lost policy holder or a beneficiary in the estate of the lost policy holder) either:
  - (i) is transferred the asset by the trustee; or
  - (ii) becomes absolutely entitled to the asset.

Note: The asset may be a demutualisation asset, or some other asset.

*Consequence for trustee*

- (2) Disregard a \*capital gain or \*capital loss the trustee makes from the \*CGT event.

*Consequence for lost policy holder*

- (3) The \*cost base of the asset in the hands of the trustee of the lost policy holders trust just before the \*CGT event becomes the first element of the cost base and \*reduced cost base of the asset in the hands of the lost policy holder, \*legal personal representative or beneficiary.
- (4) The lost policy holder, \*legal personal representative or beneficiary is taken to have \*acquired the asset when the trustee of the lost policy holders trust acquired it.

**315-155 Trustee assessed if assets dealt with not for benefit of lost policy holder**

- (1) This section applies in relation to a \*capital gain from a \*CGT event if:
  - (a) the CGT event happens in relation to an asset held by the trustee of a lost policy holders trust; and
  - (b) section 315-150 does not apply to the CGT event.
- (2) If this section applies:
  - (a) for the purposes of sections 97, 98A and 100 of the *Income Tax Assessment Act 1936*, the share of the net income of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 315-160

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trust that is attributable to the \*capital gain is taken not to be included in the assessable income of a beneficiary of the trust; and

- (b) the trustee is not assessed, and is not liable to pay tax, in respect of the share under section 98 of the *Income Tax Assessment Act 1936*.

Note: Because of these consequences in relation to sections 97 and 98 of the *Income Tax Assessment Act 1936*, the trustee will be assessed on the beneficiary's share under section 99A of that Act.

**315-160 Subdivision 126-E does not apply to lost policy holders trust**

Subdivision 126-E does not apply in relation to a demutualisation to which this Division applies.

**Subdivision 315-D—Special cost base rules for certain shares and rights in holding companies**

**Table of sections**

315-210 Cost base for shares and rights in certain holding companies

**315-210 Cost base for shares and rights in certain holding companies**

- (1) This section applies in relation to a \*CGT asset that is a demutualisation asset if:
- (a) the demutualisation asset is:
    - (i) a share in an entity mentioned in subparagraph 315-85(1)(a)(iii); or
    - (ii) a right to \*acquire a share in an entity mentioned in that subparagraph; and
  - (b) the entity owns other assets in addition to the shares in the demutualising health insurer; and
  - (c) the share or right is issued to a participating policy holder or the trustee of a lost policy holders trust.

This section applies despite sections 315-80 and 315-145.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Cost base adjustment*

- (2) The first element of the \*cost base and \*reduced cost base of the \*CGT asset is worked out under the method statement.

*Method statement*

- Step 1. Start with the \*market value of the demutualising health insurer on the day the asset is issued.
- Step 2. Divide the result of step 1 by the sum of:
- (a) the number of shares in the entity that are issued under the demutualisation; and
  - (b) the number of shares in the entity that can be \*acquired under rights that are demutualisation assets issued under the demutualisation.
- Step 3. The result of step 2 is the first element of the \*cost base and \*reduced cost base of the asset, unless the asset is a right.
- Step 4. If the asset is a right, multiply the result of step 2 by the number of shares that can be \*acquired under the right. The result is the first element of the \*cost base and \*reduced cost base of the asset.

Example: Wellbeing Health demutualises on 1 April 2008 and has a market value of \$400 million on that day. It distributes its accumulated mutual surplus in the form of rights to acquire shares in its holding company Healthiness Insurance Ltd (Healthiness). The rights do not have an exercise price.

A total of 800 million shares can be acquired in Healthiness under rights issued under the demutualisation. Each right allows the holder to acquire 50 shares. No shares in Healthiness are issued.

Under the method statement, the first element of the cost base and reduced cost base of each right is worked out by dividing the market value of Wellbeing Health (step 1) by the number of shares in Healthiness that can be acquired under the demutualisation (step 2) and multiplying the result by the number of shares that can be acquired under the right (step 4):

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

$$\frac{\$400 \text{ million}}{800 \text{ million}} \times 50 = \$25$$

*Acquisition rule*

- (3) The participating policy holder or trustee is taken to have \*acquired the \*CGT asset at the time it is issued.

**Subdivision 315-E—Special CGT rule for legal personal representatives and beneficiaries**

**Table of sections**

315-260 Special CGT rule for legal personal representatives and beneficiaries

**315-260 Special CGT rule for legal personal representatives and beneficiaries**

- (1) This section sets out what happens if a \*CGT asset:
- (a) is a demutualisation asset; and
  - (b) forms part of the estate of a participating policy holder mentioned in subsection 315-90(1) who has died, but was not owned by the policy holder just before dying; and
  - (c) \*passes to a beneficiary in the policy holder's estate because the asset is transferred to the beneficiary by the policy holder's \*legal personal representative.

Note: Division 128 deals with the effect of death in relation to CGT assets a person owns just before dying.

- (2) Disregard a \*capital gain or \*capital loss the \*legal personal representative makes if the asset \*passes to a beneficiary in the policy holder's estate.

*Consequence for beneficiary*

- (3) The \*cost base and \*reduced cost base of the asset in the hands of the \*legal personal representative just before the asset \*passes to the beneficiary becomes the first element of the cost base and reduced cost base of the asset in the hands of the beneficiary.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) The beneficiary is taken to have \*acquired the asset when the \*legal personal representative acquired it.

### **Subdivision 315-F—Non-CGT consequences of demutualisation**

#### **Table of sections**

315-310 General taxation consequences of issue of demutualisation assets etc.

#### **315-310 General taxation consequences of issue of demutualisation assets etc.**

- (1) An amount of \*ordinary income or \*statutory income of an entity to which subsection (2) applies is not assessable and not \*exempt income if:
- (a) the amount would otherwise be included in the ordinary income or statutory income of the entity only because a demutualisation asset was issued to the entity; or
  - (b) the amount is a payment made to the entity, under a demutualisation to which this Division applies, in connection with:
    - (i) the variation or abrogation of rights attaching to or consisting of a \*CGT asset covered by section 315-20; or
    - (ii) the conversion, cancellation, extinguishment or redemption of such a CGT asset.
- (2) This subsection applies to an entity that:
- (a) is, or has been, a policy holder (within the meaning of the *Private Health Insurance Act 2007*) of, or another person insured through, the demutualising health insurer; or
  - (b) is issued with the demutualisation asset, or receives the payment, because of the death of a policy holder mentioned in paragraph (a).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Part 3-35—Insurance business**

### **Division 320—Life insurance companies**

#### **Table of Subdivisions**

	Guide to Division 320
320-A	Preliminary
320-B	What is included in a life insurance company's assessable income
320-C	Deductions and capital losses
320-D	Income tax, taxable income and tax loss of life insurance companies
320-E	No-TFN contributions of life insurance companies that are RSA providers
320-F	Complying superannuation/FHSA asset pool
320-H	Segregation of assets to discharge exempt life insurance policy liabilities
320-I	Transfers of business

#### **Guide to Division 320**

##### **320-1 What this Division is about**

This Division provides for the taxation of life insurance companies in a broadly comparable way to other entities that derive similar kinds of income.

Because of the nature of the business of life insurance companies, the Division contains special rules for working out their taxable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Those rules:

- include certain amounts in assessable income;
- identify certain amounts of exempt income and non-assessable non-exempt income;
- identify specific deductions.

Life insurance companies can have one or both of these taxable incomes for any income year for the purposes of working out their income tax for that year:

- a taxable income of the complying superannuation/FHSA class, which consists of taxable income that relates to complying superannuation business or FHSAs, and is taxed at the rate of tax that applies to complying superannuation funds;
- a taxable income of the ordinary class, which consists of taxable income that relates to other businesses and is taxed at the corporate tax rate.

Life insurance companies can also have tax losses that correspond to those 2 classes. The Division provides that tax losses of a particular class can be deducted only from incomes in respect of that class.

The Division ensures that the income tax worked out on the basis of these taxable incomes and tax losses is a single amount of income tax on one taxable income.

The Division also contains rules for segregating the assets of life insurance companies into:

- assets that relate to complying superannuation business or FHSAs;
- assets that relate to immediate annuity and other exempt business.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



This Division also ensures that life insurance companies that are RSA providers are liable to pay tax on no-TFN contributions income.

## **Operative provisions**

### **Subdivision 320-A—Preliminary**

#### **320-5 Object of Division**

- (1) The object of this Division is to provide for the taxation of \*life insurance companies in a broadly comparable way to other entities that \*derive similar kinds of income.
- (2) To achieve this object, the Division:
  - (a) identifies certain amounts that are included in the assessable income, or are \*exempt income or \*non-assessable non-exempt income, of a \*life insurance company; and
  - (b) identifies certain amounts that a life insurance company can deduct; and
  - (c) enables a life insurance company to have taxable incomes and \*tax losses of the following classes for the purposes of working out its income tax for an income year:
    - (i) the \*complying superannuation/FHSA class;
    - (ii) the \*ordinary class; and
  - (d) contains other provisions necessary to enable the income tax on the taxable income of a life insurance company to be worked out.

Note: Section 320-5 of the *Income Tax (Transitional Provisions) Act 1997* provides that the tax consequences of certain transfers of assets of a life insurance company that is a friendly society to a complying superannuation fund are to be disregarded.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 320-B—What is included in a life insurance company's assessable income**

### **Guide to Subdivision 320-B**

#### **320-10 What this Subdivision is about**

This Subdivision provides for certain amounts to be included in a life insurance company's assessable income and for certain other amounts to be exempt income or non-assessable non-exempt income.

#### **Table of sections**

##### **Operative provisions**

320-15	Assessable income—various amounts
320-30	Assessable income—special provision for certain income years
320-35	Exempt income
320-37	Non-assessable non-exempt income
320-45	Tax treatment of gains or losses from CGT events in relation to complying superannuation/FHSA assets

#### **Operative provisions**

##### **320-15 Assessable income—various amounts**

- (1) A \*life insurance company's assessable income includes:
  - (a) the total amount of the \*life insurance premiums paid to the company in the income year; and
  - (b) amounts received or recovered under \*contracts of reinsurance (except amounts that relate to a risk, or part of a risk, in relation to which subsection 148(1) of the *Income Tax Assessment Act 1936* applies) to the extent to which they relate to the \*risk components of claims paid under \*life insurance policies; and
  - (c) any amount received or recovered that is a refund, or in the nature of a refund, of the life insurance premium paid under a

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 320-15

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- contract of reinsurance (except any amount that relates to a risk, or part of a risk, in relation to which subsection 148(1) of the *Income Tax Assessment Act 1936* applies); and
- (ca) any reinsurance commission received or recovered by the company in respect of a contract of reinsurance (except any commission that relates to a risk, or part of a risk, in relation to which subsection 148(1) of the *Income Tax Assessment Act 1936* applies); and
  - (d) any amount received under a profit-sharing arrangement contained in, or entered into in relation to, a contract of reinsurance; and
  - (da) the \*transfer values of assets transferred by the company from a \*complying superannuation/FHSA asset pool under subsection 320-180(1) or 320-195(3); and
  - (db) the transfer values of assets transferred by the company to a complying superannuation/FHSA asset pool under subsection 320-180(3) or 320-185(1); and
  - (e) if an asset (other than money) is transferred from or to a complying superannuation/FHSA asset pool under subsection 320-180(1) or (3), to a complying superannuation/FHSA asset pool under section 320-185 or from a complying superannuation/FHSA asset pool under subsection 320-195(2) or (3)—the amount (if any) that is included in the company's assessable income of the income year in which the asset was transferred because of section 320-200; and
  - (f) the transfer values of assets transferred by the company from the company's \*segregated exempt assets under subsection 320-235(1) or 320-250(2); and
  - (g) if an asset (other than money) is transferred to the company's segregated exempt assets under subsection 320-235(3) or section 320-240—the amount (if any) that is included in the company's assessable income because of section 320-255; and
  - (h) subject to subsection (2), if the \*value, at the end of the income year, of the company's liabilities under the \*net risk components of life insurance policies is less than the value, at the end of the previous income year, of those liabilities—an amount equal to the difference; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: Where the value at the end of the income year exceeds the value at the end of the previous income year, the excess can be deducted: see section 320-85.

- (i) amounts specified in agreements under section 295-260; and
  - (j) \*specified roll-over amounts paid to the company; and
  - (ja) amounts imposed by the company in respect of risk riders for \*ordinary investment policies in an income year in which the company did not receive any life insurance premiums for those policies; and
  - (k) fees and charges (not otherwise included in, or taken into account in working out, the company's assessable income) imposed by the company in respect of life insurance policies; and
  - (l) if the company is an \*RSA provider—contributions made to \*RSAs provided by the company that would be included in the company's assessable income under Subdivision 295-C if that Subdivision applied to the company.
- (2) Paragraph (1)(h) does not cover any liabilities under:
- (a) a \*life insurance policy that provides for \*participating benefits or \*discretionary benefits; or
  - (b) an \*exempt life insurance policy; or
  - (c) a \*funeral policy.
- (3) An amount included in assessable income under paragraph (1)(i) is included for the income year of the \*life insurance company that includes the last day of the transferor's income year to which the agreement referred to in section 295-260 relates.

### **320-30 Assessable income—special provision for certain income years**

- (1) This section applies to a \*life insurance company for each of the following income years (each a *relevant income year*):
- (a) the income year in which 1 July 2000 occurs;
  - (b) the 4 following income years.

Note: The effect of this section is modified when the life insurance business of a life insurance company is transferred to another life insurance company: see section 320-340.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 320-35

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- (2) If:
- (a) the \*value of the company's liabilities at the end of 30 June 2000 under its \*continuous disability policies (being the value used by the company for the purposes of its \*income tax return);  
*exceeds*
  - (b) the value of the company's liabilities at the end of 30 June 2000 under the \*net risk components of its continuous disability policies as calculated under subsection 320-85(4);  
the company's assessable income for each relevant income year includes an amount equal to one-fifth of the excess.
- (3) However, if a \*life insurance company ceases in a relevant income year to carry on \*life insurance business or to have any liabilities under the \*net risk components of \*continuous disability policies, subsection (2) does not apply for that income year or any future income years but the company's assessable income for that income year includes so much of the excess referred to in subsection (2) as has not been included in the company's assessable income for any previous relevant income years.

**320-35 Exempt income**

These amounts \*derived by a \*life insurance company are exempt from income tax:

- (a) amounts of \*ordinary income and \*statutory income accrued before 1 July 1988 that were derived from assets that have become \*complying superannuation/FHSA assets;
- (b) if the company is an \*RSA provider—any amounts that are disregarded because of paragraph 320-137(3)(d) or (e) in working out the company's taxable income of the \*complying superannuation/FHSA class.

**320-37 Non-assessable non-exempt income**

- (1) These amounts \*derived by a \*life insurance company are not assessable income and are not \*exempt income:
- (a) amounts of ordinary income and statutory income derived from \*segregated exempt assets, being income that relates to

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the period during which the assets were segregated exempt assets;

- (b) amounts of ordinary income and statutory income derived from the \*disposal of units in a \*pooled superannuation trust;
- (c) if an \*Australian/overseas fund or an \*overseas fund established by the company derived foreign establishment amounts—the foreign resident proportion of the foreign establishment amounts;
- (d) if the company is a \*friendly society:
  - (i) amounts derived before 1 July 2001 that are exempt from income tax under section 50-1; and
  - (ii) amounts derived on or after 1 July 2001 but before 1 January 2003, that are attributable to \*income bonds, \*funeral policies or \*sickness policies; and
  - (iii) amounts derived on or after 1 July 2001 but before 1 January 2003, that are attributable to \*scholarship plans and would have been exempt from income tax under section 50-1 if they had been received before 1 July 2001; and
  - (iv) amounts derived on or after 1 January 2003 that are attributable to income bonds, funeral policies or \*sickness policies, that were issued before 1 January 2003; and
  - (v) amounts derived on or after 1 January 2003 that are attributable to scholarship plans issued before 1 January 2003 and that would have been exempt from income tax if they had been received before 1 July 2001.

Note: The effect of this section is modified when the life insurance business of a life insurance company is transferred to another life insurance company: see section 320-325.

- (1A) For the purposes of paragraph (1)(c), ***foreign establishment amounts*** for the \*life insurance company means the total amount of assessable income that was \*derived in the income year:
- (a) in the course of the carrying on by the company of a business in a foreign country at or through a \*permanent establishment of the company in that country; and
  - (b) from sources in that or any other foreign country; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) from assets that:
- (i) are attributable to the permanent establishment; and
  - (ii) are held to meet the liabilities under the \*life insurance policies issued by the company at or through the permanent establishment.
- (2) For the purposes of paragraph (1)(c), the ***foreign resident proportion*** of the \*foreign establishment amounts is the amount worked out using the formula:

$$\text{Foreign establishment amounts} \times \frac{\text{Foreign resident foreign establishment policy liabilities}}{\text{All foreign establishment policy liabilities}}$$

where:

***all foreign establishment policy liabilities*** means the average value for the income year (as calculated by an \*actuary) of the policy liabilities (as defined in the \*Valuation Standard) for all \*life insurance policies that:

- (a) were included in the class of \*life insurance business to which the company's \*Australian/overseas fund or \*overseas fund relates; and
- (b) were issued by the company at or through the \*permanent establishment to which the foreign establishment amounts relate.

***foreign resident foreign establishment policy liabilities*** means the average value for the income year (as calculated by an \*actuary) of the policy liabilities (as defined in the \*Valuation Standard) for all \*life insurance policies that:

- (a) are \*foreign resident life insurance policies; and
- (b) were issued by the company at or through the \*permanent establishment to which the foreign establishment amounts relate.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **320-45 Tax treatment of gains or losses from CGT events in relation to complying superannuation/FHSA assets**

- (1) If a \*CGT event happens in respect of a \*CGT asset that is a \*complying superannuation/FHSA asset of a \*life insurance company, section 295-85 and 295-90 applies for the purpose of working out the amount of any \*capital gain or \*capital loss that arises from the event.

Note: See Subdivision 295-B of the *Income Tax (Transitional Provisions) Act 1997* for rules about cost base for assets owned by superannuation entities at the end of 30 June 1988.

- (2) Subsection (1) has effect despite anything in Division 230.

### **Subdivision 320-C—Deductions and capital losses**

#### **Guide to Subdivision 320-C**

#### **320-50 What this Subdivision is about**

This Subdivision specifies particular deductions that are available to a life insurance company, specifies particular amounts that a life insurance company cannot deduct and contains provisions relating to a life insurance company's capital losses.

#### **Table of sections**

##### **Operative provisions**

320-55	Deduction for life insurance premiums where liabilities under life insurance policies are to be discharged from complying superannuation/FHSA assets
320-60	Deduction for life insurance premiums where liabilities under life insurance policies are to be discharged from segregated exempt assets
320-65	Deduction for life insurance premiums in respect of life insurance policies that provide for participating or discretionary benefits
320-70	No deduction for life insurance premiums in respect of certain life insurance policies payable only on death or disability
320-75	Deduction for ordinary investment policies
320-80	Deduction for certain claims paid under life insurance policies

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 320-55

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- 320-85 Deduction for increase in value of liabilities under net risk components of life insurance policies
- 320-87 Deduction for assets transferred from or to complying superannuation/FHSA asset pool
- 320-100 Deduction for life insurance premiums paid under certain contracts of reinsurance
- 320-105 Deduction for assets transferred to segregated exempt assets
- 320-107 Deductions for increased amount of lump sum death benefit
- 320-110 Deduction for interest credited to income bonds
- 320-111 Deduction for funeral policy payout
- 320-112 Deduction for scholarship plan payout
- 320-115 No deduction for amounts credited to RSAs
- 320-120 Capital losses from assets other than complying superannuation/FHSA assets or segregated exempt assets
- 320-125 Capital losses from complying superannuation/FHSA assets

### Operative provisions

#### **320-55 Deduction for life insurance premiums where liabilities under life insurance policies are to be discharged from complying superannuation/FHSA assets**

- (1) This section applies to a \*life insurance company in respect of \*life insurance policies where the company's liabilities under the policies are to be discharged out of \*complying superannuation/FHSA assets.
- (2) The company can deduct:
  - (a) the amounts of the \*life insurance premiums received in respect of the policies that are transferred to its \*complying superannuation/FHSA assets in the income year;less:
  - (b) so much of those amounts as relate to the company's liability to pay amounts on the death or disability of a person.
- (3) For the purposes of subsection (2) only, the amount of a \*life insurance premium that *relates* to the company's liability to pay amounts on the death or disability of a person is:
  - (a) if the policy provides for \*participating benefits or \*discretionary benefits—nil; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) if paragraph (a) does not apply and the policy states that the whole or a specified part of the premium is payable in respect of such a liability—the whole or that part of the premium, as appropriate; or
- (c) if neither paragraph (a) nor (b) applies:
  - (i) if the policy is an \*endowment policy—10% of the premium; or
  - (ii) if the policy is a \*whole of life policy—30% of the premium; or
  - (iii) otherwise—so much of the premium as an \*actuary determines to be attributable to such a liability.

**320-60 Deduction for life insurance premiums where liabilities under life insurance policies are to be discharged from segregated exempt assets**

A \*life insurance company can deduct the amounts of \*life insurance premiums transferred in the income year to its \*segregated exempt assets under subsection 320-240(3).

**320-65 Deduction for life insurance premiums in respect of life insurance policies that provide for participating or discretionary benefits**

A \*life insurance company can deduct the amounts of \*net premiums received in respect of \*life insurance policies (other than \*complying superannuation/FHSA life insurance policies or \*exempt life insurance policies) that provide for \*participating benefits or \*discretionary benefits.

**320-70 No deduction for life insurance premiums in respect of certain life insurance policies payable only on death or disability**

- (1) A \*life insurance company cannot deduct any part of the amounts of \*life insurance premiums received in respect of \*life insurance policies under which amounts are to be paid only on the death or disability of a person.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 320-75

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- (2) This section does not apply to:
- (a) \*life insurance policies that provide for \*participating benefits or \*discretionary benefits; or
  - (b) funeral policies.

**320-75 Deduction for ordinary investment policies**

- (1) This section applies to a \*life insurance company in respect of \*ordinary investment policies issued by the company.
- (2) The company can deduct, in respect of \*life insurance premiums received in the income year for those policies:
- (a) the sum of the \*net premiums;
- less:
- (b) so much of the net premiums as an \*actuary determines to be attributable to fees and charges charged in that income year.
- (3) In making a determination under subsection (2), an \*actuary is to have regard to:
- (a) the changes over the income year in the sum of the \*net current termination values of the policies; and
  - (b) the movements in those values during the income year.
- (4) In addition, if an \*actuary determines that:
- (a) there has been a reduction in the income year (the *current year*) of exit fees that were imposed in respect of those policies in a previous income year; and
  - (b) the reduction (or a part of it) has not been taken into account in a determination under subsection (2) for the current year;
- the company can deduct so much of that reduction as has not been so taken into account.

**320-80 Deduction for certain claims paid under life insurance policies**

- (1) A \*life insurance company can deduct the amounts paid in respect of the \*risk components of claims paid under \*life insurance policies during the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The **risk component** of a claim paid under a \*life insurance policy is:
- (a) if:
    - (i) the policy does not provide for \*participating benefits or \*discretionary benefits; and
    - (ii) the policy is neither an \*exempt life insurance policy nor a \*funeral policy; and
    - (iii) an amount is payable under the policy only on the death or disability of the insured person;  
the amount paid under the policy as a result of the occurrence of that event; or
  - (b) if the policy provides for participating benefits or discretionary benefits or is an exempt life insurance policy, \*FHSA or a funeral policy—nil; or
  - (c) otherwise—the amount paid under the policy as a result of the death or disability of the insured person *less* the \*current termination value of the policy (calculated by an \*actuary) immediately before the death, or the occurrence of the disability, of the person.
- (3) Except as provided by subsection (1), a \*life insurance company cannot deduct amounts paid in respect of claims under \*life insurance policies.

### **320-85 Deduction for increase in value of liabilities under net risk components of life insurance policies**

- (1) A \*life insurance company can deduct the amount (if any) by which the \*value, at the end of the income year, of its liabilities under the \*net risk components of \*life insurance policies exceeds the value, at the end of the previous income year, of those liabilities.

Note 1: Where the value at the end of the income year is less than the value at the end of the previous income year, the difference is included in assessable income: see paragraph 320-15(1)(h).

Note 2: Section 320-85 of the *Income Tax (Transitional Provisions) Act 1997* makes special provision in respect of the calculation of the value of a life insurance company's liabilities under the net risk components of life insurance policies at the end of the income year immediately preceding the income year in which 1 July 2000 occurs.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) Subsection (1) does not cover any liabilities under:
- (a) a \*life insurance policy that provides for \*participating benefits or \*discretionary benefits; or
  - (b) an \*exempt life insurance policy; or
- (ba) is an \*FHSA; or
- (c) a \*funeral policy.
- (3) If a \*life insurance policy is a \*disability policy (other than a \*continuous disability policy), the *value* at a particular time of the liabilities of the \*life insurance company under the \*net risk component of the policy is the \*current termination value of the component at that time (calculated by an \*actuary).
- (4) In the case of \*life insurance policies other than policies to which subsection (3) applies, the *value* at a particular time of the liabilities of the \*life insurance company under the \*net risk components of the policies is the amount calculated by an \*actuary to be:
- (a) the sum of the policy liabilities (as defined in the \*Valuation Standard) in respect of the net risk components of the policies at that time;
- less
- (b) the sum of any cumulative losses (as defined in the Valuation Standard) for the net risk components of the policies at that time.

**320-87 Deduction for assets transferred from or to complying superannuation/FHSA asset pool**

- (1) A \*life insurance company can deduct the \*transfer values of assets that are transferred by the company in the income year from a \*complying superannuation/FHSA asset pool under subsection 320-180(1) or 320-195(3).
- (2) A \*life insurance company can deduct the \*transfer values of assets that are transferred by the company in the income year to a \*complying superannuation/FHSA asset pool under subsection 320-180(3) or 320-185(1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) If an asset (other than money) is transferred by a \*life insurance company:
- (a) from a \*complying superannuation/FHSA asset pool under subsection 320-180(1) or 320-195(2) or (3); or
  - (b) to a complying superannuation/FHSA asset pool under subsection 320-180(3) or section 320-185;
- the company can deduct the amount (if any) that it can deduct because of section 320-200.

### **320-100 Deduction for life insurance premiums paid under certain contracts of reinsurance**

A \*life insurance company can deduct amounts that:

- (a) were paid by the company in the income year as \*life insurance premiums under \*contracts of reinsurance; and
- (b) do not relate to a risk, or part of a risk, in relation to which subsection 148(1) of the *Income Tax Assessment Act 1936* applies.

### **320-105 Deduction for assets transferred to segregated exempt assets**

- (1) A \*life insurance company can deduct the \*transfer values of assets transferred in the income year to the company's \*segregated exempt assets under subsection 320-235(3) or 320-240(1).
- (2) If an asset (other than money) is transferred to a \*life insurance company's \*segregated exempt assets under subsection 320-235(3) or section 320-240, the company can deduct the amount (if any) that it can deduct because of section 320-255.

### **320-107 Deductions for increased amount of lump sum death benefit**

- (1) A \*life insurance company can deduct an amount under this section if:
  - (a) it pays a lump sum because of the death of a person to the trustee of the deceased's estate or an individual who was a \*spouse, former spouse or \*child of the deceased at the time of death or payment; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 320-110

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- (b) the payment is in relation to the commutation of, or is of the capital amount payable on the termination of, an \*exempt life insurance policy or a life insurance policy covered by subparagraph (b)(i) of the definition of *complying superannuation/FHSA life insurance policy* in subsection 995-1(1) while the policy was held by the deceased by reason that the deceased would have been entitled to receive the \*annuity concerned; and
- (c) it increases the lump sum by an amount (the *tax saving amount*) so that the amount of the lump sum is the amount that the company could have paid if no tax were payable on amounts included in its assessable income under Subdivision 320-B.

(2) The company can deduct the amount for the income year in which the lump sum is paid.

(3) The amount the company can deduct is:

$$\frac{\text{Tax saving amount}}{\text{Complying superannuation/FHSA class rate}}$$

where:

*complying superannuation/FHSA class rate* is the rate of tax imposed on the \*complying superannuation/FHSA class of the company's taxable income for the income year.

(4) The amount the company can deduct for a sum paid because of the death of a person to the trustee of the deceased's estate is so much of the subsection (3) amount as is appropriate having regard to the extent to which individuals referred to in paragraph (1)(a) can reasonably be expected to benefit from the estate.

**320-110 Deduction for interest credited to income bonds**

(1) A \*life insurance company that is a \*friendly society can deduct interest credited in the income year to the holders of \*income bonds issued after 31 December 2002 where the interest accrued on or after 1 January 2003.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) This section has effect despite subsection 320-80(3).

### **320-111 Deduction for funeral policy payout**

- (1) A \*life insurance company that is a \*friendly society can deduct the amount of a benefit provided in the income year by the company under a \*funeral policy issued after 31 December 2002, reduced by so much of the sum of the amounts deducted or deductible by the company under section 320-75 for any income year as is reasonably related to the benefit.
- (2) This section has effect despite subsection 320-80(3).

### **320-112 Deduction for scholarship plan payout**

- (1) A \*life insurance company that is a \*friendly society can deduct the amount of a benefit it provides in the income year and on or after 1 January 2003:
- (a) under a \*scholarship plan covered by subsection (2) or (3); and
  - (b) to, or on behalf of, a person nominated in the plan as a beneficiary whose education is to be helped by the benefit;
- reduced by so much of the sum of the amounts deducted or deductible by the company under section 320-75 for any income year as is reasonably related to the benefit.
- (2) This subsection covers a \*scholarship plan issued by the \*life insurance company after 31 December 2002.
- (3) This subsection covers a \*scholarship plan if:
- (a) the plan was issued by the \*life insurance company before 1 January 2003; and
  - (b) no amount received by the company on or after 1 January 2003 and attributable to the plan is \*non-assessable non-exempt income of the company under paragraph 320-37(1)(d).
- (4) This section has effect despite subsection 320-80(3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **320-115 No deduction for amounts credited to RSAs**

A \*life insurance company that is an \*RSA provider cannot deduct amounts credited to \*RSAs.

### **320-120 Capital losses from assets other than complying superannuation/FHSA assets or segregated exempt assets**

- (1) This section applies to assets (*ordinary assets*) of a \*life insurance company other than:
  - (a) \*complying superannuation/FHSA assets; or
  - (b) \*segregated exempt assets.
- (2) In working out a \*life insurance company's \*net capital gain or \*net capital loss for the income year, \*capital losses from ordinary assets can be used only to reduce \*capital gains from ordinary assets.
- (3) If some or all of a \*capital loss from an ordinary asset cannot be applied in an income year, the unapplied amount can be applied in the next income year in which the company's \*capital gains from ordinary assets exceed the company's capital losses (if any) from ordinary assets.
- (4) If the company has 2 or more unapplied \*net capital losses from ordinary assets, the company must apply them in the order in which they were made.

Note: This section affects the amount of assessable income that is to be taken into account in working out a taxable income or tax loss of the ordinary class: see sections 320-139 and 320-143.

### **320-125 Capital losses from complying superannuation/FHSA assets**

- (1) In working out a \*life insurance company's \*net capital gain or \*net capital loss for the income year, \*capital losses from \*complying superannuation/FHSA assets can be used only to reduce \*capital gains from complying superannuation/FHSA assets.
- (2) If some or all of a \*capital loss from a \*complying superannuation/FHSA asset cannot be applied in an income year, the unapplied amount can be applied in the next income year in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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which the company's \*capital gains from \*complying superannuation/FHSA assets exceed the company's capital losses (if any) from complying superannuation/FHSA assets.

- (3) If the company has 2 or more unapplied \*net capital losses from \*complying superannuation/FHSA assets, the company must apply them in the order in which they were made.

Note: This section affects the amount of assessable income that is to be taken into account in working out a taxable income or tax loss of the complying superannuation/FHSA class: see sections 320-137 and 320-141.

## **Subdivision 320-D—Income tax, taxable income and tax loss of life insurance companies**

### **Guide to Subdivision 320-D**

#### **320-130 What this Subdivision is about**

This Subdivision explains how a life insurance company's income tax is worked out.

For that purpose, this Subdivision enables a life insurance company to have taxable incomes and tax losses of the following classes:

- the complying superannuation/FHSA class;
- the ordinary class.

#### **320-131 Overview of Subdivision**

##### *Working out the income tax*

- (1) In any income year, a life insurance company can have:
- (a) a taxable income of the complying superannuation/FHSA class and/or a taxable income of the ordinary class; or
  - (b) a tax loss of the complying superannuation/FHSA class and/or a tax loss of the ordinary class; or
  - (c) a taxable income of one class and a tax loss of the other class.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 320-131

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Note: The taxable incomes mentioned in paragraph (a) are taxed at different rates: see section 23A of the *Income Tax Rates Act 1986*.

- (2) Taxable incomes and tax losses of both classes are taken into account in working out the amount of income tax that the company has to pay for the income year (see section 320-134). That amount is then taken to be the income tax on the company's taxable income for that income year.

*Working out taxable income and tax loss of each class*

- (3) In general, the rules in this Act about working out a company's taxable income or tax loss, or deducting a company's tax loss, apply to a life insurance company in relation to:
- (a) working out a taxable income or tax loss of a particular class; or
  - (b) deducting a tax loss of a particular class.
- (4) However, that general rule is subject to the following:
- (a) sections 320-137 to 320-143, which allocate amounts of incomes and deductions for the purposes of working out a taxable income or tax loss of a particular class;
  - (b) subsections 320-141(2) and 320-143(2), which provide that tax losses of a particular class can be deducted only from incomes in respect of that class;
  - (c) section 320-149, which sets out the provisions in this Act that have effect only in relation to a taxable income or tax loss of the ordinary class.

**Table of sections**

**General rules**

320-133	Object of Subdivision
320-134	Income tax of a life insurance company
320-135	Taxable income and tax loss of each of the 2 classes

**Taxable income and tax loss of life insurance companies**

320-137	Taxable income—complying superannuation/FHSA class
320-139	Taxable income—ordinary class

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- 320-141 Tax loss—complying superannuation/FHSA class
- 320-143 Tax loss—ordinary class
- 320-149 Provisions that apply only in relation to the ordinary class

## General rules

### 320-133 Object of Subdivision

- (1) The object of this Subdivision is to ensure that:
  - (a) for the purposes of working out the amount of a \*life insurance company's income tax for an income year:
    - (i) the company's taxable income or \*tax loss of one \*class is worked out separately from its taxable income or tax loss of the other class; and
    - (ii) the company's tax losses of a particular class can be deducted only from its incomes in respect of that class; and
  - (b) for the purposes of this Act, that amount of income tax is treated as the company's income tax on its taxable income for that income year.
- (2) In subsection (1), a *class* means the \*complying superannuation/FHSA class or the \*ordinary class.

### 320-134 Income tax of a life insurance company

#### *Working out the income tax*

- (1) Work out a \*life insurance company's income tax for an income year under section 4-10 as follows:
  - (a) apply steps 1 and 2 of the method statement in subsection 4-10(3) to work out separately the amount that would be the company's basic income tax liability for its taxable income of each \*class for that year;
  - (b) treat the sum of these amounts as the company's basic income tax liability for that year and apply step 4 of the method statement to subtract its \*tax offsets from that sum.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 320-135

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- (2) For the purposes of this Act:
- (a) the income tax worked out in accordance with subsection (1) is taken to be the company's income tax on its taxable income for the income year; and
  - (b) except as provided by subsection (1) of this section and sections 320-135 to 320-149, the company's taxable income for that year is taken to be equal to the sum of the company's taxable incomes of the 2 \*classes for that year.

Note: This means that there is only one assessment in respect of the company's taxable income for the income year and that the income tax constitutes only one debt to the Commonwealth.

*Working out the income tax on certain assumptions*

- (3) Subsection (1) also has effect in relation to working out an amount that would be the company's income tax if certain assumptions were made. It has that effect in the same way as it has effect in relation to working out the company's income tax under section 4-10 (except in regard to those assumptions).

Note: This means, for example, subsection (1) also has effect in relation to working out the amount of a life insurance company's income tax on the basis of the tax offset priority rules in Division 63.

**320-135 Taxable income and tax loss of each of the 2 classes**

- (1) Subject to the other provisions in this Subdivision:
- (a) this Act has effect for a \*life insurance company in relation to working out a taxable income of a particular \*class in the same way as it has effect in relation to working out a taxable income of any other company; and
  - (b) this Act has effect for a life insurance company in relation to working out or deducting a \*tax loss of a particular class in the same way as it has effect in relation to working out or deducting a tax loss of any other company.
- (2) Sections 320-137 to 320-143 have effect in addition to other provisions in this Act that relate to working out a taxable income or \*tax loss, or deducting a tax loss (as appropriate).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) Nothing in this Subdivision prevents a \*life insurance company from:
- (a) having taxable incomes, or \*tax losses, of both \*classes for the same income year; or
  - (b) having a taxable income of one class and a tax loss of the other class for the same income year.

Note: In certain circumstances, a life insurance company can have a taxable income and a tax loss of the same class in an income year (see Subdivision 165-B as it has effect under this Subdivision).

## Taxable income and tax loss of life insurance companies

### 320-137 Taxable income—complying superannuation/FHSA class

- (1) A \*life insurance company's taxable income of the **complying superannuation/FHSA class** is a taxable income worked out under this Act on the basis of only:
- (a) assessable income of the company that is covered by subsection (2); and
  - (b) deductions of the company that are covered by subsection (4); and
  - (c) \*tax losses of the company that are of the \*complying superannuation/FHSA class.

Note: For the usual way of working out a taxable income: see subsection 4-15(1). For other ways of working out a taxable income: see subsection 4-15(2).

#### *Relevant assessable income*

- (2) This subsection covers the following assessable income of a \*life insurance company:
- (a) assessable income \*derived by the company from the investment of its \*complying superannuation/FHSA assets in relation to the period during which those assets were complying superannuation/FHSA assets;
  - (b) so much of the amount that is included in the company's assessable income because of paragraph 320-15(1)(a) as is equal to the total \*transfer value of assets transferred in the income year by the company to a \*complying

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- superannuation/FHSA asset pool under subsection 320-185(3);
- (c) if an asset (other than money) is transferred by the company from a complying superannuation/FHSA asset pool under subsection 320-180(1) or 320-195(2) or (3)—amounts that are included in the company's assessable income because of section 320-200;
  - (d) amounts that are included in the company's assessable income because of paragraph 320-15(1)(db), (i) or (j);
  - (e) amounts that are included in the company's assessable income under subsection 115-280(4);
  - (f) subject to subsection (3), so much of the company's assessable income for the income year as is:
    - (i) the total amount credited during that year to the \*RSAs provided by the company; less
    - (ii) the total amount debited during that year from the RSAs.

*Amounts disregarded for RSAs*

- (3) In working out the amount mentioned in paragraph (2)(f), disregard the following amounts:
  - (a) contributions credited to the \*RSAs that would not be included in the company's assessable income under Subdivision 295-C if that Subdivision applied to the company;
  - (b) amounts debited from the RSAs that are benefits paid to, or in respect of, the holders of the RSAs;
  - (c) income tax debited from the RSAs;
  - (d) if an \*annuity was paid from an RSA in respect of the whole of the income year, or the whole of the part of the income year in which the RSA existed, the total amount credited to the RSA during the income year;
  - (e) if an annuity was paid from an RSA in respect of a part, but not the whole, of the portion of the income year in which the RSA existed, so much of the total amount credited to the RSA during the income year as is equal to the amount worked out using the following formula:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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$$\text{Total amount credited to the *RSA during the income year} \times \frac{\text{Number of days in the part of the income year in which the *annuity was paid}}{\text{Number of days in the income year in which the RSA existed}}$$

*Relevant deductions*

- (4) This subsection covers the following deductions of a \*life insurance company:
- (a) amounts that the company can deduct under section 320-55;
  - (b) amounts that the company can deduct (other than any \*tax losses) in respect of the investment of the company's \*complying superannuation/FHSA assets in relation to the period during which those assets were complying superannuation/FHSA assets;
  - (c) amounts that the company can deduct under section 320-87 because of subsection (1) or paragraph (3)(a) of that section;
  - (d) amounts that the company can deduct under subsection 115-280(1);
  - (e) so much of the amounts that the company can deduct under subsection 115-215(6) as are attributable to \*capital gains that:
    - (i) the company is taken to have under subsection 115-215(3); and
    - (ii) are in respect of the investment of the company's complying superannuation/FHSA assets; and
    - (iii) are in relation to the period during which those assets were complying superannuation/FHSA assets.

**320-139 Taxable income—ordinary class**

A \*life insurance company's taxable income of the *ordinary class* is a taxable income worked out under this Act on the basis of only:

- (a) assessable income of the company that is not covered by subsection 320-137(2); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 320-141

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- (b) amounts (other than \*tax losses) that the company can deduct and are not covered by subsection 320-137(4); and
- (c) tax losses of the company that are of the \*ordinary class.

Note: For the usual way of working out a taxable income: see subsection 4-15(1). For other ways of working out a taxable income: see subsection 4-15(2).

**320-141 Tax loss—complying superannuation/FHSA class**

*Working out a tax loss of the complying superannuation/FHSA class*

- (1) A \*life insurance company's \*tax loss of the ***complying superannuation/FHSA class*** is a tax loss worked out under this Act on the basis of only:
  - (a) assessable income of the company that is covered by subsection 320-137(2); and
  - (b) deductions of the company that are covered by subsection 320-137(4); and
  - (c) \*net exempt income of the company that is attributable to \*exempt income \*derived:
    - (i) from the company's \*complying superannuation/FHSA assets; and
    - (ii) in relation to the period during which those assets were complying superannuation/FHSA assets.

Note: For the usual way of working out a tax loss: see section 36-10. For other ways of working out a tax loss: see section 36-25.

*Deducting a tax loss of the complying superannuation/FHSA class*

- (2) A \*life insurance company's \*tax loss of the ***complying superannuation/FHSA class*** can be deducted under this Act only from:
  - (a) \*net exempt income of the company that is attributable to \*exempt income \*derived:
    - (i) from the company's \*virtual PST assets; and
    - (ii) in relation to the period during which those assets were virtual PST assets; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) assessable income of the company that is covered by subsection 320-137(2), reduced by deductions of the company that are covered by subsection 320-137(4).

Note: For the usual way of deducting a tax loss: see section 36-17. For other ways of deducting a tax loss: see section 36-25.

### **320-143 Tax loss—ordinary class**

#### *Working out a tax loss of the ordinary class*

- (1) A \*life insurance company's \*tax loss of the **ordinary class** is a tax loss worked out under this Act on the basis of only:
- (a) assessable income of the company that is not covered by subsection 320-137(2); and
  - (b) amounts (other than tax losses) that the company can deduct and are not covered by subsection 320-137(4); and
  - (c) \*net exempt income of the company that is not attributable to \*exempt income \*derived:
    - (i) from the company's \*complying superannuation/FHSA assets; and
    - (ii) in relation to the period during which those assets were complying superannuation/FHSA assets.

Note: For the usual way of working out a tax loss: see section 36-10. For other ways of working out a tax loss: see section 36-25.

#### *Deducting a tax loss of the ordinary class*

- (2) A \*life insurance company's \*tax loss of the **ordinary class** can be deducted under this Act only from:
- (a) \*net exempt income of the company that is not attributable to \*exempt income \*derived:
    - (i) from the company's \*complying superannuation/FHSA assets; and
    - (ii) in relation to the period during which those assets were complying superannuation/FHSA assets; and
  - (b) assessable income of the company that is not covered by subsection 320-137(2), reduced by amounts (other than tax losses) that the company can deduct and are not covered by subsection 320-137(4).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: For the usual way of deducting a tax loss: see section 36-17. For other ways of deducting a tax loss: see section 36-25.

### **320-149 Provisions that apply only in relation to the ordinary class**

- (1) The provisions covered by subsection (2):
  - (a) have effect as provided by section 320-135 in relation to a \*life insurance company's taxable income, or \*tax loss, of the \*ordinary class; but
  - (b) have no effect in relation to the company's taxable income, or tax loss, of the \*complying superannuation/FHSA class.
- (2) This subsection covers these provisions:
  - (a) section 36-55;
  - (b) Division 165 (except Subdivision 165-CD).

Example 1: A life insurance company that has an amount of excess franking offsets will need to recalculate its tax loss of the ordinary class under section 36-55. But its tax loss of the complying superannuation/FHSA class is unaffected by that section.

Example 2: A life insurance company that fails to meet the relevant tests of Division 165 will need to recalculate the ordinary class of its taxable income and tax loss under Subdivision 165-B. But the complying superannuation/FHSA class of its taxable income and tax loss are unaffected by that Subdivision.

### **Subdivision 320-E—No-TFN contributions of life insurance companies that are RSA providers**

#### **Guide to Subdivision 320-E**

#### **320-150 What this Subdivision is about**

This Subdivision makes Subdivisions 295-I and 295-J apply to life insurance companies that are RSA providers.

The consequence is that those life insurance companies are liable to pay tax on no-TFN contributions income under Subdivision 295-I. They may also be entitled to a tax offset under Subdivision 295-J.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Table of sections

### Operative provisions

320-155 Subdivisions 295-I and 295-J apply to companies that are RSA providers

## Operative provisions

### 320-155 Subdivisions 295-I and 295-J apply to companies that are RSA providers

- (1) Despite subsection 295-5(4), Subdivisions 295-I and 295-J apply to a \*life insurance company that is an \*RSA provider.
- (2) For the purposes of the application of those Subdivisions to a \*life insurance company, a contribution included in the assessable income of the company under paragraph 320-15(1)(l) is taken to have been included under Subdivision 295-C.

## Subdivision 320-F—Complying superannuation/FHSA asset pool

### Guide to Subdivision 320-F

#### 320-165 What this Subdivision is about

This Subdivision explains how a life insurance company can segregate assets (to be known as a *complying superannuation/FHSA asset pool*) to be used for the sole purpose of discharging its complying superannuation liabilities.

## Table of sections

### Operative provisions

320-170 Establishment of complying superannuation/FHSA asset pool  
320-175 Valuations of complying superannuation/FHSA assets and complying superannuation/FHSA liabilities for each valuation time  
320-180 Consequences of a valuation under section 320-175

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 320-170

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- 320-185 Transfer of assets to complying superannuation/FHSA asset pool otherwise than as a result of a valuation under section 320-175
- 320-190 Complying superannuation/FHSA liabilities
- 320-195 Transfer of assets and payment of amounts from a complying superannuation/FHSA asset pool otherwise than as a result of a valuation under section 320-175
- 320-200 Consequences of transfer of assets to or from complying superannuation/FHSA asset pool

## **Operative provisions**

### **320-170 Establishment of complying superannuation/FHSA asset pool**

- (1) A \*life insurance company may, on or after 1 July 2000, segregate in accordance with subsections (2) and (3) any of its assets for the sole purpose of discharging its \*complying superannuation/FHSA liabilities out of those assets.
- (1A) Except as provided by section 320-170 of the *Income Tax (Transitional Provisions) Act 1997*, an asset is taken not to be included in the \*complying superannuation/FHSA assets unless the whole of the asset is included among those assets.
- (2) The assets segregated must, at the time of the segregation, be a representative sample of all the company's assets that support its \*complying superannuation/FHSA liabilities immediately before the segregation.
- (3) The assets segregated must have, as at the time of the segregation, a total \*transfer value that does not exceed the sum of:
  - (a) the company's \*complying superannuation/FHSA liabilities as at that time; and
  - (b) any reasonable provision made by the company at that time in its accounts for liability for income tax in respect of the assets segregated.
- (4) A \*life insurance company that segregates assets as mentioned in subsections (1) to (3) at a time after 1 July 2000 but before 1 October 2000 is taken to have segregated those assets in accordance with those subsections on 1 July 2000.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (5) If a segregation of assets is made in accordance with the above subsections, the company must use the segregated assets, and any other assets afterwards included among the segregated assets, only for the purpose of discharging its \*complying superannuation/FHSA liabilities.
- (6) The assets from time to time segregated are together to be known as the ***complying superannuation/FHSA asset pool*** and each asset from time to time included among those assets is to be known as a ***complying superannuation/FHSA asset***.
- (7) In this Subdivision:
  - (a) a reference to the transfer of an asset to, or from, the \*complying superannuation/FHSA asset pool:
    - (i) is a reference to the inclusion of the asset among the segregated assets, or the exclusion of an asset from the segregated assets, as the case may be; and
    - (ii) includes a reference to the transfer of money to, or from, the complying superannuation/FHSA asset pool, as the case may be; and
  - (b) if an asset transferred to or from the complying superannuation/FHSA asset pool is money, a reference to the \*transfer value of the asset transferred is a reference to the amount of the money.

### **320-175 Valuations of complying superannuation/FHSA assets and complying superannuation/FHSA liabilities for each valuation time**

- (1) A \*life insurance company that has established a \*complying superannuation/FHSA asset pool must cause the following amounts to be calculated within the period of 60 days starting immediately after each \*valuation time:
  - (a) the total \*transfer value of the company's \*complying superannuation/FHSA assets as at the valuation time;
  - (b) the company's \*complying superannuation/FHSA liabilities as at the valuation time.

Note: The time when a life insurance company joins or leaves a consolidated group is also a valuation time: see section 713-525.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 320-180

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- (2) These are the *valuation times*:
- (a) the end of the income year in which the \*complying superannuation/FHSA asset pool was established;
  - (b) the end of each later income year.

Note 1: The time when a life insurance company joins or leaves a consolidated group is also a valuation time: see sections 713-525 and 713-585.

Note 2: A life insurance company that fails to comply with this section is liable to an administrative penalty: see section 288-70 in Schedule 1 to the *Taxation Administration Act 1953*.

**320-180 Consequences of a valuation under section 320-175**

*Transfer from the complying superannuation/FHSA asset pool*

- (1) If the total \*transfer value of the company's \*complying superannuation/FHSA assets as at a \*valuation time exceeds the sum of:
- (a) the company's \*complying superannuation/FHSA liabilities as at that time; and
  - (b) any reasonable provision made by the company at that time in its accounts for liability for income tax in respect of those assets;
- the company must transfer, from the \*complying superannuation/FHSA asset pool, assets of any kind having a total transfer value equal to the excess.
- (2) A transfer under subsection (1) must be made within the period of 30 days starting immediately after:
- (a) the day on which the total \*transfer value and the \*complying superannuation/FHSA liabilities (as at the \*valuation time) were calculated; or
  - (b) if those amounts were calculated on different days—the later of those days.

The transfer, once made, is taken to have been made at the valuation time (whether or not the transfer is made within those 30 days).

Note: A life insurance company that fails to comply with subsections (1) and (2) is liable to an administrative penalty: see section 288-70 in Schedule 1 to the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Transfer to the complying superannuation/FHSA asset pool*

- (3) If the total \*transfer value of the company's \*complying superannuation/FHSA assets as at a \*valuation time is less than the sum of:
- (a) the company's \*complying superannuation/FHSA liabilities as at that time; and
  - (b) any reasonable provision made by the company at that time in its accounts for liability for income tax in respect of those assets;
- the company can transfer, to the \*complying superannuation/FHSA asset pool, assets of any kind having a total transfer value not exceeding the difference.
- (4) A transfer under subsection (3) is taken to have been made at the \*valuation time if it is made within the period of 30 days starting immediately after:
- (a) the day on which the total \*transfer value and the \*complying superannuation/FHSA liabilities (as at the valuation time) were calculated; or
  - (b) if those amounts were calculated on different days—the later of those days.

**320-185 Transfer of assets to complying superannuation/FHSA asset pool otherwise than as a result of a valuation under section 320-175**

- (1) If a \*life insurance company determines, at a time other than a \*valuation time, that the total \*transfer value of the company's \*complying superannuation/FHSA assets as at that time is less than the sum of:
- (a) the company's \*complying superannuation/FHSA liabilities as at that time; and
  - (b) any reasonable provision made by the company at that time in its accounts for liability for income tax in respect of those assets;
- the company can transfer, to the \*complying superannuation/FHSA asset pool, assets of any kind having a total transfer value not exceeding the difference.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 320-190

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- (2) A \*life insurance company can at any time transfer an asset of any kind to a \*complying superannuation/FHSA asset pool in exchange for an amount of money equal to the \*transfer value of the asset at the time of the transfer.
- (3) A \*life insurance company can transfer to a \*complying superannuation/FHSA asset pool in an income year assets of any kind having a total \*transfer value not exceeding the total amount of the \*life insurance premiums paid to the company in that income year for the purchase of \*complying superannuation/FHSA life insurance policies.
- (4) Except as provided by this section and subsection 320-180(3), a \*life insurance company cannot transfer an asset to a \*complying superannuation/FHSA asset pool.

**320-190 Complying superannuation/FHSA liabilities**

- (1) The amount of the \*complying superannuation/FHSA liabilities of a \*life insurance company is to be worked out in accordance with subsection (2) in respect only of \*life insurance policies issued by the company:
  - (a) that are \*complying superannuation/FHSA life insurance policies; and
  - (b) the liabilities under which are to be discharged out of the company's \*complying superannuation/FHSA assets.
- (2) The amount of the *complying superannuation/FHSA liabilities* of a \*life insurance company at a particular time is the sum of the following amounts at that time, as calculated by an \*actuary:
  - (a) for policies providing for \*participating benefits or \*discretionary benefits:
    - (i) the values of supporting assets, as defined in the \*Valuation Standard; and
    - (ii) the \*policy owners' retained profits;
  - (b) for other policies—the \*current termination values.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**320-195 Transfer of assets and payment of amounts from a complying superannuation/FHSA asset pool otherwise than as a result of a valuation under section 320-175**

- (1) If:
- (a) a \*life insurance policy issued by a \*life insurance company becomes an \*exempt life insurance policy; and
  - (b) immediately before the policy became an exempt life insurance policy, the policy was a policy referred to in subsection 320-190(1);
- the company can transfer from a \*complying superannuation/FHSA asset pool, to its \*segregated exempt assets, assets of any kind whose total \*transfer value does not exceed the company's liabilities in respect of the policy.
- (2) A \*life insurance company can at any time transfer an asset from a \*complying superannuation/FHSA asset pool in exchange for an amount of money equal to the \*transfer value of the asset at the time of the transfer.
- (3) If a \*life insurance company:
- (a) imposes any fees or charges in respect of \*complying superannuation/FHSA assets; or
  - (b) imposes any fees or charges in respect of \*complying superannuation/FHSA life insurance policies other than policies:
    - (i) that provide \*superannuation death benefits, \*disability superannuation benefits or temporary disability benefits of a kind referred to in paragraph 295-460(c), that are \*participating benefits; and
    - (ii) the liabilities under which are to be discharged out of the company's \*complying superannuation/FHSA asset pool; or
  - (c) determines, at a time other than a \*valuation time, that the total \*transfer value of the company's complying superannuation/FHSA assets as at that time exceeds the sum of:
    - (i) the company's \*complying superannuation/FHSA liabilities at that time; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 320-200

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- (ii) any reasonable provision made by the company at that time in its accounts for liability for income tax in respect of those assets;

the company must, when the fees or charges are imposed or the excess is determined, as the case may be, transfer, from the \*complying superannuation/FHSA asset pool, assets having a total transfer value equal to the fees, charges or excess, as the case may be.

- (4) If:

- (a) any liabilities arise for the discharge of which a \*life insurance company's \*complying superannuation/FHSA asset pool is established; or
- (b) any expenses are incurred by a life insurance company directly in respect of \*complying superannuation/FHSA assets in relation to a period during which the assets are complying superannuation/FHSA assets; or
- (c) any liabilities to pay \*PAYG instalments, or income tax, that are attributable to the company's \*complying superannuation/FHSA assets;

the life insurance company must pay, from the complying superannuation/FHSA asset pool, any amounts required to discharge the liabilities, or amounts equal to the expenses (as appropriate).

**320-200 Consequences of transfer of assets to or from complying superannuation/FHSA asset pool**

- (1) This section applies if:

- (a) an asset (other than money) is transferred from a \*complying superannuation/FHSA asset pool under subsection 320-180(1) or 320-195(2) or (3); or
- (b) an asset (other than money) is transferred to a complying superannuation/FHSA asset pool under subsection 320-180(3) or section 320-185.

- (2) In determining:

- (a) for the purposes of this Act (other than Parts 3-1 and 3-3) whether an amount is included in, or can be deducted from,

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the assessable income of a \*life insurance company in respect of the transfer of the asset; or

- (b) for the purposes of Parts 3-1 and 3-3:
- (i) whether the company made a \*capital gain in respect of the transfer of the asset; or
  - (ii) whether the company made a \*capital loss in respect of the transfer of the asset;

the company is taken:

- (c) to have sold, immediately before the transfer, the asset transferred for a consideration equal to its \*market value; and
- (d) to have purchased the asset again at the time of the transfer for a consideration equal to its market value.

(2A) Without limiting subsection (2), where the asset transferred is a \*depreciating asset, Division 40 has effect for the company as if:

- (a) in relation to the sale of the asset that is taken to have occurred under paragraph (2)(c):
  - (i) the sale were a \*balancing adjustment event; and
  - (ii) the \*termination value of the asset for that event were equal to the consideration for the sale under that paragraph; and
  - (iii) the company had stopped \*holding the asset at the time of the sale; and
- (b) in relation to the purchase of the asset that is taken to have occurred under paragraph (2)(d):
  - (i) the company had only begun to hold the asset after the purchase; and
  - (ii) the first element of the asset's \*cost were equal to the consideration for the purchase under that paragraph; and
  - (iii) the company had acquired the asset from an \*associate of the company.

Note: This means that, amongst other things, as a result of the transfer:

- the asset's cost for the purposes of working out a deduction under Division 40 is reset; and
- the company's assessable income might be adjusted under section 40-285.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 320-220

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- (3) If, apart from this subsection and section 320-55, a \*life insurance company could deduct an amount or make a \*capital loss as a result of a transfer of an asset to or from its \*complying superannuation/FHSA asset pool, the deduction or capital loss is disregarded until:
- (a) the asset ceases to exist; or
  - (b) the asset, or a greater than 50% interest in it, is \*acquired by an entity other than an entity that is an \*associate of the company immediately after the transfer.
- (4) Subsection (3) does not apply in relation to an amount that the company can deduct under a provision in Division 40.

**Subdivision 320-H—Segregation of assets to discharge exempt life insurance policy liabilities**

**Guide to Subdivision 320-H**

**320-220 What this Subdivision is about**

This Subdivision explains how a life insurance company can segregate assets to be used for the sole purpose of discharging its liabilities under life insurance policies where the income derived by the company from those policies is exempt from income tax.

**Table of sections**

**Operative provisions**

320-225	Segregation of assets for purpose of discharging exempt life insurance policy liabilities
320-230	Valuations of segregated exempt assets and exempt life insurance policy liabilities for each valuation time
320-235	Consequences of a valuation under section 320-230
320-240	Transfer of assets to segregated exempt assets otherwise than as a result of a valuation under section 320-230
320-245	Exempt life insurance policy liabilities
320-246	Exempt life insurance policy

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- 320-247 Policy split into an exempt life insurance policy and another life insurance policy
- 320-250 Transfer of assets and payment of amounts from segregated exempt assets otherwise than as a result of a valuation under section 320-230
- 320-255 Consequences of transfer of assets to or from segregated exempt assets

## Operative provisions

### 320-225 Segregation of assets for purpose of discharging exempt life insurance policy liabilities

- (1) A \*life insurance company may, on or after 1 July 2000, segregate in accordance with subsections (2) and (3) any of its assets for the sole purpose of discharging its \*exempt life insurance policy liabilities out of those assets.

Note: Section 320-225 of the *Income Tax (Transitional Provisions) Act 1997* provides that a life insurance company may transfer a part of an asset to its segregated exempt assets before 1 October 2000.

- (1A) Except as provided by section 320-225 of the *Income Tax (Transitional Provisions) Act 1997*, an asset is taken not to be included in the segregated assets under this Subdivision unless the whole of the asset is included among the segregated assets.
- (2) The assets segregated must, at the time of the segregation, be a representative sample of all the company's assets that support its \*exempt life insurance policy liabilities immediately before the segregation.
- (3) The assets segregated must have, as at the time of the segregation, a total \*transfer value that does not exceed the amount of the company's \*exempt life insurance policy liabilities as at that time.
- (4) A \*life insurance company that segregates assets as mentioned in subsections (1) to (3) at a time after 1 July 2000 but before 1 October 2000 is taken to have segregated those assets in accordance with those subsections on 1 July 2000.
- (5) If a segregation of assets is made in accordance with the above subsections, the company must use the \*segregated exempt assets, and any other assets afterwards included among the segregated

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 320-230

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assets, only for the purpose of discharging its \*exempt life insurance policy liabilities.

- (6) In this Subdivision:
- (a) a reference to the transfer of an asset to, or from, a \*life insurance company's \*segregated exempt assets:
    - (i) is a reference to the inclusion of an asset among the segregated exempt assets, or the exclusion of an asset from the segregated exempt assets, as the case may be; and
    - (ii) includes a reference to the transfer of money to, or from, those assets, as the case may be; and
  - (b) if an asset transferred to or from those assets is money, a reference to the \*transfer value of the asset transferred is a reference to the amount of the money.

**320-230 Valuations of segregated exempt assets and exempt life insurance policy liabilities for each valuation time**

- (1) A \*life insurance company that has segregated any of its assets in accordance with section 320-225 must cause the following amounts to be calculated within the period of 60 days starting immediately after each \*valuation time:
- (a) the total \*transfer value of the company's \*segregated exempt assets as at the valuation time;
  - (b) the amount of the company's \*exempt life insurance policy liabilities as at the valuation time.

Note: The time when a life insurance company joins or leaves a consolidated group is also a valuation time: see section 713-525.

- (2) These are the *valuation times*:
- (a) the end of the income year in which the segregation occurred;
  - (b) the end of each later income year.

Note 1: The time when a life insurance company joins or leaves a consolidated group is also a valuation time: see sections 713-525 and 713-585.

Note 2: A life insurance company that fails to comply with this section is liable to an administrative penalty: see section 288-70 in Schedule 1 to the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **320-235 Consequences of a valuation under section 320-230**

#### *Transfer from the segregated exempt assets*

- (1) If:
- (a) the total \*transfer value of the company's \*segregated exempt assets as at a \*valuation time;  
*exceeds*
  - (b) the amount of the company's \*exempt life insurance policy liabilities as at that time;
- the company must transfer, from the segregated exempt assets, assets of any kind having a total transfer value equal to the excess.
- (2) A transfer under subsection (1) must be made within the period of 30 days starting immediately after:
- (a) the day on which the total \*transfer value and the \*exempt life insurance policy liabilities (as at the \*valuation time) were calculated; or
  - (b) if those amounts were calculated on different days—the later of those days.

The transfer, once made, is taken to have been made at the valuation time (whether or not the transfer is made within those 30 days).

Note: A life insurance company that fails to comply with subsections (1) and (2) is liable to an administrative penalty: see section 288-70 in Schedule 1 to the *Taxation Administration Act 1953*.

#### *Transfer to the segregated exempt assets*

- (3) If:
- (a) the total \*transfer value of the company's \*segregated exempt assets as at a \*valuation time;  
*is less than*
  - (b) the amount of the company's \*exempt life insurance policy liabilities as at that time;
- the company can transfer, to the segregated exempt assets, assets of any kind having a total transfer value not exceeding the difference.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 320-240

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- (4) A transfer under subsection (3) is taken to have been made at the \*valuation time if it is made within the period of 30 days starting immediately after:
- (a) the day on which the total \*transfer value and the \*exempt life insurance policy liabilities (as at the valuation time) were calculated; or
  - (b) if those amounts were calculated on different days—the later of those days.

**320-240 Transfer of assets to segregated exempt assets otherwise than as a result of a valuation under section 320-230**

- (1) If a \*life insurance company determines, at a time other than a \*valuation time, that:
- (a) the total \*transfer value of the company's \*segregated exempt assets as at that time;  
*is less than*
  - (b) the company's \*exempt life insurance policy liabilities as at that time;
- the company can transfer, to the segregated exempt assets, assets of any kind having a total transfer value not exceeding the difference.
- (2) A \*life insurance company can at any time transfer an asset of any kind to its \*segregated exempt assets in exchange for an amount of money equal to the \*transfer value of the asset at the time of the transfer.
- (3) A \*life insurance company can transfer, to its \*segregated exempt assets in an income year, assets of any kind having a total \*transfer value not exceeding the total amount of the \*life insurance premiums paid to the company in that income year for the purchase of \*exempt life insurance policies.
- (4) Except as provided by this section and subsections 320-195(1) and 320-235(3), a \*life insurance company cannot transfer an asset to its \*segregated exempt assets.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **320-245 Exempt life insurance policy liabilities**

- (1) The amount of the \*exempt life insurance policy liabilities of a \*life insurance company is to be worked out in accordance with subsection (2) in respect only of \*life insurance policies issued by the company:
  - (a) that are \*exempt life insurance policies; and
  - (b) the liabilities under which are to be discharged out of the company's \*segregated exempt assets.
  
- (2) The amount of the *exempt life insurance policy liabilities* of a \*life insurance company at a particular time is the sum of the following amounts at that time, as calculated by an \*actuary:
  - (a) for policies providing for allocated benefits (other than \*participating benefits or \*discretionary benefits)—the \*current termination values;
  - (b) for policies providing for participating benefits or discretionary benefits:
    - (i) the values of supporting assets, as defined in the \*Valuation Standard; and
    - (ii) the \*policy owner's retained profits;
  - (c) for other policies—the policy liabilities, as defined in the Valuation Standard.
  
- (3) An \*exempt life insurance policy *provides for allocated benefits* if:
  - (a) the policy:
    - (i) is held by the trustee of a \*complying superannuation fund; and
    - (iii) provides for an \*allocated pension; or
  - (b) the policy:
    - (i) is held by a \*life insurance company other than the life insurance company that issued the policy; and
    - (ii) is a \*segregated exempt asset of the life insurance company that issued the policy; and
    - (iii) provides for an allocated pension; or
  - (c) the policy provides for an \*allocated annuity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**320-246 Exempt life insurance policy**

- (1) An *exempt life insurance policy* is a \*life insurance policy (other than an \*RSA):
- (a) that is held by the trustee of a \*complying superannuation fund and provides solely for the discharge of the fund's liabilities (contingent or not) in respect of \*superannuation income stream benefits that are currently payable by the fund; or
  - (b) that is held by the trustee of a \*pooled superannuation trust, where:
    - (i) the policy provides solely for the discharge of the liabilities (contingent or not) in respect of \*superannuation income stream benefits that are currently payable by complying superannuation funds; and
    - (ii) the funds are unit holders of the trust; or
  - (c) that is held by another \*life insurance company and is a \*segregated exempt asset of that other company; or
  - (d) that is held by the trustee of a \*constitutionally protected fund; or
  - (e) that provides for an \*immediate annuity that:
    - (i) was purchased on or before 9 December 1987 and was not purchased wholly or partly with a \*roll-over superannuation benefit; or
    - (ii) satisfies the conditions in subsections (3), (4) and (5) and was purchased on or before 9 December 1987 wholly or partly with a roll-over superannuation benefit; or
    - (iii) satisfies the conditions in subsections (3), (4) and (5) and was purchased after 9 December 1987; or
    - (iv) satisfies the conditions in subsections (3), (4) and (5) and was purchased on or after 1 July 2007; or
  - (f) that provides for either or both of the following:
    - (i) a \*personal injury annuity, payments of which are exempt from income tax under Division 54;
    - (ii) a \*personal injury lump sum, payment of which is exempt from income tax under Division 54.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: A part of a life insurance policy may be taken to be an exempt life insurance policy under section 320-247.

- (3) An \*immediate annuity satisfies the conditions in this subsection if it is payable until the later of:
- (a) the death of a person (or the death of the last to die of 2 or more persons); or
  - (b) the end of a fixed term.
- (4) An \*immediate annuity satisfies the conditions in this subsection if the contract under which it is payable does not permit:
- (a) the total amount payable for its commutation to exceed:
    - (i) if the annuity is a \*superannuation income stream that was purchased on or after 1 July 2007—the amount of the \*taxable component of the \*superannuation interest supporting the superannuation income stream; or
    - (ii) if subparagraph (i) does not apply—its reduced purchase price (within the meaning of former section 27A of the *Income Tax Assessment Act 1936* just before the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Simplification) Act 2007*).
  - (b) any payment of its residual capital value (within the meaning of that section) to exceed its purchase price (within the meaning of that section).
- (5) An \*immediate annuity satisfies the conditions in this subsection if there is no unreasonable deferral of the payments of the annuity, having regard to:
- (a) to the extent to which the payments depend on the returns of the investment of the assets of the \*life insurance company paying the annuity—when the payments are made and when those returns are \*derived; and
  - (b) to the extent to which the payments do not depend on those returns—the relative sizes of the payments from year to year; and
  - (c) any other relevant factors.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**320-247 Policy split into an exempt life insurance policy and another life insurance policy**

*When is a part of a policy taken to be an exempt life insurance policy?*

- (1) A part of a \*life insurance policy (the *original policy*) is taken to be an \*exempt life insurance policy for the purposes of this Act if:
  - (a) the part provides solely for the discharge of the liabilities (contingent or not) in respect of \*superannuation income stream benefits that are currently payable by a \*complying superannuation fund; and
  - (b) the trustee of the fund holds the original policy.
- (2) A part of a \*life insurance policy (the *original policy*) is taken to be an \*exempt life insurance policy for the purposes of this Act if:
  - (a) the part provides solely for the discharge of liabilities that are attributable to the liabilities (contingent or not) in respect of \*superannuation income stream benefits that are currently payable by \*complying superannuation funds; and
  - (b) the trustee of a \*pooled superannuation trust holds the original policy; and
  - (c) the funds are unit holders of the trust.

*What happens to the rest of the policy?*

- (3) If a part of a policy (the *original policy*) is taken to be an \*exempt life insurance policy under subsection (1) or (2), the rest of the original policy is taken to be another \*life insurance policy for the purposes of this Act.

**320-250 Transfer of assets and payment of amounts from segregated exempt assets otherwise than as a result of a valuation under section 320-230**

- (1) A \*life insurance company can at any time transfer an asset from its \*segregated exempt assets in exchange for an amount of money equal to the \*transfer value of the asset at the time of the transfer.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) If a \*life insurance company:
- (a) imposes any fees or charges in respect of \*segregated exempt assets; or
  - (b) imposes any fees or charges in respect of \*exempt life insurance policies where the liabilities under the policies are to be discharged out of the company's segregated exempt assets; or
  - (c) determines, at a time other than a \*valuation time, that the total \*transfer value of the company's segregated exempt assets as at that time exceeds the amount of the company's \*exempt life insurance policy liabilities as at that time;
- the company must, when the fees or charges are imposed or the excess is determined, as the case may be, transfer from the segregated exempt assets, assets having a total transfer value equal to the fees, charges or excess, as the case may be.
- (3) If:
- (a) any liabilities arise for the discharge of which a \*life insurance company has \*segregated exempt assets; or
  - (b) any expenses are incurred by a life insurance company directly in respect of segregated exempt assets in relation to a period during which the assets are segregated exempt assets;
- the life insurance company must pay from the segregated exempt assets any amounts required to discharge the liabilities or amounts equal to the expenses, as the case may be.

### **320-255 Consequences of transfer of assets to or from segregated exempt assets**

- (1) This section applies if:
- (a) an asset (other than money) is transferred from the company's \*segregated exempt assets under subsection 320-235(1) or 320-250(1) or (2); or
  - (b) an asset (other than money) is transferred to the company's \*segregated exempt assets under subsection 320-235(3) or section 320-240.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) In determining:
- (a) for the purposes of this Act (other than Division 40 and Parts 3-1 and 3-3) whether an amount is included in, or can be deducted from, the assessable income of a \*life insurance company in respect of the transfer of the asset; or
  - (b) for the purposes of Parts 3-1 and 3-3:
    - (i) whether the company made a \*capital gain in respect of the transfer; or
    - (ii) whether the company made a \*capital loss in respect of the transfer;
- the company is taken:
- (c) to have sold, immediately before the transfer, the asset transferred for a consideration equal to its \*market value; and
  - (d) to have purchased the asset again at the time of the transfer for a consideration equal to its market value.
- (3) If, apart from this subsection, section 320-60 and subsection 320-105(1), a \*life insurance company could deduct an amount or apply a \*capital loss as a result of the transfer of an asset to its \*segregated exempt assets, the deduction or capital loss is disregarded until:
- (a) the asset ceases to exist; or
  - (b) the asset, or a greater than 50% interest in it, is \*acquired by an entity other than an entity that is an \*associate of the company, immediately after the acquisition.
- (3A) Subsection (3) does not apply in relation to an amount that the company can deduct under a provision in Division 40.
- (4) A \*life insurance company cannot deduct an amount or apply a \*capital loss as a result of the transfer of an asset from its \*segregated exempt assets.
- (6) If a \*depreciating asset is transferred to the \*segregated exempt assets of a \*life insurance company, then, in determining for the purposes of Division 40 whether an amount is included in, or can be deducted from, the company's assessable income as a result of the transfer, the company is taken:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) to have, at the time immediately before the transfer, sold the asset for a consideration equal to its \*market value at that time; and
  - (b) to have, at the time of the transfer, purchased the asset again for a consideration equal to its market value at that time.
- (7) If a \*depreciating asset that has been included in the \*segregated exempt assets of a \*life insurance company since the asset was acquired by the company or the initial segregation of those assets took place is transferred from those assets, then the company must assume for the purposes of Division 40 that:
- (a) if the asset's \*market value at the time of the transfer is greater than its \*adjustable value at that time, the company:
    - (i) had, at the time immediately before the transfer, sold the asset for a consideration equal to its adjustable value at that time; and
    - (ii) had, at the time of the transfer, purchased the asset again for a consideration equal to its adjustable value at that time; or
  - (b) if the asset's market value at the time of the transfer is equal to or less than its adjustable value at that time, the company:
    - (i) had, at the time immediately before the transfer, sold the asset for a consideration equal to its market value at that time; and
    - (ii) had, at the time of the transfer, purchased the asset again for a consideration equal to its market value at that time.
- (8) If a \*depreciating asset that was previously transferred to the \*segregated exempt assets of a \*life insurance company is transferred from those assets, then, the company must assume, for the purposes of Division 40 that:
- (a) if the asset's \*market value at the time of its transfer from those assets is greater than its market value at the time when it was transferred to those assets, the company:
    - (i) had, at the time immediately before the transfer from those assets, sold the asset for a consideration equal to its market value at the time when it was transferred to those assets; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) had, at the time of the transfer from those assets, purchased the asset again for a consideration equal to its market value at the time when it was transferred to those assets; or
  - (b) if the asset's market value at the time of its transfer from those assets is equal to or less than its market value at the time when it was transferred to those assets, the company:
    - (i) had, at the time immediately before the transfer from those assets, sold the asset for a consideration equal to its market value at that time; and
    - (ii) had, at the time of the transfer from those assets, purchased the asset again for a consideration equal to its market value at that time.
- (9) Division 40 has effect in relation to an asset covered by subsection (6), (7) or (8) as if:
- (a) in relation to the sale of the asset that is taken to have occurred under that subsection:
    - (i) the sale were a \*balancing adjustment event; and
    - (ii) the \*termination value of the asset for that event were equal to the consideration for the sale under that subsection; and
    - (iii) the company had stopped \*holding the asset at the time of the sale; and
  - (b) in relation to the purchase of the asset that is taken to have occurred under that subsection:
    - (i) the company had only begun to hold the asset after the purchase; and
    - (ii) the first element of the asset's \*cost were equal to the consideration for the purchase under that subsection; and
    - (iii) the company had acquired the asset from an \*associate of the company.

Note: This means that, amongst other things, as a result of the transfer:

- the asset's cost for the purposes of working out a deduction under Division 40 is reset; and
- the company's assessable income might be adjusted under section 40-285 if the transfer is a transfer to the company's segregated exempt assets.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 320-I—Transfers of business

### Guide to Subdivision 320-I

#### 320-300 What this Subdivision is about

This Subdivision contains special rules that apply when all or part of the life insurance business of a life insurance company is transferred to another life insurance company under the *Life Insurance Act 1995* or the *Financial Sector (Business Transfer and Group Restructure) Act 1999*.

#### Table of sections

##### Operative provisions

320-305	When this Subdivision applies
320-310	Special deductions and amounts of assessable income
320-315	Complying superannuation/FHSA asset pool and segregated exempt assets
320-320	Certain amounts treated as life insurance premiums
320-325	Friendly societies
320-330	Immediate annuities
320-335	Parts of assets treated as separate assets
320-340	Continuous disability policies
320-345	Exemption of management fees

#### Operative provisions

##### 320-305 When this Subdivision applies

The rules in this Subdivision have effect if all or part of the \*life insurance business of a \*life insurance company (the ***originating company***) is transferred to another life insurance company (the ***recipient company***):

- (a) in accordance with a scheme confirmed by the Federal Court of Australia under Part 9 of the *Life Insurance Act 1995*; or
- (b) under the *Financial Sector (Business Transfer and Group Restructure) Act 1999*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **320-310 Special deductions and amounts of assessable income**

#### *Deduction for originating company*

- (1) If the originating company pays an amount to the recipient company in respect of liabilities under the \*net risk components of \*life insurance policies transferred to the recipient company, the originating company can deduct that amount for the income year in which the transfer took place.

#### *Amount included in originating company's assessable income*

- (2) If the originating company receives an amount from the recipient company in respect of liabilities under the \*net risk components of \*life insurance policies transferred to the recipient company, that amount is included in the assessable income of the originating company for the income year in which the transfer took place.

#### *Deduction for recipient company*

- (3) If the recipient company pays an amount to the originating company in respect of liabilities under the \*net risk components of \*life insurance policies transferred to the recipient company, the recipient company can deduct that amount for the income year in which the transfer took place.

### **320-315 Complying superannuation/FHSA asset pool and segregated exempt assets**

- (1) Assets that were \*complying superannuation/FHSA assets of the originating company just before the transfer took place and that are transferred to the recipient company become complying superannuation/FHSA assets of the recipient company.
- (2) Assets that were \*segregated exempt assets of the originating company just before the transfer took place and that are transferred to the recipient company become segregated exempt assets of the recipient company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **320-320 Certain amounts treated as life insurance premiums**

- (1) This Division applies to the recipient company as if the amount or value of any consideration received by the recipient company in respect of liabilities under \*life insurance policies transferred to the company were \*life insurance premiums paid to the company at the time the transfer took place.
- (2) However, subsection (1) does not apply to consideration:
  - (a) that relates to liabilities that, just before the transfer took place, were discharged out of the originating company's \*complying superannuation/FHSA assets or \*segregated exempt assets; or
  - (b) that relates to the part of a \*life insurance policy that has been reinsured under a \*contract of reinsurance (except consideration that relates to a risk, or part of a risk, in relation to which subsection 148(1) of the *Income Tax Assessment Act 1936* applies).

### **320-325 Friendly societies**

- (1) This section has effect if the originating company and the recipient company were \*friendly societies just before the transfer took place.
- (2) For the purposes of paragraph 320-37(1)(d), an \*income bond, \*funeral policy, \*sickness policy or \*scholarship plan issued by the recipient company in substitution for an income bond, funeral policy, sickness policy or scholarship plan (the *original policy*) transferred from the originating company is taken to have been issued at the time the original policy was issued if the terms of the substituted policy are not materially different from those of the original policy.

### **320-330 Immediate annuities**

For the purposes of section 320-246, a \*life insurance policy that provides for an \*immediate annuity issued by the recipient company in substitution for a policy (also the *original policy*) transferred from the originating company is taken to have been

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

issued at the time the original policy was issued if the terms of the substituted policy are not materially different from those of the original policy.

### **320-335 Parts of assets treated as separate assets**

If:

- (a) an asset is transferred to the recipient company from the originating company; and
- (b) parts of that asset were, under section 320-170 or 320-225 of the *Income Tax (Transitional Provisions) Act 1997*, treated as separate assets of the originating company just before the transfer took place;

those parts of that asset are also treated as separate assets of the recipient company.

### **320-340 Continuous disability policies**

- (1) This section has effect if:
  - (a) the originating company and the recipient company were members of the same \*wholly-owned group just before the transfer took place; and
  - (b) all of the liabilities under the \*continuous disability policies of the originating company are transferred to the recipient company; and
  - (c) the transfer took place before the income year in which 1 July 2005 occurs; and
  - (d) an amount (the *section 320-30 amount*) would have been included in the assessable income of the originating company under section 320-30 for the income year in which the transfer took place if the transfer had not taken place.
- (2) Section 320-30 does not apply to the originating company for the income year in which the transfer took place or a later income year.
- (3) The amount worked out using this formula is included in the assessable income of the originating company for the income year in which the transfer took place:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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$$\text{Section 320-30 amount} \times \frac{\text{Continuous disability policy days}}{365}$$

where:

*continuous disability policy days* means the number of days during the income year in which the transfer took place that the originating company held \*continuous disability policies.

- (4) The section 320-30 amount, reduced by the amount included in the assessable income of the originating company under subsection (3), is included in the assessable income of the recipient company for the income year in which the transfer took place.
- (5) For each income year after the year in which the transfer took place and that is a relevant income year for the purposes of section 320-30, the recipient company's assessable income includes the amount that would have been included in the originating company's assessable income under that section for that year if the transfer had not taken place.

### **320-345 Exemption of management fees**

- (1) This section has effect if:
  - (a) the originating company and the recipient company were members of the same \*wholly-owned group just before the transfer took place; and
  - (b) a \*life insurance policy (also the *original policy*):
    - (i) is constituted by a contract made with the originating company before 1 July 2000; and
    - (ii) is transferred to the recipient company before 1 July 2005.
- (2) For the purposes of section 320-40, a \*life insurance policy issued by the recipient company in substitution for the original policy is taken to have been constituted by a contract made with the recipient company before 1 July 2000 if the terms of the substituted policy are not materially different from those of the original policy.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 320-345

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- (3) Subsection 320-40(4) applies to so much of the sum of the amounts applicable in respect of the substituted policy under subsections 320-40(5), (6) and (7) as does not exceed any fees or charges made by the recipient company that the originating company would have been entitled to make under the terms of the original policy as applying just before 1 July 2000.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 322—Assistance for policyholders with insolvent general insurers**

### **Guide to Division 322**

#### **322-1 What this Division is about**

This Division sets out special measures to assist in the rescue package provided in response to the collapse of the HIH group and deals with the tax treatment of entitlements under Part VC (Financial claims scheme for policyholders with insolvent general insurers) of the *Insurance Act 1973*.

#### **Table of sections**

322-5	Rescue payments treated as insurance payments by HIH
322-10	HIH Trust exempt from tax
322-15	Certain capital gains and capital losses disregarded

### **Subdivision 322-A—HIH rescue package**

#### **322-5 Rescue payments treated as insurance payments by HIH**

- (1) This Act applies to you as if a payment you receive from the Commonwealth, the \*HIH Trust or a prescribed entity for assignment of your rights under or in relation to a \*general insurance policy you held with an \*HIH company:
  - (a) had been made by the HIH company; and
  - (b) had been made under the terms and conditions of the general insurance policy you held with the HIH company.
- (2) The *HIH Trust* is the HIH Claims Support Trust (established on 6 July 2001).
- (3) An *HIH company* is:
  - (a) CIC Insurance Limited; or
  - (b) FAI General Insurance Company Limited; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 322-10

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- (c) FAI Reinsurances Pty Limited; or
- (d) FAI Traders Insurance Company Pty Limited; or
- (e) HIH Casualty and General Insurance Limited; or
- (f) HIH Underwriting and Insurance (Australia) Pty Limited; or
- (g) World Marine and General Insurances Pty Limited; or
- (h) another related company specified in writing by the Commissioner.

**322-10 HIH Trust exempt from tax**

The total \*ordinary income and \*statutory income of:

- (a) the HIH Trust; and
  - (b) an entity prescribed for the purposes of this Division;
- is exempt from income tax.

**322-15 Certain capital gains and capital losses disregarded**

A \*capital gain or \*capital loss you make because you assign a right under or in relation to a \*general insurance policy you held with an \*HIH company to the Commonwealth, the trustee of the \*HIH Trust or a prescribed entity is disregarded.

**Subdivision 322-B—Tax treatment of entitlements under financial claims scheme**

**Guide to Subdivision 322-B**

**322-20 What this Subdivision is about**

This Act applies to a payment of an entitlement under Part VC (Financial claims scheme for policyholders with insolvent general insurers) of the *Insurance Act 1973* as if the payment were made by the insurer under the insurance policy concerned.

Disregard a capital gain or loss from:

- (a) the disposal to APRA under that Part of rights against the insurer under an insurance policy; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) the payment of an entitlement under that Part.

## Table of sections

### Operative provisions

- |        |   |
|--------|---|
| 322-25 | Payment of entitlement under financial claims scheme treated as payment from insurer                              |
| 322-30 | Disposal of rights against insurer to APRA and meeting of financial claims scheme entitlement have no CGT effects |

## Operative provisions

### **322-25 Payment of entitlement under financial claims scheme treated as payment from insurer**

- (1) This Act applies to you as if an amount paid to you, or applied for your benefit, to meet your entitlement under Part VC (Financial claims scheme for policyholders with insolvent general insurers) of the *Insurance Act 1973* relating to a \*general insurance policy issued by a \*general insurance company had been paid to you by the company under the terms and conditions of the policy.
- (2) To avoid doubt, subsection (1) does not affect the operation of Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: Division 21 in Schedule 1 to the *Taxation Administration Act 1953* contains special provisions about how Part 2-5 in that Schedule operates in relation to the meeting of entitlements under Part VC of the *Insurance Act 1973*.

### **322-30 Disposal of rights against insurer to APRA and meeting of financial claims scheme entitlement have no CGT effects**

Disregard a \*capital gain or \*capital loss you make because:

- (a) under section 62ZZL of the *Insurance Act 1973*, you \*dispose of a \*CGT asset consisting of your rights against a \*general insurance company to \*APRA; or
- (b) your entitlement under Division 3 of Part VC of that Act is met.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-35** Insurance business

**Division 322** Assistance for policyholders with insolvent general insurers

Section 322-30

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- Note 1: Section 6ZZZL of the *Insurance Act 1973* causes you to cease to be the owner, and APRA to become the owner, of rights against a general insurance company relating to a general insurance policy when your entitlement arises under Part VC of that Act in relation to the policy.
- Note 2: Division 3 of Part VC of the *Insurance Act 1973* entitles persons with valid claims based on general insurance policies issued by certain general insurance companies that have since become insolvent to be paid the amount of those claims by APRA.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Part 3-45—Rules for particular industries and occupations**

### **Division 328—Small business entities**

#### **Table of Subdivisions**

- 328-B Objects of this Division
- 328-C What is a small business entity
- 328-D Capital allowances for small business entities
- 328-E Trading stock for small business entities

#### **Guide to Division 328**

##### **328-5 What this Division is about**

This Division explains the meaning of the terms *small business entity*, *annual turnover*, *aggregated turnover* and related concepts (Subdivision 328-C).

If you are a small business entity, this Division allows you to change the way the income tax law applies to you in these ways:

- (a) you can choose to put your depreciating assets into a long life pool or a general pool and treat each pool as a single asset (Subdivision 328-D);
- (b) you can choose not to account for annual changes in trading stock value that are not more than \$5,000 (Subdivision 328-E).

In usual circumstances, these changes will simplify the working out of your taxable income, and so reduce your compliance costs.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Table of sections**

328-10 Concessions available to small business entities

**328-10 Concessions available to small business entities**

- (1) If you are a small business entity for an income year, you can choose to take advantage of the concessions set out in the following table. Some of the concessions have additional, specific conditions that must also be satisfied.

<b>Item</b>	<b>Concession</b>	<b>Provision</b>
1	CGT 15-year asset exemption	Subdivision 152-B of this Act
2	CGT 50% active asset reduction	Subdivision 152-C of this Act
3	CGT retirement exemption	Subdivision 152-D of this Act
4	CGT roll-over	Subdivision 152-E of this Act
5	Simpler depreciation rules	Subdivision 328-D of this Act
6	Simplified trading stock rules	Subdivision 328-E of this Act
7	Deducting certain prepaid business expenses immediately	Sections 82KZM and 82KZMD of the <i>Income Tax Assessment Act 1936</i>
8	Accounting for GST on a cash basis	Section 29-40 of the GST Act
9	Annual apportionment of input tax credits for acquisitions and importations that are partly creditable	Section 131-5 of the GST Act
10	Paying GST by quarterly instalments	Section 162-5 of the GST Act

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Item</b>	<b>Concession</b>	<b>Provision</b>
11	FBT car parking exemption	Section 58GA of the <i>Fringe Benefits Tax Assessment Act 1986</i>
12	PAYG instalments based on GDP-adjusted notional tax	Section 45-130 of Schedule 1 to the <i>Taxation Administration Act 1953</i>

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- (2) Also, if you are a small business entity for an income year, the standard 2-year period for amending your assessment applies to you (section 170 of the *Income Tax Assessment Act 1936*).

Note: If you are a small business entity for an income year and your aggregated turnover for the year is less than \$75,000, you may also be entitled to the 25% entrepreneurs' tax offset: see Subdivision 61-J of this Act.

### **Subdivision 328-B—Objects of this Division**

#### **328-50 Objects of this Division**

- (1) The main object of this Division is to offer eligible small businesses the choice of a new platform to deal with their tax. The platform is designed to benefit those businesses in one or more of these ways:
- reducing their tax;
  - providing simpler rules for determining their income and deductions;
  - providing simpler capital allowances and trading stock requirements;
  - reducing their compliance costs.
- (2) This Division also provides rules that are intended to prevent other businesses from taking advantage of those benefits.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 328-C—What is a small business entity

### Guide to Subdivision 328-C

#### 328-105 What this Subdivision is about

This Subdivision explains the meaning of the terms *small business entity*, *annual turnover*, *aggregated turnover* and related concepts.

#### Table of sections

##### Operative provisions

- 328-110 Meaning of *small business entity*
- 328-115 Meaning of *aggregated turnover*
- 328-120 Meaning of *annual turnover*
- 328-125 Meaning of *connected with* an entity
- 328-130 Meaning of *affiliate*

#### Operative provisions

##### 328-110 Meaning of *small business entity*

*General rule: based on aggregated turnover worked out as at the beginning of the current income year*

- (1) You are a *small business entity* for an income year (the *current year*) if:
  - (a) you carry on a \*business in the current year; and
  - (b) one or both of the following applies:
    - (i) you carried on a business in the income year (the *previous year*) before the current year and your \*aggregated turnover for the previous year was less than \$2 million;
    - (ii) your aggregated turnover for the current year is likely to be less than \$2 million.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: Section 328-110 of the *Income Tax (Transitional Provisions) Act 1997* affects the operation of this subsection in relation to the 2007-08 and 2008-09 income years.

- (2) You work out your \*aggregated turnover for the current year for the purposes of subparagraph (1)(b)(ii):
- (a) as at the first day of the current year; or
  - (b) if you start to carry on a \*business during the current year— as at the day you start to carry on the business.

Note: Subsection 328-120(5) provides for how to work out your annual turnover (which is relevant to working out your aggregated turnover) if you do not carry on a business for the whole of an income year.

*Exception: aggregated turnover for 2 previous income years was \$2 million or more*

- (3) However, you are not a **small business entity** for an income year (the **current year**) because of subparagraph (1)(b)(ii) if:
- (a) you carried on a \*business in each of the 2 income years before the current year; and
  - (b) your \*aggregated turnover for each of those income years was \$2 million or more.

Note: Section 328-110 of the *Income Tax (Transitional Provisions) Act 1997* affects the operation of this subsection in relation to the 2007-08 and 2008-09 income years.

*Additional rule: based on aggregated turnover worked out as at the end of the current income year*

- (4) You are also a **small business entity** for an income year (the **current year**) if:
- (a) you carry on a \*business in the current year; and
  - (b) your \*aggregated turnover for the current year, worked out as at the end of that year, is less than \$2 million.

Note: If you are a small business entity only because of subsection (4), you cannot choose any of the following concessions:

- (a) paying PAYG instalments based on GDP-adjusted notional tax: see section 45-130 of Schedule 1 to the *Taxation Administration Act 1953*;
- (b) accounting for GST on a cash basis: see section 29-40 of the GST Act;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 328-115

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- (c) making an annual apportionment of input tax credits for acquisitions and importations that are partly creditable: see section 131-5 of the GST Act;
- (d) paying GST by quarterly instalments: see section 162-5 of the GST Act.

*Winding up a business previously carried on*

- (5) This Subdivision applies to you as if you carried on a \*business in an income year if:
  - (a) in that year you were winding up a business you previously carried on; and
  - (b) you were a \*small business entity for the income year in which you stopped carrying on that business.

Note 1: Subsection 328-120(5) provides for how to work out your annual turnover (which is relevant to working out your aggregated turnover) if you do not carry on a business for the whole of an income year.

Note 2: A special rule applies if you were an STS taxpayer under this Division (as in force immediately before the commencement of this section) in the income year in which you stopped carrying on the business: see section 328-111 of the *Income Tax (Transitional Provisions) Act 1997*.

*Partners in a partnership*

- (6) A person who is a partner in a partnership in an income year is not, in his or her capacity as a partner, a **small business entity** for the income year.

**328-115 Meaning of aggregated turnover**

- (1) Your **aggregated turnover** for an income year is the sum of the relevant annual turnovers (see subsection (2)) excluding any amounts covered by subsection (3).

Note: For small business relief purposes, additional entities may be treated as being connected with you or your affiliate under section 152-48.

- (2) The **relevant annual turnovers** are:
  - (a) your \*annual turnover for the income year; and
  - (b) the annual turnover for the income year of any entity (a **relevant entity**) that is \*connected with you at any time during the income year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the annual turnover for the income year of any entity (a **relevant entity**) that is an \*affiliate of yours at any time during the income year.
- (3) Your **aggregated turnover** for an income year does not include the following amounts:
  - (a) amounts \*derived in the income year by you or a relevant entity from dealings between you and the relevant entity while the relevant entity is \*connected with you or is your \*affiliate;
  - (b) amounts derived in the income year by a relevant entity from dealings between the relevant entity and another relevant entity while each relevant entity is connected with you or is your affiliate;
  - (c) amounts derived in the income year by a relevant entity while the relevant entity is not connected with you and is not your affiliate.

### **328-120 Meaning of *annual turnover***

#### *General rule*

- (1) An entity's **annual turnover** for an income year is the total \*ordinary income that the entity \*derives in the income year in the ordinary course of carrying on a \*business.

#### *Exclusion of amounts relating to GST*

- (2) In working out an entity's \*annual turnover for an income year, do not include any amount that is \*non-assessable non-exempt income under section 17-5 (which is about GST).

#### *Exclusion of amounts derived from sales of retail fuel*

- (3) In working out an entity's \*annual turnover for an income year, do not include any amounts of \*ordinary income the entity \*derives from sales of \*retail fuel.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 328-125

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*Amounts derived from dealings with associates*

- (4) In working out an entity's \*annual turnover for an income year, the amount of \*ordinary income the entity \*derives from any dealing with an \*associate of the entity is the amount of ordinary income the entity would derive from the dealing if it were at \*arm's length.

Note: Amounts derived in an income year from any dealings between an entity and an associate that is a relevant entity within the meaning of section 328-115 are not included in the entity's aggregated turnover for that year: see subsection 328-115(3).

*Business carried on for part of income year only*

- (5) If an entity does not carry on a \*business for the whole of an income year, the entity's \*annual turnover for the income year must be worked out using a reasonable estimate of what the entity's annual turnover for the income year would be if the entity carried on a business for the whole of the income year.

*Regulations may provide for different calculation of annual turnover*

- (6) The regulations may provide that an entity's \*annual turnover for an income year is to be calculated in a different way, but only so that it would be less than the amount worked out under this section.

**328-125 Meaning of *connected with* an entity**

- (1) An entity is ***connected with*** another entity if:
- (a) either entity controls the other entity in a way described in this section; or
  - (b) both entities are controlled in a way described in this section by the same third entity.

*Direct control of an entity other than a discretionary trust*

- (2) An entity (the ***first entity***) controls another entity if the first entity, its \*affiliates, or the first entity together with its affiliates:
- (a) except if the other entity is a discretionary trust—beneficially own, or have the right to acquire the beneficial ownership of, interests in the other entity that carry between them the right

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

to receive a percentage (the **control percentage**) that is at least 40% of:

- (i) any distribution of income by the other entity; or
  - (ii) if the other entity is a partnership—the net income of the partnership; or
  - (iii) any distribution of capital by the other entity; or
- (b) if the other entity is a company—beneficially own, or have the right to acquire the beneficial ownership of, <sup>\*</sup>equity interests in the company that carry between them the right to exercise, or control the exercise of, a percentage (the **control percentage**) that is at least 40% of the voting power in the company.

*Direct control of a discretionary trust*

- (3) An entity (the **first entity**) controls a discretionary trust if a trustee of the trust acts, or could reasonably be expected to act, in accordance with the directions or wishes of the first entity, its <sup>\*</sup>affiliates, or the first entity together with its affiliates.
- (4) An entity (the **first entity**) controls a discretionary trust for an income year if, for any of the 4 income years before that year:
- (a) the trustee of the trust paid to, or applied for the benefit of:
    - (i) the first entity; or
    - (ii) any of the first entity's <sup>\*</sup>affiliates; or
    - (iii) the first entity and any of its affiliates;any of the income or capital of the trust; and
  - (b) the percentage (the **control percentage**) of the income or capital paid or applied is at least 40% of the total amount of income or capital paid or applied by the trustee for that year.

Note: Section 328-112 of the *Income Tax (Transitional Provisions) Act 1997* affects the operation of this subsection in relation to the 2007-08, 2008-09, 2009-10 and 2010-11 income years.

- (5) An entity does not control a discretionary trust because of subsection (4) if the entity is:
- (a) an <sup>\*</sup>exempt entity; or
  - (b) a <sup>\*</sup>deductible gift recipient.

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<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 328-130

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*Commissioner may determine that an entity does not control another entity*

- (6) If the control percentage referred to in subsection (2) or (4) is at least 40%, but less than 50%, the Commissioner may determine that the first entity does not control the other entity if the Commissioner thinks that the other entity is controlled by an entity other than, or by entities that do not include, the first entity or any of its \*affiliates.

*Indirect control of an entity*

- (7) This section applies to an entity (the **first entity**) that directly controls another entity (the **second entity**) as if the first entity also controlled any other entity that is directly, or indirectly by any other application or applications of this section, controlled by the second entity.
- (8) However, subsection (7) does not apply if the second entity is an entity of any of the following kinds:
- (a) a company \*shares in which (except shares that carry the right to a fixed rate of \*dividend) are listed for quotation in the official list of an \*approved stock exchange;
  - (b) a \*publicly traded unit trust;
  - (c) a \*mutual insurance company;
  - (d) a \*mutual affiliate company;
  - (e) a company (other than one covered by paragraph (a)) all the shares in which are beneficially owned by one or more of the following:
    - (i) a company covered by paragraph (a);
    - (ii) a publicly traded unit trust;
    - (iii) a mutual insurance company;
    - (iv) a mutual affiliate company.

**328-130 Meaning of *affiliate***

- (1) An individual or a company is an ***affiliate*** of yours if the individual or company acts, or could reasonably be expected to act, in accordance with your directions or wishes, or in concert with you,

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

in relation to the affairs of the \*business of the individual or company.

- (2) However, an individual or a company is not your *affiliate* merely because of the nature of the business relationship you and the individual or company share.

**Note:** For small business relief purposes, a spouse or a child under 18 years may also be an affiliate under section 152-47.

**Example:** A partner in a partnership would not be an affiliate of another partner merely because the first partner acts, or could reasonably be expected to act, in accordance with the directions or wishes of the second partner, or in concert with the second partner, in relation to the affairs of the partnership.

Directors of the same company and trustees of the same trust, or the company and a director of that company, would be in a similar position.

## **Subdivision 328-D—Capital allowances for small business entities**

### **Guide to Subdivision 328-D**

#### **328-170 What this Subdivision is about**

If you are a small business entity, you can choose to deduct amounts for most of your depreciating assets on a diminishing value basis using a pool that is treated as a single depreciating asset.

Broadly, a pool is made up of the costs of the depreciating assets that are allocated to it or, in some cases, a proportion of those costs.

The pool rate is 30% for most depreciating assets, and 5% for depreciating assets that have an effective life of 25 years or more.

There is an immediate deduction for low-cost assets.

This Subdivision sets out how to calculate the pool deductions, and also sets out the consequences of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 328-175

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- (a) disposal of depreciating assets; and
- (b) not choosing to use this Subdivision for an income year after having chosen to do so for an earlier income year; and
- (c) changing the business use of depreciating assets.

**Table of sections**

**Operative provisions**

328-175	Calculations for depreciating assets
328-180	Low cost assets
328-185	Pooling
328-190	Calculation
328-195	Opening pool balance
328-200	Closing pool balance
328-205	Estimate of taxable use
328-210	Low pool value
328-215	Disposal etc. of depreciating assets
328-220	What happens if you are not a small business entity or do not choose to use this Subdivision for an income year
328-225	Change in business use
328-230	Estimate where deduction denied
328-235	Interaction with Divisions 85 and 86
328-243	Roll-over relief
328-245	Consequences of roll-over
328-247	Pool deductions
328-250	Deductions for assets first used in BAE year
328-253	Deductions for cost addition amounts
328-255	Closing pool balance etc. below zero
328-257	Taxable use

**Operative provisions**

**328-175 Calculations for depreciating assets**

- (1) You can choose to calculate your deductions and some amounts of assessable income under this Subdivision instead of under

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Division 40 for an income year for all the \*depreciating assets that you \*hold if:

- (a) you are a \*small business entity for the income year; and
- (b) you started to use the assets or have them \*installed ready for use, for a \*taxable purpose during or before that income year.

This subsection has effect subject to subsections (2) to (10).

Note: If you choose to use this Subdivision for an income year, you continue to use this Subdivision for your small business pools for a later income year even if you are not a small business entity, or do not choose to use this Subdivision, for the later year: see section 328-220.

*Exception: assets to which Division 40 does not apply*

- (2) This Subdivision does not apply to a \*depreciating asset to which Division 40 does not apply because of section 40-45.

*Exception: primary production*

- (3) If you are a \*small business entity for the income year, for each \*depreciating asset you use to carry on a \*primary production business and for which you could deduct amounts under Subdivision 40-F (about primary production depreciating assets) or Subdivision 40-G (about capital expenditure of primary producers and other landholders) apart from subsection (1), you can choose:
  - (a) to deduct amounts for it under Subdivision 40-F or 40-G; or
  - (b) to calculate your deductions for it under this Subdivision.

Note: A choice made by a transferor under this subsection for an asset applies also to the transferee if roll-over relief under subsection 40-340(1) or (3) is chosen: see section 328-245.

- (4) You must make the choice under subsection (3) for each \*depreciating asset of the kind referred to in that subsection for the later of:
  - (a) the first income year for which you are, or last were, a \*small business entity; or
  - (b) the income year in which you started to use the asset, or have it \*installed ready for use, for a \*taxable purpose.

Once you have made the choice for an asset, you cannot change it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Exception: horticultural plants*

- (5) You cannot deduct amounts for \*horticultural plants (including grapevines) under this Subdivision.

*Exception: asset let on depreciating asset lease*

- (6) You cannot deduct amounts for a \*depreciating asset under this Subdivision if the asset is being or might reasonably be expected to be let predominantly on a \*depreciating asset lease.

*Exception: assets in a low-value or software development pool*

- (7) You cannot deduct amounts for a \*depreciating asset under this Subdivision if:
- (a) the asset was allocated to your low-value pool under Subdivision 40-E, or to your pool under the former Subdivision 42-L, during an income year for which you were not a \*small business entity or had not chosen to use this Subdivision; or
  - (b) the asset is \*in-house software and expenditure on the asset is allocated to a software development pool under that Subdivision.

Note: You will have to continue deducting amounts for these assets under Division 40.

- (8) A \*depreciating asset referred to in subsection (7) is not allocated to a pool under this Subdivision and does not qualify for a deduction under section 328-180.

*Exception: assets previously deductible under research and development provisions*

- (9) You cannot deduct amounts for a \*depreciating asset for any period under this Subdivision if you can deduct an amount for the asset under section 73BA of the *Income Tax Assessment Act 1936* (or could so deduct an amount if you had not chosen a tax offset under section 73I of that Act) for the same or an earlier period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Exception: restriction on choosing to use this Subdivision*

(10) If:

- (a) you choose to use this Subdivision to deduct amounts for your \*depreciating assets for an income year; and
- (b) you do not choose to use this Subdivision for a later income year for which you satisfy the conditions to make this choice (see subsection (1));

you cannot choose to use this Subdivision until at least 5 years after the first later income year for which you satisfied the conditions to make this choice but did not do so.

Note 1: Your ability to choose to use this Subdivision may also be restricted by section 328-440 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 2: If you choose to use this Subdivision for an income year, you continue to use it for assets that have been allocated to your small business pools for a later income year even if you are not a small business entity, or do not choose to use this Subdivision, for the later year: see section 328-220.

### **328-180 Low cost assets**

- (1) You deduct the \*taxable purpose proportion of the \*adjustable value of a \*depreciating asset for the income year in which you start to use the asset, or have it \*installed ready for use, for a \*taxable purpose if:
  - (a) you were a \*small business entity for that year and the year in which you started to \*hold it; and
  - (ab) you chose to use this Subdivision for each of those years; and
  - (b) the asset is a \*low-cost asset.
- (2) You can also deduct, for an income year for which you are a \*small business entity and you choose to use this Subdivision, the \*taxable purpose proportion of an amount included in the second element of the \*cost of a \*low-cost asset for which you have deducted an amount under subsection (1) if:
  - (a) the amount so included is less than \$1,000; and
  - (b) you started to use the asset, or have it \*installed ready for use, for a \*taxable purpose during an earlier income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 328-185

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- (3) A \*low-cost asset for which you have deducted an amount under this section is allocated to your \*general small business pool if:
  - (a) an amount of \$1,000 or more is included in the second element of the asset's \*cost; or
  - (b) any amount is included in the second element of the asset's cost and you have deducted or can deduct an amount under subsection (2) for an amount previously included in the second element of the asset's cost.
- (4) This Division applies to the asset as if its \*adjustable value were the amount included in the second element of its \*cost as mentioned in subsection (3).
- (5) Subsection (3) applies even if the amount is included in the second element of the asset's \*cost during an income year for which you are not a \*small business entity or do not choose to use this Subdivision.

### 328-185 Pooling

- (1) If you are a \*small business entity for an income year and you have chosen to use this Subdivision for that year, you deduct amounts for your \*depreciating assets (except \*low-cost assets for which you have deducted or can deduct an amount under section 328-180) through a pool, which allows you to deduct amounts for them as if they were a single asset, thereby simplifying your calculations. You use one rate for the pool.
- (2) There are 2 kinds of pools:
  - (a) a **general small business pool** to which \*depreciating assets having \*effective lives of less than 25 years are allocated; and
  - (b) a **long life small business pool** to which depreciating assets having effective lives of 25 years or more are allocated.

#### *Allocating assets to a pool*

- (3) A \*depreciating asset:
  - (a) that you \*hold just before, and at the start of, the first income year for which you are, or last were, a \*small business entity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) for which you calculate your deductions under this Subdivision instead of under Division 40; and
- (c) that has not previously been allocated to your \*general small business pool or \*long life small business pool; and
- (d) that you have started to use, or have \*installed ready for use, for a \*taxable purpose;

is automatically allocated to your general small business pool or long life small business pool according to its \*effective life.

- (4) A \*depreciating asset that you start to use, or have \*installed ready for use, for a \*taxable purpose during an income year for which you are a \*small business entity and you choose to use this Subdivision is allocated to the appropriate pool at the end of that year.

Note: The allocation happens even if you no longer hold the asset at the end of that income year.

*Exception for long life assets*

- (5) You can choose not to have a \*depreciating asset allocated to a \*long life small business pool to which it would otherwise have been allocated if you started to use it, or have it \*installed ready for use, for a \*taxable purpose before 1 July 2001.

Note: If you make this choice, you would continue to deduct amounts for the asset under Division 40.

- (6) You must make that choice for the first income year for which you are a \*small business entity and you choose to use this Subdivision. Once you have made the choice for an asset, you cannot change it.

*No re-allocation*

- (7) Once a \*depreciating asset is allocated to your \*general small business pool or \*long life small business pool, it is not re-allocated, even if you are not a \*small business entity for a later income year or you do not choose to use this Subdivision for that later year.

Note: If you chose to use this Subdivision for an income year, you continue to use it for your small business pools for a later income year even if you are not a small business entity, or do not choose to use this Subdivision, for the later year: see section 328-220.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 328-190

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Example: Greg is not a small business entity for the 2008-09 income year. At that time his long life small business pool contains one depreciating asset with an effective life of 26 years. Greg still holds that asset in the 2010-11 income year. Greg is a small business entity for that income year and chooses to use this Subdivision. The asset has remained in the pool since the end of the 2008-09 income year. The asset is not re-allocated when he recommences deducting amounts for depreciating assets under this Subdivision, even though its remaining effective life is now 24 years.

### 328-190 Calculation

- (1) You calculate your deduction for each pool for an income year using this formula:

\*Opening pool balance × Pool rate

where:

**pool rate** is:

- (a) 30% for a \*general small business pool; or
- (b) 5% for a \*long life small business pool.

Note: You use section 328-210 instead if the pool has a low pool value.

- (2) Your deduction for each \*depreciating asset that you start to use, or have \*installed ready for use, for a \*taxable purpose during an income year for which you are a \*small business entity and choose to use this Subdivision is:

- (a) 15% of the \*taxable purpose proportion of its \*adjustable value if its \*effective life is less than 25 years; or
- (b) 2.5% of the taxable purpose proportion of its adjustable value if its effective life is 25 years or more.

- (3) You can also deduct for an income year for which you are a \*small business entity and choose to use this Subdivision the amount worked out under subsection (4) for an amount (the **cost addition amount**) included in the second element of the \*cost of a \*depreciating asset for that year if you started to use the asset, or have it \*installed ready for use, for a \*taxable purpose during an earlier income year.

Note: The second element of cost is worked out under section 40-190.

- (4) The amount you can deduct is:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) 15% of the \*taxable purpose proportion of the cost addition amount if the asset's \*effective life is less than 25 years; or
- (b) 2.5% of the taxable purpose proportion of the cost addition amount if the asset's effective life is 25 years or more.

Note: The amounts that a transferor and transferee can deduct under this section are modified if roll-over relief under section 40-340 is chosen: see sections 328-243 and 328-247.

### **328-195 Opening pool balance**

- (1) For the first income year for which you are a \*small business entity and choose to use this Subdivision, the ***opening pool balance*** of a pool is the sum of the \*taxable purpose proportions of the \*adjustable values of \*depreciating assets allocated to the pool under subsection 328-185(3).
- (2) For a later income year, the ***opening pool balance*** of a pool is that pool's \*closing pool balance for the previous income year, reduced or increased by any adjustment required under section 328-225 (about change in the business use of an asset).

Note: You continue to deduct amounts using your small business pools even if you are not a small business entity, or do not choose to use this Subdivision, for a later income year: see section 328-220.

- (3) However, if:
  - (a) you are not a \*small business entity for an income year or you do not choose to use this Subdivision for that year; but
  - (b) you are a small business entity for a later income year and you choose to use this Subdivision for the later year;the ***opening pool balance*** of a pool includes the sum of the \*taxable purpose proportions of the \*adjustable values of \*depreciating assets allocated to the pool under subsection 328-185(3) for that year.

### **328-200 Closing pool balance**

You work out the ***closing pool balance*** of a pool for an income year in this way:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Method statement*

- Step 1. Add to the \*opening pool balance of the pool for the income year:
- (a) the sum of the \*taxable purpose proportions of the \*adjustable values of \*depreciating assets you started to use, or have \*installed ready for use, for a \*taxable purpose during the income year and that are allocated to that pool; and
  - (b) the taxable purpose proportion of any cost addition amounts (see subsection 328-190(3)) for the income year for assets allocated to the pool.
- Step 2. Subtract from the step 1 amount:
- (a) the \*taxable purpose proportions of the \*termination values of \*depreciating assets allocated to the pool and for which a \*balancing adjustment event occurred during the income year; and
  - (b) your deduction under subsection 328-190(1) for the pool for the income year; and
  - (c) your deductions under subsection 328-190(2) for \*depreciating assets you started to use, or have \*installed ready for use, for a \*taxable purpose during the income year and that are allocated to that pool; and
  - (d) your deductions under subsection 328-190(3) for the income year for cost addition amounts for assets allocated to the pool.
- Step 3. The result is the ***closing pool balance*** of the pool for the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: A transferor does not subtract anything for certain balancing adjustment events under paragraph (a) of step 2 if roll-over relief under section 40-340 is chosen: see sections 328-243 and 328-245.

### 328-205 Estimate of taxable use

- (1) You must, for the first income year for which you are, or last were, a \*small business entity, make a reasonable estimate for that year of the proportion you will use, or have \*installed ready for use, each \*depreciating asset that you \*held just before, and at the start of, that year for a \*taxable purpose if:
  - (a) the asset has not previously been allocated to your \*general small business pool or \*long life small business pool; and
  - (b) you have started to use it, or have it installed ready for use, for a taxable purpose; and
  - (c) you have chosen to calculate your deductions for it under this Subdivision.
- Note 1: That proportion will be 100% for an asset that you expect to use, or have installed ready for use, solely for a taxable purpose.
- Note 2: Your estimate will be zero for an income year if another provision of this Act denies a deduction for that year: see section 328-230.
- Note 3: This subsection does not apply to a transferee for certain assets if roll-over relief under section 40-340 is chosen: see sections 328-243 and 328-257.
- (2) You must also make this estimate for each \*depreciating asset that you \*hold and start to use, or have \*installed ready for use, for a \*taxable purpose during an income year for which you are a \*small business entity and you choose to use this Subdivision. You must make the estimate for the income year in which you start to use it, or have it installed ready for use, for such a purpose.
- (3) The *taxable purpose proportion* of a \*depreciating asset's \*adjustable value, or of an amount included in the second element of its \*cost, is that part of that amount that represents:
  - (a) the proportion you estimated under subsection (1) or (2); or
  - (b) if you have had to make an adjustment under section 328-225 for the asset—the proportion most recently applicable to the asset under that section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 328-205

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Note: An amount included in the second element of the cost of a depreciating asset is referred to in this Division as a cost addition amount: see subsection 328-190(3).

- (4) The **taxable purpose proportion** of a \*depreciating asset's \*termination value is that part of that amount that represents:
- (a) if you have not had to make an adjustment under section 328-225 for the asset—the proportion you estimated under subsection (1) or (2); or
  - (b) if you have had to make at least one such adjustment and the asset is allocated to a \*general small business pool—the average of:
    - (i) the proportion you estimated under subsection (1) or (2); and
    - (ii) the proportion applicable to the asset for each of the 3 income years you \*held the asset after the one in which the asset was allocated to the pool; or
  - (c) if you have had to make at least one such adjustment and the asset is allocated to a long life small business pool—the average of:
    - (i) the proportion you estimated under subsection (1) or (2); and
    - (ii) the proportion applicable to the asset for each of the 20 income years you \*held the asset after the one in which the asset was allocated to the pool.

Example: When Bria's van was allocated to her general small business pool for the 2007-08 income year, she estimated that it would be used 50% for deliveries in her florist business. Due to increasing deliveries, Bria estimates the van's business use to be 70% for the 2008-09 year, and 90% for the 2009-10 year. She makes an adjustment under section 328-225 for both those years.

Bria sells the van for \$3,000 at the start of the 2011-12 income year. She must now average the business use estimates for the van for the year it was allocated to the pool and the next 3 years to work out the taxable purpose proportion of its termination value. The average is worked out as follows:

- 50% (original estimate); plus
- 70% (2008-09 estimate); plus
- 90% (2009-10 estimate); plus
- 90% (no change on previous year);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

$$= 300\% \div 4 = 75\%$$

The taxable purpose proportion of the van's termination value is, therefore:

$$75\% \text{ of } \$3,000 = \$2,250$$

### 328-210 Low pool value

- (1) Your deduction for a \*general small business pool or \*long life small business pool for an income year is the amount worked out under subsection (2) (instead of an amount calculated under section 328-190) if that amount is less than \$1,000 but more than zero.

Note: See section 328-215 for the result when the amount is less than zero.

- (2) The amount is the sum of:
- (a) the pool's \*opening pool balance for the income year; and
  - (b) the \*taxable purpose proportion of the \*adjustable value of each \*depreciating asset you started to use, or have \*installed ready for use, for a \*taxable purpose during the income year and that is allocated to that pool; and
  - (c) the taxable purpose proportion of any cost addition amounts (see subsection 328-190(3)) for the income year for assets allocated to the pool;

less the sum of the taxable purpose proportion of the \*termination values of depreciating assets allocated to that pool and for which a \*balancing adjustment event occurred during the income year.

- (3) In that case, the \*closing pool balance of the pool for that income year then becomes zero.

Example: Amanda's Graphics is a small business entity for the 2008-09 income year and chooses to use this Subdivision for that year. The business has an opening pool balance of \$1,200 for its general small business pool for that year.

During that year, Amanda acquired a new computer for \$2,000. The taxable purpose proportion of its adjustable value is:

$$\$2,000 \times 80\% \text{ business use estimate} = \$1,600$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 328-215

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Amanda also sold her business car for \$1,900 during that year. The car was used 100% in the business.

To work out whether she can deduct an amount under this section, Amanda uses this calculation:

$$\$1,200 + \$1,600 = \$2,800 - \$1,900 = \$900$$

Because the result is less than \$1,000, Amanda can deduct the \$900 for the income year. The pool's closing balance for the year is zero.

**328-215 Disposal etc. of depreciating assets**

- (1) This section sets out adjustments you may have to make if a \*balancing adjustment event occurs for a \*depreciating asset for which you calculate your deductions under this Subdivision.
- (2) If the asset is allocated to a pool and:
  - (a) the \*closing pool balance of the pool for the income year in which the event occurred is less than zero; or
  - (b) the amount worked out under subsection 328-210(2) for that income year is less than zero;the amount by which that balance or amount is less than zero is included in your assessable income for that year.
- (3) In that case, the \*closing pool balance of the pool for that income year then becomes zero.
- (4) If the asset was one for which you deducted an amount under section 328-180 (about low-cost assets), you include the \*taxable purpose proportion of the asset's \*termination value in your assessable income.

**328-220 What happens if you are not a small business entity or do not choose to use this Subdivision for an income year**

- (1) If you are not a \*small business entity for an income year or you do not choose to use this Subdivision for that year, this Subdivision continues to apply to your \*general small business pool and \*long life small business pool for that year and later income years.
- (2) However, \*depreciating assets you started to use, or have \*installed ready for use, for a \*taxable purpose during an income year for

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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which you are not a \*small business entity or do not choose to use this Subdivision cannot be allocated to a pool under this Subdivision until an income year for which you are a small business entity and you choose to use this Subdivision.

- (3) This section applies to a transferee referred to in subsection 328-243(1) or (1A) who:
- (a) was not a \*small business entity for the income year in which the relevant \*balancing adjustment events occurred; or
  - (b) did not choose to use this Subdivision for that year;
- as if the transferee had been a small business entity for an earlier income year and had chosen to use this Subdivision for the earlier year. This rule applies even if roll-over relief is not chosen.

### **328-225 Change in business use** [see Note 6]

- (1) You must, for each income year (the **present year**) after the year in which a \*depreciating asset is allocated to a pool, make a reasonable estimate of the proportion you use the asset, or have it \*installed ready for use, for a \*taxable purpose in that year.

Note: This section is modified in its application to a transferee for certain assets if roll-over relief under section 40-340 is chosen: see sections 328-243 and 328-257.

- (1A) You must make an adjustment for the present year if your estimate for that year under subsection (1) is different by more than 10 percentage points from:
- (a) your original estimate (see section 328-205); or
  - (b) if you have made an adjustment under this section—the most recent estimate you made under subsection (1) that resulted in an adjustment under this section.
- (2) The adjustment is made to the \*opening pool balance of the \*general small business pool or \*long life small business pool to which the asset was allocated, and it must be made before you calculate your deduction under this Subdivision for the present year.

Note: The opening pool balance will be reduced if the adjustment worked out under subsection (3) is a negative amount. It will be increased if the adjustment is positive.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 328-225

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(3) The adjustment is:

$$\text{Reduction factor} \times \text{Asset value} \times \left[ \begin{array}{l} \text{Present year} \\ \text{estimate} \end{array} - \text{Last estimate} \right]$$

where:

**asset value** is:

- (a) for a \*depreciating asset you started to use, or have \*installed ready for use, for a \*taxable purpose during an income year for which you were a \*small business entity and chose to use this Subdivision—the asset's \*adjustable value at that time; or
- (b) for an asset you started to use, or have installed ready for use, for a taxable purpose while you were not an STS taxpayer—its adjustable value at the start of the income year for which it was allocated to a \*general small business pool or a \*long-life small business pool;

increased by any amounts included in the second element of the asset's \*cost from the time mentioned in paragraph (a) or (b) until the beginning of the income year for which you are making the adjustment.

**last estimate** is:

- (a) your original estimate of the proportion you use, or have \*installed ready for use, a \*depreciating asset for a \*taxable purpose (see section 328-205); or
- (b) if you have made an adjustment under this section—the latest estimate taken into account under this section.

**present year estimate** is your reasonable estimate of the proportion you use the asset, or have it \*installed ready for use, for a \*taxable purpose during the present year.

**reduction factor** is the number worked out under subsection (4).

(4) The **reduction factor** in the formula in subsection (3) is:

- (a) for a \*depreciating asset you started to use, or have \*installed ready for use, for a \*taxable purpose during an income year for which you were a \*small business entity and chose to use this Subdivision:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

$$\left[ 1 - \left( \frac{\text{rate}}{2} \right) \right] \times \left[ 1 - \text{rate} \right]^{n-1}$$

- (b) for an asset you started to use, or have \*installed ready for use, for a taxable purpose while you were not an STS taxpayer:

$$\left[ 1 - \text{rate} \right]^n$$

where:

***n*** is the number of income years (counting part of an income year as a whole year) before the present year for which you have deducted or can deduct an amount for the \*depreciating asset under this Subdivision.

***rate*** is the rate applicable to the pool to which the asset is allocated.

Note: The reduction factor for a depreciating asset in your general small business pool which you started to use, or have installed ready for use, for a taxable purpose during an income year for which you were not a small business entity or did not choose to use this Subdivision is:

- 0.7 for the income year after it is allocated to the pool; and
- 0.49 for the income year after that; and
- 0.343 for the income year after that.

The reduction factor for a depreciating asset in your general small business pool which you started to use, or have installed ready for use, for a taxable purpose during an income year for which you were a small business entity and chose to use this Subdivision is:

- 0.85 for the income year after it is allocated to the pool; and
- 0.595 for the income year after that; and
- 0.417 for the income year after that.

### *Exceptions*

- (5) However:
- (a) you do not need to make an estimate or an adjustment under this section for a \*depreciating asset for an income year that is at least:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 328-230

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- (i) for an asset allocated to a \*general small business pool—3 income years after the income year in which it was allocated; or
  - (ii) for an asset allocated to a \*long life small business pool—20 income years after the income year in which it was allocated; and
- (b) you cannot make an adjustment for a depreciating asset if your reasonable estimate of the proportion you use a depreciating asset, or have it \*installed ready for use, for a \*taxable purpose changes in a later income year by the 10 percentage points mentioned in subsection (1) or less.

**328-230 Estimate where deduction denied**

This Subdivision applies to you as if you had estimated that you will not use, or have \*installed ready for use, a \*depreciating asset at all for a \*taxable purpose during an income year if a provision of this Act outside this Division denies a deduction for the asset for that year.

**328-235 Interaction with Divisions 85 and 86**

- (1) Despite sections 85-10 and 86-60, if you are a \*small business entity for an income year you can deduct amounts for \*depreciating assets under this Subdivision.
- (2) However, you cannot deduct an amount for a \*car under this Subdivision if, had you not been a \*small business entity and chosen to use this Subdivision, sections 86-60 and 86-70 would have prevented you deducting an amount for it.

**328-243 Roll-over relief**

- (1A) There is roll-over relief under subsection 40-340(1) (as affected by subsection 40-340(2)) if:
- (a) \*balancing adjustment events occur for \*depreciating assets on a day (the **BAE day**) because an entity (the **transferor**) disposes of the assets in an income year to another entity (the **transferee**); and
  - (b) the disposal involves a \*CGT event; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the conditions in item 1, 2 or 3 of the table in subsection 40-340(1) are satisfied; and
  - (d) deductions for the assets are calculated under this Subdivision; and
  - (e) the transferor and the transferee jointly choose the roll-over relief; and
  - (f) the condition in subsection (2) is met.
- (1) Roll-over relief can be chosen under subsection 40-340(3) if:
- (a) \*balancing adjustment events occur for \*depreciating assets on a day (the **BAE day**) because of subsection 40-295(2); and
  - (b) deductions for the assets are calculated under this Subdivision; and
  - (c) the entity or entities that had an interest in the assets just before the balancing adjustment events occurred (the **transferor**) and the entity or entities that have an interest in the assets just after the events occurred (the **transferee**) jointly choose the roll-over relief; and
  - (d) the condition in subsection (2) is met.
- (2) All of the \*depreciating assets that, just before the \*balancing adjustment events occurred, were:
- (a) \*held by the transferor; and
  - (b) allocated to the transferor's \*general small business pool or \*long life small business pool;
- must be held by the transferee just after those events occurred.

### **328-245 Consequences of roll-over**

- (1) The transferor does not subtract anything for the \*balancing adjustment events under:
- (a) paragraph (a) of step 2 in the method statement in section 328-200; or
  - (b) subsection 328-210(2).
- (2) Subsection 328-215(4) does not apply to the \*balancing adjustment events for the transferor.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 328-247

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- (3) A choice made by the transferor for a \*depreciating asset under subsection 328-175(3) (about primary production assets) applies to the transferee as if it had been made by the transferee.
- (4) Sections 328-247 to 328-257 have effect.

**328-247 Pool deductions**

- (1) The amount that can be deducted for the transferor's \*general small business pool and \*long life small business pool for the income year (the **BAE year**) in which the \*balancing adjustment events occurred under subsection 328-190(1) or section 328-210 for the BAE year is split equally between:
  - (a) the transferor and the transferee; or
  - (b) if there are 2 or more occurrences of balancing adjustment events for relevant entities for the BAE year and a roll-over is chosen for each occurrence—the entities concerned.

**Example:** John and Dave operate a dry cleaning business in partnership (the transferor). The transferor is a small business entity for the relevant income year and has chosen to use this Subdivision for that year. On the 90th day of an income year, Jonathan joins the partnership. The new partnership (the transferee) is a small business entity for the income year and chooses to use this Subdivision for that year. Had there been no partnership change, a deduction of \$6,600 would have been available for the transferor's general small business pool. The transferor and transferee jointly choose the roll-over.

The deduction available to the transferor and the transferee for the pool under subsection 328-190(1) is \$3,300 each.

- (2) The transferor cannot deduct any amount for the transferor's \*general small business pool or \*long life small business pool for an income year after the BAE year.

**328-250 Deductions for assets first used in BAE year**

- (1) This section applies in working out the amount that the transferor or transferee can deduct for the BAE year under subsection 328-180(1) (low-cost assets) or subsection 328-190(2) (assets that will be pooled) for a \*depreciating asset that the transferor or transferee started to use, or have \*installed ready for use, for a \*taxable purpose during the BAE year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Asset first used by transferor*

- (2) If the asset was first used or \*installed ready for use by the transferor, the amount that can be deducted under subsection 328-180(1) or subsection 328-190(2) for the asset for the BAE year is split equally between:
- (a) the transferor and the transferee; or
  - (b) if there are 2 or more occurrences of \*balancing adjustment events for relevant entities for the BAE year and a roll-over is chosen for each occurrence—the entities concerned.

*Asset first used by transferee*

- (3) If the asset was first used or \*installed ready for use by the transferee:
- (a) the transferor cannot deduct anything for the asset for the BAE year; and
  - (b) the amount that can be deducted under subsection 328-180(1) or 328-190(2) for the asset for the BAE year is:
    - (i) deductible by the transferee; or
    - (ii) if there are 2 or more occurrences of \*balancing adjustment events for relevant entities for the BAE year and a roll-over is chosen for each occurrence—split equally between the entities concerned (except ones that did not use the asset or have it installed ready for use).

Example: To continue the example from section 328-247, the transferee buys a low-cost asset on the 150th day of the BAE year for \$800.

On the 250th day of the year, Evan joins the transferee partnership. The new transferee partnership is a small business entity for the BAE year, and chooses to use this Subdivision for that year, and a further roll-over is chosen.

The original transferor cannot deduct anything for the asset. The original transferee (now a transferor) and the new transferee can deduct \$400 each.

*Special rule for low-cost assets*

- (4) Subsection (5) applies if:
- (a) the transferor started to use, or have \*installed ready for use, a \*low-cost asset during the BAE year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) a \*balancing adjustment event occurs for that asset before the BAE day.
- (5) The transferee cannot deduct anything for the asset for the BAE year, and subsection 328-215(4) does not apply to the transferee in relation to the asset.

**328-253 Deductions for cost addition amounts**

- (1) This section applies in working out the amount that the transferor or transferee can deduct for the BAE year under subsection 328-180(2) or 328-190(3) for expenditure incurred by the transferor or transferee during the BAE year that is included in the second element of the \*cost of a depreciating asset.

*Expenditure incurred by transferor*

- (2) If the expenditure was incurred by the transferor, the amount that can be deducted under subsection 328-180(2) or 328-190(3) for the BAE year is split equally between:
  - (a) the transferor and the transferee; or
  - (b) if there are 2 or more occurrences of \*balancing adjustment events for relevant entities for the BAE year and a roll-over is chosen for each occurrence—the entities concerned.

*Expenditure incurred by transferee*

- (3) If the expenditure was incurred by the transferee:
  - (a) the transferor cannot deduct anything for the expenditure for the BAE year; and
  - (b) the amount that can be deducted under subsection 328-180(2) or 328-190(3) for the expenditure for the BAE year is:
    - (i) deductible by the transferee; or
    - (ii) if there are 2 or more occurrences of \*balancing adjustment events for relevant entities for the BAE year and a roll-over is chosen for each occurrence—split equally between the entities concerned.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Special rule for expenditure on low-cost assets*

- (4) Subsection (5) applies if:
  - (a) the transferor incurred the expenditure in relation to a \*low-cost asset; and
  - (b) a \*balancing adjustment event occurs for that asset before the BAE day.
- (5) The transferee cannot deduct anything for the expenditure for the BAE year, and subsection 328-215(4) does not apply to the transferee in relation to the asset.

**328-255 Closing pool balance etc. below zero**

- (1) This section applies if:
  - (a) the \*closing pool balance of the transferor's \*general small business pool or \*long life small business pool for the BAE year is less than zero; or
  - (b) the amount worked out under subsection 328-210(2) for that pool for the BAE year is less than zero;because a \*balancing adjustment event occurred for an asset allocated to that pool during that year.
- (2) The amount included in assessable income under subsection 328-215(2) is split equally between:
  - (a) the transferor and transferee; or
  - (b) if there are 2 or more occurrences of \*balancing adjustment events for relevant entities for the BAE year and a roll-over is chosen for each occurrence—the entities concerned.

**328-257 Taxable use**

- (1) This section applies to \*depreciating assets (the *previously held assets*) that were \*held by the transferor just before the \*balancing adjustment events occurred.
- (2) Subsection 328-205(1) (about estimates of taxable use) does not apply to previously held assets in the hands of the transferee for the BAE year. Instead, the transferee uses for the BAE year:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 328-280

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- (a) the estimate made by the transferor under that subsection for the asset; or
  - (b) if the transferor had made one or more estimates for the asset under subsection 328-225(1) that resulted in an adjustment under section 328-225 (about change in business use)—that estimate or the most recent of those estimates.
- (3) Section 328-225 applies to the transferee for each previously held asset for income years after the BAE year as if:
- (a) the transferee had \*held the asset during the period that the transferor held it; and
  - (b) estimates applicable to the transferor for the asset under that section were also applicable to the transferee.

**Subdivision 328-E—Trading stock for small business entities**

**Guide to Subdivision 328-E**

**328-280 What this Subdivision is about**

Small business entities can choose not to account for their trading stock in some circumstances. This Subdivision modifies the rules in Division 70 about trading stock for small business entities.

**Table of sections**

**Operative provisions**

- 328-285 Trading stock for small business entities
- 328-295 Value of trading stock on hand

**Operative provisions**

**328-285 Trading stock for small business entities**

You can choose not to account for changes in the \*value of your \*trading stock for an income year if:

- (a) you are a \*small business entity for that year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the difference between the value of all your trading stock on hand at the start of that year and the value you reasonably estimate of all your trading stock on hand at the end of that year is not more than \$5,000.

Note 1: As a result, sections 70-35 and 70-45 (about comparing the value of each item of trading stock on hand at the start and end of an income year) will not apply to you for the income year.

Note 2: When making a reasonable estimate of the value of trading stock on hand:

- special valuation rules may be used, for example, obsolete stock, natural increase of livestock, horse breeding stock; and
- the estimated value disregards an amount equal to the amount of input tax credits (if any) to which you would be entitled for an item if the acquisition of the item had been solely for a creditable purpose: see subsection 70-45(1A).

Note 3: If you choose to account for changes in the value of your trading stock for an income year, you will have to do a stocktake and account for the change in the value of all your trading stock: see Subdivision 70-C.

### **328-295 Value of trading stock on hand**

- (1) If you make a choice under section 328-285 for an income year, the \*value of all your \*trading stock on hand at the start of the income year is:
- (a) the same amount as was taken into account under this Act at the end of the previous income year; or
  - (b) zero if no item of trading stock was taken into account under this Act at the end of the previous income year.

Note: The amount taken into account at the end of the previous income year is worked out under either section 70-45 or subsection (2) of this section.

- (2) If you make a choice under section 328-285 for an income year, this Act applies to you as if the \*value of all your \*trading stock on hand at the end of the year were equal to the value of all your trading stock on hand at the start of the year.

Note: If you do not make a choice under section 328-285, the value of trading stock on hand at the end of the year is worked out using section 70-45.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 328** Small business entities

Section 328-295

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Example: Angela operates a riding school, and also sells riding gear. Her business is a small business entity for the 2008-09 income year and makes a choice under section 328-285 for that year.

At the start of the 2008-09 income year, the opening value of Angela's trading stock is \$30,000. Using her reliable inventory system, she estimates the closing value to be \$34,000.

The closing value for the 2008-09 income year, and the opening value for the 2009-10 income year, will be \$30,000.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 345—FHSAs**

### **Table of Subdivisions**

	Guide to Division 345
345-A	Treatment of FHSA providers
345-B	Treatment of FHSA holders
345-C	FHSA misuse tax

### **Guide to Division 345**

#### **345-1 What this Division is about**

FHSAs (short for first home saver accounts) are accounts, life policies and interests in trusts that comply with requirements in the *First Home Saver Accounts Act 2008*.

This Division sets out the income tax treatment of the financial institutions that provide FHSAs (Subdivision 345-A) and of individuals that hold FHSAs (Subdivision 345-B).

Certain payments from FHSAs are subject to FHSA misuse tax (Subdivision 345-C).

### **Subdivision 345-A—Treatment of FHSA providers**

#### **Table of sections**

345-5	FHSA provider that is trustee of FHSA trust—tax payable
345-10	FHSA provider that is trustee of FHSA trust—CGT to be primary code for calculating gains or losses
345-15	FHSA provider that is an ADI (other than RSA provider)—taxable income and standard component of taxable income
345-20	FHSA provider that is an ADI—FHSA component of taxable income
345-25	FHSA provider that is an ADI (other than an RSA provider)—amounts that cannot be deducted
345-30	Amounts of tax paid by FHSA providers that are ADIs

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**345-5 FHSA provider that is trustee of FHSA trust—tax payable**

- (1) The trustee of an \*FHSA trust is liable to pay income tax for the \*financial year on the taxable income of the trust.
- (2) The amount of the tax is the amount of income tax that would be payable by the trust under section 4-10 if the trust were an \*Australian resident liable (in accordance with section 4-1) to pay income tax for the \*financial year.
- (3) For the purposes of subsection (2):
  - (a) apply the special rules in this Subdivision in working out the taxable income of the trust; and
  - (b) apply the applicable rate of tax specified in section 30 of the *Income Tax Rates Act 1986* to the taxable income of the trust.

**345-10 FHSA provider that is trustee of FHSA trust—CGT to be primary code for calculating gains or losses**

- (1) The modifications in subsection (2) apply if a \*CGT event happens involving a \*CGT asset that was owned by an \*FHSA trust.
- (2) These provisions do not apply to the \*CGT event:
  - (a) sections 6-5 (about \*ordinary income);
  - (b) section 8-1 (about amounts you can deduct);
  - (c) sections 15-15 and 25-40 (about profit-making undertakings or plans).

*Exceptions*

- (3) The provisions referred to in subsection (2) can apply to the \*CGT event if:
  - (a) any \*capital gain or \*capital loss from the event is attributable to currency exchange rate fluctuations; or
  - (b) the \*CGT asset is one of the following:
    - (i) debenture stock, a bond, \*debenture, certificate of entitlement, bill of exchange, promissory note or other security;
    - (ii) a deposit with a bank, building society or other financial institution;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (iii) a loan (secured or not);
  - (iv) some other contract under which an entity is liable to pay an amount (whether the liability is secured or not).
- (4) The provisions referred to in subsection (2) can also apply to the \*CGT event if a \*capital gain or \*capital loss from the event is disregarded because of one of the provisions in this table:

**Where gain or loss disregarded because of CGT provision**

<b>Item</b>	<b>Provision</b>	<b>Brief description</b>
1	Paragraph 104-15(4)(a)	Title in a CGT asset does not pass when a hire purchase or similar agreement ends
2	Section 118-5	Cars, motor cycles and valour decorations
3	Section 118-10	Collectables and personal use assets
4	Section 118-13	Shares in a PDF
5	Section 118-25	Trading stock
6	Section 118-30	Film copyright
7	Section 118-35	Research and development
8	Section 118-55	Foreign currency hedging gains and losses
9	Section 118-60	Certain gifts
10	Section 118-300	Insurance policies
11	Section 118-305	Superannuation

**345-15 FHSA provider that is an ADI (other than RSA provider)—  
taxable income and standard component of taxable  
income**

- (1) The taxable income of an \*FHSA provider that is an \*ADI (other than an \*RSA provider) is split into an \*FHSA component and a \*standard component.

Note: The taxable income of an FHSA provider that is an ADI and an RSA provider is split into an RSA component, an FHSA component and a standard component (see section 295-555).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) If the \*FHSA component exceeds the \*FHSA provider's taxable income:
  - (a) the provider's taxable income is equal to the FHSA component; and
  - (b) this Act applies to the provider as if it had a \*tax loss for the income year of an amount that would have been that loss if the FHSA component were not \*ordinary income or \*statutory income.
- (3) The *standard component* is the remaining part (if any) of the \*FHSA provider's taxable income for the income year after subtracting the \*FHSA component.

**345-20 FHSA provider that is an ADI—FHSA component of taxable income**

The *FHSA component* for an income year of an \*FHSA provider that is an \*ADI is the total earnings or other return for the year credited to \*FHSAs provided by the FHSA provider, reduced by the total amount of fees (however described) paid from those FHSAs to the FHSA provider for providing them.

**345-25 FHSA provider that is an ADI (other than an RSA provider)—amounts that cannot be deducted**

An \*FHSA provider that is an \*ADI (other than an \*RSA provider) cannot deduct anything for amounts credited to \*FHSAs.

**345-30 Amounts of tax paid by FHSA providers that are ADIs**

An amount is not assessable income and is not \*exempt income of an \*FHSA provider if:

- (a) the amount is paid from an \*FHSA to the FHSA provider to enable the provider to make a payment of a kind mentioned in paragraph 31(1)(h) of the *First Home Saver Accounts Act 2008*; and
- (b) the provider is an ADI.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 345-B—Treatment of FHSA holders**

### **Table of sections**

345-50 Credits to and payments from FHSAs etc.

### **345-50 Credits to and payments from FHSAs etc.**

- (1) An amount of earnings or other return credited to an \*FHSA you hold is not your assessable income and is not your \*exempt income.
- (2) A payment made from an \*FHSA you hold is not your assessable income and is not your \*exempt income.
- (3) A \*Government FHSA contribution payable for you in accordance with the *First Home Saver Accounts Act 2008*, and paid in accordance with Part 4 of that Act, is not your assessable income and is not your \*exempt income.
- (4) A \*capital gain or \*capital loss that you make from a \*CGT event happening in relation to a right to, or any part of, an \*FHSA that you hold is disregarded.

## **Subdivision 345-C—FHSA misuse tax**

### **Table of sections**

345-100 Liability for FHSA misuse tax  
345-110 Due date for payment of FHSA misuse tax  
345-115 General interest charge

### **345-100 Liability for FHSA misuse tax**

A person is liable to pay tax imposed by the *Income Tax (First Home Saver Accounts Misuse Tax) Act 2008* in respect of a \*FHSA home acquisition payment from an \*FHSA held by the person if:

- (a) the payment fails to satisfy the \*FHSA payment conditions;  
or
- (b) the payment satisfies the FHSA payment conditions, but is an \*FHSA ineligibility payment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 345** FHSAs

Section 345-110

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Note: The Commissioner may make an assessment of the amount of the tax under section 169 of the *Income Tax Assessment Act 1936*.

**345-110 Due date for payment of FHSA misuse tax**

\*FHSA misuse tax assessed for a person is due and payable 21 days after the Commissioner gives the person notice of the assessment.

**345-115 General interest charge**

If \*FHSA misuse tax payable by a person remains unpaid after the time by which it is due and payable, the person is liable to pay the \*general interest charge on the unpaid amount for each day in the period that:

- (a) starts at the beginning of the day on which the FHSA misuse tax was due to be paid; and
- (b) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:
  - (i) the FHSA misuse tax;
  - (ii) general interest charge on any of the FHSA misuse tax.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 375—Australian films**

### **Table of Subdivisions**

- 375-G Film losses
- 375-H Deductions for shares in a film licensed investment company

### **Subdivision 375-G—Film losses**

#### **Guide to Subdivision 375-G**

#### **375-800 What this Subdivision is about**

A tax loss may have a film component if you incurred film deductions in the loss year. If so, the film component is regarded as a separate tax loss. You can deduct the film loss from your film income only.

#### **Table of sections**

##### **Operative provisions**

- 375-805 Does your tax loss have a film component?
- 375-810 What is a film loss?
- 375-815 Deductibility of film losses
- 375-820 Order in which tax losses are to be deducted

#### **Operative provisions**

#### **375-805 Does your tax loss have a film component?**

- (1) A \*tax loss in an income year has a *film component* if:
- your \*film deductions exceed the sum of:
  - your \*assessable film income; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 375-805

- your \*net exempt film income.

The amount of the film component is the excess or the tax loss, whichever is less.

- (1A) If an entity's \*tax loss is worked out under a provision listed in the table, the **film component** is what that tax loss would have been if:
- (a) the entity's \*film deductions for the \*loss year had been its only deductions; and
  - (b) the entity's \*assessable film income for the \*loss year had been its only assessable income; and
  - (c) the entity's \*net exempt film income for the \*loss year had been its only \*net exempt income.

However, the film component cannot exceed the actual tax loss.

Working out film component of tax loss		
Item	Provision	Type of entity
1	165-70	Company—income year when ownership or control changed
2	175-35	Company—deductions that have been used to obtain a tax benefit disallowed
3	268-60 in Schedule 2F to the <i>Income Tax Assessment Act 1936</i>	Trust—income year when ownership or control changed

- (2) Your **film deductions** for an income year are the following:
- (a) amounts you can deduct for the income year under section 124ZAF of the *Income Tax Assessment Act 1936*;
  - (b) amounts that you can deduct for the income year and to which section 124ZAO of the *Income Tax Assessment Act 1936* applies in relation to you for the income year.
- (3) Your **assessable film income** for an income year is so much of the amount, or the sum of the amounts, to which section 26AG of the *Income Tax Assessment Act 1936* applies in relation to you for the income year as is assessable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) Your **net exempt film income** for an income year is your \*exempt film income for that year reduced by:
  - (a) any taxes payable in respect of that income in a country or place outside Australia; and
  - (b) any expenses (not of a capital nature) so far as you incurred them during that year in deriving that income.
- (5) Your **exempt film income** for an income year is so much of the amount, or the sum of the amounts, to which section 26AG of the *Income Tax Assessment Act 1936* applies in relation to you for the income year as is exempt income.

### **375-810 What is a film loss?**

If a \*tax loss has a \*film component, it is treated as 2 separate \*tax losses: one (the **film loss**) consisting of the film component and the other consisting of the rest (if any).

### **375-815 Deductibility of film losses**

- (1) You can deduct a \*film loss only from your \*net exempt film income or your \*net assessable film income.
- (2) Your **net assessable film income** for an income year is your \*assessable film income for that year reduced by your \*film deductions for that year.
- (3) This section applies in addition to the other rules about how \*tax losses are applied.

### **375-820 Order in which tax losses are to be deducted**

If, for an income year, you have \*net exempt film income, \*net assessable film income, or both, you deduct your \*film losses (in the order in which you incurred them) before any other \*tax losses of the same or any other \*loss year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



## **Subdivision 375-H—Deductions for shares in a film licensed investment company**

### **375-850 What this Subdivision is about**

You can deduct amounts you have paid for shares issued to you by a film licensed investment company (FLIC). The deduction does not apply to shares issued after 30 June 2007.

Because of these deductions, there are special rules about the tax treatment of a FLIC.

### **Table of sections**

#### **Provisions affecting you if you own shares in a film licensed investment company**

- 375-855 What can you deduct?
- 375-860 When can you claim the deduction?
- 375-865 How can you lose your entitlement?
- 375-870 How this Subdivision applies to partners and partnerships
- 375-872 Distribution of FLIC concessional capital is instead taken to be a dividend

#### **Provisions affecting film licensed investment companies**

- 375-875 Tax losses cannot be transferred to or from FLICs
- 375-880 FLIC cannot claim deductions for concessional capital

## **Provisions affecting you if you own shares in a film licensed investment company**

### **375-855 What can you deduct?**

- (1) You can deduct money you pay for \*shares in a \*film licensed investment company (a *FLIC*) if the shares are issued to you by the FLIC during the period the FLIC's concessional capital licence is in force.

Note: The period a FLIC's licence is in force is determined under the *Film Licensed Investment Company Act 2005*. It cannot be in force after 30 June 2007.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) A *film licensed investment company* is a company that has been granted a licence to raise concessional capital under the *Film Licensed Investment Company Act 2005* (whether or not the licence has ceased to be in force).

Note: Under the *Film Licensed Investment Company Act 2005* concessional capital is money paid to the FLIC for the issue of shares during the period its concessional capital licence is in force (see section 6 of that Act).

### **375-860 When can you claim the deduction?**

- (1) If you pay for the \*shares in an income year and the shares are issued in the same income year, you get the deduction for that income year.
- (2) If you pay for the \*shares in an income year but the shares are not issued until a later income year, you get the deduction for the later income year.

Note: A FLIC can only issue fully paid shares (see section 13 of the *Film Licensed Investment Company Act 2005*).

### **375-865 How can you lose your entitlement?**

- (1) You lose your entitlement to the deduction if the \*Arts Minister decides to remove the concessional status of your shares.

Note: The Arts Minister may do this if the FLIC in which you hold shares breaches certain requirements under the FLIC's Act. See sections 32 and 34 of the *Film Licensed Investment Company Act 2005*.

- (2) You also lose your entitlement to the deduction if the Commissioner is satisfied that:
- (a) the \*FLIC in which you hold the \*shares has breached a condition under Division 7 of Part 2 of the *Film Licensed Investment Company Act 2005*, or a requirement under section 34 of that Act; and
  - (b) the Arts Minister has been given notice that the Commissioner is satisfied as mentioned in paragraph (a); and
  - (c) the Arts Minister has not, within 6 months after that notice, notified the Commissioner that the Arts Minister has made a decision about the alleged breach.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 375-870

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Note: The Arts Minister's decisions about alleged breaches are made under sections 32 and 34 of the *Film Licensed Investment Company Act 2005*. Subsection (2) above is only relevant in a situation where the Arts Minister has, as far as the Commissioner knows, made **no** decision under those sections.

- (3) If the Commissioner is satisfied of the matters set out in subsection (2), the Commissioner must, within 28 days, give written notice to the \*Arts Minister about the loss of entitlement that has occurred under subsection (2).

*Amendment of assessment*

- (4) If you lose your entitlement after you have already got the deduction, your assessment may be amended to disallow the deduction.

**375-870 How this Subdivision applies to partners and partnerships**

*Application*

- (1) This section applies to allocate to you, for the purposes of this Subdivision, money paid for \*shares issued by a \*FLIC during an income year if:
- (a) you are a partner in a partnership; and
  - (b) the shares have been issued to you and your partners jointly; and
  - (c) the partnership has paid for the shares.

*Allocation of payments to partners*

- (2) For the purposes of this Subdivision, you are taken to have paid for the shares during that income year:
- (a) the amount of the payment for the \*shares that the partners agreed is attributable to you; or
  - (b) if there was no such agreement—the proportion of the payment for the shares that is equal to the proportion of your individual interest in the net income or partnership loss of the partnership for that income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*This Subdivision does not apply to net income or partnership loss*

- (3) Disregard this Subdivision when working out the net income or partnership loss of the partnership under section 90 of the *Income Tax Assessment Act 1936*.

**375-872 Distribution of FLIC concessional capital is instead taken to be a dividend**

- (1) For the purposes of this Act, an amount that a \*FLIC pays to you by way of distribution of \*FLIC concessional capital, on a liquidation or a share buy back or other return of capital, is instead taken to be a *dividend* that the FLIC pays to you out of profits the FLIC \*derived from sources in Australia.

*Dividend cannot exceed amount of deductions*

- (2) Subsection (1) does not apply to the extent that the total of the payments the \*FLIC makes by way of such distribution of \*FLIC concessional capital in respect of particular \*shares exceeds the total of the deductions under section 375-855 for the shares (whether it was you or a previous owner of the shares who got the deductions).

*FLIC must comply with Corporations Act rules about dividends*

- (3) Subsection (1) applies only if the requirements of the *Corporations Act 2001* (except section 254T) relating to declaring and paying a \*dividend are satisfied (as well as any requirements relating to the distribution).

*Paragraph 202-45(e) does not apply*

- (4) Paragraph 202-45(e) does not apply to a payment that is taken to be a dividend under this section.

Note: Paragraph 202-45(e) provides that a distribution that is sourced, directly or indirectly, from a company's share capital account is unfrankable.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Provisions affecting film licensed investment companies

### 375-875 Tax losses cannot be transferred to or from FLICs

- (1) A \*FLIC cannot transfer to another company a \*tax loss or a \*net capital loss for an income year if the FLIC's concessional capital licence is in force during some or all of that income year.
- (2) A company cannot transfer to a \*FLIC a \*tax loss or a \*net capital loss for an income year if the FLIC's concessional capital licence is in force during some or all of that income year.

Note 1: A FLIC's concessional capital licence is granted under the *Film Licensed Investment Company Act 2005*.

Note 2: These 2 rules are exceptions to the general rules about transfer of losses between companies in Subdivisions 170-A and 170-B.

### 375-880 FLIC cannot claim deductions for concessional capital

- (1) If a \*FLIC has spent an amount of \*FLIC concessional capital in respect of a \*film, the FLIC cannot deduct the amount under this Act.
- (2) ***FLIC concessional capital*** means money paid to the FLIC by a person for the issue, during the period the FLIC's concessional capital licence is in force, of \*shares to that person.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 376—Films generally (tax offsets for Australian production expenditure)**

### **Table of Subdivisions**

- 376-A Guide to Division 376
- 376-B Tax offsets for Australian expenditure in making a film
- 376-C Production expenditure and qualifying Australian production expenditure
- 376-D Certificates for films and other matters

### **Subdivision 376-A—Guide to Division 376**

#### **376-1 What this Division is about**

Companies may be entitled to 1 of 3 refundable tax offsets in relation to Australian expenditure incurred in making films. The offsets are designed to support and develop the Australian screen media industry by providing concessional tax treatment for Australian expenditure.

### **Table of sections**

- 376-2 Key features of the tax offsets for Australian production expenditure on films
- 376-5 Structure of this Division

#### **376-2 Key features of the tax offsets for Australian production expenditure on films**

- (1) The 3 tax offsets are:
- (a) a refundable tax offset for Australian expenditure in making an Australian film (the producer offset); and
  - (b) a refundable tax offset for Australian expenditure in making any film (the location offset); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 376-5

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- (c) a refundable tax offset for Australian expenditure on post, digital and visual effects production for any film (the PDV offset).
- (2) A company is only entitled to one of these offsets in relation to a film.
- (3) The amount of the offset is determined as a percentage of certain Australian expenditure incurred by a company in producing the film:
  - (a) the amount of the producer offset is 40% of the company's qualifying Australian production expenditure on the film if the film is a feature film, and 20% of such expenditure if the film is not a feature film; and
  - (b) the amount of the location offset is 15% of the company's qualifying Australian production expenditure on the film; and
  - (c) the amount of the PDV offset is 15% of the company's qualifying Australian production expenditure on the film that relates to post, digital and visual effects production for the film.
- (4) One of the requirements for entitlement to these offsets is that a company must be issued with a certificate for the film. The certificate will state the amount of Australian expenditure on which the offset will be determined.
- (5) The offset is claimed by a company in its income tax return.

**376-5 Structure of this Division**

- (1) Subdivision 376-B tells you about the different tax offsets available for films, who can get each offset and what conditions must be met to get each offset. It also tells you how to work out the amount of each offset.
- (2) Subdivision 376-C explains what is meant by:
  - (a) production expenditure on a film; and
  - (b) qualifying Australian production expenditure on a film.It also contains some rules for quantifying expenditure.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) Subdivision 376-D deals with a number of administrative matters:
- (a) applying for a certificate for a film; and
  - (b) the issue and revocation of a certificate for a film; and
  - (c) the making of rules by the Arts Minister (including rules for the establishment of the Film Certification Advisory Board) and the film authority; and
  - (d) review of decisions of the Arts Minister and the film authority; and
  - (e) amendment of assessments following the revocation of a certificate for a film.

### **Subdivision 376-B—Tax offsets for Australian expenditure in making a film**

#### **Table of sections**

##### **Refundable tax offset for Australian expenditure in making a film (location offset)**

- 376-10 Film production company entitled to refundable tax offset for Australian expenditure in making a film (location offset)
- 376-15 Amount of the location offset
- 376-20 Minister must issue certificate for a film for the location offset
- 376-25 Company may nominate one individual whose remuneration is to be disregarded for the location offset
- 376-30 Minister to determine a company's qualifying Australian production expenditure for the location offset

##### **Refundable tax offset for post, digital and visual effects production for a film (PDV offset)**

- 376-35 Film production company entitled to refundable tax offset for post, digital and visual effects production for a film (PDV offset)
- 376-40 Amount of the PDV offset
- 376-45 Minister must issue certificate for a film for the PDV offset
- 376-50 Minister to determine a company's qualifying Australian production expenditure for the PDV offset

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Refundable tax offset for Australian expenditure in making an Australian film (producer offset)**

- 376-55 Film production company entitled to refundable tax offset for Australian expenditure in making an Australian film (producer offset)
- 376-60 Amount of the producer offset
- 376-65 Film authority must issue certificate for an Australian film for the producer offset
- 376-70 Determination of content of film
- 376-75 Film authority to determine a company's qualifying Australian production expenditure for the producer offset

**Refundable tax offset for Australian expenditure in making a film (location offset)**

**376-10 Film production company entitled to refundable tax offset for Australian expenditure in making a film (location offset)**

- (1) A company is entitled to a \*tax offset under this section (the *location offset*) for an income year in respect of a \*film if:
- (a) if the total of the company's \*qualifying Australian production expenditure on the film (as determined by the \*Arts Minister under section 376-30) is less than \$50 million—the company's \*production expenditure on the film ceased being incurred in the income year; and
  - (b) if the total of the company's qualifying Australian production expenditure on the film (as determined by the \*Arts Minister under section 376-30) is at least \$50 million—the company's qualifying Australian production expenditure on the film ceased being incurred in the income year; and
  - (c) the \*Arts Minister has issued a certificate to the company for the film under section 376-20 (certificate for the location offset); and
  - (d) the company claims the offset in its \*income tax return for the income year; and
  - (e) the company:
    - (i) is an Australian resident; or
    - (ii) is a foreign resident but does have a \*permanent establishment in Australia and does have an \*ABN;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

when the company lodges the income tax return and when the tax offset is due to be credited to the company.

The claim referred to in paragraph (d) is irrevocable.

Note: The location offset is a refundable tax offset: see section 67-23.

- (2) The company is not entitled to the location offset if:
- (a) the company or someone else claims a deduction in relation to a unit of industrial property that relates to copyright in the \*film under Division 10B of Part III of the *Income Tax Assessment Act 1936*; or
  - (b) a final certificate for the film has been issued at any time under Division 10BA of Part III of the *Income Tax Assessment Act 1936* (whether or not the certificate is still in force); or
  - (c) a certificate for the film has been issued at any time under section 376-45 (certificate for the PDV offset) (whether or not the certificate is still in force); or
  - (d) a certificate for the film has been issued at any time under section 376-65 (certificate for the producer offset) (whether or not the certificate is still in force).

### **376-15 Amount of the location offset**

The amount of the location offset is 15% of the total of the company's \*qualifying Australian production expenditure on the \*film (as determined by the \*Arts Minister under section 376-30).

### **376-20 Minister must issue certificate for a film for the location offset**

- (1) The \*Arts Minister must issue a certificate to a company for a \*film in relation to the location offset if the Minister is satisfied that the conditions in subsections (2), (3) and (5) are met.

*Type of film*

- (2) The conditions in this subsection are that:
- (a) the \*film was produced for:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 376-20

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- (i) exhibition to the public in cinemas or by way of television broadcasting (including broadcasting by way of the delivery of a television program by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*); or
  - (ii) distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); and
- (b) the film is:
- (i) a \*feature film or a film of a like nature; or
  - (ii) a mini-series of television drama; or
  - (iii) a television series that is not covered by subparagraph (i) or (ii); and
- (c) the film is not, or is not to a substantial extent:
- (i) if the film is covered by subparagraph (b)(i) or (ii)—a documentary; or
  - (ii) a film for exhibition as an advertising program or a commercial; or
  - (iii) a film for exhibition as a discussion program, a quiz program, a panel program, a variety program or a program of a like nature; or
  - (iv) a film of a public event; or
  - (v) if the film is covered by subparagraph (b)(i) or (ii)—a film forming part of a drama program series that is, or is intended to be, of a continuing nature; or
  - (vi) a training film; or
  - (vii) a computer game (within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995*).

*Television series*

- (3) The conditions in this subsection are that:
- (a) if the \*film is a television series that is not covered by subparagraph (2)(b)(i) or (ii), it is made up of 2 or more episodes that:
    - (i) are produced wholly or principally for exhibition to the public on television under a single title; and
    - (ii) contain a common theme or themes; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (iii) contain dramatic elements that form a narrative structure; and
- (iv) are produced wholly or principally for exhibition together, for a national market or national markets; and

Note: A documentary can be a television series.

- (b) if the film is a television series that is not covered by subparagraph (2)(b)(i) or (ii):
    - (i) for a television series that is predominantly a digital animation or other animation—the \*making of the television series (other than a pilot episode, if any, or activities mentioned in paragraph 376-125(3)(a)) takes place within a period of not longer than 36 months; or
    - (ii) otherwise—all principal photography for the television series (other than a pilot episode, if any) takes place within a period of not longer than 12 months; and
  - (c) if the film is a television series that is not covered by subparagraph (2)(b)(i) or (ii)—the amount worked out for the film under subsection (6) is at least \$1 million.
- (4) To avoid doubt, and without limiting subparagraph (3)(a)(iii), a \*film satisfies the requirement in that subparagraph if:
- (a) the sole or dominant purpose of the film is to depict actual events, people or situations; and
  - (b) the film depicts those events, people or situations in a dramatic or entertaining way, with a heavy emphasis on dramatic impact or entertainment value.

*Conditions relating to expenditure thresholds*

- (5) The conditions in this subsection are that:
- (a) the total of the company's \*qualifying Australian production expenditure on the \*film (as determined by the \*Arts Minister under section 376-30) is at least \$15 million; and
  - (b) if the total of the company's qualifying Australian production expenditure on the film is less than \$50 million:
    - (i) the total of the company's qualifying Australian production expenditure on the film is at least 70% of the total of all the company's \*production expenditure on the film; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 376-25

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- (ii) the company either carried out, or made the \*arrangements for the carrying out of, all the activities that were necessary for the \*making of the film; and
- (c) if the total of the company's qualifying Australian production expenditure on the film is at least \$50 million, the company either carried out, or made the arrangements for the carrying out of, all the activities in Australia that were necessary for the making of the film.

Note: The operation of subparagraph (b)(ii) and paragraph (c) is affected by paragraph 376-180(1)(d) (which deals with the situation where one company takes over the making of a film from another company).

- (6) For the purposes of paragraph (3)(c), the amount for a \*film is worked out by using the formula:

$$\frac{\text{Total QAPE}}{\text{Duration of film in hours}}$$

where:

*duration of film in hours* means the total length of the \*film, measured in hours.

*total QAPE* means the total of the company's \*qualifying Australian production expenditure on the \*film (as determined by the \*Arts Minister under section 376-30).

**376-25 Company may nominate one individual whose remuneration is to be disregarded for the location offset**

- (1) In its application for the certificate under section 376-230, the company may nominate one individual as an individual to whom this section applies.
- (2) If the company nominates an individual under subsection (1), disregard the following for the purposes of this Division, to the extent that it relates to the location offset:
  - (a) the remuneration and other benefits provided to the individual for the individual's services in relation to the \*making of the \*film;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) travel and other costs associated with the services the individual provides in relation to the making of the film.

Note: This means that, for the purposes of the location offset, the individual's remuneration and benefits, and associated costs, are disregarded both in working out the total of the company's qualifying Australian production expenditure on the film and in working out the company's total production expenditure on the film.

### **376-30 Minister to determine a company's qualifying Australian production expenditure for the location offset**

- (1) If a company applies to the \*Arts Minister for the issue of a certificate to the company for a \*film under section 376-20 (certificate for the location offset), the Arts Minister must, as soon as practicable after receiving the application, determine in writing the total of the company's \*qualifying Australian production expenditure on the film for the purposes of the location offset.
- (2) In making a determination under subsection (1), the \*Arts Minister must have regard to the matters in Subdivision 376-C.
- (3) The \*Arts Minister must give the company written notice of the determination.
- (4) A determination made under subsection (1) is not a legislative instrument.

### **Refundable tax offset for post, digital and visual effects production for a film (PDV offset)**

#### **376-35 Film production company entitled to refundable tax offset for post, digital and visual effects production for a film (PDV offset)**

- (1) A company is entitled to a \*tax offset under this section (the *PDV offset*) for an income year in respect of a \*film if:
  - (a) the company's \*qualifying Australian production expenditure on the film, to the extent that it relates to \*post, digital and visual effects production for the film, ceased being incurred in the income year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 376-35

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- (b) the \*Arts Minister has issued a certificate to the company for the post, digital and visual effects production for the film under section 376-45 (certificate for the PDV offset); and
- (c) the company claims the offset in its \*income tax return for the income year; and
- (d) the company:
  - (i) is an Australian resident; or
  - (ii) is a foreign resident but does have a \*permanent establishment in Australia and does have an \*ABN; when the company lodges the income tax return and when the tax offset is due to be credited to the company.

The claim referred to in paragraph (c) is irrevocable.

Note: The PDV offset is a refundable tax offset: see section 67-23.

- (2) **Post, digital and visual effects production** for a \*film means:
- (a) the creation of audio or visual elements (other than principal photography, pick ups or the creation of physical elements such as sets, props or costumes) for the film; and
  - (b) the manipulation of audio or visual elements (other than pick ups or physical elements such as sets, props or costumes) for the film; and
  - (c) activities that are necessarily related to the activities mentioned in paragraph (a) or (b).

Note: 3D animation, digital compositing and music composition and recording are examples of post, digital and visual effects production.

- (3) The company is not entitled to the PDV offset if:
- (a) the company or someone else claims a deduction in relation to a unit of industrial property that relates to copyright in the \*film under Division 10B of Part III of the *Income Tax Assessment Act 1936*; or
  - (b) a final certificate for the film has been issued at any time under Division 10BA of Part III of the *Income Tax Assessment Act 1936* (whether or not the certificate is still in force); or
  - (c) a certificate for the film has been issued at any time under section 376-20 (certificate for the location offset) (whether or not the certificate is still in force); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) a certificate for the film has been issued at any time under section 376-65 (certificate for the producer offset) (whether or not the certificate is still in force).

### **376-40 Amount of the PDV offset**

The amount of the PDV offset is 15% of the total of the company's \*qualifying Australian production expenditure (as determined by the \*Arts Minister under section 376-50) on a \*film, to the extent that it relates to \*post, digital and visual effects production for the film.

### **376-45 Minister must issue certificate for a film for the PDV offset**

- (1) The \*Arts Minister must issue a certificate to a company for the \*post, digital and visual effects production for a \*film in relation to the PDV offset if the Minister is satisfied that the conditions in subsections (2), (3) and (5) are met.

*Type of film*

- (2) The conditions in this subsection are that:
- (a) the \*film was produced for:
    - (i) exhibition to the public in cinemas or by way of television broadcasting (including broadcasting by way of the delivery of a television program by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*); or
    - (ii) distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); and
  - (b) the film is:
    - (i) a \*feature film or a film of a like nature; or
    - (ii) a mini-series of television drama; or
    - (iii) a television series that is not covered by subparagraph (i) or (ii); and
  - (c) the film is not, or is not to a substantial extent:
    - (i) if the film is covered by subparagraph (b)(i) or (ii)—a documentary; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 376** Films generally (tax offsets for Australian production expenditure)

Section 376-45

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- (ii) a film for exhibition as an advertising program or a commercial; or
- (iii) a film for exhibition as a discussion program, a quiz program, a panel program, a variety program or a program of a like nature; or
- (iv) a film of a public event; or
- (v) if the film is covered by subparagraph (b)(i) or (ii)—a film forming part of a drama program series that is, or is intended to be, of a continuing nature; or
- (vi) a training film; or
- (vii) a computer game (within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995*).

*Television series*

- (3) The condition in this subsection is that, if the \*film is a television series that is not covered by subparagraph (2)(b)(i) or (ii), it is made up of 2 or more episodes that:
- (a) are produced wholly or principally for exhibition to the public on television under a single title; and
  - (b) contain a common theme or themes; and
  - (c) contain dramatic elements that form a narrative structure; and
  - (d) are produced wholly or principally for exhibition together, for a national market or national markets.
- Note: A documentary can be a television series.
- (4) To avoid doubt, and without limiting paragraph (3)(c), a \*film satisfies the requirement in that paragraph if:
- (a) the sole or dominant purpose of the film is to depict actual events, people or situations; and
  - (b) the film depicts those events, people or situations in a dramatic or entertaining way, with a heavy emphasis on dramatic impact or entertainment value.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Conditions relating to expenditure thresholds*

- (5) The conditions of this subsection are that:
- (a) the total of the company's \*qualifying Australian production expenditure on the \*film (as determined by the \*Arts Minister under section 376-50), to the extent that it relates to \*post, digital and visual effects production for the film, is at least \$5 million; and
  - (b) the company either carried out, or made the arrangements for the carrying out of, all the activities in Australia that were necessary for the post, digital and visual effects production for the film.

Note: The operation of paragraph (b) is affected by paragraph 376-180(1)(d) (which deals with the situation where one company takes over the making of a film from another company).

**376-50 Minister to determine a company's qualifying Australian production expenditure for the PDV offset**

- (1) If a company applies to the \*Arts Minister for the issue of a certificate to the company for the \*post, digital and visual effects production for a \*film under section 376-45 (certificate for the PDV offset), the Arts Minister must, as soon as practicable after receiving the application, determine in writing the total of the company's \*qualifying Australian production expenditure, to the extent that it relates to post, digital and visual effects production for the film, for the purposes of the PDV offset.
- (2) In making a determination under subsection (1), the \*Arts Minister must have regard to the matters in Subdivision 376-C.
- (3) The \*Arts Minister must give the company written notice of the determination.
- (4) A determination made under subsection (1) is not a legislative instrument.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Refundable tax offset for Australian expenditure in making an Australian film (producer offset)**

**376-55 Film production company entitled to refundable tax offset for Australian expenditure in making an Australian film (producer offset)**

- (1) A company is entitled to a \*tax offset under this section (the *producer offset*) for an income year in respect of a \*film if:
- (a) the film was \*completed in the income year; and
  - (b) the \*film authority has issued a certificate to the company under section 376-65 (certificate for the producer offset) for the film; and
  - (c) the company claims the offset in its \*income tax return for the income year; and
  - (d) the company:
    - (i) is an Australian resident; or
    - (ii) is a foreign resident but does have a \*permanent establishment in Australia and does have an \*ABN; when the company lodges the income tax return and when the tax offset is due to be credited to the company.

The claim referred to in paragraph (c) is irrevocable.

Note: The producer offset is a refundable tax offset: see section 67-23.

- (2) A \*film is *completed*:
- (a) for a film that is not a series or a season of a series—when it is first in a state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public; or
  - (b) for a series—at the earlier of:
    - (i) the time when the 65th episode is first in a state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public; and
    - (ii) the time when the series is first in such a state; and
  - (c) for a season of a series—at the earlier of:
    - (i) the time when the 65th episode of the series is first in a state where it could reasonably be regarded as ready to

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

be distributed, broadcast or exhibited to the general public; and

(ii) the time when the season is first in such a state.

- (3) **Film authority** means Screen Australia.
- (4) The company is not entitled to the producer offset if:
- (a) the company or someone else claims a deduction in relation to a unit of industrial property that relates to copyright in the \*film under Division 10B of Part III of the *Income Tax Assessment Act 1936*; or
  - (b) a final certificate for the film has been issued at any time under Division 10BA of Part III of the *Income Tax Assessment Act 1936* (whether or not the certificate is still in force); or
  - (c) a certificate for the film has been issued at any time under section 376-20 (certificate for the location offset) (whether or not the certificate is still in force); or
  - (d) a certificate for the film has been issued at any time under section 376-45 (certificate for the PDV offset) (whether or not the certificate is still in force); or
  - (e) the company or someone else has deducted money paid for \*shares in a \*film licensed investment company under Subdivision 375-H and the film licensed investment company has invested in the film; or
  - (f) production assistance (other than \*development assistance) for the film has been received by the company or anyone else before 1 July 2007 from any of the following bodies:
    - (i) the Film Finance Corporation Australia Limited;
    - (ii) Film Australia Limited;
    - (iii) the Australian Film Commission;
    - (iv) the Australian Film, Television and Radio School.
- (5) **Development assistance** for a \*film means financial assistance provided to assist with meeting the development costs for the film, and includes assistance to the extent to which it is provided in relation to any of the following:
- (a) location surveys and other activities undertaken to assess locations for possible use in the film;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 376-60

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- (b) storyboarding for the film;
- (c) scriptwriting for the film;
- (d) research for the film;
- (e) casting actors for the film;
- (f) developing a budget for the film;
- (g) developing a shooting schedule for the film.

**376-60 Amount of the producer offset**

The amount of the producer offset is:

- (a) if the \*film is a \*feature film—40%; or
- (b) if the film is not a feature film—20%;

of the total of the company's \*qualifying Australian production expenditure on the film (as determined by the \*film authority under section 376-75).

**376-65 Film authority must issue certificate for an Australian film for the producer offset**

- (1) The \*film authority must issue a certificate to a company for a \*film in relation to the producer offset if the film authority is satisfied that:
  - (a) the company either carried out, or made the arrangements for the carrying out of, all the activities that were necessary for the \*making of the film; and
  - (b) the conditions in subsections (2) to (6) are met.

Note: The operation of paragraph (a) is affected by paragraph 376-180(1)(d) (which deals with the situation where one company takes over the making of a film from another company).

*Type of film*

- (2) The conditions in this subsection are that:
  - (a) the \*film:
    - (i) has a significant Australian content (see section 376-70); or
    - (ii) has been made under an \*arrangement entered into between the Commonwealth or an authority of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Commonwealth and a foreign country or an authority of the foreign country; and

- (b) the film was produced for:
  - (i) exhibition to the public in cinemas or by way of television broadcasting (including broadcasting by way of the delivery of a television program by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*); or
  - (ii) distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); and
- (c) the film is:
  - (i) a \*feature film; or
  - (ii) a single episode program; or
  - (iii) a series; or
  - (iv) a season of a series; or
  - (v) a short form animated drama that is not covered by subparagraph (i), (ii), (iii) or (iv); and
- (d) the film is not, or is not to a substantial extent:
  - (i) a film for exhibition as an advertising program or a commercial; or
  - (ii) a film for exhibition as a discussion program, a quiz program, a panel program, a variety program or a program of a like nature; or
  - (iii) a film of a public event (other than a documentary); or
  - (iv) a training film; or
  - (v) a computer game (within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995*); or
  - (vi) a news or current affairs program; or
  - (vii) a reality program (other than a documentary).

*Single episode programs*

- (3) The conditions in this subsection are that, if the \*film is a single episode program, it:
  - (a) is of a like nature to a \*feature film; and
  - (b) is produced for:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 376-65

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- (i) exhibition to the public by way of television broadcasting (including broadcasting by way of the delivery of a television program by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*); or
- (ii) distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); and
- (c) if the program is a documentary—is of at least one half of a commercial hour in duration; and
- (d) if the program is not a documentary—is of at least one commercial hour in duration.

*Short form animated drama*

- (4) The conditions in this subsection are that, if the \*film is a short form animated drama, it:
  - (a) is a drama program comprising one or more episodes which are produced wholly or principally for exhibition together, for a national market or national markets under a single title; and
  - (b) is predominantly made using cell, stop motion, digital or other animation; and
  - (c) contains a common theme or themes; and
  - (d) is of at least one quarter of a commercial hour in duration.

*Series and seasons of series*

- (5) The conditions in this subsection are that:
  - (a) if the application for the certificate is for a \*film that is a series and not for a film that is a season of that series:
    - (i) the series is made up of at least 2 episodes; and
    - (ii) each episode of the series is at least one half of a commercial hour in duration, except where the film is predominantly made using cell, stop motion, digital or other animation, in which case each episode is at least one quarter of a commercial hour in duration; and
    - (iii) the series has a new creative concept (see section 376-70); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) if the application for the certificate is for a film that is a season of a series:
- (i) the season is made up of at least 2 episodes; and
  - (ii) each episode of the series is at least one half of a commercial hour in duration, except where the film is predominantly made using cell, stop motion, digital or other animation, in which case each episode is at least one quarter of a commercial hour in duration; and
  - (iii) the series has a new creative concept (see section 376-70).

*Expenditure thresholds*

(6) The conditions in this subsection are as set out in the table.

<b>Expenditure thresholds</b>			
<b>Item</b>	<b>For this type of film ...</b>	<b>The total of the company's qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...</b>	<b>and the amount for the film worked out under subsection (7) is at least ...</b>
1	A *feature film	\$1 million	not applicable
2	A single episode program other than a documentary	\$1 million	\$800,000
3	A single episode program that is a documentary	not applicable	\$250,000

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 376** Films generally (tax offsets for Australian production expenditure)

Section 376-65

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<b>Expenditure thresholds</b>			
<b>Item</b>	<b>For this type of film ...</b>	<b>The total of the company's qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...</b>	<b>and the amount for the film worked out under subsection (7) is at least ...</b>
4	A short form animated drama that is not a *feature film, a single episode program, a series or a season of a series	\$250,000	\$1,000,000
5	A *film where the application for the certificate is for a series and not for a season of that series, and the series is not a documentary	\$1 million	\$500,000
6	A *film where the application for the certificate is for a series and not for a season of that series, and the series is a documentary	not applicable	\$250,000
7	A * film where the application for the certificate is for a season of a series, and the series is not a documentary	\$1 million	\$500,000

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Expenditure thresholds**

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Item	For this type of film ...	The total of the company's qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...	and the amount for the film worked out under subsection (7) is at least ...
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8	A *film where the application for the certificate is for a season of a series, and the series is a documentary	not applicable	\$250,000
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- (7) The amount worked out for a \*film under this subsection is the amount worked out using the formula:

$$\frac{\text{Total QAPE}}{\text{Duration of film in hours}}$$

where:

*duration of film in hours* means the total length of the \*film, measured in hours.

*total QAPE* means the total of the company's \*qualifying Australian production expenditure on the \*film (as determined by the \*film authority under section 376-75).

**376-70 Determination of content of film**

- (1) In determining for the purposes of section 376-65 (certificate for the producer offset) whether a \*film has a significant Australian content, the \*film authority must have regard to the following:
- (a) the subject matter of the film;
  - (b) the place where the film was made;
  - (c) the nationalities and places of residence of the persons who took part in the \*making of the film;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 376-75

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- (d) the details of the \*production expenditure incurred in respect of the film;
  - (e) any other matters that the film authority considers to be relevant.
- (2) In determining for the purposes of section 376-65 (certificate for the producer offset) whether a \*film that is a series has a new creative concept, the \*film authority must have regard to the following:
- (a) the title of the series;
  - (b) whether the series has substantially different characters, settings, production locations and individuals involved in the \*making of the series than any other series;
  - (c) any other matters that the film authority considers to be relevant.

**376-75 Film authority to determine a company's qualifying Australian production expenditure for the producer offset**

- (1) If a company applies to the \*film authority for the issue of a certificate to the company for a \*film under section 376-65 (certificate for the producer offset), the film authority must, as soon as practicable after receiving the application, determine in writing the total of the company's \*qualifying Australian production expenditure on the film for the purposes of the producer offset.
- (2) In making a determination under subsection (1), the \*film authority must have regard to the matters in Subdivision 376-C.
- (3) The \*film authority must give the company written notice of the determination.
- (4) A determination made under subsection (1) is not a legislative instrument.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 376-C—Production expenditure and qualifying Australian production expenditure**

### **Table of sections**

#### **Production expenditure—common rules**

- 376-125 Production expenditure—general test
- 376-130 Production expenditure—special qualifying Australian production expenditure
- 376-135 Production expenditure—specific exclusions

#### **Production expenditure—special rules for the location offset**

- 376-140 Production expenditure—special rules for the location offset

#### **Qualifying Australian production expenditure—common rules**

- 376-145 Qualifying Australian production expenditure—general test
- 376-150 Qualifying Australian production expenditure—specific inclusions
- 376-155 Qualifying Australian production expenditure—specific exclusions
- 376-160 Qualifying Australian production expenditure—treatment of services embodied in goods

#### **Qualifying Australian production expenditure—special rules for the location offset and the PDV offset**

- 376-165 Qualifying Australian production expenditure—special rules for the location offset and the PDV offset

#### **Qualifying Australian production expenditure—special rules for the producer offset**

- 376-170 Qualifying Australian production expenditure—special rules for the producer offset

#### **Expenditure generally—common rules**

- 376-175 Expenditure to be worked out on an arm's length basis
- 376-180 Expenditure incurred by prior production companies

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Production expenditure—common rules

### 376-125 Production expenditure—general test

- (1) A company's *production expenditure* on a \*film is expenditure that the company incurs to the extent to which it:
  - (a) is incurred in, or in relation to, the \*making of the film; or
  - (b) is reasonably attributable to:
    - (i) the use of equipment or other facilities for; or
    - (ii) activities undertaken in;  
the making of the film.
- (2) The *making* of a \*film means the doing of the things necessary for the production of the first copy of the film.
- (3) The *making* of a \*film includes:
  - (a) pre-production activities in relation to the film; and
  - (b) post-production activities in relation to the film; and
  - (c) any other activities undertaken to bring the film up to the state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public.
- (4) The *making* of a \*film does not include:
  - (a) developing the proposal for the \*making of the film; or
  - (b) arranging or obtaining finance for the film; or
  - (c) distributing the film; or
  - (d) promoting the film.
- (5) Without limiting subsection (1), a company's *production expenditure* on a \*film:
  - (a) may be expenditure that is incurred in the income year for which the \*tax offset is sought or in an earlier income year;  
and
  - (b) may be expenditure of either a capital or a revenue nature;  
and
  - (c) may be expenditure that gives rise to a deduction.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Paragraph (c) has effect subject to item 10 of the table in section 376-135 (which deals with capital allowances).

(6) If:

(a) a company:

(i) \*holds a \*depreciating asset; and

(ii) uses the asset, while held, in the \*making of a \*film; and

(b) deductions in relation to the asset are available under Division 40 (which deals with capital allowances);

the *production expenditure* of the company on the film includes an amount equal to the decline in the value of the asset to the extent to which that decline is reasonably attributable to the use of the asset in the making of the film (the *film proportion*). The decline in value of the asset is to be worked out using Division 40.

Note: Under item 10 of the table in section 376-135, expenditure that sets or increases the cost of the asset does not count as production expenditure.

(7) If a \*balancing adjustment event occurs for the asset before the film is \*completed:

(a) if the asset's \*termination value is more than its \*adjustable value just before the event occurred—the *production expenditure* of the company on the film is reduced by the film proportion of the difference; or

(b) if the asset's termination value is less than its adjustable value just before the event occurred—the *production expenditure* of the company on the film includes the film proportion of the difference.

### **376-130 Production expenditure—special qualifying Australian production expenditure**

Expenditure of a company is also *production expenditure* of the company on a \*film if it is \*qualifying Australian production expenditure of the company on the film under section 376-150 or 376-165.

Note: This means that the special qualifying Australian production expenditure in sections 376-150 and 376-165 is taken into account both in working out the total amount of the company's qualifying Australian production expenditure and in working out the total amount

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 376** Films generally (tax offsets for Australian production expenditure)

Section 376-135

---

of all the company's production expenditure on the film. The total amount of all production expenditure is relevant to a company's eligibility for the location offset: see the test in paragraph 376-20(5)(b).

**376-135 Production expenditure—specific exclusions**

Despite sections 376-125 and 376-130, the following expenditure of a company is not *production expenditure* of the company on a \*film, except to the extent, if any, as mentioned in column 3 of the table:

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<b>Expenditure that does not count as production expenditure on a film</b>		
<b>Item</b>	<b>This kind of expenditure by the company is not production expenditure ...</b>	<b>except to the extent to which the expenditure is ...</b>
1	<i>Financing expenditure</i> expenditure incurred by way of, or in relation to, the financing of the *film (including returns payable on amounts invested in the film and expenditure in relation to raising and servicing finance for the film)	
2	<i>Development expenditure</i> *development expenditure on the *film	*qualifying Australian production expenditure under item 1 of the table in subsection 376-150(1)
3	<i>Copyright acquisition expenditure</i> expenditure incurred in acquiring copyright, or a licence in relation to copyright, in a pre-existing work for use in the *film	*qualifying Australian production expenditure under item 2 of the table in subsection 376-150(1)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Expenditure that does not count as production expenditure on a film**

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Item	This kind of expenditure by the company is not production expenditure ...	except to the extent to which the expenditure is ...
4	<p><i>General business overheads</i></p> <p>expenditure incurred to meet the general business overheads of the company that:</p> <p>(a) are not incurred in, or in relation to, the *making of the *film; and</p> <p>(b) are not reasonably attributable to:</p> <p style="padding-left: 20px;">(i) the use of equipment or other facilities for; or</p> <p style="padding-left: 20px;">(ii) activities undertaken in; the making of the film</p>	<p>*qualifying Australian production expenditure under item 1 of the table in subsection 376-165(1) or item 1 of the table in subsection 376-170(2)</p>
5	<p><i>Publicity and promotion expenditure</i></p> <p>expenditure incurred in publicising or otherwise promoting the *film (including press expenses, still photography, videotapes, public relations and other similar expenses)</p>	<p>*qualifying Australian production expenditure under item 3 or 4 of the table in subsection 376-150(1)</p>
6	<p><i>Deferments</i></p> <p>amounts that are payable only out of the receipts, earnings or profits from the *film</p>	
7	<p><i>Profit participation</i></p> <p>amounts that:</p> <p>(a) depend on the receipts, earnings or profits from the *film; or</p> <p>(b) are otherwise dependent on the commercial performance of the film</p>	

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 376** Films generally (tax offsets for Australian production expenditure)

Section 376-140

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**Expenditure that does not count as production expenditure on a film**

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<b>Item</b>	<b>This kind of expenditure by the company is not production expenditure ...</b>	<b>except to the extent to which the expenditure is ...</b>
8	<i>Residuals</i> amounts payable in satisfaction of the residual rights of a person who is a member of the cast	paid out by the company before the *film is *completed
9	<i>Advances</i> amounts paid by way of advance on a payment to which item 6, 7 or 8 applies to the extent to which it may become repayable by the person to whom it is paid	
10	<i>Acquisition of depreciating asset</i> expenditure to the extent to which it sets, or increases, the *cost of a *depreciating asset  This item has effect subject to subsections 376-125(6) and (7).	*qualifying Australian production expenditure under item 2 of the table in subsection 376-150(1)
11	<i>Regulations</i> expenditure specified in regulations	

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**Production expenditure—special rules for the location offset**

**376-140 Production expenditure—special rules for the location offset**

Despite sections 376-125 and 376-130, the expenditure of a company is not *production expenditure* of the company on a \*film in relation to the location offset if:

- (a) the film is a television series that is not a \*feature film or a mini-series of television drama; and
- (b) the expenditure is reasonably attributable to the production of a pilot episode to the television series; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) the expenditure, apart from this subsection, would be production expenditure that was not \*qualifying Australian production expenditure.

Note: The total amount of all production expenditure is relevant to the test in paragraph 376-20(5)(b).

### **Qualifying Australian production expenditure—common rules**

#### **376-145 Qualifying Australian production expenditure—general test**

A company's *qualifying Australian production expenditure* on a \*film is the company's \*production expenditure on the film to the extent to which it is incurred for, or is reasonably attributable to:

- (a) goods and services provided in Australia; or
- (b) the use of land located in Australia; or
- (c) the use of goods that are located in Australia at the time they are used in the \*making of the film.

#### **376-150 Qualifying Australian production expenditure—specific inclusions**

- (1) The following expenditure of a company is also *qualifying Australian production expenditure* of the company on a \*film:

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##### **Special Australian expenditure**

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<b>Item</b>	<b>Type of expenditure</b>
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- |   |  |
|---|--|
| 1 | <i>Australian development expenditure</i><br>*development expenditure on the *film to the extent to which it is incurred for, or is reasonably attributable to: <ul style="list-style-type: none"><li>(a) goods and services provided in Australia; or</li><li>(b) the use of land located in Australia; or</li><li>(c) the use of goods that are located in Australia at the time they are used in the *making of the film</li></ul> [see subsection (2)] |
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 376** Films generally (tax offsets for Australian production expenditure)

Section 376-155

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**Special Australian expenditure**

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<b>Item</b>	<b>Type of expenditure</b>
2	<i>Expenditure incurred in acquiring Australian copyright</i> expenditure incurred to acquire copyright, or a licence in relation to copyright, in a pre-existing work for use in the *film if the copyright is held by an individual or a company that is an Australian resident
3	<i>Expenditure incurred in producing Australian copyrighted promotional material</i> expenditure incurred in producing material for use in publicising or otherwise promoting the *film if the copyright in the material is held by an individual or a company that is an Australian resident
4	<i>Expenditure incurred in producing additional content</i> expenditure incurred in producing audio or visual content for the *film otherwise than for use in the first copy of the film, to the extent that the expenditure is incurred in Australia prior to the *completion of the film
5	<i>Regulations</i> expenditure prescribed by the regulations

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(2) Legal costs are covered by item 1 of the table in subsection (1) only if they relate to:

- (a) writers' contracts; or
- (b) chain of title and other copyright issues.

**376-155 Qualifying Australian production expenditure—specific exclusions**

Despite sections 376-145, 376-150, 376-165 and 376-170, the following expenditure of a company is not *qualifying Australian production expenditure* of a company on a \*film:

- (a) expenditure that is incurred when:
  - (i) the company is a foreign resident; and
  - (ii) the company does not have both a \*permanent establishment in Australia and an \*ABN;
- (b) expenditure in relation to:
  - (i) remuneration and other benefits provided to an individual for the individual's services in relation to the \*making of the film; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) travel and other costs associated with the services an individual provides in relation to the making of the film; if the individual:
  - (iii) is not a member of the cast; and
  - (iv) enters Australia to work on the film for less than 2 consecutive calendar weeks;
- (c) expenditure prescribed by the regulations.

**376-160 Qualifying Australian production expenditure—treatment of services embodied in goods**

If:

- (a) a company incurs expenditure for the provision of what is essentially a service; and
- (b) the results of the service are provided to the company by being embodied in goods that are delivered to the company; and
- (c) the service that is embodied in the goods was predominantly performed outside Australia;

the service is not provided to the company in Australia merely because the goods are delivered to the company in Australia.

Note: Paragraph (b)—a document, for example, might set out legal or other professional advice or a computer disk might contain a program that has been made or data that has been compiled.

**Qualifying Australian production expenditure—special rules for the location offset and the PDV offset**

**376-165 Qualifying Australian production expenditure—special rules for the location offset and the PDV offset**

- (1) For the purposes of the location offset and the PDV offset, the following expenditure of a company is also *qualifying Australian production expenditure* of the company on a \*film:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 376** Films generally (tax offsets for Australian production expenditure)

Section 376-165

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**Special Australian expenditure—location offset and PDV offset**

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**Item    Type of expenditure**

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- 1    *Australian business overheads*  
general business overheads of the company that:  
(a) are not incurred in, or in relation to, the \*making of the \*film; and  
(b) are not reasonably attributable to:  
    (i) the use of equipment or other facilities for; or  
    (ii) activities undertaken in;  
        the making of the film;  
to the extent to which they:  
(c) are incurred for, or are reasonably attributable to:  
    (i) goods and services provided in Australia; or  
    (ii) the use of land located in Australia; or  
    (iii) the use of goods that are located in Australia at the time they  
        are used in the making of the film; and  
(d) represent a reasonable apportionment of those overheads between the  
    making of the film and the other activities undertaken by the company  
This item has effect subject to subsection (2).
- 
- 2    *Travel to Australia*  
expenditure of the company in relation to an individual's travel to  
Australia to undertake activities in Australia in relation to the \*making of  
the \*film, if the remuneration paid to the individual for those activities is  
\*qualifying Australian production expenditure of the company
- 
- 3    *Expenditure incurred in freighting goods to Australia*  
expenditure incurred in freighting goods to Australia, to the extent that the  
goods will be used in the \*making of the \*film
- 
- (2) General business overheads of the company are covered by item 1  
of the table in subsection (1) only to the extent to which they do  
not exceed the lesser of:  
(a) 2% of the total of all the company's \*production expenditure  
    on the \*film; and  
(b) \$500,000.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Qualifying Australian production expenditure—special rules for the producer offset**

### **376-170 Qualifying Australian production expenditure—special rules for the producer offset**

*Expenditure that is qualifying Australian production expenditure*

- (1) For the purposes of subsections 376-65(6) and (7), expenditure on a \*film incurred in a foreign country is ***qualifying Australian production expenditure*** of a company on the film if:
- (a) the expenditure is incurred by the company claiming the offset, or by another entity that is involved in the \*making of the film; and
  - (b) the expenditure would be qualifying Australian production expenditure if it had been incurred for, or reasonably attributable to:
    - (i) goods and services provided in Australia; or
    - (ii) the use of land located in Australia; or
    - (iii) the use of goods that are located in Australia at the time they are used in the \*making of the film; and
  - (c) the film is made under an \*arrangement entered into between the Commonwealth or an authority of the Commonwealth and the foreign country or an authority of the foreign country.

Note: This means that such expenditure is taken into account for the purposes of determining whether to issue a certificate for the producer offset to the company under section 376-65. It is not taken into account in working out the amount of the producer offset to which the company is entitled.

- (2) For the purposes of the producer offset, the following expenditure of a company is also ***qualifying Australian production expenditure*** of the company on a \*film:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 376** Films generally (tax offsets for Australian production expenditure)

Section 376-170

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**Special Australian expenditure—producer offset**

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**Item    Type of expenditure**

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- 1        *Australian business overheads*  
general business overheads of the company that:  
(a) are not incurred in, or in relation to, the \*making of the \*film; and  
(b) are not reasonably attributable to:  
      (i) the use of equipment or other facilities for; or  
      (ii) activities undertaken in;  
          the making of the film;  
to the extent to which they:  
(c) are incurred for, or are reasonably attributable to:  
      (i) goods and services provided in Australia; or  
      (ii) the use of land located in Australia; or  
      (iii) the use of goods that are located in Australia at the time they  
          are used in the making of the film; and  
(d) represent a reasonable apportionment of those overheads between the  
      making of the film and the other activities undertaken by the company  
This item has effect subject to subsection (3).
- 
- 2        *Travel to Australia and other countries*  
expenditure of the company in relation to an individual's travel:  
(a) to Australia, to undertake activities in relation to the \*making of the  
      \*film; and  
(b) to or within any other country, to undertake activities in relation to the  
      making of the film, if the remuneration paid to the individual for those  
      activities would be \*qualifying Australian production expenditure of  
      the company under item 4 of this table.
- 
- 3        *Expenditure incurred in freighting goods within and between countries*  
expenditure incurred in freighting goods within and between countries, to  
the extent that the goods will be used in the \*making of the \*film.
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Special Australian expenditure—producer offset**

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**Item    Type of expenditure**

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- 4    *Expenditure incurred in other countries*  
expenditure incurred outside Australia:
- (a) for the remuneration of an Australian resident, or the purchase of goods or services from companies or \*permanent establishments that have an \*ABN; and
  - (b) during the period in which principal photography for the film takes place outside Australia
- if the subject matter of the film reasonably requires the location in which the expenditure is incurred to be used for principal photography.
- 
- (3) General business overheads of the company are covered by item 1 of the table in subsection (2) only to the extent to which they do not exceed the lesser of:
- (a) 5% of the total of all the company's \*total film expenditure on the \*film; and
  - (b) \$500,000.

*Expenditure that is not qualifying Australian production expenditure*

- (4) For the purposes of the producer offset, the following expenditure of a company is not ***qualifying Australian production expenditure*** of a company on a \*film:
- (a) expenditure on the film that is paid for with \*development assistance received from any of the following bodies:
    - (i) the Film Finance Corporation Australia Limited;
    - (ii) Film Australia Limited;
    - (iii) the Australian Film Commission;
    - (iv) the Australian Film, Television and Radio School;
    - (v) Screen Australia;unless the amount or value of the assistance has been repaid;
  - (b) the following expenditure:
    - (i) \*development expenditure on the film;
    - (ii) remuneration provided to the principal director, producers and principal cast associated with the film;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 376** Films generally (tax offsets for Australian production expenditure)

Section 376-175

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- to the extent that such expenditure comprises greater than 20% of the company's \*total film expenditure on the film;
- (c) for a series or a season of a series—expenditure on an episode beyond the 65th episode of the series.
- (5) In applying paragraph (4)(c), episodes completed before 1 July 2007 count towards the limit in that paragraph.
- (6) **Total film expenditure** on a film means:
- (a) expenditure covered by sections 376-125, 376-130, 376-150 and 376-170; and
- (b) expenditure mentioned in column 2 of the table in section 376-135, to the extent that it is not covered by paragraph (a).

**Expenditure generally—common rules**

**376-175 Expenditure to be worked out on an arm's length basis**

For the purposes of this Division, if any 2 or more parties to:

- (a) an \*arrangement under which a company incurs expenditure in relation to a \*film; or
- (b) any act or transaction directly or indirectly connected with expenditure that a company incurs in relation to a film;

do not deal with each other at \*arm's length in relation to the arrangement, or in relation to the act or transaction, the expenditure is taken to be only so much (if any) of the expenditure as would have been incurred if they had been dealing with each other at arm's length in relation to the arrangement, or in relation to the act or transaction.

**376-180 Expenditure incurred by prior production companies**

- (1) For the purposes of this Division, if a company (the **incoming company**) takes over the \*making of a \*film from another company (the **outgoing company**):
- (a) expenditure incurred in relation to the film by the outgoing company is taken to have been incurred in relation to the film by the incoming company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) for the purposes of determining the extent to which that expenditure is \*qualifying Australian production expenditure of the incoming company, the incoming company is taken:
    - (i) to have been an Australian resident at any time when the outgoing company was an Australian resident; and
    - (ii) to have had a \*permanent establishment in Australia at any time when the outgoing company had a permanent establishment in Australia; and
    - (iii) to have had an \*ABN at any time when the outgoing company had an ABN; and
  - (c) expenditure that the incoming company incurs in order to be able to take over the making of the film is to be disregarded for the purposes of this Division; and
  - (d) any activities carried out, and arrangements made, by the outgoing company in relation to the film are taken, for the purposes of subparagraph 376-20(5)(b)(ii) and paragraphs 376-20(5)(c), 376-45(5)(b) and 376-65(1)(a), to have been carried out or made by the incoming company in relation to the film.
- (2) For the purposes of subsection (1):
- (a) expenditure incurred on the \*film by the outgoing company includes expenditure that the outgoing company is itself taken to have incurred on the film because of the operation of subsection (1); and
  - (b) the outgoing company is taken:
    - (i) to have been an Australian resident at any time when the outgoing company is taken to have been an Australian resident because of the operation of subsection (1); and
    - (ii) to have had a \*permanent establishment in Australia at any time when the outgoing company is taken to have had a permanent establishment in Australia because of the operation of subsection (1); and
    - (iii) to have had an \*ABN at any time when the outgoing company is taken to have had an ABN because of the operation of subsection (1); and
  - (c) activities carried out by the outgoing company in relation to the film include activities that the outgoing company is taken

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 376** Films generally (tax offsets for Australian production expenditure)

Section 376-230

---

to have carried out in relation to the film because of the operation of subsection (1); and

- (d) arrangements made by the outgoing company for the carrying out of activities in relation to the film include arrangements that the outgoing company is taken to have made because of the operation of subsection (1).

Example: If Uncle Carty Ltd starts out making a film and then Mr Grouble Ltd takes over the making of the film, Mr Grouble Ltd is taken to have incurred the expenditure that Uncle Carty Ltd incurred on the film. If Lousie Ltd subsequently takes over the making of the film from Mr Grouble Ltd, Lousie Ltd is taken to have incurred the expenditure that Mr Grouble Ltd incurred on the film (including the expenditure of Uncle Carty Ltd that is attributed to Mr Grouble Ltd).

**Subdivision 376-D—Certificates for films and other matters**

**Table of sections**

376-230	Production company may apply for certificate
376-235	Notice of refusal to issue certificate
376-240	Issue of certificate
376-245	Revocation of certificate
376-250	Notice of decision or determination
376-255	Review of decisions by the Administrative Appeals Tribunal
376-260	Minister may make rules about the location offset and the PDV offset
376-265	Film authority may make rules about the producer offset
376-270	Amendment of assessments

**376-230 Production company may apply for certificate**

*Application for location offset certificate*

- (1) A company may apply to the \*Arts Minister for the issue of a certificate to the company for a \*film under section 376-20 (certificate for the location offset):
- (a) if the total of the company's \*qualifying Australian production expenditure on the film (as determined by the \*Arts Minister under section 376-30) is less than \$50 million—when all of the company's \*production expenditure has been incurred; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) if the total of the company's qualifying Australian production expenditure on the film (as determined by the \*Arts Minister under section 376-30) is at least \$50 million—when all of the company's qualifying Australian production expenditure has been incurred.

*Application for PDV offset certificate*

- (2) Once all of a company's \*qualifying Australian production expenditure on a \*film, to the extent that it relates to \*post, digital and visual effects production for the film, has been incurred, the company may apply to the \*Arts Minister for the issue of a certificate to the company for the film under section 376-45 (certificate for the PDV offset).

*Application for producer offset certificate*

- (3) Once a \*film is \*completed, a company may apply to the \*film authority for the issue of a certificate to the company for the film under section 376-65 (certificate for the producer offset).

*Form of application*

- (4) An application under subsection (1) or (2) must be made in accordance with the rules determined by the \*Arts Minister under section 376-260 so far as they relate to the requirements for applications.
- (5) An application under subsection (3) must be made in accordance with the rules determined by the \*film authority under section 376-265 so far as they relate to the requirements for applications.

**376-235 Notice of refusal to issue certificate**

- (1) If the \*Arts Minister decides not to issue a certificate under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset) for a \*film, the Minister must give the applicant written notice of the decision (including reasons for the decision).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 376** Films generally (tax offsets for Australian production expenditure)

Section 376-240

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- (2) If the \*film authority decides not to issue a certificate under section 376-65 (certificate for the producer offset) for a \*film, the authority must give the applicant written notice of the decision (including reasons for the decision).

**376-240 Issue of certificate**

- (1) A certificate issued to a company under section 376-20 (certificate for the location offset), 376-45 (certificate for the PDV offset) or 376-65 (certificate for the producer offset) must:
- (a) be in writing; and
  - (b) specify the company's \*ABN; and
  - (c) specify the date of issue of the certificate; and
  - (d) if the certificate is issued under section 376-20—specify the total of the company's \*qualifying Australian production expenditure on the \*film, as determined by the \*Arts Minister under section 376-30; and
  - (e) if the certificate is issued under section 376-45—specify the total of the company's qualifying Australian production expenditure on the film, to the extent that it relates to \*post, digital and visual effects production for the film, as determined by the Arts Minister under section 376-50; and
  - (f) if the certificate is issued under section 376-65—specify the total of the company's qualifying Australian production expenditure on the film, as determined by the \*film authority under section 376-75.
- (2) If the certificate is issued under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset), the \*Arts Minister must give the Commissioner notice of the issue of a certificate for a \*film within 30 days after issuing the certificate.
- (3) The notice under subsection (2) must specify:
- (a) the company's name; and
  - (b) the company's address; and
  - (c) the total of the company's \*qualifying Australian production expenditure on the \*film, as determined by the \*Arts Minister under section 376-30 or 376-50, as the case may be; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(d) other matters agreed to between the \*Arts Minister and the Commissioner.

The notice must be accompanied by a copy of the certificate.

- (4) If the certificate is issued under section 376-65 (certificate for the producer offset), the \*film authority must give the Commissioner notice of the issue of a certificate for a \*film within 30 days after issuing the certificate.
- (5) The notice under subsection (4) must specify:
- (a) the company's name; and
  - (b) the company's address; and
  - (c) the total of the company's \*qualifying Australian production expenditure on the \*film, as determined by the \*film authority under section 376-75; and
  - (d) other matters agreed to between the film authority and the Commissioner.

The notice must be accompanied by a copy of the certificate.

### **376-245 Revocation of certificate**

- (1) The \*Arts Minister may revoke a certificate issued to a company for a \*film under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset) if:
- (a) the Minister is satisfied that the issue of the certificate was obtained by fraud or serious misrepresentation; or
  - (b) the company does not provide a copy of the film to the Minister within 30 days of when the film is \*completed.
- (2) If the \*Arts Minister revokes a certificate under subsection (1), the Minister must give the company to whom the certificate was issued written notice of the revocation (including reasons for the decision to revoke the certificate).
- (3) The \*film authority may revoke a certificate issued to a company for a \*film under section 376-65 (certificate for the producer offset) if the authority is satisfied that the issue of the certificate was obtained by fraud or serious misrepresentation.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 376** Films generally (tax offsets for Australian production expenditure)

Section 376-250

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- (4) If the \*film authority revokes a certificate under subsection (3), the authority must give the company to whom the certificate was issued written notice of the revocation (including reasons for the decision to revoke the certificate).
- (5) If a certificate is revoked under subsection (1) or (3), it is taken, for the purposes of this Division, never to have been issued.

Note: This means that if an assessment of a company's income tax is issued on the basis that the company is entitled to a tax offset for a film and the certificate for the film is then revoked, the assessment will be amended to take account of the fact that the company was never entitled to the tax offset: see section 376-270.

- (6) Subsection (5) does not apply for the purposes of:
  - (a) the operation of this section or section 376-250; or
  - (b) a review by a court or the \*AAT of the decision to revoke the certificate.

**376-250 Notice of decision or determination**

- (1) This section applies to a notice of a decision given under section 376-235 (refusal to issue a certificate) or 376-245 (revocation of a certificate), and to a notice of a determination given under section 376-30 (determination of qualifying Australian production expenditure for location offset), 376-50 (determination of qualifying Australian production expenditure for PDV offset) or 376-75 (determination of qualifying Australian production expenditure for producer offset).
- (2) The notice of the decision or determination is to include the statements set out in subsections (3) and (4).
- (3) There must be a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the \*AAT, by (or on behalf of) any entity whose interests are affected by the decision or determination, for review of the decision or determination.
- (4) There must also be a statement to the effect that a request may be made under section 28 of the *Administrative Appeals Tribunal Act 1975* by (or on behalf of) such an entity for a statement:
  - (a) setting out the findings on material questions of fact; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) referring to the evidence or other material on which those findings were based; and
  - (c) giving the reasons for the decision or determination; except where subsection 28(4) of that Act applies.
- (5) If the \*Arts Minister or the \*film authority fails to comply with subsection (3) or (4), that failure does not affect the validity of the decision or determination.

### **376-255 Review of decisions by the Administrative Appeals Tribunal**

Applications may be made to the \*AAT for review of:

- (a) a decision made by the \*Arts Minister to refuse an application for a certificate under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset); or
- (b) a decision made by the Arts Minister under section 376-245 to revoke a certificate; or
- (c) a decision made by the \*film authority to refuse an application for a certificate under section 376-65 (certificate for the producer offset); or
- (d) a decision made by the film authority under section 376-245 to revoke a certificate; or
- (e) a determination by the Arts Minister in relation to the total of a company's \*qualifying Australian production expenditure under section 376-30 or 376-50; or
- (f) a determination by the film authority in relation to the total of a company's \*qualifying Australian production expenditure under section 376-75.

### **376-260 Minister may make rules about the location offset and the PDV offset**

*Rules establishing the Film Certification Advisory Board*

- (1) The \*Arts Minister may, by legislative instrument, make rules:
- (a) establishing a Film Certification Advisory Board to:
    - (i) consider applications under subsection 376-230(1) (application for a certificate for the location offset) or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 376** Films generally (tax offsets for Australian production expenditure)

Section 376-260

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- (2) (application for a certificate for the PDV offset) and advise the Minister on whether to issue certificates under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset); and
- (ii) perform such other functions in relation to the operation of this Division as are specified in the rules; and
- (b) specifying the membership of the Board and the terms and conditions of appointment to the Board; and
- (c) specifying procedures to be followed by the Board in performing its functions.

*Rules providing for provisional certificates in relation to location offset and the PDV offset*

- (2) The \*Arts Minister may, by legislative instrument, make rules providing for the issue of provisional certificates in relation to the location offset or the PDV offset.

*Rules about applications for certificates in relation to the location offset and the PDV offset*

- (3) The \*Arts Minister may, by legislative instrument, make rules specifying how applications for certificates (including provisional certificates) in relation to the location offset or the PDV offset are to be made, including:
  - (a) the form in which applications are to be made; and
  - (b) the information to be provided in applications; and
  - (c) methods for verifying such information; and
  - (d) procedures for providing, at the Minister's request, additional information in support of an application.
- (4) Rules under paragraph (3)(c) can include rules requiring reports by auditors or independent line producers.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **376-265 Film authority may make rules about the producer offset**

*Rules providing for provisional certificates in relation to the producer offset*

- (1) The \*film authority may, by legislative instrument, make rules providing for the issue of provisional certificates in relation to the producer offset.

*Rules about applications for certificates in relation to the producer offset*

- (2) The \*film authority may, by legislative instrument, make rules specifying how applications for certificates (including provisional certificates) in relation to the producer offset are to be made, including:
  - (a) the form in which applications are to be made; and
  - (b) the information to be provided in applications; and
  - (c) methods for verifying such information; and
  - (d) procedures for providing, at the authority's request, additional information in support of an application.
- (3) Rules under paragraph (2)(c) can include rules requiring reports by auditors or independent line producers.

### **376-270 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this Division for an income year if:

- (a) a certificate issued to a company for a \*film is revoked under section 376-245 after the time the company lodged its \*income tax return for an income year; and
- (b) the amendment is made at any time during the period of 4 years starting immediately after the revocation of the certificate.

Note: Section 170 of that Act specifies the periods within which assessments may be amended.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 376** Films generally (tax offsets for Australian production expenditure)

Section 376-275

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**376-275 Review in relation to certain production levels**

The Minister must, before the end of 12 months after the commencement of this Division, initiate a review of the effect of this Division in relation to levels of production by the Australian independent production sector compared to levels of production by Australian television broadcasters.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 380—National Rental Affordability Scheme**

### **Table of Subdivisions**

	Guide to Division 380
380-A	National Rental Affordability Scheme Tax Offset
380-B	Payments made in relation to the National Rental Affordability Scheme etc.

### **Guide to Division 380**

#### **380-1 What this Division is about**

This Division provides a tax offset to certain entities as a result of certificates issued under the *National Rental Affordability Scheme Act 2008*.

It also ensures that payments made, and non-cash benefits provided, by a State or Territory governmental body in relation to the National Rental Affordability Scheme are not assessable income and not exempt income.

### **Subdivision 380-A—National Rental Affordability Scheme Tax Offset**

#### **Table of sections**

380-5	Claims by individuals, corporate tax entities and superannuation funds
380-10	Claims by a party to a non-entity joint venture
380-15	Claims by certain entities to whom NRAS rent flows indirectly
380-20	Claims by a trustee of a trust that does not have net income for an income year
380-25	When NRAS rent flows indirectly to or through an entity
380-30	Share of NRAS rent

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 380-5

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**380-5 Claims by individuals, corporate tax entities and superannuation funds**

*Entitlement*

- (1) An entity is entitled to a \*tax offset for an income year if:
  - (a) the entity is an individual, a \*corporate tax entity or \*superannuation fund; and
  - (b) the \*Housing Secretary has issued the entity with a certificate under the *National Rental Affordability Scheme Act 2008*; and
  - (c) the income year begins in the \*NRAS year to which the certificate relates.

*Amount*

- (2) The amount of the entity's \*tax offset is the amount stated in the certificate.
- (3) However, if the \*Housing Secretary issues the entity with an amended certificate under the *National Rental Affordability Scheme Act 2008*, the amount of the entity's \*tax offset is the amount stated in the amended certificate.

**380-10 Claims by a party to a non-entity joint venture**

- (1) An entity is entitled to a \*tax offset for an income year if:
  - (a) the entity has \*NRAS rent for a rental dwelling covered by subsection (3) for the income year; and
  - (b) the entity is:
    - (i) a party to a \*non-entity joint venture; and
    - (ii) an individual, a \*corporate tax entity or \*superannuation fund.
- (2) The amount of the entity's \*tax offset for an income year is the sum of all amounts worked out under subsection (4) for the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) \*NRAS rent for a rental dwelling is covered by this subsection if:
- (a) NRAS rent is derived by a party to a \*non-entity joint venture in relation to the rental dwelling for an income year; and
  - (b) the \*Housing Secretary has issued the non-entity joint venture with a certificate under the *National Rental Affordability Scheme Act 2008* in relation to the rental dwelling; and
  - (c) the income year begins in the \*NRAS year to which the certificate relates.
- (4) If an entity has \*NRAS rent for a rental dwelling covered by subsection (3), work out an amount for the income year under this subsection using the following formula:

$$\text{Amount stated in certificate for the rental dwelling} \times \frac{\text{*NRAS rent * derived by the entity from the rental dwelling for the income year}}{\text{Total *NRAS rent * derived from the rental dwelling for the income year}}$$

- (5) If a partnership or a trustee of a trust has \*NRAS rent covered by subsection (3), for the purpose of applying sections 380-15 and 380-20, assume:
- (a) a certificate was issued by the \*Housing Secretary to the partnership or the trustee of the trust for the \*NRAS year mentioned in paragraph (3)(c) of this section; and
  - (b) the rental dwellings covered by the certificate are those for which the partnership or the trustee has NRAS rent covered by subsection (3) of this section; and
  - (c) the amount stated in the certificate was the total of all amounts worked out under subsection (4) of this section in relation to those rental dwellings.
- (6) However, if the \*Housing Secretary issues an amended certificate under the *National Rental Affordability Scheme Act 2008* in relation to the rental dwelling, the amounts under subsection (4) are to be worked out using the amount or amounts, as the case may be, stated in the amended certificate.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 380-15

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**380-15 Claims by certain entities to whom NRAS rent flows indirectly**

- (1) An entity to whom \*NRAS rent for a rental dwelling \*flows indirectly in an income year is entitled to a \*tax offset for that income year that is equal to the amount worked out under subsection (2), if:
- (a) the entity is:
    - (i) an individual; or
    - (ii) a \*corporate tax entity when the NRAS rent flows indirectly to it; or
    - (iii) the trustee of a trust that is liable to be assessed on a share of, or all or a part of, the trust's \*net income under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* for that income year; or
    - (iv) the trustee of an \*FHSA; or
    - (v) a \*superannuation fund, an \*approved deposit fund or a \*pooled superannuation trust; and
  - (b) the \*Housing Secretary has issued a certificate under the *National Rental Affordability Scheme Act 2008* to a partnership or a trustee of a trust in relation to the rental dwelling; and
  - (c) the income year of the partnership or the trustee of the trust begins in the \*NRAS year to which the certificate relates.

Note: The entities covered by this section are the ultimate recipients of the NRAS rent because the NRAS rent does not flow indirectly through them to other entities.

- (2) Work out the amount using the following formula:

$$\text{Amount stated in certificate} \times \frac{\text{The entity's *share of *NRAS rent for the rental dwelling}}{\text{Total *NRAS rent *derived from rental dwellings covered by the certificate for the income year mentioned in paragraph (1)(c)}}$$

- (3) However, if the \*Housing Secretary issues an amended certificate under the *National Rental Affordability Scheme Act 2008* in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

relation to the rental dwelling, work out the amount under subsection (2) using the amount stated in the amended certificate.

**380-20 Claims by a trustee of a trust that does not have net income for an income year**

- (1) An entity is entitled to a \*tax offset for an income year if:
  - (a) the entity is a trustee of a trust; and
  - (b) the trust does not have a \*net income for the income year; and
  - (c) \*NRAS rent for a rental dwelling would otherwise \*flow indirectly to the entity in the income year as if:
    - (i) the trust did have a net income for the income year; and
    - (ii) for the purposes of paragraph 380-25(4)(b), the entity has a share amount, being the net income referred to in subparagraph (i) of this paragraph; and
    - (iii) the entity's \*share of the NRAS rent under section 380-30 was a positive amount; and
  - (d) the \*Housing Secretary has issued a certificate under the *National Rental Affordability Scheme Act 2008* to a partnership or a trustee of a trust in relation to the rental dwelling; and
  - (e) the income year of the partnership or the trustee of the trust begins in the \*NRAS year to which the certificate relates.
- (2) The amount of the \*tax offset is the amount worked out in accordance with subsection 380-15(2), as if the reference in the formula to paragraph (1)(c) were a reference to paragraph (1)(e) of this section. For the purposes of working out the entity's \*share of \*NRAS rent for the rental dwelling, assume subparagraphs (1)(c)(i), (ii) and (iii) of this section apply.
- (3) However, if the \*Housing Secretary issues an amended certificate under the *National Rental Affordability Scheme Act 2008* in relation to the rental dwelling, the amount of the entity's \*tax offset is worked out in accordance with subsection 380-15(2) using the amount stated in the amended certificate.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 380-25

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- (4) If the trustee of a trust is entitled to a \*tax offset under this section:
- (a) a beneficiary of the trust; or
  - (b) a subsequent entity to whom \*NRAS rent for the rental dwelling \*flows indirectly;
- is not entitled to a tax offset under this Subdivision in relation to the NRAS rent for the rental dwelling.

**380-25 When NRAS rent flows indirectly to or through an entity**

- (1) This section sets out the circumstances in which \*NRAS rent:
- (a) *flows indirectly* to an entity (subsection (2), (3) or (4)); or
  - (b) *flows indirectly* through an entity (subsection (5)).

*Partners*

- (2) \*NRAS rent *flows indirectly* to a partner in a partnership in an income year if, and only if:
- (a) during that income year, the NRAS rent is \*derived by the partnership, or \*flows indirectly to the partnership as a beneficiary because of a previous application of subsection (3); and
  - (b) the partner has an individual interest:
    - (i) in the partnership's \*net income for that income year that is covered by paragraph 92(1)(a) or (b) of the *Income Tax Assessment Act 1936*; or
    - (ii) in a \*partnership loss of the partnership for that income year that is covered by paragraph 92(2)(a) or (b) of that Act;(whether or not that individual interest becomes assessable income in the hands of the partner); and
  - (c) the partner's \*share of the NRAS rent under section 380-30 is a positive amount (whether or not the partner actually receives any of that share).

*Beneficiaries*

- (3) \*NRAS rent *flows indirectly* to a beneficiary of a trust in an income year if, and only if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) during that income year, the NRAS rent is \*derived by the trustee of the trust, or \*flows indirectly to the trustee as a partner or beneficiary because of a previous application of subsection (2) or this subsection; and
- (b) the beneficiary has this amount for that income year (the **share amount**):
  - (i) a share of the trust's \*net income for that income year that is covered by paragraph 97(1)(a) of the *Income Tax Assessment Act 1936*; or
  - (ii) an individual interest in the trust's net income for that income year that is covered by section 98A or 100 of that Act;(whether or not the share amount becomes assessable income in the hands of the beneficiary); and
- (c) the beneficiary's \*share of the NRAS rent under section 380-30 is a positive amount (whether or not the beneficiary actually receives any of that share).

*Trustees*

- (4) \*NRAS rent **flows indirectly** to the trustee of a trust in an income year if, and only if:
  - (a) during that income year, the NRAS rent is \*derived by the trustee, or \*flows indirectly to the trustee as a partner or beneficiary because of a previous application of subsection (2) or (3); and
  - (b) the trustee is liable or, but for another provision in this Act, would be liable, to be assessed in respect of an amount (the **share amount**) that is:
    - (i) a share of the trust's \*net income for that income year under section 98 of the *Income Tax Assessment Act 1936*; or
    - (ii) all or a part of the trust's net income for that income year under section 99 or 99A of that Act;(whether or not the share amount becomes assessable income in the hands of the trustee); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 380-30

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- (c) the trustee's \*share of the NRAS rent under section 380-30 is a positive amount (whether or not the trustee actually receives any of that share).

Note: A trustee to whom NRAS rent flows indirectly under this subsection is entitled to a tax offset under section 380-15 and the NRAS rent does not flow indirectly through the trustee to another entity.

- (5) \*NRAS rent *flows indirectly* through an entity (the *first entity*) to another entity if, and only if:
- (a) the other entity is the focal entity in an item of the table in section 380-30 in relation to the NRAS rent; and
  - (b) that focal entity's \*share of the NRAS rent is based on the first entity's share of the NRAS rent as an intermediary entity in that or another item of the table.

### 380-30 Share of NRAS rent

*Object of section*

- (1) The object of this section is to ensure that:
- (a) \*NRAS rent derived by a partnership or the trustee of a trust is allocated notionally amongst entities who \*derive benefits from that NRAS rent; and
  - (b) that allocation corresponds with the way in which those benefits were derived.
- (2) An entity's *share* of \*NRAS rent is an amount notionally allocated to the entity as its share of the NRAS rent, whether or not the entity actually receives any of that NRAS rent.
- (3) That amount is equal to the entity's *share* of the \*NRAS rent as the focal entity in column 3 of an item of the table.

Note: An entity's share of the NRAS rent is based on the share of the NRAS rent of each preceding intermediary entity through which the NRAS rent flows, starting from the intermediary entity to whom the NRAS rent is paid.

This means that in some cases (see items 2 and 4 of the table), more than one item of the table will need to be applied to work out the share of the NRAS rent of an ultimate recipient of the NRAS rent.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***Share of NRAS rent***

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<b>Item</b>	<b>Column 1</b> <b>For this intermediary entity and this focal entity:</b>	<b>Column 2</b> <b>The intermediary entity's share of the NRAS rent is:</b>	<b>Column 3</b> <b>The focal entity's share of the NRAS rent is:</b>
1	a partnership is the <i>intermediary entity</i> and a partner in that partnership is the <i>focal entity</i> if:  (a) *NRAS rent is *derived by the partnership; and  (b) the partner has, in respect of the partnership, an individual interest mentioned in subsection 380-25(2)	the NRAS rent	so much of the NRAS rent as is taken into account in working out the amount of that individual interest
2	a partnership is the <i>intermediary entity</i> and a partner in that partnership is the <i>focal entity</i> if:  (a) *NRAS rent *flows indirectly to the partnership as a beneficiary of a trust; and  (b) the partner has, in respect of the partnership, an individual interest mentioned in subsection 380-25(2)	the amount worked out under column 3 of item 3 or 4 of this table where the partnership, as a beneficiary, is the focal entity in that item	so much of the amount worked out under column 2 of this item as is attributable to the partner, having regard to the partnership agreement and any other relevant circumstances

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 380** National Rental Affordability Scheme

Section 380-30

**Share of NRAS rent**

<b>Item</b>	<b>Column 1</b> <b>For this intermediary entity and this focal entity:</b>	<b>Column 2</b> <b>The intermediary entity's share of the NRAS rent is:</b>	<b>Column 3</b> <b>The focal entity's share of the NRAS rent is:</b>
3	<p>the trustee of a trust is the <i>intermediary entity</i> and the trustee or a beneficiary of the trust is the <i>focal entity</i> if:</p> <p>(a) *NRAS rent is *derived by the trustee; and</p> <p>(b) the trustee or beneficiary has, in respect of the trust, a share amount mentioned in subsection 380-25(3) or (4)</p>	<p>(a) if the trust has a positive amount of *net income for that year—the NRAS rent; or</p> <p>(b) otherwise—nil</p>	<p>so much of the amount worked out under column 2 of this item as is taken into account in working out that share amount</p>
4	<p>the trustee of a trust is the <i>intermediary entity</i> and the trustee or a beneficiary of the trust is the <i>focal entity</i> if:</p> <p>(a) *NRAS rent *flows indirectly to the trustee as a partner in a partnership or as a beneficiary of another trust; and</p> <p>(b) the trustee or beneficiary has, in respect of the trust, a share amount mentioned in subsection 380-25(3) or (4)</p>	<p>the amount worked out under column 3 of:</p> <p>(a) item 1 or 2 of this table where the trustee, as a partner, is the focal entity in that item; or</p> <p>(b) item 3 or a previous application of this item where the trustee, as a beneficiary, is the focal entity in that item</p>	<p>so much of the amount worked out under column 2 of this item as is attributable to the focal entity in this item, having regard to the trust deed and any other relevant circumstances</p>

Note: In item 3 or 4 of the table, the trustee of a trust can be both the intermediary entity and the focal entity in the same item.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Subdivision 380-B—Payments made in relation to the National Rental Affordability Scheme etc.**

**Table of sections**

380-35	Payments made and non-cash benefits provided in relation to the National Rental Affordability Scheme
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**380-35 Payments made and non-cash benefits provided in relation to the National Rental Affordability Scheme**

A payment made to you or a \*non-cash benefit provided to you by:

- (a) a Department of a State or Territory; or
- (b) a body (whether incorporated or not) established for a public purpose by or under a law of a State or Territory;

in relation to your participation in the National Rental Affordability Scheme is not assessable income and is not \*exempt income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 385—Primary production

### Table of Subdivisions

	Guide to Division 385
385-E	Primary producer can elect to spread or defer tax on profit from forced disposal or death of live stock
385-F	Insurance for loss of live stock or trees
385-G	Double wool clips
385-H	Rules that apply to all elections made under Subdivisions 385-E, 385-F and 385-G

### Guide to Division 385

#### 385-1 What this Division is about

This Division contains rules that are specific to primary producers.
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### Table of sections

385-5	Where to find some other rules relevant to primary producers
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#### 385-5 Where to find some other rules relevant to primary producers

Rules relevant to primary producers		
Item	For rules about this topic:	See:
1	The rules about assessable income arising from disposals of trading stock apply to live stock, because live stock is trading stock.	Subdivision 70-D

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Rules relevant to primary producers</b>		
<b>Item</b>	<b>For rules about this topic:</b>	<b>See:</b>
2	The rules about assessable income arising from disposals of trading stock apply to: (a) standing or growing crops; and (b) crop-stools; and (c) trees planted and tended for sale.	Subdivision 70-D
3	There are some capital allowances for primary producers and some other land-holders.	Subdivisions 40-F and 40-G
4	Long-term averaging of some primary producers' tax liability (by tax offsets and extra income tax)	Division 392

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**Subdivision 385-E—Primary producer can elect to spread or defer tax on profit from forced disposal or death of live stock**

**Guide to Subdivision 385-E**

**385-90 What this Subdivision is about**

You can elect to exclude from your assessable income the profit on a forced disposal or death of live stock that you held as assets of a primary production business you carry on in Australia.

The excluded profit is then brought into your assessable income over a 5 year period in one of 2 ways.

**Table of sections**

385-95 Basic principles for elections under this Subdivision

**Operative provisions**

385-100 Cases where you can make an election

385-105 Election to spread tax profit over 5 years

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 385-95

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- 385-110 Alternative election to defer tax profit and reduce cost of replacement live stock
- 385-115 Your assessable income includes an amount for replacement live stock you breed
- 385-120 Purchase price of replacement live stock is reduced
- 385-125 Alternative election because of bovine tuberculosis has effect over 10 years not 5

**385-95 Basic principles for elections under this Subdivision**

(1) You can elect:

- to spread the profit on the disposal or death over the income year of the disposal or death and the next 4 income years (*election to spread*); or
- to defer including the profit in your assessable income, if you will use the proceeds of the disposal or death mainly to replace the live stock (*election to defer*).

(2) If you make an election to defer, the profit is “used” over the next 5 income years:

- by reducing the amount for which you are taken to have bought replacement stock (as a result, your tax profit on the disposal of the replacement stock is increased); and
- by including in your assessable income amounts for replacement stock that you breed.

Any unused part of the profit is included in your assessable income for the fifth income year.

**Operative provisions**

**385-100 Cases where you can make an election**

(1) You can make an election if:

- (a) you dispose of \*live stock, or they die, because:
  - (i) land is compulsorily acquired or resumed under an Act;or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) a State or Territory leases land for a cattle tick eradication campaign; or
  - (iii) pasture or fodder is destroyed by fire, drought or flood and you will use the \*proceeds of the disposal or death mainly to buy replacement stock or to maintain breeding stock for the purpose of replacing the live stock; or
  - (iv) they are compulsorily destroyed under an \*Australian law for the control of a \*disease or they die of such a \*disease; or
  - (v) you receive an official notification under an \*Australian law dealing with contamination of property; and
  - (b) you held the live stock as assets of a \*primary production business you carry on in Australia; and
  - (c) apart from this Subdivision, your assessable income for any income year would include the \*proceeds of the disposal or death.
- (2) The *proceeds of the disposal or death* are:
- (a) if you dispose of the \*live stock or their carcasses in the ordinary course of \*business—the total of:
    - (i) any amount you receive as payment for the live stock or carcasses; and
    - (ii) any compensation you receive for the death or destruction, or a reduction in \*market value, of the live stock or their carcasses from an \*Australian government agency; or
  - (b) if you dispose of the \*live stock or their carcasses outside the ordinary course of \*business—the total of:
    - (i) the market value of the live stock or their carcasses, at the time of disposal; and
    - (ii) any compensation you receive for the death or destruction, or a reduction in market value, of the live stock or their carcasses from an \*Australian government agency; or
  - (c) if the \*live stock die, and you do not dispose of their carcasses to someone else—any compensation you receive for their death or destruction from an \*Australian government agency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 385-105

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**385-105 Election to spread tax profit over 5 years**

- (1) You can elect:
- (a) to include in your assessable income for the \*disposal year the \*proceeds of the disposal or death, reduced by the \*tax profit on the disposal or death; and
  - (b) to include 20% of the tax profit on the disposal or death in your assessable income for the disposal year; and
  - (c) to include 20% of the tax profit on the disposal or death in your assessable income for each of the next 4 income years.

For rules about the making and effect of an election, see Subdivision 385-H.

- (2) The **disposal year** is the income year in which you dispose of the \*live stock, or they die, as mentioned in subsection 385-100(1).
- (3) The **tax profit on the disposal or death** is any amount remaining after subtracting from the \*proceeds of the disposal or death the sum of:
- (a) the amount paid or payable for the purchase of as many of the \*live stock as you purchased during the income year; and
  - (b) the \*value of the rest of the live stock as \*trading stock on hand at the start of the income year.

**385-110 Alternative election to defer tax profit and reduce cost of replacement live stock**

- (1) Alternatively, you can elect:
- (a) to include in your assessable income for the \*disposal year the \*proceeds of the disposal or death, reduced by the \*tax profit on the disposal or death; and
  - (b) to reduce the cost of replacement \*live stock you buy in the disposal year (or any of the next 5 income years) by amounts totalling not more than the tax profit on the disposal or death; and
  - (c) to include in your assessable income for the last of the 5 income years following the disposal year any \*unused tax profit on the disposal or death on the last day of that year.

Note: If the election is made because of bovine tuberculosis, it has effect over 10 income years instead of 5: see section 385-125.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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For rules about the making and effect of an election, see Subdivision 385-H

- (2) However, you can only make this election if you will use the \*proceeds of the disposal or death mainly to buy replacement \*live stock, or to maintain breeding stock for the purpose of replacing the live stock that were disposed of or died.
- (3) The ***unused tax profit on the disposal or death*** is the \*tax profit on the disposal or death less the total of:
  - (a) the amounts included in your assessable income under section 385-115 for replacement animals you breed; and
  - (b) the amounts by which the amount paid or payable for the purchase of replacement animals is reduced under section 385-120.

### **385-115 Your assessable income includes an amount for replacement live stock you breed**

If you make the election in section 385-110, then for the \*disposal year and each of the next 5 income years, your assessable income includes any amount you choose for each replacement animal you breed during that income year. (However, you can choose not to include an amount.)

### **385-120 Purchase price of replacement live stock is reduced**

- (1) If you make the election in section 385-110, then the amount paid or payable for the purchase of each replacement animal you buy in the \*disposal year, or in the next 5 income years, is treated as if it were reduced by the \*reduction amount.

#### *Meaning of reduction amount*

- (2) The ***reduction amount*** is:
  - so much of the \*tax profit on the disposal or death as is attributable to live stock of the species you are replacing;divided by:
  - the number of animals of that species that you disposed of or that died.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 385-125

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- (3) However, if:
- (a) you purchase a replacement animal of a different species from the \*live stock it replaces; and
  - (b) you pay substantially more for it than you could have paid for a replacement animal of the same species;
- the **reduction amount** for the animal is any reasonable amount at least equal to the amount worked out under subsection (2).

*Exception to avoid reducing unused tax profit to less than nil*

- (4) However, if applying subsection (1) to a particular purchase would reduce the \*unused tax profit on the disposal or death to less than nil, instead reduce the amount paid or payable for the purchase of each replacement animal in that purchase by:
- the \*unused tax profit on the disposal or death; divided by:
  - the number of animals in the purchase.

**385-125 Alternative election because of bovine tuberculosis has effect over 10 years not 5**

If you can make an election under this Subdivision because:

- (a) \*live stock are compulsorily destroyed under an \*Australian law for the control of bovine tuberculosis; or
- (b) \*live stock die of that \*disease;

sections 385-110 to 385-120 apply as if they referred to 10 income years instead of 5 years.

**Subdivision 385-F—Insurance for loss of live stock or trees**

**Table of sections**

385-130 Insurance for loss of live stock or trees

**385-130 Insurance for loss of live stock or trees**

If your assessable income for an income year would otherwise include an insurance recovery for a loss of \*live stock, or for a loss

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

by fire of trees, that you hold as assets of a \*primary production business you carry on in Australia, you can elect:

- (a) to include only 20% of the insurance recovery in your assessable income for that income year; and
- (b) to include 20% of the insurance recovery in your assessable income for each of the next 4 income years.

For rules about the making and effect of an election, see Subdivision 385-H.

### **Subdivision 385-G—Double wool clips**

#### **Table of sections**

385-135 Election to defer including profit on second wool clip

#### **385-135 Election to defer including profit on second wool clip**

- (1) If your assessable income for an income year would otherwise include the \*proceeds of the sale of 2 wool clips because fire, drought or flood causes you to shear your sheep earlier than normal, you can elect to include in your assessable income for the *next* income year the \*profit on the sale of the earlier than normal wool clip.

For rules about the making and effect of an election, see Subdivision 385-H.

- (2) However, at the time the wool was shorn, the sheep must have been assets of a \*primary production business you carried on in Australia. Also, the fire, drought or flood must have been in an area of Australia where you carried on that business at that time.
- (3) The *proceeds of the sale of 2 wool clips* are:
  - (a) the proceeds of the sale of the earlier than normal wool clip; and
  - (b) an amount covered by one or more of the following:
    - (i) proceeds of the sale of another wool clip in the income year;
    - (ii) proceeds of the sale of wool shorn in the previous income year that you hold at the start of the income year and that you took into account at cost in working out the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 385-145

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\*value of your trading stock under Division 60 at the end of the previous income year;

- (iii) an amount for wool shorn in the previous income year that is included in your assessable income of the income year because of a previous election under this section.

- (4) The *profit on the sale of the earlier than normal wool clip* is the proceeds of the sale of the wool clip that would otherwise be included in your assessable income for the income year, less the expenses you incur in the income year that are directly attributable to the earlier shearing and sale.

**Subdivision 385-H—Rules that apply to all elections made under Subdivisions 385-E, 385-F and 385-G**

**Table of sections**

385-145	Partnerships and trusts
385-150	Time for making election
385-155	Amounts are assessable income from carrying on the primary production business
385-160	Effect of certain events on election
385-163	Disentitling events
385-165	New partnership can elect to be treated as same entity as old partnership
385-170	New partnership can elect to take advantage of election made by former owner of the business

**385-145 Partnerships and trusts**

If a partnership or trustee carries on a \*primary production business, only the partnership or trustee can make an election under Subdivision 385-E, 385-F or 385-G.

**385-150 Time for making election**

You can only make an election under Subdivision 385-E, 385-F or 385-G before you lodge your \*income tax return for the last income year for which your assessable income would (apart from the election) include any of:

- (a) the \*proceeds of the disposal or death of \*live stock; or  
(b) the insurance recovery for the loss of \*live stock or trees; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(c) the \*proceeds of the sale of the 2 wool clips.  
The Commissioner may allow you further time to make the election.

### **385-155 Amounts are assessable income from carrying on the primary production business**

The following are taken to be assessable income from carrying on a \*primary production business in Australia:

- (a) an amount included in your assessable income because of an election under Subdivision 385-E, 385-F or 385-G; or
- (b) an amount included in your assessable income because of section 385-160 (Effect of certain events on election).

### **385-160 Effect of certain events on election**

- (1) You cannot make an election under Subdivision 385-E, 385-F or 385-G after a \*disentitling event happens.
- (2) If a \*disentitling event happens *after* you make an election under Subdivision 385-E, 385-F or 385-G, your assessable income for the income year in which the event happens includes:
  - (a) the \*proceeds of the disposal or death of \*live stock; or
  - (b) the insurance recovery for the loss of \*live stock or trees; or
  - (c) the \*proceeds of the sale of 2 wool clips;reduced by each amount that, because of the election, is included in your assessable income for that or an earlier income year.
- (3) However, if a \*disentitling event happens *after* you make an election under section 385-110 (Alternative election to defer tax profit and reduce cost of replacement live stock), your assessable income for the income year in which the event happens includes any \*unused tax profit on the disposal or death on the last day of that income year.

### **385-163 Disentitling events**

- (1) A *disentitling event* happens when:
  - (a) you die; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 385-163

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- (b) you become bankrupt, insolvent, commence to be wound up, apply to take the benefit of a law for the relief of bankrupt or insolvent debtors, compound with creditors, or make an assignment of any property for the benefit of creditors; or
  - (c) you leave Australia permanently, or it appears to the Commissioner that you are about to do so; or
  - (d) you cease to carry on the \*primary production business to which the election relates.
- (2) In the case of a partnership, a *disentitling event* happens when:
- (a) a partner in the partnership becomes bankrupt, insolvent, commences to be wound up, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors, or makes an assignment of any property for the benefit of creditors; or
  - (b) a partner leaves Australia permanently, or it appears to the Commissioner that a partner is about to do so; or
  - (c) the partnership ceases to carry on the \*primary production business to which the election relates; or
  - (d) there is a variation in the constitution of the partnership or the interests of the partners.
- (3) In the case of a trust, a *disentitling event* happens when:
- (a) a beneficiary dies; or
  - (b) an order for the administration of the trust estate is made under a law relating to bankruptcy; or
  - (c) a beneficiary becomes bankrupt, insolvent, commences to be wound up, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors, or makes an assignment of any property for the benefit of creditors; or
  - (d) the trustee or a beneficiary leaves Australia permanently, or it appears to the Commissioner that the trustee or a beneficiary is about to do so; or
  - (e) the trustee ceases to carry on the \*primary production business to which the election relates.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**385-165 New partnership can elect to be treated as same entity as old partnership**

- (1) Under Subdivision 385-E, 385-F or 385-G a new partnership can elect to be treated as a continuation of an old partnership that would otherwise cease to exist if:
  - (a) it immediately takes over the relevant \*primary production business of the old partnership; and
  - (b) partners, together entitled to at least 25% of the income of the new partnership, were also partners in the old partnership.
- (2) The new partnership must make this election before it lodges its \*income tax return for the income year in which it takes over the \*business.

**385-170 New partnership can elect to take advantage of election made by former owner of the business**

- (1) If an entity (except a partnership):
  - (a) has made an election under Subdivision 385-E, 385-F or 385-G; and
  - (b) transfers the relevant \*primary production business to a partnership; and
  - (c) is entitled to at least 25% of the income of that partnership; the partnership may elect to apply the Subdivision under which the entity made the election to all future events as if it were that entity.
- (2) The partnership must make this election before it lodges its \*income tax return for the income year in which the \*business is transferred to it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 392—Long-term averaging of primary producers' tax liability

### Table of Subdivisions

#### Guide to Division 392

- 392-A Is your income tax affected by averaging?
- 392-B What kind of averaging adjustment must you make?
- 392-C How big is your averaging adjustment?
- 392-D Effect of permanent reduction of your basic taxable income

### Guide to Division 392

#### 392-1 What this Division is about

If you are a primary producer for 2 or more years in a row, this Division evens out your income tax liability from year to year. (It does so by reducing the effect that fluctuations in your taxable income have on the marginal rates of tax that apply to you from year to year.)

### Table of sections

- 392-5 Overview of averaging process

#### 392-5 Overview of averaging process

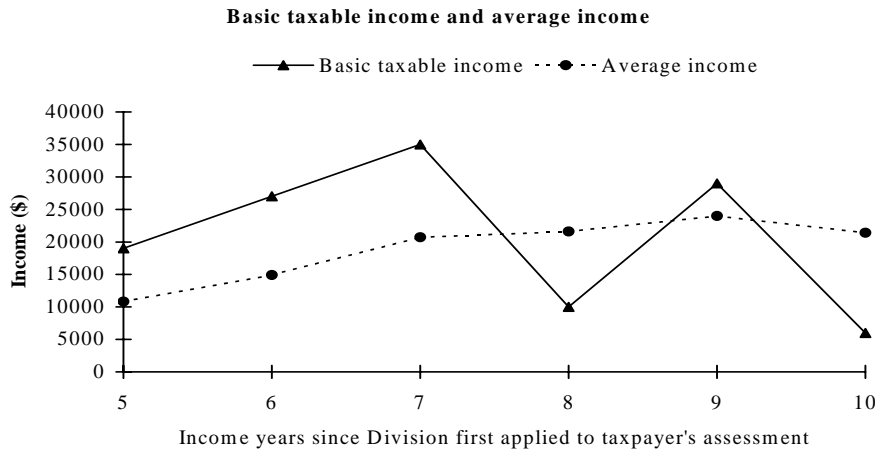
##### *How averaging adjustments work*

- (1) This Division reduces or increases your income tax liability to bring it closer to what it would have been if worked out using a special rate of income tax. That rate (the comparison rate) is based on the income tax that you would pay for the current year on the average of your taxable income for up to the last 5 income years.

Example: The graph shows how averaging taxable income reduces the effect of variations in taxable income (giving a fairly steady comparison rate from year to year).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



*Tax offset as averaging adjustment*

- (2) You may be entitled to a tax offset if the income tax you would pay on your basic taxable income for the current year at the comparison rate is *less* than the income tax you would pay on that income (apart from this Division and certain other provisions).

See the examples of years 5, 6, 7 and 9 in the graph in subsection (4).

*Extra income tax as averaging adjustment*

- (3) You may be liable to extra income tax on some or all of your basic taxable income for the current year if the income tax you would pay on your basic taxable income for the current year at the comparison rate is *more* than the income tax on that income (apart from this Division and certain other provisions).

See the examples of years 8 and 10 in the graph in subsection (4).

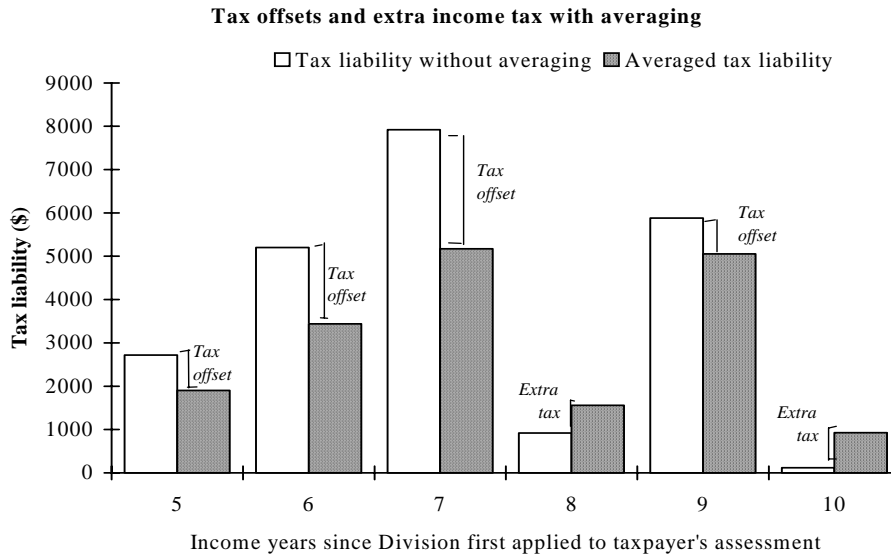
*Example of the effect of averaging*

- (4) The graph shows an example of the effect of averaging, using the same income figures as the graph in the example in subsection (1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 392-5



Note: The example assumes that all the basic taxable income was from a primary production business.

*Effect of non-primary production income on averaging adjustment*

- (5) Your income from sources other than your primary production business may affect the adjustment of your income tax. If more than \$5,000 of your basic taxable income is attributable to those sources, your averaging adjustment will be reduced to reflect the proportion of your basic taxable income attributable to primary production. (There are special shading-out arrangements if your taxable income from other sources is between \$5,000 and \$10,000.)

*No adjustment in certain cases*

- (6) Your income tax will not be adjusted under this Division in certain cases. In particular, you can choose not to have your income tax adjusted under this Division for the rest of your life.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 392-A—Is your income tax affected by averaging?**

### **Table of sections**

392-10	Individuals who carry on a primary production business
392-15	Meaning of <i>basic taxable income</i>
392-20	Trust beneficiaries taken to be carrying on primary production business
392-25	Choosing not to have your income tax averaged

### **392-10 Individuals who carry on a primary production business**

- (1) This Division applies to your assessment for the \*current year if:
- (a) you are an individual; and
  - (b) you have carried on a \*primary production business in Australia for 2 or more income years in a row (the last of which is the current year); and
  - (c) for at least one of those income years your \*basic taxable income is less than or equal to your basic taxable income for the next of those income years.

Note 1: It follows that this Division does *not* apply if your basic taxable income has decreased every income year since you started carrying on a primary production business.

Note 2: In working out whether this Division applies to your assessment for an income year, you may need to take account of income years before the 1998-99 income year: see section 392-1 of the *Income Tax (Transitional Provisions) Act 1997*.

*Continued application of this Division after you stop carrying on a primary production business*

- (2) This Division also applies to your assessment for the \*current year if:
- (a) this Division applied to your assessment for an earlier income year during which you carried on a \*primary production business in Australia; and
  - (b) you do not carry on that business during the current year; and
  - (c) at least one of the following conditions is met for each income year (including the current year) after the income year in which you stopped carrying on that business:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 392-15

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- (i) your assessable income for the income year included assessable income that was \*derived from, or resulted from, your having carried on that business;
- (ii) you carried on a \*primary production business in Australia during the income year.

Note: In working out whether this Division applies to your assessment for an income year, you may need to take account of income years before the 1998-99 income year. See section 392-1 of the *Income Tax (Transitional Provisions) Act 1997*.

**392-15 Meaning of *basic taxable income***

- (1) Work out your ***basic taxable income*** for an income year as follows:

*Method statement*

Step 1. Work out what would have been your taxable income for the income year if your assessable income for the income year:

- (a) had *not* included any amount under section 82-65, 82-70 or 302-145 of the *Income Tax Assessment Act 1997* (certain superannuation benefits and employment termination payments); and

Note: This means that certain deductions will also be excluded.

- (b) had *not* included any \*net capital gain for the income year.

Step 2. Subtract from the Step 1 amount any \*above-average special professional income included in your taxable income for the income year under Division 405.

- (2) However, your ***basic taxable income*** for an income year is nil if:
- (a) you do not have a taxable income for the income year; or
  - (b) the amount worked out under subsection (1) for the income year is *less* than nil.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**392-20 Trust beneficiaries taken to be carrying on primary production business**

- (1) You are taken to carry on a \*primary production business carried on by a trust during an income year if you are a beneficiary presently entitled to all or part of the trust income for the income year.
- (2) However, you are not taken to carry on the \*primary production business if you are presently entitled to less than \$1,040 of the trust income for the income year, unless the Commissioner is satisfied that your interest in the trust was not acquired or granted wholly or primarily to enable your income tax to be adjusted under this Division.
- (3) You are not taken to carry on a \*primary production business carried on by the trustee of:
  - (a) a corporate unit trust (as defined in section 102J of the *Income Tax Assessment Act 1936*, which deals with corporate unit trusts); or
  - (b) a public trading trust (as defined in section 102R of the *Income Tax Assessment Act 1936*, which deals with public trading trusts).

**392-25 Choosing not to have your income tax averaged**

- (1) You can choose that this Division (except this section) not apply to your assessment for an income year. If you make this choice, this Division (except this section) does not apply to your assessment for the income year *or any later income year*.
- (2) You must make your choice in writing and give it to the Commissioner by the time you lodge your \*income tax return for the income year to which your choice relates. However, the Commissioner may allow you to give the choice later.
- (3) Your choice cannot be revoked after it is given to the Commissioner.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 392-30

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**Subdivision 392-B—What kind of averaging adjustment must you make?**

**Guide to Subdivision 392-B**

**392-30 What this Subdivision is about**

This Subdivision explains how to work out whether you are entitled to a tax offset for the current year or whether you must pay extra income tax for the current year.

**Table of sections**

**Tax offset or extra income tax**

392-35 Will you get a tax offset or have to pay extra income tax?

**How to work out the comparison rate**

392-40 Identify income years for averaging your basic taxable income

392-45 Work out your average income for those years

392-50 Work out the income tax on your average income at basic rates

392-55 Work out the comparison rate

**Tax offset or extra income tax**

**392-35 Will you get a tax offset or have to pay extra income tax?**

(1) Compare:

(a) the amount (the *income tax you would pay at the comparison rate*) worked out using the formula:

$$\frac{\text{*Basic taxable income for *current year}}{\text{*current year}} \times \text{*Comparison rate}$$

(b) the amount of income tax that you would pay on your \*basic taxable income for the \*current year at \*basic rates.

Note: You must disregard some provisions of this Act in working out amounts of income tax for the purposes of this subsection: see subsection (5).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Tax offset*

- (2) You are entitled to a \*tax offset equal to the \*averaging adjustment worked out under Subdivision 392-C if the income tax you would pay at the comparison rate is *less* than the amount of income tax you would pay at \*basic rates.

*Extra income tax*

- (3) You must pay extra income tax on the \*averaging component of your \*basic taxable income if the income tax you would pay at the comparison rate is *more* than the amount of income tax you would pay at \*basic rates.

Note 1: Section 12A of the *Income Tax Rates Act 1986* sets the rate at which you must pay extra income tax on the averaging component of your basic taxable income.

Note 2: It does so in such a way that, generally, the extra income tax you must pay equals the averaging adjustment worked out under Subdivision 392-C.

*Meaning of basic rates*

- (4) The **basic rates** at which you would pay income tax are:
- (a) if you are a resident taxpayer as defined in the *Income Tax Rates Act 1986*—the rates of income tax in paragraph (1)(b) of Part I of Schedule 7 to that Act, taking into account the way it would apply with any changes to your tax-free threshold under section 20 of that Act; or
  - (b) if you are a non-resident taxpayer as defined in the *Income Tax Rates Act 1986*—the rates of income tax in paragraph 1(b) of Part II of Schedule 7 to that Act.

*Disregard certain provisions in working out amounts*

- (5) Work out the amount of income tax mentioned in paragraph (1)(b) as if:
- (a) the following provisions did not apply:
    - (i) this Division;
    - (ii) section 94 (Partner not having control and disposal of share in partnership income) of the *Income Tax Assessment Act 1936*;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 392** Long-term averaging of primary producers' tax liability

Section 392-40

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- (iii) Division 6AA (Income of certain children) of Part III of the *Income Tax Assessment Act 1936*;
  - (iv) Part VIIB (Medicare levy) of the *Income Tax Assessment Act 1936*; and
- (b) you were not entitled to any rebate or credit under the *Income Tax Assessment Act 1936* or to any \*tax offset under this Act.

*No adjustment*

- (6) This Division does not affect your income tax for the \*current year if the income tax you would pay at the \*comparison rate equals the amount of income tax you would pay at \*basic rates.

Note: The 2 amounts will be equal if:

- your basic taxable income and your average income are both below the tax-free threshold; or
- your average income equals your basic taxable income for the current year.

## How to work out the comparison rate

### 392-40 Identify income years for averaging your basic taxable income

The income years over which you must average your \*basic taxable income are:

- (a) if this Division has applied to your assessment for at least 4 income years in a row (including the \*current year)—the current year and the 4 previous income years; or
- (b) if this Division has applied to your assessment for less than 4 income years in a row (including the \*current year)—those income years and the last income year before them.

Note: You may need to average your basic taxable income for one or more income years before the 1998-99 income year. See section 392-1 of the *Income Tax (Transitional Provisions) Act 1997*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**392-45 Work out your average income for those years**

- (1) Work out your *average income* in this way:

*Method statement*

- Step 1. Add up your \*basic taxable income for each of the income years over which you must average your basic taxable income.
- Step 2. Divide the sum by the number of those income years.
- Step 3. Round the result down to the nearest whole dollar if the result is not already a number of whole dollars.

- (2) Your *basic assessable income* for an income year is your assessable income for the income year, less:
- (a) any amount included in your assessable income section 82-65, 82-70 or 302-145 of the *Income Tax Assessment Act 1997* (certain employment termination payments and superannuation benefits); and
  - (b) any \*net capital gain included in your assessable income under Division 102 of the *Income Tax Assessment Act 1997*.

**392-50 Work out the income tax on your average income at basic rates**

Work out the amount of income tax that you would pay on your \*average income for the \*current year at \*basic rates.

**392-55 Work out the comparison rate**

Work out the *comparison rate* using the formula:

$$\frac{\text{Income tax on *average income, as worked out under section 392-50}}{\text{*Average income}}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 392-C—How big is your averaging adjustment?

### Guide to Subdivision 392-C

#### 392-60 What this Subdivision is about

This Subdivision explains how to work out the amount of the averaging adjustment of your income tax for the current year (whether it is a tax offset or is used by the *Income Tax Rates Act 1986* to set the rate at which you must pay extra income tax).

#### Table of sections

392-65 What your averaging adjustment reflects

##### Your gross averaging amount

392-70 Working out your gross averaging amount

##### Your averaging adjustment

392-75 Working out your averaging adjustment

##### How to work out your averaging component

392-80 Work out your taxable primary production income

392-85 Work out your taxable non-primary production income

392-90 Work out your averaging component

#### 392-65 What your averaging adjustment reflects

- (1) Your averaging adjustment is a proportion of your gross averaging amount, taking account of:
  - (a) your taxable primary production income (the part of your basic taxable income from your primary production business); and
  - (b) your taxable non-primary production income (the part of your basic taxable income from other sources).

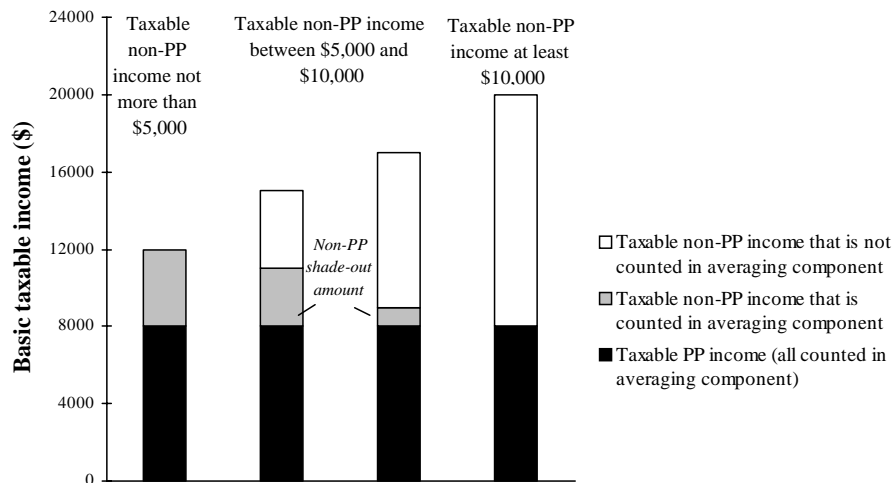
Your averaging component is the means of taking into account the different parts of your basic taxable income in working out your averaging adjustment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) If your taxable non-primary production income is less than or equal to \$5,000, your averaging component equals the whole of your basic taxable income. (In other words, your averaging component includes all of your taxable primary production income and all of your taxable non-primary production income.)
- (3) If your taxable non-primary production income is between \$5,000 and \$10,000, a shading-out system applies so that your averaging component includes some of your taxable non-primary production income as well as all of your taxable primary production income.
- (4) If your taxable non-primary production income is \$10,000 or more, your averaging component equals your taxable primary production income. Your averaging component does not include any of your taxable non-primary production income.
- (5) The following diagram shows examples of these relationships.

**Averaging component as a component of basic taxable income**



The second and third columns show that as taxable non-primary production income increases above \$5,000 (up to a maximum of \$10,000), less of it is counted in the averaging component.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 392-70

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## Your gross averaging amount

### 392-70 Working out your gross averaging amount

Your *gross averaging amount* is the amount of the difference between the following amounts worked out under section 392-35:

- (a) the income tax you would pay at the comparison rate;
- (b) the amount of income tax that you would pay on your \*basic taxable income for the \*current year at \*basic rates.

## Your averaging adjustment

### 392-75 Working out your averaging adjustment

Work out your *averaging adjustment* for the \*current year using the formula:

$$\text{*Gross averaging amount} \times \frac{\text{*Averaging component}}{\text{*Basic taxable income}}$$

## How to work out your averaging component

### 392-80 Work out your taxable primary production income

- (1) Work out your *taxable primary production income* for the \*current year in this way:

*Method statement*

- Step 1. Compare your \*assessable primary production income for the \*current year with your \*primary production deductions for the current year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- Step 2. If your assessable primary production income is larger than your primary production deductions, your **taxable primary production income** is the difference between them.
- Step 3. If your primary production deductions are larger than (or equal to) your assessable primary production income, your **taxable primary production income** is nil.

*Assessable primary production income*

- (2) Your **assessable primary production income** for the \*current year is the amount of your \*basic assessable income for the current year that was \*derived from, or resulted from, your carrying on a \*primary production business.

*Primary production deductions*

- (3) Work out your **primary production deductions** for the \*current year in this way:

*Method statement*

Step 1. Add any amounts you can deduct (except \*apportionable deductions) for the \*current year, so far as they reasonably relate to your \*assessable primary production income for an income year.

Step 2. Work out the result of applying the formula:

$$\text{*Apportionable deductions} \times \frac{\left( \text{Assessable PP income} - \text{Sum from Step 1} \right)}{\text{*Basic taxable income} + \text{*Apportionable deductions}}$$

where:

**assessable PP income** means your \*assessable primary production income for the \*current year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 392-85

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Step 3. Add the sum from Step 1 to the result from Step 2 (which may be negative): the total is your **primary production deductions**.

**392-85 Work out your taxable non-primary production income**

- (1) Work out your **taxable non-primary production income** for the \*current year in this way:

*Method statement*

- Step 1. Compare your \*assessable non-primary production income for the \*current year with your \*non-primary production deductions for the current year.
- Step 2. If your assessable non-primary production income is larger than your non-primary production deductions, your **taxable non-primary production income** is the difference between them.
- Step 3. If your non-primary production deductions are larger than (or equal to) your assessable non-primary production income, your **taxable non-primary production income** is nil.

*Assessable non-primary production income*

- (2) Your **assessable non-primary production income** for the \*current year is the difference between:
- (a) your \*basic assessable income for the current year; and
  - (b) your \*assessable primary production income for the current year.

*Non-primary production deductions*

- (3) Your **non-primary production deductions** for the \*current year are the difference between:
- (a) the sum of your deductions for the current year; and
  - (b) your \*primary production deductions for the current year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**392-90 Work out your averaging component**

- (1) Work out your *averaging component* for the \*current year using the following table, taking into account:
- (a) your \*taxable primary production income for the current year; and
  - (b) your \*taxable non-primary production income for the current year.

<b>Averaging component</b>			
<b>Item</b>	<b>If *taxable non-primary production income:</b>	<b>The averaging component equals:</b>	
		<b>for *taxable primary production income &gt; 0</b>	<b>for *taxable primary production income = 0</b>
1	is nil	*Basic taxable income	Nil
2	is more than nil but does not exceed \$5,000	*Basic taxable income	*Basic taxable income
3	exceeds \$5,000 but does not exceed \$10,000	*Taxable primary production income plus *non-primary production shade-out amount	*Non-primary production shade-out amount
4	is \$10,000 or more	*Taxable primary production income	Nil

Note: Subsections (2) and (3) explain how to work out your non-primary production shade-out amount if your taxable non-primary production income is between \$5,000 and \$10,000.

*Non-primary production shade-out amount if your taxable primary production income is more than nil*

- (2) If your \*taxable primary production income is more than nil, your *non-primary production shade-out amount* is the amount worked out using the formula:

$$\$10,000 - \text{Taxable non-PP income}$$

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 392** Long-term averaging of primary producers' tax liability

Section 392-95

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*Non-primary production shade-out amount if your taxable primary production income is nil*

- (3) If your \*taxable primary production income is nil, your ***non-primary production shade-out amount*** is the amount worked out using the formula:

$$\$10,000 - \frac{\text{Taxable non-PP income}}{\text{Taxable non-PP income}} - \left( \text{PP deductions} - \text{Assessable PP income} \right)$$

However, if that amount is less than nil, your ***non-primary production shade-out amount*** is nil.

- (4) In this section:

***Assessable PP income*** means your \*assessable primary production income for the \*current year.

***PP deductions*** means your \*primary production deductions for the \*current year.

***Taxable non-PP income*** your \*taxable non-primary production income for the \*current year.

**Subdivision 392-D—Effect of permanent reduction of your basic taxable income**

**Table of sections**

392-95 You are treated as if you had not carried on business before

**392-95 You are treated as if you had not carried on business before**

*Choosing to discontinue and restart averaging*

- (1) You can choose that this Division not affect your income tax liability for an income year (the ***reduction year***) if you show the Commissioner that, because of retirement from your occupation or from any other cause, your \*basic taxable income for the reduction year is permanently reduced during that year to less than two thirds of your \*average income for that year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (1A) You must make the choice by notifying the Commissioner in writing by the day you lodge your \*income tax return for the reduction year. However, the Commissioner can allow you to make it later.
- (1B) If you make a choice under subsection (1), this Division applies to assessments for later income years as if you had never carried on a \*primary production business before the reduction year.

*Working out the extent of the permanent reduction*

- (2) In working out the extent of the permanent reduction, you must work out your \*average income for the reduction year on the basis that your \*basic assessable income for an income year taken into account in working out your average income did *not* include any assessable income from sources from which you do not usually receive assessable income.
- (3) In working out the extent of the permanent reduction, disregard a reduction in \*basic taxable income to the extent that it results from a change of assets from which assessable income was \*derived into assets from which you derive income that is not assessable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 394—Forestry managed investment schemes**

### **Guide to Division 394**

#### **394-1 What this Division is about**

This Division sets out rules about deductions for contributions to forestry managed investment schemes. It also sets out the tax treatment of proceeds from the sale of interests in such schemes, and of proceeds from harvesting trees under such schemes.

#### **Table of sections**

394-5	Object of this Division
394-10	Deduction for amounts paid under forestry managed investment schemes
394-15	Forestry managed investment schemes and related concepts
394-20	Payments on behalf of participant in forestry managed investment scheme
394-25	CGT event in relation to forestry interest in forestry managed investment scheme—initial participant
394-30	CGT event in relation to forestry interest in forestry managed investment scheme—subsequent participant
394-35	70% DFE rule
394-40	Payments under forestry managed investment scheme
394-45	Direct forestry expenditure

#### **394-5 Object of this Division**

The object of this Division is to encourage the expansion of commercial plantation forestry in Australia through the establishment and tending of new plantations for felling. This is achieved by:

- (a) permitting investors to deduct amounts paid under a forestry scheme in the year of payment, if certain conditions are met (for example, that it is reasonable to expect that the manager of the scheme will spend at least 70% of investors' contributions, on a market value basis, on activities that establish, tend, fell and harvest trees); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) allowing secondary market trading of interests in such schemes, while minimising tax arbitrage and providing tax certainty for investors.

**394-10 Deduction for amounts paid under forestry managed investment schemes**

- (1) You can deduct an amount if:
  - (a) you hold a \*forestry interest in a \*forestry managed investment scheme; and
  - (b) you pay the amount under the scheme; and
  - (c) the scheme satisfies the \*70% DFE rule (see section 394-35) on 30 June in the income year in which a \*participant in the scheme first pays an amount under the scheme; and
  - (d) you do not have day to day control over the operation of the scheme (whether or not you have the right to be consulted or give directions); and
  - (e) at least one of these conditions is satisfied:
    - (i) there is more than one participant in the scheme;
    - (ii) the \*forestry manager of the scheme, or an \*associate of the forestry manager, manages, arranges or promotes similar schemes; and
  - (f) the condition in subsection (4) is satisfied.
- (2) You deduct the amount for the income year in which you pay it.
- (3) For the purposes of this Division, do *not* treat an amount as being paid under a \*forestry managed investment scheme if:
  - (a) you pay the amount in connection with a \*CGT event in relation to a \*forestry interest in the scheme; and
  - (b) as a result of the CGT event:
    - (i) another \*participant in the scheme no longer holds the forestry interest; and
    - (ii) you start to hold the forestry interest.
- (4) For the purposes of paragraph (1)(f), the condition in this subsection is satisfied unless:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 394-15

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- (a) 18 months have elapsed since the end of the income year in which an amount is first paid under the \*forestry managed investment scheme by a \*participant in the scheme; and
  - (b) the trees intended to be established in accordance with the scheme have not all been established before the end of those 18 months.
- (5) You cannot deduct an amount under subsection (1) if:
- (a) you hold the \*forestry interest mentioned in paragraph (1)(a) as an \*initial participant; and
  - (b) a \*CGT event happens in relation to the forestry interest within 4 years after the end of the income year in which you first pay an amount under the scheme.
- If you have already deducted it, your assessment may be amended to disallow the deduction.
- (6) Despite section 170 of the *Income Tax Assessment Act 1936*, the Commissioner may amend your assessment at any time within 2 years after the \*CGT event, for the purpose of giving effect to subsection (5).
- (7) Sections 82KZMD and 82KZMF of the *Income Tax Assessment Act 1936* do not affect the timing of a deduction under this section.

**394-15 Forestry managed investment schemes and related concepts**

- (1) A \*scheme is a *forestry managed investment scheme* if the purpose of the scheme is for establishing and tending trees for felling in Australia.
- (2) The entity that manages, arranges or promotes a \*forestry managed investment scheme is the *forestry manager* of the scheme.
- (3) A *forestry interest* in a \*forestry managed investment scheme is a right to benefits produced by the scheme (whether the right is actual, prospective or contingent and whether it is enforceable or not).
- (4) An entity that holds a \*forestry interest in a \*forestry managed investment scheme (other than the \*forestry manager of the scheme) is a *participant* in the scheme.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (5) A \*participant in a \*forestry managed investment scheme holds a \*forestry interest in the scheme as an *initial participant* if:
- (a) the participant obtains the forestry interest from the \*forestry manager of the scheme; and
  - (b) the payment by the participant to obtain the forestry interest results in the establishment of trees.

**394-20 Payments on behalf of participant in forestry managed investment scheme**

For the purposes of this Division, treat a payment to the \*forestry manager of a \*forestry managed investment on behalf of a \*participant in the scheme as a payment by the participant to the forestry manager.

**394-25 CGT event in relation to forestry interest in forestry managed investment scheme—initial participant**

- (1) This section applies if:
- (a) you hold a \*forestry interest in a \*forestry managed investment scheme as an \*initial participant in the scheme; and
  - (b) at least one of these conditions is satisfied:
    - (i) you can deduct or have deducted an amount for an income year under section 394-10 in relation to the forestry interest;
    - (ii) the condition in subparagraph (i) would be satisfied if subsection 394-10(5) were disregarded; and
  - (c) a \*CGT event happens in relation to the forestry interest, other than a CGT event that happens in respect of thinning.
- (2) Your assessable income for the income year in which the \*CGT event happens includes:
- (a) if, as a result of the CGT event, you no longer hold the \*forestry interest—the \*market value of the forestry interest (worked out as at the time of the event); or
  - (b) otherwise—the decrease (if any) in the market value of the forestry interest as a result of the CGT event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 394-30

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- (3) Any amount that you actually receive because of the \*CGT event is not included in your assessable income (nor is it \*exempt income).

**394-30 CGT event in relation to forestry interest in forestry managed investment scheme—subsequent participant**

- (1) This section applies if:
- (a) you hold a \*forestry interest in a \*forestry managed investment scheme otherwise than as an \*initial participant in the scheme; and
  - (b) at least one of these conditions is satisfied:
    - (i) you can deduct or have deducted an amount for an income year under section 394-10 in relation to the forestry interest;
    - (ii) you could deduct an amount for an income year under section 394-10 if you had paid the amount under the scheme in that year; and
  - (c) a \*CGT event happens in relation to the forestry interest, other than a CGT event that happens in respect of thinning.
- (2) Your assessable income for the income year in which the \*CGT event happens includes the lesser of the following:
- (a) the \*market value of the forestry interest (worked out as at the time of the event);
  - (b) the amount (if any) by which the \*total forestry scheme deductions in relation to the forestry interest exceeds the \*incidental forestry scheme receipts in relation to the forestry interest.
- (3) The *total forestry scheme deductions* in relation to the \*forestry interest is the total of each amount that you can deduct or have deducted under section 394-10 for each income year in relation to the forestry interest.
- (4) The *incidental forestry scheme receipts* in relation to the \*forestry interest is the total of each amount that you have received under the scheme in each income year in relation to the forestry interest for a reason otherwise than because of the \*CGT event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (5) However, if you still hold the forestry interest despite the \*CGT event, work out the amount included in your assessable income under subsection (2) using this formula (instead of using the amount worked out under subsection (2)):

$$\text{Amount worked out under subsection (2)} \times \frac{\text{Decrease (if any) in the *market value of the *forestry interest as a result of the CGT event}}{\text{*Market value of the *forestry interest just before the CGT event}}$$

- (6) If this section has operated previously in relation to the \*forestry interest, disregard an amount for the purposes of subsections (3) and (4) to the extent that it has already been reflected in your assessable income under that previous operation in relation to the forestry interest.
- (7) These provisions do not apply to the \*CGT event:
- (a) section 6-5 (about \*ordinary income);
  - (b) any other provision that includes an amount in assessable income, other than the following:
    - (i) a provision in Part 3-1 or 3-3;
    - (ii) subsection (2) of this section;
  - (c) section 8-1 (about amounts you can deduct);
  - (d) any other provision that allows you to deduct an amount from your assessable income;
  - (e) section 118-20.
- (8) However, the provisions referred to in subsection (7) can apply to the \*CGT event if a \*capital gain or \*capital loss from the event is disregarded because of section 118-25.
- (9) Just before the \*CGT event, increase the \*cost base and \*reduced cost base of the \*forestry interest by the amount included in your assessable income under subsection (2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 394-35

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**394-35 70% DFE rule**

- (1) A \*forestry managed investment scheme satisfies the **70% DFE rule** on 30 June in an income year if it is reasonable to expect on that 30 June that the amount of DFE under the scheme (see subsection (2)) is no less than 70% of the amount of the payments under the scheme (see subsection (3)).
- (2) The amount of DFE under the scheme is the amount of the net present value (on that 30 June) of all \*direct forestry expenditure under the scheme that the \*forestry manager of the scheme has paid or will pay under the scheme.
- (3) The amount of payments under the scheme is the amount of the net present value (on that 30 June) of all amounts that all current and future \*participants in the scheme have paid or will pay under the scheme.
- (4) In working out the net present value of an amount paid before that 30 June:
  - (a) unless paragraph (b) applies—treat the amount as having been paid on that 30 June; or
  - (b) if the amount was paid in an income year ending before that 30 June—treat the amount as having been paid on the 30 June in that income year.
- (5) In working out the net present value of an amount expected to be paid after that 30 June, treat the amount as having been paid on 1 January in the income year in which it is expected to be paid.
- (6) Reduce an amount worked out under subsection (2) or (3) to the extent (if any) to which that amount can reasonably be expected to be recouped.
- (7) In working out the net present value of an amount for the purposes of this section, use the yield on Australian Government Treasury Bonds with the maturity closest to 10 years (as published by the Reserve Bank of Australia).
- (8) For the purposes of subsection (2), if:
  - (a) the \*forestry manager of the scheme has paid or will pay an amount under the scheme in a transaction; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the forestry manager and at least one other party to the transaction did not or will not deal at \*arm's length in relation to the transaction; and
  - (c) the amount is or will be more or less than the \*market value of what it is for;
- treat the amount as that market value.

### **394-40 Payments under forestry managed investment scheme**

For the purposes of this Division, do *not* treat the following payments as payments under a \*forestry managed investment scheme by a \*participant in the scheme:

- (a) payments for \*borrowing money;
- (b) payments of interest and payments in the nature of interest;
- (c) payments of stamp duty;
- (d) payments of \*GST;
- (e) payments that relate to one or more of the matters mentioned in paragraphs 394-45(4)(a), (b) or (c).

### **394-45 Direct forestry expenditure**

- (1) ***Direct forestry expenditure*** under a \*forestry managed investment scheme means:
  - (a) an amount paid under the scheme that is attributable to establishing, tending, felling and harvesting trees; and
  - (b) notional amounts reflecting the \*market value of goods, services or the use of land, provided by the \*forestry manager of the scheme, for establishing, tending, felling and harvesting trees.

Example 1: Notional amounts reflecting the value of the use of land owned by the forestry manager that is provided for establishing, tending, felling and harvesting trees.

Example 2: Notional amounts reflecting the value of tree felling services provided by the forestry manager.
- (2) Treat \*direct forestry expenditure covered by paragraph (1)(b) as paid annually for each income year of the \*forestry manager of the scheme based on the \*market value of the goods, services, or the use of the land. Treat the day on which it is paid as:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 394-45

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- (a) unless paragraph (b) or (c) applies—1 January in the income year; or
- (b) if the first time an amount is paid under the scheme is later than the first day of the income year—the last day of the income year; or
- (c) if the scheme comes to an end on a day before the end of the income year—that day.

*Exclusions—general*

- (3) However, **direct forestry expenditure** under the scheme does not include amounts paid under the scheme to the extent that they relate to any of the following:
  - (a) marketing of the scheme;  
Example: Advertising, sales, sponsorship and entertainment.
  - (b) insurance, contingency funds or provisions (other than provisions for employee entitlements);
  - (c) financing;
  - (d) lobbying;
  - (e) general business overheads (but not overheads directly related to forestry);
  - (f) subscriptions to industry bodies;
  - (g) commissions for financial planners or financial advisers;
  - (h) compliance with requirements related to the structure and operations of the \*forestry manager of the scheme;  
Example: Product design and preparation of product disclosure statements.
  - (i) supervision and auditing of contracts, other than direct supervision of direct forestry activities (such as establishing trees for felling);
  - (j) legal fees relating to any matter mentioned in this subsection.

*Exclusions—expenditure after harvest etc.*

- (4) Also, **direct forestry expenditure** under the scheme does not include amounts paid under the scheme to the extent that they relate to any of the following:
  - (a) transportation and handling of felled trees that happens after the earliest of the following:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) sale of the trees;
- (ii) arrival of the trees at the mill door;
- (iii) arrival of the trees at the port;
- (iv) arrival of the trees at the place of processing (other than where processing happens in-field);
- (b) processing;
- (c) stockpiling (other than in-field stockpiling);
- (d) marketing and sale of forestry produce.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 396—Land transport facilities borrowings**

### **Table of Subdivisions**

#### Guide to Division 396

- 396-A Key operative provisions
- 396-B What LTF interest is covered?
- 396-C Projects, borrowers and lenders
- 396-D Application, approval and agreement process
- 396-E Miscellaneous

### **Guide to Division 396**

#### **396-5 What this Division is about**

A lender can get a tax offset for certain interest it derives on an approved borrowing by another entity for the construction of land transport facilities.

For a borrowing to be approved:

- (a) the borrower must apply to the Commissioner; and
- (b) the Minister for Transport and Regional Development must approve the application; and
- (c) that Minister, the borrower and each of the lenders must enter into an agreement.

The total of tax offsets available under this Division for an income year is subject to a limit.

Where a tax offset is given for interest, the borrower cannot deduct the interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Subdivision 396-A—Key operative provisions

### Guide to Subdivision 396-A

#### 396-10 What this Subdivision is about

This Subdivision provides for:

- (a) the tax offset for the lender; and
- (b) deductions not to be allowed to the borrower.

It also provides for a cap to be set on the amount of tax offsets approved for each income year.

#### Table of sections

##### Operative provisions

- 396-15 Tax offset for LTF interest on land transport facilities borrowings
- 396-20 Maximum cost to Commonwealth
- 396-25 Borrower cannot deduct LTF interest for which lender has tax offset

#### Operative provisions

##### 396-15 Tax offset for LTF interest on land transport facilities borrowings

- (1) An entity that is a lender under a \*land transport facilities borrowings agreement is entitled to a \*tax offset for \*LTF interest covered by the agreement.

*Amount of tax offset*

- (2) The amount of the tax offset is worked out using the formula:

\*Corporate tax rate × LTF interest covered by agreement

However, the amount cannot exceed any amount specified in the \*land transport facilities borrowings agreement as the maximum \*tax offset for that lender for the income year for that agreement.

- (3) In subsection (2):

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 396-20

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***LTF interest covered by agreement*** means the amount of \*LTF interest that is covered by the \*land transport facilities borrowings agreement and that is \*derived by the entity in the income year.

**396-20 Maximum cost to Commonwealth**

The maximum net cost to the Commonwealth of \*tax offsets to be approved under this Division for an income year (after taking into account deductions that are reduced) is the amount determined, by written notice, by the Treasurer.

Note: The maximum amount is taken into account under subsection 396-70(5) in approving projects.

**396-25 Borrower cannot deduct LTF interest for which lender has tax offset**

- (1) The total of amounts that an entity that is a borrower under a \*land transport facilities borrowings agreement can deduct for an income year for \*LTF interest covered by the agreement is reduced by:

$$\frac{1}{\text{*Corporate tax rate}} \times \text{Tax offset entitlement}$$

- (2) In subsection (1):

***tax offset entitlement*** is the total of the amounts of \*tax offset worked out under subsection 396-15(2) for LTF interest that is covered by the agreement and that is \*derived by a lender in the income year.

- (3) If the amount by which deductions for an income year are to be reduced by subsection (1) (or by a previous operation of this subsection) exceeds the total of those deductions:
- (a) the deductions are reduced to nil; and
  - (b) the total amount that the borrower can deduct for the *next* income year for \*LTF interest covered by the agreement is reduced by the total of:
    - (i) that excess; and
    - (ii) the amount worked out for that next income year using the formula in subsection (1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: This can happen where interest is incurred by the borrower in an income year after the income year in which it is derived by the lender.

## **Subdivision 396-B—What LTF interest is covered?**

### **Guide to Subdivision 396-B**

This Subdivision sets out the interest for which a tax offset can be obtained.

#### **Table of sections**

##### **Operative provisions**

396-30	What is <i>LTF interest</i> ?
396-35	Interest covered by land transport facilities borrowings agreement
396-40	Interest ceasing to be covered by a land transport facilities borrowings agreement

#### **Operative provisions**

##### **396-30 What is *LTF interest*?**

- (1) *LTF interest*, in relation to a borrower, is:
- (a) a payment of interest, or in the nature of interest, made or liable to be made by the borrower, for which the borrower is, apart from this Division, entitled to a deduction; or
  - (b) an amount allowable as a deduction to the borrower under section 159GT of the *Income Tax Assessment Act 1936* in relation to a \*borrowing that is covered by a \*land transport facilities borrowings agreement; or
  - (c) an amount allowable as a deduction to the borrower under Division 230, to the extent that, if that Division did not apply, the amount would be allowable as a deduction to the borrower in the circumstances mentioned in paragraph (b).

Note: Section 159GT deals with certain securities.

- (2) *LTF interest*, in relation to a lender, is:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 396-35

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- (a) a payment of interest, or in the nature of interest, made or liable to be made to the lender, that is included in the lender's assessable income for an income year; or
- (b) an amount included in the assessable income of the lender under section 159GQ of the *Income Tax Assessment Act 1936* in relation to a \*borrowing that is covered by a \*land transport facilities borrowings agreement; or
- (c) an amount included in the assessable income of the lender under Division 230, to the extent that, if that Division did not apply, the amount would be included in the assessable income of the lender in the circumstances mentioned in paragraph (b).

Note: Section 159GQ deals with certain securities.

**396-35 Interest covered by land transport facilities borrowings agreement**

- (1) \*LTF interest that is \*derived by an entity is covered by a \*land transport facilities borrowings agreement if:
  - (a) the entity is a lender under the agreement; and
  - (b) the LTF interest arises under a \*borrowing that is covered by the agreement when the interest is derived.
- (2) \*LTF interest that is incurred by an entity is covered by a \*land transport facilities borrowings agreement if:
  - (a) the entity is the borrower under the agreement; and
  - (b) the LTF interest arises under a \*borrowing that is covered by the agreement at the time that the LTF interest is incurred.

**396-40 Interest ceasing to be covered by a land transport facilities borrowings agreement**

\*LTF interest ceases to be covered by a \*land transport facilities borrowing agreement if the borrower or a lender breaches the agreement and the Minister for Transport and Regional Development decides:

- (a) that the breach is a material breach of the agreement; and
- (b) not to agree to vary the agreement in a way that would cause the breach to no longer be a breach.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Subdivision 396-C—Projects, borrowers and lenders

### Guide to Subdivision 396-C

This Subdivision explains the projects that can be approved and who can be approved as borrowers or lenders.

Where a project and a borrower are approved, a land transport facilities borrowings agreement is entered into under Subdivision 396-D.

### Table of sections

#### Operative provisions

- 396-45 What projects can be approved?
- 396-50 Who can be approved as a borrower?
- 396-55 Who can be a lender?

### Operative provisions

#### 396-45 What projects can be approved?

- (1) To be approved, a project must be the construction of a \*land transport facility or the construction or acquisition of one or more \*related facilities.
- (2) A *land transport facility* is a road, tunnel, bridge, or railway line, in Australia, that is to be used for the transport of the public or their goods at a charge to them (whether the transport is by the member of the public concerned or by another entity).
- (3) *Related facilities* are facilities in Australia that are reasonably necessary for a \*land transport facility to be able to operate for the purpose for which it was constructed.
- (4) The following are examples of \*related facilities:
  - (a) \*depreciating assets and other equipment (for example, rolling stock in the case of a railway) for use in operating the \*land transport facility;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 396-50

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- (b) buildings or other structures from which staff are to operate the land transport facility;
  - (c) buildings or other structures for storing freight, cargo, depreciating assets, fuel, stores or equipment;
  - (d) stations or passenger or freight terminals;
  - (e) maintenance facilities.
- (5) A road, road bridge or road tunnel to provide access to a \*land transport facility that is a railway is not a **related facility** (or part of the land transport facility itself).
- (6) A railway, railway bridge or railway tunnel to provide access to a \*land transport facility that is a road is not a **related facility** (or part of the land transport facility itself).

Note: Items 20 and 21 of Schedule 3 to the *Taxation Laws Amendment Act (No. 1) 1998* treat certain facilities as if they were land transport facilities or related facilities.

**396-50 Who can be approved as a borrower?**

- (1) An entity can only be approved as a borrower in relation to a particular project if the entity is:
- (a) an incorporated body; or
  - (b) a \*corporate limited partnership; or
  - (c) a \*corporate unit trust; or
  - (d) a \*public trading trust;
- and intends to continue to be that type of entity for the period covered by the agreement.
- (2) An entity cannot be approved as a borrower if the entity is making the \*borrowing in partnership with another entity.
- (3) An entity cannot be approved as a borrower if the entity:
- (a) is a government body (within the meaning of subsection 93D(1) of the *Development Allowance Authority Act 1992*); or
  - (b) is government owned (within the meaning of subsection 93I(3) of that Act);
- unless the entity is covered by subsection 93I(4) of that Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **396-55 Who can be a lender?**

A lender must be an Australian resident for the whole of an income year to be entitled to a \*tax offset under this Division for that income year.

### **Subdivision 396-D—Application, approval and agreement process**

#### **Guide to Subdivision 396-D**

This Subdivision sets out the process for applications to be made and approved and agreements to be entered into.

#### **Table of sections**

##### **Operative provisions**

396-60	Applications
396-65	Minister or Commissioner may seek more information
396-70	Minister for Transport and Regional Development to consider applications
396-75	Selection criteria
396-80	Land transport facilities borrowings agreements
396-85	Conditions to be in all agreements
396-90	Variation of agreements

#### **Operative provisions**

##### **396-60 Applications**

- (1) An entity that wants to be approved as a borrower in relation to a particular project must give a written application to the Commissioner.
- (2) The application must be in a form approved in writing by the Commissioner and must contain all information that is required for proper completion of the form.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 396-65

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*Electronic applications*

- (3) An approval by the Commissioner of a form of application may require or permit the application to be given on a specified kind of data processing device, or by way of electronic transmission, in accordance with specified software requirements.

**396-65 Minister or Commissioner may seek more information**

- (1) The Minister for Transport and Regional Development or the Commissioner may, in writing, ask an applicant to provide additional information for the purpose of determining the applicant's application.
- (2) The Minister for Transport and Regional Development does not have to consider, or further consider, the application until the additional information has been provided.

**396-70 Minister for Transport and Regional Development to consider applications**

- (1) The Minister for Transport and Regional Development is to consider applications and to decide:
  - (a) whether to approve the borrower and the project; and
  - (b) if so, whether to set a maximum amount of \*tax offsets for the project for each income year covered by the approval.
- (2) A decision to approve a borrower and a project must be in writing and must specify:
  - (a) the borrower; and
  - (b) the project; and
  - (c) the income years covered by the approval; and
  - (d) if a maximum amount of \*tax offsets for the project for each income year covered by the approval is set—the maximum amount for each income year.The amount may be different for different years.
- (3) The decision may include conditions to which the approval is subject.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4) The approval must not cover an income year that starts more than 5 years after the first \*borrowing is made in respect of the project.
- (5) In making a decision under paragraphs (1)(a) and (1)(b), the Minister for Transport and Regional Development must attempt to ensure that the maximum net cost referred to in section 396-20 for any income year will not be exceeded.
- (6) For the purposes of subsection (5), where no maximum amount is specified in relation to a project, the Minister for Transport and Regional Development is to take account of the expected amount of tax offsets for that project.
- (7) The Minister for Transport and Regional Development does not need to make the decision within any particular time. For example, the Minister for Transport and Regional Development may decide to make decisions under subsection (1) on only 2 days in a year.

### **396-75 Selection criteria**

- (1) In making a decision, the Minister for Transport and Regional Development is to take into account the following matters:
  - (a) the commercial viability of the \*land transport facilities;
  - (b) the benefit that the borrower would receive from having the \*tax offset available to lenders;
  - (c) the estimated taxation revenue that would be forgone as a result of allowing the \*tax offsets;
  - (d) any economic or social benefits or costs associated with the project;
  - (e) the extent to which the project conforms to Commonwealth and State government policies and planning requirements;
  - (f) the extent to which persons who are likely to be affected by the project have been consulted in relation to the project;
  - (g) any other matter that the Minister for Transport and Regional Development considers is relevant.
- (2) The Minister for Transport and Regional Development is also to take into account any advice from the Commissioner in relation to the application of this Act in relation to the project or any \*borrowings or proposed borrowings relating to the project.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 396-80

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Example: The Commissioner may advise the Minister that:

- a lender is a foreign resident; or
- section 51AD of the Income Tax Assessment Act 1936 may apply to the project; or
- Division 250 may apply in relation to the land transport facilities.

**396-80 Land transport facilities borrowings agreements**

- (1) If the Minister for Transport and Regional Development has made a decision approving a project and a borrower, the Minister for Transport and Regional Development must enter into a *land transport facilities borrowings agreement* with the borrower that sets out the lender, or lenders, that will be entitled to a \*tax offset.
- (2) Each lender specified in the agreement must also be a party to the agreement.
- (3) The agreement must specify:
  - (a) the project; and
  - (b) the borrower; and
  - (c) each of the lenders that will be entitled to a \*tax offset under the agreement; and
  - (d) the income years covered by the agreement; and
  - (e) the \*borrowings that are covered by the agreement; and
  - (f) any conditions to which the agreement is subject.
- (4) If the Minister for Transport and Regional Development has specified, in the decision under section 396-70, the maximum amount of \*tax offsets allowable for any income year for the project, the agreement must specify the maximum amount of tax offset allowable that will be available for each lender for each income year. The total of the amounts specified must not exceed the maximum specified in the decision.
- (5) The conditions specified in the agreement must include:
  - (a) the conditions set out in section 396-85; and
  - (b) any conditions specified by the Minister for Transport and Regional Development in the decision under section 396-70;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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but may include such other conditions as the Minister for Transport and Regional Development considers appropriate.

### **396-85 Conditions to be in all agreements**

- (1) All \*land transport facilities borrowings agreements must include the following conditions:
  - (a) that the facilities covered by the agreement will be used in accordance with subsection (2);
  - (b) that the borrower and each of the lenders will do each of the things that they state in the agreement that they will do;
  - (c) that the borrower will not do anything that:
    - (i) will cause Division 250 of this Act to apply to any of the facilities concerned; or
    - (ii) will cause section 51AD of the Tax Act or Division 16D of Part III of that Act to apply to any of the facilities concerned; or
    - (iii) would have caused section 51AD of the Tax Act or Division 16D of Part III of that Act to apply to any of the facilities concerned if the amendments made by Part 2 of Schedule 1 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* had not been made;
  - (d) that the \*borrowings will only be used in the construction of the facilities or the construction or acquisition of \*related facilities;
  - (e) that the borrower will keep proper records in respect of all dealings by the borrower with the borrowed money;
  - (f) that the borrower and each of the lenders will keep proper records in respect of the doing of all other things specified in the agreement (for example, in respect of things done in constructing any facility);
  - (g) that the borrower and each of the lenders will inform the Commissioner of any breach of the agreement within 30 days of becoming aware of the breach;
  - (h) that each of the lenders will, as soon as is practicable, inform the borrower of the amount of any tax offset to which the lender is entitled for a borrowing under the agreement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 396** Land transport facilities borrowings

Section 396-90

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- (2) A facility is used in accordance with this subsection if the borrower:
- (a) owns the facility (or holds a \*quasi-ownership right granted by an \*exempt Australian government agency over land to which the facility is attached); and
  - (b) uses the facility principally for gaining or producing assessable income; and
  - (c) effectively controls the use of the facility (other than by leasing it);
- from the time that the facility is first used until the end of the last income year covered by the agreement.

**396-90 Variation of agreements**

- (1) The parties to a \*land transport facilities borrowings agreement may revoke or vary the agreement.
- (2) In addition, the Minister for Transport and Regional Development and the borrower may enter into an agreement to replace an existing agreement where a lender is to cease to be covered or a new lender is to be covered. Each lender that is specified in the replacement agreement must also be a party to the replacement agreement.
- (3) Any varied or replacement agreement must comply with subsections 396-80(4) and (5).

**Subdivision 396-E—Miscellaneous**

**Table of sections**

396-95	Provision of information
396-100	Publication of information about approvals and agreements
396-105	Delegation by Minister for Transport and Regional Development
396-110	Decision by Minister for Transport and Regional Development not reviewable by AAT

**396-95 Provision of information**

- (1) Any information that was provided under this Division may be given to:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) a Minister or an individual or employee under the control of a Minister; or
  - (b) an employee of, or individual performing services for, the Commonwealth;
- if the person giving the information considers that it would assist the administration of this Division. This can be done despite any prohibition in section 16 of the *Income Tax Assessment Act 1936* or section 3C of the *Taxation Administration Act 1953*.
- (2) Any person who is given information under this section, and any person or employee under his or her control, is subject to the same rights, privileges, obligations and liabilities, under subsections 16(2) and (3) of the *Income Tax Assessment Act 1936* and 3C(2), (3) and (4) of the *Taxation Administration Act 1953* in relation to that information, as if he or she were an officer within the meaning of section 16 of the *Income Tax Assessment Act 1936* or section 3C of the *Taxation Administration Act 1953*.

#### **396-100 Publication of information about approvals and agreements**

The Minister for Transport and Regional Development may publish any information that is included in an approval or an agreement under this Division. This can be done despite any prohibition in section 16 of the *Income Tax Assessment Act 1936* or section 3C of the *Taxation Administration Act 1953*.

#### **396-105 Delegation by Minister for Transport and Regional Development**

The Minister for Transport and Regional Development may, by written notice, delegate to the Secretary to that Minister's Department, or to an SES employee, or acting SES employee, in that Minister's Department, all or any of that Minister's powers under this Division other than that Minister's powers under section 396-70.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 396** Land transport facilities borrowings

Section 396-110

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**396-110 Decision by Minister for Transport and Regional  
Development not reviewable by AAT**

The \*AAT must not, in reviewing any decision, review a decision of the Minister for Transport and Regional Development under this Division (other than a decision under section 396-40) or any decision by any person that was preliminary to such a decision.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 402—Environment protection expenditure**

### **Table of Subdivisions**

Guide to Division 402  
402-W Urban water tax offset

### **Guide to Division 402**

#### **402-1 What this Division is about**

This Division provides for certain tax measures in relation to environment protection.

#### **Subdivision 402-W—Urban water tax offset**

### **Guide to Subdivision 402-W**

#### **402-750 What this Subdivision is about**

A company may get a refundable tax offset under the National Urban Water and Desalination Plan for a project that the Water Minister certifies as being eligible for the tax offset.

The amount of the urban water tax offset is specified in the certificate.

The urban water tax offset is only available for the income years 2009-10 to 2012-13.

Note: This Subdivision will be repealed on 1 July 2014; see Part 2 of Schedule 4 to the *Tax Laws Amendment (2009 Measures No. 2) Act 2009*.

### **Table of sections**

402-755 Entitlement to urban water tax offset  
402-760 Certificates

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 402** Environment protection expenditure

Section 402-755

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- 402-765 Amount of urban water tax offset
- 402-770 Revoking certificates
- 402-775 AAT review
- 402-780 Guidelines

**402-755 Entitlement to urban water tax offset**

- (1) A company is entitled to a \*tax offset for a project for an income year if the \*Water Minister certifies under section 402-760 that the project is eligible for the tax offset for the year.
- (2) The amount of the \*tax offset is the amount specified in the certificate.

Note: The tax offset is subject to the refundable tax offset rules: see section 67-23.

**402-760 Certificates**

*Issuing certificates*

- (1) The \*Water Minister may certify, in writing, to a company that a project is eligible for the urban water tax offset for an income year, if:
  - (a) the eligible up-front capital costs of the project (within the meaning given by the guidelines made under section 402-780) are:
    - (i) in the case of a stormwater harvesting project—\$4 million or more; or
    - (ii) in any other case—\$30 million or more; and
  - (b) the other requirements specified in those guidelines are met.
- (2) The \*Water Minister may only issue certificates for the following income years:
  - (a) the 2009-10 income year;
  - (b) the 2010-11 income year;
  - (c) the 2011-12 income year;
  - (d) the 2012-13 income year.
- (3) In deciding whether to issue a certificate, the \*Water Minister must comply with the guidelines made under section 402-780.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) If the \*Water Minister issues a certificate under this section, he or she must, within 30 days, give a copy to the Commissioner.

*Refusal to issue certificates*

- (5) If the \*Water Minister refuses to issue a certificate to a company under this section, he or she must, within 30 days, give written notice of the refusal to the company.
- (6) The notice must explain that the company may apply to the \*AAT for review of the \*Water Minister's refusal to issue a certificate to the company (see section 402-775).

**402-765 Amount of urban water tax offset**

- (1) A certificate issued under section 402-760 must specify the amount of the \*tax offset.
- (2) In specifying an amount, the \*Water Minister must comply with the guidelines made under section 402-780.
- (3) The total of the amounts specified in certificates issued to a company for a stormwater harvesting project for one or more income years:
- (a) must not exceed 50% of the eligible up-front capital costs of the project (within the meaning given by the guidelines made under section 402-780); and
  - (b) must not exceed \$20 million.
- (4) The total of the amounts specified in certificates issued to a company for a project (other than a stormwater harvesting project) for one or more income years:
- (a) must not exceed 10% of the eligible up-front capital costs of the project (within the meaning given by the guidelines made under section 402-780); and
  - (b) must not exceed \$100 million.
- (5) A certificate issued to a company under section 402-760 must explain that the company may apply to the \*AAT for review of the amount specified in the certificate (see section 402-775).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 402-770

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**402-770 Revoking certificates**

*Revoking certificates*

- (1) The \*Water Minister may revoke a certificate issued to a company under section 402-760.
- (2) However, the \*Water Minister may only do so in the circumstances provided for in the guidelines made under section 402-780.
- (3) If the \*Water Minister revokes the certificate, he or she must, within 30 days, give to the company and to the Commissioner:
  - (a) written notice of the revocation; and
  - (b) written reasons for the decision to revoke the certificate.
- (4) The notice given to the company must explain that the company may apply to the \*AAT for review of the \*Water Minister's revocation of the certificate (see section 402-775).

*Revoked certificates taken never to have been issued*

- (5) If the \*Water Minister revokes a certificate under this section, the certificate is taken, for the purposes of this Subdivision, never to have been issued.
- (6) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purpose of giving effect to this Subdivision for an income year if:
  - (a) a certificate issued to a company is revoked under this section after the time the company lodged its \*income tax return for the income year; and
  - (b) the amendment is made at any time during the period of 4 years starting immediately after the revocation of the certificate.

Note: Section 170 of the *Income Tax Assessment Act 1936* specifies the usual period within which assessments may be amended.

*Certificates cannot be varied*

- (7) A certificate issued under section 402-760 cannot be varied.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

#### **402-775 AAT review**

A company may apply to the \*AAT for review of a decision of the \*Water Minister under this Subdivision:

- (a) to refuse to issue a certificate to the company; or
- (b) to specify a particular amount in a certificate issued to the company; or
- (c) to revoke a certificate issued to the company.

#### **402-780 Guidelines**

- (1) The \*Water Minister must, by legislative instrument, make guidelines about issuing and revoking certificates under this Subdivision.
- (2) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, the guidelines may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time if:
  - (a) the instrument or other writing is issued by the \*Water Minister or by the \*Water Department; and
  - (b) the instrument or other writing, as in force or existing from time to time, is publicly available.
- (3) A legislative instrument made under subsection (1) does not take effect before the end of the period in which it could be disallowed in either House of the Parliament.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 405** Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons

Section 405-1

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**Division 405—Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons**

**Table of Subdivisions**

Guide to Division 405

405-A Above-average special professional income

405-B Assessable professional income

405-C Taxable professional income and average taxable professional income

**Guide to Division 405**

**405-1 What this Division is about**

Significant fluctuations can occur in the professional incomes of authors, inventors, performing artists, production associates and sportspersons.

To lessen the impact of these fluctuations on your marginal tax rates, special tax rates apply if your professional income is above your average.

This Division explains how the scheme works and sets out the rules for working out your above-average special professional income.

**Table of sections**

405-5 Special rate of income tax on your above-average special professional income

405-10 Overview of the Division

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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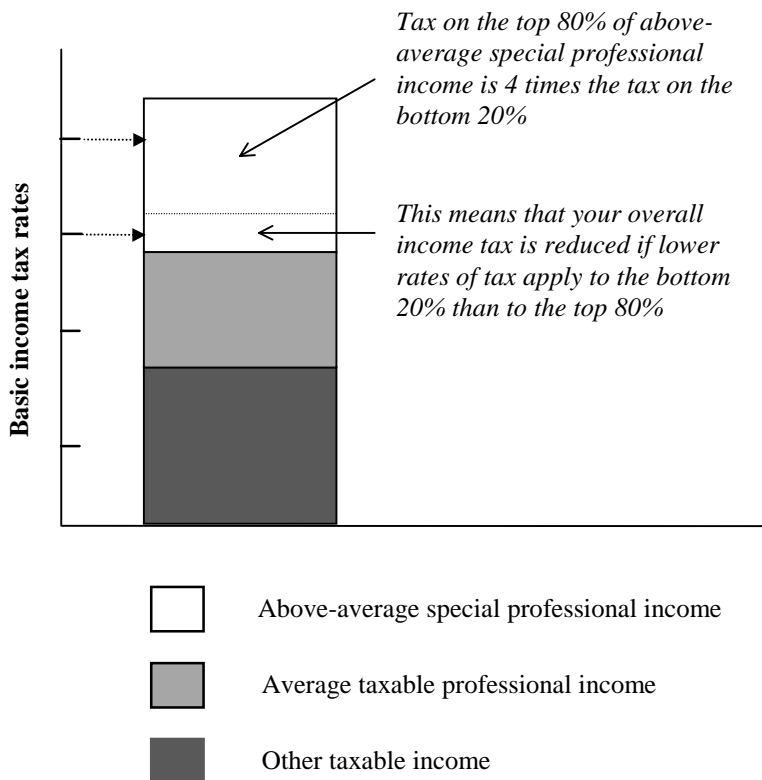
**405-5 Special rate of income tax on your above-average special professional income**

- (1) If you have above-average special professional income, the *Income Tax Rates Act 1986* generally sets a special rate so that the amount of income tax you pay on the top 4/5 of your above-average special professional income is effectively 4 times what you would pay on the bottom 1/5 of that income at basic rates.

Note : Your overall income tax will be less only if 2 marginal rates of income tax would apply to your above-average special professional income if it were treated as the top slice of your taxable income.

- (2) The following diagram illustrates how the special rate works.

**Income tax treatment of above-average special professional income**



\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 405** Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons

Section 405-10

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**405-10 Overview of the Division**

*For which income years do you have above-average special professional income?*

- (1) The first income year for which you have above-average special professional income is the first income year (professional year 1):
  - (a) for which your taxable professional income is more than \$2,500; and
  - (b) during all or part of which you are an Australian resident.
- (2) After professional year 1, you have above-average special professional income for any income year for all or part of which you are an Australian resident.

Note: You need not have been an Australian resident for every income year since professional year 1.

*What is above-average special professional income?*

- (3) Your above-average special professional income for the current year is the amount (if any) by which your taxable professional income *exceeds* your average taxable professional income.

See Subdivision 405-A.

*What is taxable professional income?*

- (4) Your taxable professional income depends on your assessable professional income.
- (5) Your assessable professional income is assessable income from your work as an author, inventor, performing artist, production associate or sportsperson.

See section 405-45.

See Subdivision 405-B.

*How do you work out your average taxable professional income?*

- (6) Generally, your average taxable professional income for the current year is the average of your taxable professional income for the last 4 income years.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 405-15

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See section 405-50.

- (7) However, special phasing-in arrangements apply to work out your average taxable professional income for an income year that is less than 4 income years after professional year 1.

These arrangements favour people who were Australian residents for at least part of the income year *before* professional year 1.

See section 405-50.

### **Subdivision 405-A—Above-average special professional income**

#### **Table of sections**

405-15 When do you have above-average special professional income?

#### **405-15 When do you have above-average special professional income?**

- (1) Your taxable income for the \*current year includes *above-average special professional income* if and only if:
- (a) you are an individual; and
  - (b) you have been an Australian resident for all or part of the current year; and
  - (c) your \*taxable professional income for the current year exceeds your \*average taxable professional income for the current year; and
  - (d) either:
    - (i) your \*taxable professional income for the current year is more than \$2,500; or
    - (ii) your \*taxable professional income for an earlier income year was more than \$2,500 and you were an Australian resident for all or part of that income year.

*How much above-average special professional income do you have?*

- (2) The amount of \*above-average special professional income in your taxable income for the \*current year is the difference between:
- (a) your \*taxable professional income for the current year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 405** Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons

Section 405-20

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- (b) your \*average taxable professional income for the current year.

**Subdivision 405-B—Assessable professional income**

**Table of sections**

405-20	What you count as <i>assessable professional income</i>
405-25	Meaning of <i>special professional, performing artist, production associate, sportsperson</i> and <i>sporting competition</i>
405-30	What you <i>cannot</i> count as assessable professional income
405-35	Limits on counting amounts as assessable professional income
405-40	Joint author or inventor treated as sole author or inventor

**405-20 What you count as *assessable professional income***

- (1) Work out your *assessable professional income* for an income year by adding up all your assessable income for the income year that you count under this Subdivision.

Note 1: Section 405-30 may stop you counting an amount.

Note 2: Subsection 405-35(1) stops you counting an amount more than once, even if it is described in more than one subsection of this section.

Note 3: Subsection 405-35(2) may affect the amount you count.

*Assessable income from professional services*

- (2) You count any assessable income that you \*derive as a reward for providing services relating to your activities as a \*special professional.

*Assessable income from prizes*

- (3) You also count any assessable income that you \*derive as a prize for your activities as a \*special professional.

*Assessable income from promotions and commentary*

- (4) You also count any assessable income that you \*derive, because you are or were a \*special professional, for:  
(a) endorsing or promoting goods or services; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) appearing or participating in an advertisement; or
- (c) appearing or participating in an interview; or
- (d) providing services as a commentator; or
- (e) providing similar services.

*Assessable income from assigning copyright or granting a licence*

- (5) You also count any assessable income that you \*derive:
  - (a) as consideration for:
    - (i) assigning all or part of the copyright in a literary, dramatic, musical or artistic work of which you are the author; or
    - (ii) granting an interest in the copyright in such a work by granting a licence; or
  - (b) as an advance on account of royalties relating to such a copyright.

*Assessable income from assigning or granting patent rights*

- (6) You also count any assessable income that you \*derive:
  - (a) as consideration for:
    - (i) assigning all or part of the patent for an invention that you invented; or
    - (ii) granting an interest in the patent for such an invention by granting a licence; or
    - (iii) assigning the right to apply for a patent for such an invention; or
  - (b) as an advance on account of royalties relating to such a patent.

*Other assessable income from works or inventions*

- (7) You also count any assessable income that you \*derive (as \*royalties or otherwise):
  - (a) for a literary, dramatic, musical or artistic work of which you are the author; or
  - (b) in relation to copyright in such a work; or
  - (c) for an invention that you invented; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 405** Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons

Section 405-25

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- (d) in relation to a patent for such an invention.

**405-25 Meaning of *special professional, performing artist, production associate, sportsperson and sporting competition***

*Special professional*

- (1) You are a ***special professional*** if you are:
- (a) the author of a literary, dramatic, musical or artistic work; or
- Note: The expression “author” is a technical term from copyright law. In general, the “author” of a musical work is its composer and the “author” of an artistic work is the artist, sculptor or photographer who created it.
- (b) the inventor of an invention; or
  - (c) a \*performing artist; or
  - (d) a \*production associate; or
  - (e) a \*sportsperson.

*Performing artist*

- (2) You are a ***performing artist*** if you exercise intellectual, artistic, musical, physical or other personal skills in the presence of an audience by performing or presenting:
- (a) music; or
  - (b) a play; or
  - (c) dance; or
  - (d) an entertainment; or
  - (e) an address; or
  - (f) a display; or
  - (g) a promotional activity; or
  - (h) an exhibition; or
  - (i) any similar activity.
- (3) You are also a ***performing artist*** if you perform or appear in or on a \*film, tape, disc or television or radio broadcast.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Production associate*

- (4) You are a **production associate** if you provide \*artistic support for:
- (a) an activity described in subsection (2); or
  - (b) the activity of making a \*film, tape, disc or television or radio broadcast.
- (5) You provide **artistic support** for an activity if:
- (a) you provide services relating to the activity as:
    - (i) an art director; or
    - (ii) a choreographer; or
    - (iii) a costume designer; or
    - (iv) a director; or
    - (v) a director of photography; or
    - (vi) a film editor; or
    - (vii) a lighting designer; or
    - (viii) a musical director; or
    - (ix) a producer; or
    - (x) a production designer; or
    - (xi) a set designer; or
  - (b) you provide similar services relating to the activity.

*Sportsperson*

- (6) You are a **sportsperson** if you compete in a \*sporting competition.
- (7) A **sporting competition** is a sporting activity to the extent that:
- (a) human beings are the only competitors in it, or it is one in which human beings:
    - (i) compete by riding animals or exercising other skills in relation to animals; or
    - (ii) compete by driving, piloting or crewing \*motor vehicles, boats, aircraft or other forms of transport; or
    - (iii) compete with natural obstacles or natural forces, or by overcoming them; and
  - (b) participation in it by human competitors involves primarily their exercising physical prowess, physical strength or physical stamina.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 405** Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons

Section 405-30

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- (8) However, the participation:
- (a) of a navigator in the activity of car rallying; or
  - (b) of a coxswain in the activity of rowing; or
  - (c) of a competitor in a similar role in some other activity;
- need not involve primarily exercising physical prowess, physical strength or physical stamina for the activity to be a *sporting competition*.

**405-30 What you cannot count as assessable professional income**

*Assessable income from continuous service as author or inventor*

- (1) You cannot count as \*assessable professional income any assessable income you \*derive for meeting your obligations under a \*scheme to provide services to another person by engaging in activities as the author of a literary, dramatic, musical or artistic work, or as the inventor of an invention, unless:
- (a) the scheme was entered into solely to require you to provide services by:
    - (i) making one or more specified literary, dramatic, musical or artistic works; or
    - (ii) inventing one or more specified inventions; and
  - (b) you have not been providing services, and may not reasonably be expected to provide services, to that person or his or her \*associates under successive \*schemes that result in substantial continuity of your providing services.

*Assessable income from certain activities*

- (2) You cannot count as \*assessable professional income any assessable income that you \*derive for:
- (a) coaching or training \*sportspersons; or
  - (b) umpiring or refereeing a \*sporting competition; or
  - (c) administering a \*sporting competition; or
  - (d) being a member of the pit crew in motor sport; or
  - (e) being a theatrical or sports entrepreneur; or
  - (f) owning or training animals.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Payments at end of employment, and capital gains*

- (3) You cannot count as \*assessable professional income:
- (a) a \*superannuation lump sum or an \*employment termination payment; or
  - (b) an \*unused annual leave payment or an \*unused long service leave payment; or
  - (c) a \*net capital gain.

*This section prevails over section 405-20*

- (4) You cannot count particular assessable income as \*assessable professional income if this section says you cannot, even if section 405-20 says you count it.

**405-35 Limits on counting amounts as assessable professional income**

*No double-counting*

- (1) You cannot count the same amount as \*assessable professional income more than once, even if it is described in more than one subsection of section 405-20.

*Amounts that are partly assessable professional income*

- (2) If:
- (a) you \*derive assessable income under or as a result of a \*scheme; and
  - (b) the assessable income consists of a part that is counted as \*assessable professional income and another part that cannot be; and
  - (c) one component is unreasonably large and the other component is unreasonably small, for reasons that are directly or indirectly related to one another;
- you must work out your \*assessable professional income as if the unreasonably large component were reduced by a reasonable amount and the unreasonably small component were increased by the same amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 405** Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons

Section 405-40

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- (3) Subsection (2) affects your \*assessable professional income:
- (a) whether you \*derived the assessable income directly or indirectly under or as a result of the \*scheme; and
  - (b) whether or not a reason mentioned in paragraph (2)(c) is the only reason why a component is unreasonably large or small.

**405-40 Joint author or inventor treated as sole author or inventor**

- (1) If you are a joint author of a literary, dramatic, musical or artistic work, work out your \*assessable professional income as if you were the author of that work.

Note: This section means that you are treated as a special professional, even if you have never been the sole author of a work.

- (2) If you are a joint inventor of an invention, work out your \*assessable professional income as if you were the inventor of that invention.

Note: This section means that you are treated as a special professional, even if you have never been the sole inventor of an invention.

**Subdivision 405-C—Taxable professional income and average taxable professional income**

**Table of sections**

405-45	Working out your taxable professional income
405-50	Working out your average taxable professional income

**405-45 Working out your taxable professional income**

Your *taxable professional income* for an income year is the amount (if any) by which your \*assessable professional income for that year exceeds the amount of your deductions for that year worked out as follows:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Method statement*

Step 1. Add up any amounts you can deduct for that year (except \*apportionable deductions), so far as they reasonably relate to your \*assessable professional income for the year.

Step 2. Work out the amount using the formula:

$$\text{*Apportionable deductions} \times \frac{\left( \text{*Assessable professional income} - \text{Sum from Step 1} \right)}{\text{Taxable income} - \text{*Apportionable deductions}}$$

Note: The result may be greater than the apportionable deductions. Also, it may be negative.

Step 3. Add the sum from Step 1 to the result from Step 2. If the result is more than nil, it is the amount of your deductions to be subtracted from your \*assessable professional income.

### 405-50 Working out your average taxable professional income

*It is generally a 4-year average*

- (1) Work out your **average taxable professional income** for the \*current year by:
  - (a) adding up your \*taxable professional income for each of the last 4 income years before the current year; and
  - (b) dividing the total by 4.

*Phasing-in arrangements for new professionals*

- (2) However, if the \*current year is less than 4 income years after \*professional year 1, work out your **average taxable professional income** using the table in subsection (5).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 405** Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons

Section 405-50

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- (3) **Professional year 1** is the first income year:
- (a) during which you were an Australian resident (for all or part of the income year); and
  - (b) for which your \*taxable professional income was more than \$2,500.
- (4) **Professional year 2, professional year 3** and **professional year 4** are respectively the next 3 income years after \*professional year 1.
- (5) The table is as follows:

<b>Average taxable professional income during phase-in period</b>			
<b>Item</b>	<b>Current year</b>	<b>Average taxable professional income if you were an Australian resident for all or part of the income year immediately before professional year 1</b>	<b>Average taxable professional income if you were a foreign resident for any of the income year immediately before professional year 1</b>
1	Professional year 1	Nil	Your *taxable professional income for *professional year 1
2	Professional year 2	1/3 of your *taxable professional income for *professional year 1	Your *taxable professional income for *professional year 1
3	Professional year 3	1/4 of the sum of your *taxable professional income for each of *professional years 1 and 2	1/2 of the sum of your *taxable professional income for each of *professional years 1 and 2
4	Professional year 4	1/4 of the sum of your *taxable professional income for each of *professional years 1, 2 and 3	1/3 of the sum of your *taxable professional income for each of *professional years 1, 2 and 3

Note: If you were a foreign resident for any part of the income year immediately before professional year 1, the effect of item 1 of the table is that your taxable income for professional year 1 will not include above-average special professional income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Division 410—Copyright collecting societies**

### **410-1 What this Division is about**

This Division sets out rules that apply whenever a copyright collecting society to which section 51-43 applies makes a payment to a member of the society.

### **Table of sections**

#### **Operative provision**

410-5 Copyright collecting society must give a notice to a member of the society

### **Operative provision**

#### **410-5 Copyright collecting society must give a notice to a member of the society**

- (1) This section applies to a \*copyright collecting society to which section 51-43 applies.
- (2) If the society makes a payment to a \*member of the society, the society must give the member a notice, in writing, that states:
  - (a) the name of the society and the member; and
  - (b) the total amount of the payment; and
  - (c) the amount of the payment on which the directors of the society are or have been assessed, and are liable to pay tax, under section 98, 99 or 99A of the *Income Tax Assessment Act 1936*; and
  - (d) the amount of the payment that is to be included in the member's assessable income under section 15-22 of this Act.

Note 1: Under section 288-75 in Schedule 1 to the *Taxation Administration Act 1953* a society is liable to an administrative penalty for failing to give a notice required under this section.

Note 2: The amount mentioned in paragraph (2)(c) is not included in the member's assessable income—see section 15-22.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-45** Rules for particular industries and occupations

**Division 410** Copyright collecting societies

Section 410-5

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- (3) The society must give the notice at the time of the payment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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# **Income Tax Assessment Act 1997**

## **Act No. 38 of 1997 as amended**

This compilation was prepared on 2 July 2009  
taking into account amendments up to Act No. 62 of 2009

**Volume 7** includes: Table of Contents  
Sections 700-1 to 727-910

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

## **Chapter 3—Specialist liability rules**



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# Contents

<b>Chapter 3—Specialist liability rules</b>	i
<b>Part 3-90—Consolidated groups</b>	1
<b>Division 700—Guide and objects</b>	1
<b>Guide</b>	1
700-1 What this Part is about.....	1
700-5 Overview of this Part.....	2
<b>Objects</b>	3
700-10 Objects of this Part .....	3
<b>Division 701—Core rules</b>	4
<b>Common rule</b>	5
701-1 Single entity rule .....	5
<b>Head company rules</b>	6
701-5 Entry history rule.....	6
701-10 Cost to head company of assets of joining entity.....	7
701-15 Cost to head company of membership interests in entity that leaves group.....	8
701-20 Cost to head company of assets consisting of certain liabilities owed by entity that leaves group.....	9
701-25 Tax-neutral consequence for head company of ceasing to hold assets when entity leaves group.....	10
<b>Entity rules</b>	11
701-30 Where entity not subsidiary member for whole of income year.....	11
701-35 Tax-neutral consequence for entity of ceasing to hold assets when it joins group .....	14
701-40 Exit history rule .....	15
701-45 Cost of assets consisting of liabilities owed to entity by members of the group.....	16
701-50 Cost of certain membership interests of which entity becomes holder on leaving group .....	17
<b>Supporting provisions</b>	18
701-55 Setting the tax cost of an asset.....	18
701-58 Effect of setting the tax cost of an asset that the head company does not hold under the single entity rule.....	20
701-60 Tax cost setting amount.....	21
701-61 Assets in relation to Division 230 financial arrangement— head company’s assessable income or deduction .....	21
701-65 Net income and losses for trusts and partnerships .....	22

---

<b>Exceptions</b>	23
701-70 Adjustments to taxable income where identities of parties to arrangement merge on joining group.....	23
701-75 Adjustments to taxable income where identities of parties to arrangement re-emerge on leaving group .....	26
701-80 Accelerated depreciation .....	29
701-85 Other exceptions etc. to the rules.....	30
<b>Division 703—Consolidated groups and their members</b>	31
<b>Guide to Division 703</b>	31
703-1 What this Division is about .....	31
<b>Basic concepts</b>	32
703-5 What is a <i>consolidated group</i> ? .....	32
703-10 What is a <i>consolidatable group</i> ? .....	33
703-15 <i>Members</i> of a consolidated group or consolidatable group.....	33
703-20 Certain entities that <i>cannot</i> be members of a consolidated group or consolidatable group .....	35
703-25 Australian residence requirements for trusts.....	37
703-30 When is one entity a <i>wholly-owned subsidiary</i> of another?.....	37
703-33 Transfer time for sale of shares in company .....	38
703-35 Treating entities as wholly-owned subsidiaries by disregarding employee shares.....	39
703-37 Disregarding certain preference shares following an ADI restructure.....	41
703-40 Treating entities held through non-fixed trusts as wholly-owned subsidiaries .....	43
703-45 Subsidiary members or nominees interposed between the head company and a subsidiary member of a consolidated group or a consolidatable group .....	43
<b>Choice to consolidate a consolidatable group</b>	44
703-50 Choice to consolidate a consolidatable group.....	44
<b>Consolidated group created when MEC group ceases to exist</b>	45
703-55 Creating consolidated groups from certain MEC groups.....	45
<b>Notice of events affecting consolidated group</b>	46
703-60 Notice of events affecting consolidated group.....	46
<b>Effects of choice to continue group after shelf company becomes new head company</b>	47
703-65 Application .....	47
703-70 Consolidated group continues in existence with interposed company as head company and original company as a subsidiary member.....	48
703-75 Interposed company treated as substituted for original company at all times before the completion time .....	48
703-80 Effects on the original company's tax position.....	50

---

---

<b>Division 705—Tax cost setting amount for assets where entities become subsidiary members of consolidated groups</b>	51
<b>Guide to Division 705</b>	51
705-1 What this Division is about .....	51
<b>Subdivision 705-A—Basic case: a single entity joining an existing consolidated group</b>	51
<b>Guide to Subdivision 705-A</b>	51
705-5 What this Subdivision is about .....	51
<b>Application and object</b>	53
705-10 Application and object of this Subdivision .....	53
705-15 Cases where this Subdivision does not have effect.....	54
<b>Tax cost setting amount for assets that joining entity brings into joined group</b>	55
705-20 Tax cost setting amount worked out under this Subdivision .....	55
705-25 Tax cost setting amount for retained cost base assets .....	55
705-30 What is the joining entity’s <i>terminating value</i> for an asset? .....	56
705-35 Tax cost setting amount for reset cost base assets .....	58
705-40 Tax cost setting amount for reset cost base assets held on revenue account .....	59
705-45 Reduction in tax cost setting amount for accelerated depreciation assets .....	60
705-47 Reduction in tax cost setting amount for some privatised assets .....	61
705-50 Reduction in tax cost setting amount for over-depreciated assets .....	64
705-55 Order of application of sections 705-40, 705-45, 705-47 and 705-50 .....	67
705-56 Modification for tax cost setting in relation to finance leases.....	67
705-57 Adjustment to tax cost setting amount where loss of pre-CGT status of membership interests in joining entity .....	69
705-58 Assets and liabilities not set off against each other.....	72
705-59 Exception: treatment of linked assets and liabilities .....	72
<b>How to work out the allocable cost amount</b>	76
705-60 What is the joined group’s <i>allocable cost amount</i> for the joining entity?.....	76
705-65 Cost of membership interests in the joining entity—step 1 in working out allocable cost amount .....	78
705-70 Liabilities of the joining entity—step 2 in working out allocable cost amount .....	82
705-75 Liabilities of the joining entity—reductions for purposes of step 2 in working out allocable cost amount.....	83
705-80 Liabilities of the joining entity—reductions/increases for purposes of step 2 in working out allocable cost amount .....	85

---

---

705-85	Liabilities of the joining entity—increases for purposes of step 2 in working out allocable cost amount.....	86
705-90	Undistributed, taxed profits accruing to joined group before joining time—step 3 in working out allocable cost amount.....	87
705-93	If pre-joining time roll-over from foreign resident company—step 3A in working out allocable cost amount .....	91
705-95	Pre-joining time distributions out of certain profits—step 4 in working out allocable cost amount .....	92
705-100	Losses accruing to joined group before joining time—step 5 in working out allocable cost amount .....	93
705-105	Continuity of holding membership interests—steps 3 to 5 in working out allocable cost amount .....	93
705-110	If joining entity transfers a loss to the head company—step 6 in working out allocable cost amount .....	94
705-115	If head company becomes entitled to certain deductions—step 7 in working out allocable cost amount.....	94
	<b>How to work out a pre-CGT factor for assets of joining entity</b>	95
705-125	Pre-CGT factor for assets of joining entity.....	95
	<b>Subdivision 705-B—Case of group formation</b>	97
	<b>Guide to Subdivision 705-B</b>	97
705-130	What this Subdivision is about .....	97
	<b>Application and object</b>	98
705-135	Application and object of this Subdivision.....	98
	<b>Modified application of Subdivision 705-A</b>	98
705-140	Subdivision 705-A has effect with modifications.....	98
705-145	Order in which tax cost setting amounts are to be worked out where subsidiary members have membership interests in other subsidiary members.....	99
705-147	Adjustment in working out step 3A of allocable cost amount to take account of membership interests held by subsidiary members in other such members .....	100
705-150	Adjustment to result of step 3A in working out allocable cost amount where pre-formation time roll-over from head company to member of wholly-owned group.....	103
705-155	Adjustments to restrict step 4 reduction of allocable cost amount to effective distributions to head company in respect of direct membership interests.....	106
705-160	Adjustment to allocation of allocable cost amount to take account of owned profits or losses of certain entities that become subsidiary members.....	109
705-163	Modified application of section 705-57.....	111
705-165	Working out pre-CGT factors where subsidiary members have membership interests in other subsidiary members.....	114

---

---

<b>Subdivision 705-C—Case where a consolidated group is acquired by another</b>	115
<b>Guide to Subdivision 705-C</b>	115
705-170 What this Subdivision is about .....	115
<b>Application and object</b>	116
705-175 Application and object of this Subdivision.....	116
<b>Modified application of Division 701 in relation to acquired group etc.</b>	116
705-180 Modifications of Division 701 .....	116
<b>Modified application of Subdivision 705-A in relation to acquiring group</b>	118
705-185 Subdivision 705-A has effect with modifications.....	118
<b>Modifications of Subdivision 705-A for the purposes of this Subdivision</b>	119
705-190 Modified application of section 705-50.....	119
705-195 Modified application of subsection 705-65(6).....	119
705-200 Modified application of section 705-85.....	120
705-205 Modified application of section 705-125 .....	121
<b>Subdivision 705-D—Where multiple entities are linked by membership interests</b>	122
<b>Guide to Subdivision 705-D</b>	122
705-210 What this Subdivision is about .....	122
<b>Application and object</b>	123
705-215 Application and object of this Subdivision.....	123
<b>Modified application of Subdivision 705-A</b>	123
705-220 Subdivision 705-A has effect with modifications.....	123
705-225 Order in which tax cost setting amounts are to be worked out where linked entities have membership interests in other linked entities .....	124
705-227 Adjustment in working out step 3A of allocable cost amount to take account of membership interests held by linked entities in other linked entities.....	125
705-230 Adjustments to restrict step 4 reduction of allocable cost amount to effective distributions to head company in respect of direct membership interests.....	128
705-235 Adjustment to allocation of allocable cost amount to take account of owned profits or losses of certain linked entities .....	129
705-240 Modified application of section 705-57.....	131
705-245 Working out pre-CGT factors where subsidiary members have membership interests in other subsidiary members.....	133

---



---

<b>Subdivision 705-E—Adjustments for errors etc.</b>	134
<b>Guide to Subdivision 705-E</b>	134
705-300 What this Subdivision is about .....	134
<b>Operative provisions</b>	134
705-305 Object of this Subdivision .....	134
705-310 Operation of Part IVA of the <i>Income Tax Assessment Act 1936</i> .....	134
705-315 Errors that attract special adjustment action .....	134
705-320 Tax cost setting amounts taken to be correct.....	136
<b>Division 707—Losses for head companies when entities become members etc.</b>	137
<b>Subdivision 707-A—Transfer of previously unutilised losses to head company</b>	137
<b>Guide to Subdivision 707-A</b>	137
707-100 What this Subdivision is about .....	137
707-105 Who can utilise the loss? .....	138
<b>Objects</b>	138
707-110 Objects of this Subdivision.....	138
<b>Application</b>	139
707-115 What losses this Subdivision applies to.....	139
<b>Transfer of loss from joining entity to head company</b>	140
707-120 Transfer of loss from joining entity to head company .....	140
707-125 Modified same business test for companies' post-1999 losses .....	141
707-130 Modified pattern of distributions test.....	143
707-135 Transferring loss transferred to joining entity because same business test was passed .....	144
<b>Effect of transfer of loss</b>	144
707-140 Effect of transfer of loss .....	144
<b>Cancelling the transfer of the loss</b>	145
707-145 Cancelling the transfer of the loss .....	145
<b>What happens if the loss is not transferred?</b>	145
707-150 Loss cannot be utilised for income year ending after the joining time .....	145
<b>Subdivision 707-B—Can a transferred loss be utilised?</b>	146
<b>Guide to Subdivision 707-B</b>	146
707-200 What this Subdivision is about .....	146
<b>Operative provisions</b>	146
707-205 Modified period for test for maintaining same ownership.....	146
707-210 Utilisation of certain losses transferred from a company depends on company that made the losses earlier.....	147

---

---

<b>Subdivision 707-C—Amount of transferred losses that can be utilised</b>	149
<b>Guide to Subdivision 707-C</b>	149
707-300 What this Subdivision is about .....	149
<b>Object</b>	150
707-305 Object of this Subdivision .....	150
<b>How much of a transferred loss can be utilised?</b>	151
707-310 How much of a transferred loss can be utilised? .....	151
707-315 What is a <i>bundle</i> of losses?.....	154
707-320 What is the <i>available fraction</i> for a bundle of losses?.....	155
707-325 <i>Modified market value</i> of an entity becoming a member of a consolidated group.....	157
707-330 Losses transferred from former head company.....	160
707-335 Limit on utilising transferred losses if circumstances change during income year .....	160
707-340 Utilising transferred losses while exempt income remains.....	161
707-345 Other provisions are subject to this Subdivision.....	163
<b>Subdivision 707-D—Special rules about losses</b>	163
707-400 Head company’s business before and after consolidation not compared .....	163
707-410 Exit history rule does not treat entity as having made a loss .....	163
<b>Division 709—Other rules applying when entities become subsidiary members etc.</b>	165
<b>Subdivision 709-A—Franking accounts</b>	165
<b>Guide to Subdivision 709-A</b>	165
709-50 What this Subdivision is about .....	165
<b>Object</b>	166
709-55 Object of this Subdivision .....	166
<b>Treatment of franking accounts at joining time</b>	167
709-60 Nil balance franking account for joining entity .....	167
<b>Treatment of subsidiary member’s franking account</b>	167
709-65 Subsidiary member’s franking account does not operate.....	167
<b>Treatment of head company’s franking account</b>	168
709-70 Credits arising in head company’s franking account .....	168
709-75 Debits arising in head company’s franking account .....	168
<b>Franking distributions by subsidiary member</b>	169
709-80 Subsidiary member’s distributions on employee shares and certain preference shares taken to be distributions by the head company.....	169
709-85 Non-share distributions by subsidiary members taken to be distributions by head company .....	169

---

---

709-90	Subsidiary member's distributions to foreign resident taken to be distributions by head company .....	170
<b>Payment of group liability by former subsidiary member</b>		170
709-95	Payment of group liability by former subsidiary member .....	170
709-100	Refund of income tax to former subsidiary member .....	171
<b>Subdivision 709-B—Imputation issues</b>		172
<b>Guide to Subdivision 709-B</b>		172
709-150	What this Subdivision is about .....	172
<b>Operative provisions</b>		172
709-155	Testing consolidated groups .....	172
709-160	Subsidiary member is exempting entity .....	173
709-165	Subsidiary member is former exempting entity .....	174
709-170	Head company and subsidiary are exempting entities .....	175
709-175	Head company is former exempting entity .....	175
<b>Subdivision 709-C—Treatment of excess franking deficit tax offsets when entity becomes a subsidiary member of a consolidated group</b>		178
<b>Guide to Subdivision 709-C</b>		178
709-180	What this Subdivision is about .....	178
709-185	Joining entity's excess franking deficit tax offsets transferred to head company .....	178
709-190	Exit history rule not to treat leaving entity as having a franking deficit tax offset excess .....	179
<b>Subdivision 709-D—Deducting bad debts</b>		180
<b>Guide to Subdivision 709-D</b>		180
709-200	What this Subdivision is about .....	180
<b>Application and object</b>		180
709-205	Application of this Subdivision .....	180
709-210	Object of this Subdivision .....	182
<b>Limit on deduction of bad debt</b>		182
709-215	Limit on deduction of bad debt .....	182
<b>Extension of Subdivision to debt/equity swap loss</b>		186
709-220	Limit on deduction of swap loss .....	186
<b>Division 711—Tax cost setting amount for membership interests where entities cease to be subsidiary members of consolidated groups</b>		188
<b>Guide to Division 711</b>		188
711-1	What this Division is about .....	188
<b>Application and object of this Division</b>		189
711-5	Application and object of this Division .....	189

---

---

<b>Tax cost setting amount for membership interests etc.</b>	189
711-10 Tax cost setting amount worked out under this Division.....	189
711-15 Tax cost setting amount where no multiple exit .....	190
711-20 What is the old group's <i>allocable cost amount</i> for the leaving entity?.....	191
711-25 Terminating values of assets that the leaving entity takes with it—step 1 in working out allocable cost amount.....	192
711-30 What is the head company's <i>terminating value</i> for an asset? .....	194
711-35 If head company becomes entitled to certain deductions— step 2 in working out allocable cost amount.....	194
711-40 Liabilities owed to the leaving entity by members of the old group—step 3 in working out allocable cost amount.....	195
711-45 Liabilities etc. owed by the leaving entity—step 4 in working out allocable cost amount .....	196
711-55 Tax cost setting amount for membership interests where multiple exit.....	199
711-65 Membership interests treated as having been acquired before 20 September 1985—simple case.....	201
711-70 Membership interests treated as having been acquired before 20 September 1985—multiple exit case .....	203
<b>Division 713—Rules for particular kinds of entities</b>	205
<b>Subdivision 713-A—Trusts</b>	205
<b>Working out a joined group's allocable cost amount for a joining         trust</b>	206
713-20 Increasing the step 1 amount for settled capital that could be distributed tax free in respect of discretionary interests.....	206
713-25 Undistributed, realised profits that accrue to joined group before joining time and could be distributed tax free—step 3 in working out allocable cost amount .....	209
<b>Determining destination of distribution by non-fixed trust</b>	210
713-50 Factors to consider.....	210
<b>Subdivision 713-C—Some unit trusts treated like head companies         of consolidated groups</b>	211
<b>Guide to Subdivision 713-C</b>	211
713-120 What this Subdivision is about .....	211
<b>Object of this Subdivision</b>	211
713-125 Object of this Subdivision .....	211
<b>Choice to form a consolidated group</b>	212
713-130 Choosing to form a consolidated group.....	212
<b>Effects of choice</b>	213
713-135 Effects of choice .....	213
713-140 Modifications of the applied law .....	214

---

---

<b>Subdivision 713-E—Partnerships</b>	216
<b>Guide to Subdivision 713-E</b>	216
713-200 What this Subdivision is about .....	216
<b>Objects</b>	217
713-205 Objects of this Subdivision.....	217
<b>Partnership cost setting interests etc.</b>	219
713-210 Partnership cost setting interests.....	219
713-215 Terminating value for partnership cost setting interest.....	219
<b>Setting tax cost of partnership cost setting interests</b>	220
713-220 Set tax cost of partnership cost setting interests if partner joins consolidated group.....	220
713-225 Tax cost setting amount for partnership cost setting interest .....	221
713-230 Reduction in allocable cost amount if partnership asset is over-depreciated .....	223
<b>Special rules where partnership joins consolidated group</b>	224
713-235 Partnership joins group—set tax cost of partnership assets .....	224
713-240 Partnership joins group—tax cost setting amount for partnership asset .....	224
713-245 Partnership joins group—pre-CGT factor for partnership asset .....	226
<b>Special rules where partnership leaves consolidated group</b>	227
713-250 Partnership leaves group—standard provisions modified.....	227
713-255 Partnership leaves group—tax cost setting amount for partnership cost setting interests .....	227
713-260 Partnership leaves group—tax cost setting amount for assets consisting of being owed certain liabilities.....	228
713-265 Partnership leaves group—adjustments to leaving partner’s allocable cost amount .....	229
713-270 Partnership leaves group—certain partnership cost setting interests treated as having been acquired before 20 September 1985 .....	230
<b>Subdivision 713-L—Life insurance companies</b>	231
<b>Guide to Subdivision 713-L</b>	231
713-500 What this Subdivision is about .....	231
<b>General modifications for life insurance companies</b>	233
713-505 Head company treated as a life insurance company .....	233
713-510 Certain subsidiaries of life insurance companies cannot be members of consolidated group.....	233
<b>Life insurance companies’ liabilities on joining consolidated group</b>	234
713-511 Treatment of certain liabilities for income year when life insurance company joins consolidated group .....	234

---

---

<b>Tax cost setting rules for life insurance companies joining consolidated group</b>	235
713-515 Certain assets taken to be retained cost base assets where life insurance company joins group .....	235
713-520 Valuing certain liabilities where life insurance company joins group.....	236
713-525 Obligation to value certain assets and liabilities at joining time.....	237
<b>Losses of life insurance companies joining consolidated group</b>	238
713-530 Treatment of certain losses of life insurance company .....	238
<b>Losses of life insurance companies' subsidiaries joining consolidated group</b>	238
713-535 Losses of entities whose membership interests are complying superannuation/FHSA assets of life insurance company .....	238
713-540 Losses of entities whose membership interests are segregated exempt assets of life insurance company .....	239
<b>Imputation rules for life insurance companies joining consolidated group</b>	240
713-545 Treatment of franking surplus in franking account of life insurance subsidiary joining group .....	240
713-550 Treatment of head company's franking account after joining .....	242
<b>Annuity payable by life insurance company to another member of a consolidated group</b>	242
713-553 Special rules relating to segregated exempt assets.....	242
713-555 Transfer from segregated exempt assets because policyholder and life insurance company are in group .....	244
713-560 If valuation of segregated exempt assets is delayed.....	246
<b>Liabilities for life insurance companies leaving consolidated group</b>	248
713-565 Treatment of certain liabilities for income year when life insurance company leaves consolidated group .....	248
<b>Losses for life insurance companies leaving consolidated group</b>	249
713-570 Certain losses transferred to leaving company .....	249
<b>Tax cost setting rules for life insurance companies leaving consolidated group</b>	250
713-575 Terminating value of certain assets where life insurance company leaves group .....	250
713-580 Valuing certain liabilities where life insurance company leaves group.....	250
713-585 Obligation to value certain assets and liabilities at leaving time.....	251
<b>Subdivision 713-M—General insurance companies</b>	252
<b>Guide to Subdivision 713-M</b>	252
713-700 What this Subdivision is about .....	252

---

---

<b>Tax cost setting rules for general insurance companies joining consolidated group</b>	252
713-705 Certain assets taken to be retained cost base assets where general insurance company joins group.....	252
<b>Liabilities and reserves of general insurance companies joining and leaving consolidated groups</b>	253
713-710 Treatment of liabilities and reserves for income year when general insurance company joins or leaves group .....	253
713-715 If general insurance company joins consolidated group .....	254
713-720 If general insurance company leaves consolidated group .....	254
<b>Division 715—Interactions between this Part and other areas of the income tax law</b>	256
<b>Subdivision 715-A—Treatment of unrealised losses existing when ownership or control of a company changes before or during consolidation</b>	256
<b>Object</b>	258
715-15 Object of this Subdivision .....	258
<b>Effect on Subdivision 165-CC of a company becoming a member of a consolidated group</b>	259
715-25 Subdivision 165-CC stops applying to earlier changeover time.....	259
715-30 Meaning of <i>165-CC tagged asset</i> .....	260
715-35 Meaning of <i>final RUNL</i> .....	260
<b>165-CC tagged assets that affect tax cost setting amounts</b>	260
715-50 Step 1 amount is reduced if membership interest in subsidiary member is 165-CC tagged asset and same business test is failed .....	260
715-55 Step 2 amount is affected if liability of subsidiary member is 165-CC tagged asset of another group member and same business test is failed .....	262
<b>165-CC tagged assets that form loss denial pools of head company when consolidated group is formed</b>	263
715-60 Assets that the head company already owns .....	263
715-70 Assets of subsidiary member that become those of head company .....	264
<b>How Subdivision 165-CC applies to consolidated groups</b>	266
715-75 Extension of single entity rule and entry history rule .....	266
<b>Effect on Subdivision 165-CC of entity leaving consolidated group</b>	266
715-80 Application of sections 715-85 to 715-110.....	266
715-85 First changeover time for leaving company at or after leaving time .....	267
715-90 How same business test applies if leaving time is changeover time for leaving company .....	267

---

---

715-95	If ownership and control of leaving entity have <i>not</i> changed since head company's last changeover time .....	268
715-100	First choice: adjustable values of leaving assets reduced to nil.....	269
715-105	Second choice: head company's final RUNL applied in reducing adjustable values of leaving assets that are loss assets .....	269
715-110	Third choice: loss denial pool of leaving entity created.....	270
<b>Effect of assets in loss denial pool of head company becoming assets of leaving entity</b>		270
715-120	What happens .....	270
715-125	First choice: adjustable values of leaving assets reduced to nil.....	271
715-130	Second choice: pool's loss denial balance applied in reducing adjustable values of leaving assets that are loss assets .....	271
715-135	Third choice: loss denial pool of leaving entity created.....	272
<b>Effect of first and second choices on various kinds of assets</b>		273
715-145	Effect of choice on adjustable value of leaving asset .....	273
<b>General provisions about loss denial pools</b>		274
715-155	When asset leaves pool.....	274
715-160	How loss denial balance is applied to losses realised on assets in pool .....	275
715-165	When pool ceases to exist.....	275
<b>Choices under this Subdivision</b>		276
715-175	When choice must be made .....	276
715-180	Head company to notify leaving entity of choice .....	276
715-185	Leaving entity may choose to cancel loss denial pool by reducing adjustable values of assets in the pool .....	276
<b>Subdivision 715-B—How Subdivision 165-CD applies to consolidated groups and leaving entities</b>		277
<b>How Subdivision 165-CD applies to consolidated groups</b>		277
715-215	Extension of single entity rule and entry history rule .....	277
715-225	Working out adjusted unrealised loss using individual asset method.....	278
715-230	No reductions or other consequences for interests subject to loss cancellation under Subdivision 715-H.....	279
<b>How Subdivision 165-CD applies to leaving entity that is a company</b>		279
715-240	Application of sections 715-245 to 715-260.....	279
715-245	If ownership or control of leaving entity has altered since head company's last alteration time or formation of group .....	280
715-250	If head company has had an alteration time but ownership and control of leaving entity have not altered since.....	281

---



---

715-255	Consequences if leaving entity is a loss company at the leaving time .....	282
715-260	If neither of sections 715-245 and 715-250 applies .....	283
<b>How Subdivision 165-CD applies to leaving entity that is a trust</b>		284
715-270	Subdivision 165-CD applies .....	284
<b>Subdivision 715-C—Common rules for the purposes of Subdivisions 715-A and 715-B</b>		285
715-290	Additional assumptions to be made when using reference time.....	285
<b>Subdivision 715-D—Treatment of company’s deferred losses under Subdivision 170-D on joining a consolidated group</b>		286
<b>Key terminology</b>		286
715-310	What is a <i>170-D deferred loss</i> , and when it <i>revives</i> .....	286
<b>Deferred loss on 165-CC tagged asset</b>		287
715-355	Head company’s own deferred losses at formation time .....	287
715-360	Deferred losses brought in by subsidiary member .....	288
715-365	How loss denial balance is applied when 170-D deferred loss revives .....	289
<b>Subdivision 715-F—Interactions with Division 230 (financial arrangements)</b>		290
715-375	Cost setting—amount of liability that is Division 230 financial arrangement .....	290
715-380	Exit history rule not to affect certain matters related to Division 230 financial arrangements .....	291
715-385	Exit history rule and elective methods applying to Division 230 financial arrangements .....	292
<b>Subdivision 715-G—How value shifting rules apply to a consolidated group</b>		292
715-410	Extension of single entity rule and entry history rule .....	292
715-450	No reductions or other consequences for interests subject to loss cancellation under Subdivision 715-H.....	293
<b>Subdivision 715-H—Cancelling loss on realisation event for direct or indirect interest in a subsidiary member of a consolidated group</b>		294
715-610	Cancellation of loss .....	294
715-615	Exception for interests in entity leaving consolidated group .....	295
715-620	Exception if loss attributable to certain matters.....	296
<b>Subdivision 715-J—Entry history rule and choices</b>		296
<b>Head company’s choice overriding entry history rule</b>		297
715-660	Head company’s choice overriding entry history rule .....	297

---

---

<b>Choices head company can make ignoring entry history rule to override inconsistencies</b>	300
715-665 Head company's choice to override inconsistency .....	300
<b>Choices with ongoing effect</b>	304
715-670 Ongoing effect of choices made by entities before joining group .....	304
715-675 Head company adopting choice with ongoing effect .....	304
<b>Subdivision 715-K—Exit history rule and choices</b>	305
<b>Choices leaving entity can make ignoring exit history rule</b>	305
715-700 Choices leaving entity can make ignoring exit history rule .....	305
<b>Choices leaving entity can make ignoring exit history rule to overcome inconsistencies</b>	307
715-705 Choices leaving entity can make ignoring exit history rule to overcome inconsistencies .....	307
<b>Subdivision 715-U—Effect on conduit foreign income</b>	310
715-875 Extension of single entity rule and entry history rule .....	310
715-880 No CFI for leaving entity .....	311
<b>Subdivision 715-V—Entity ceasing to be exempt from income tax on becoming subsidiary member of consolidated group</b>	311
715-900 Transition time taken to be just before joining time .....	311
<b>Subdivision 715-W—Effect on arrangements where CGT roll-overs are obtained</b>	312
715-910 Effect on restructures—original entity becomes a subsidiary member .....	312
715-915 Effect on restructures—original entity is a head company .....	313
715-920 Effect on restructures—original entity is a head company that becomes a subsidiary member of another group .....	313
715-925 Effect on restructures—original entity ceases being a subsidiary member .....	314
<b>Division 716—Miscellaneous special rules</b>	316
<b>Subdivision 716-A—Assessable income and deductions spread over several membership or non-membership periods</b>	316
<b>Guide to Subdivision 716-A</b>	316
716-1 What this Division is about .....	316
<b>Operative provisions</b>	317
716-15 Assessable income spread over 2 or more income years .....	317
716-25 Deductions spread over 2 or more income years .....	319
716-70 Capital expenditure that is fully deductible in one income year .....	321

---

---

<b>Assessable income and deductions arising from share of net income of a partnership or trust, or from share of partnership loss</b>	323
716-75 Application .....	323
716-80 Head company's assessable income and deductions .....	324
716-85 Entity's assessable income and deductions for a non-membership period .....	325
716-90 Entity's share of assessable income or deductions of partnership or trust .....	326
716-95 Special rule if not all partnership or trust's assessable income or deductions taken into account in working out amount .....	327
716-100 Spreading period .....	327
<b>Subdivision 716-E—Tax cost setting for exploration and prospecting assets</b>	328
716-300 Prime cost method of working out decline in value .....	328
<b>Subdivision 716-G—Low-value and software development pools</b>	329
<b>Assets in joining entity's low-value pool</b>	329
716-330 Head company's deductions for decline in value of assets in joining entity's low-value pool .....	329
<b>Entity leaving group with asset allocated to head company's low-value pool</b>	332
716-335 Entity leaving group with asset allocated to head company's low-value pool .....	332
<b>Depreciating assets arising from expenditure in joining entity's software development pool</b>	334
716-340 Depreciating assets arising from expenditure in joining entity's software development pool .....	334
<b>Software development pools if entity leaves consolidated group</b>	337
716-345 Head company taken not to have incurred expenditure .....	337
<b>Subdivision 716-Z—Other</b>	338
716-800 Allocating amounts to periods if head company and subsidiary member have different income years .....	338
716-850 Grossing up threshold amounts for periods of less than 365 days .....	338
716-855 Working out the cost base or reduced cost base of a pre-CGT asset after certain roll-overs .....	339
<b>Division 717—International tax rules</b>	341
<b>Subdivision 717-A—Foreign income tax offsets</b>	341
717-1 What this Subdivision is about .....	341
<b>Object</b>	341
717-5 Object of this Subdivision .....	341

---

---

<b>Foreign income tax on amounts in head company's assessable income</b>	342
717-10 Head company taken to be liable for subsidiary member's foreign income tax .....	342
<b>Subdivision 717-D—Transfer of certain surpluses under CFC, FIF and FLP provisions: entry rules</b>	342
<b>Guide to Subdivision 717-D</b>	342
717-200 What this Subdivision is about .....	342
<b>Object</b>	343
717-205 Object of this Subdivision .....	343
<b>Transfers</b>	343
717-210 Attribution surpluses .....	343
717-220 FIF attribution surpluses .....	344
717-227 Deferred attribution credits .....	345
717-230 Calculating FIF income where a company joins the group .....	345
<b>Subdivision 717-E—Transfer of certain surpluses under CFC, FIF and FLP provisions: exit rules</b>	346
<b>Guide to Subdivision 717-E</b>	346
717-235 What this Subdivision is about .....	346
<b>Object</b>	347
717-240 Object of this Subdivision .....	347
<b>Transfers</b>	347
717-245 Attribution surpluses .....	347
717-255 FIF attribution surpluses .....	348
717-262 Deferred attribution credits .....	349
717-265 Calculating FIF income where a company leaves the group .....	350
<b>Subdivision 717-O—Offshore banking units</b>	351
<b>Guide to Subdivision 717-O</b>	351
717-700 What this Subdivision is about .....	351
717-705 Object of this Subdivision .....	352
717-710 Head company treated as OBU .....	352
<b>Division 719—MEC groups</b>	353
<b>Subdivision 719-A—Modified application of Part 3-90 to MEC groups</b>	353
719-2 Modified application of Part 3-90 to MEC groups .....	353
<b>Subdivision 719-B—MEC groups and their members</b>	353
719-4 What this Subdivision is about .....	353
<b>Basic concepts</b>	355
719-5 What is a <i>MEC group</i> ? .....	355
719-10 What is a potential MEC group? .....	358

---

---

719-15	What is an <i>eligible tier-1 company</i> ? .....	361
719-20	What is a <i>top company</i> and a <i>tier-1 company</i> ? .....	362
719-25	Head company and subsidiary members of a MEC group.....	364
719-30	Treating entities as wholly-owned subsidiaries by disregarding employee shares.....	364
719-35	Treating entities held through non-fixed trusts as wholly-owned subsidiaries .....	366
719-40	Special conversion event—potential MEC group.....	366
719-45	Application of sections 703-20 and 703-25 .....	367
	<b>Choice to consolidate a potential MEC group</b> .....	368
719-50	Eligible tier-1 companies may choose to consolidate a potential MEC group .....	368
719-55	When choice starts to have effect .....	370
	<b>Provisional head company</b> .....	371
719-60	Appointment of provisional head company .....	371
719-65	Qualifications for the provisional head company of a MEC group .....	372
719-70	Income year of new provisional head company to be the same as that of former provisional head company.....	373
	<b>Head company</b> .....	374
719-75	Head company .....	374
	<b>Notice of events affecting group</b> .....	375
719-80	Notice of events affecting MEC group .....	375
	<b>Effects of change of head company</b> .....	376
719-85	Application .....	376
719-90	New head company treated as substituted for old head company at all times before the transition time .....	377
719-95	No consequences of old head company becoming, and new head company ceasing to be, subsidiary member of the group.....	378
	<b>Subdivision 719-C—MEC group cost setting rules: joining cases</b> .....	379
	<b>Guide to Subdivision 719-C</b> .....	379
719-150	What this Subdivision is about .....	379
	<b>Application and object</b> .....	379
719-155	Object of this Subdivision .....	379
	<b>Modified application of tax cost setting rules for joining</b> .....	380
719-160	Tax cost setting rules for joining have effect with modifications .....	380
719-165	Trading stock value not set for assets of eligible tier-1 companies.....	381
719-170	Modified effect of subsections 705-175(1) and 705-185(1) .....	381

---

---

<b>Subdivision 719-F—Losses</b>	382
<b>Guide to Subdivision 719-F</b>	382
719-250 What this Subdivision is about .....	382
<b>Maintaining the same ownership to be able to utilise loss</b>	383
719-255 Special rules .....	383
719-260 Special test for utilising a loss because a company maintains the same owners .....	384
719-265 What is the test company? .....	385
719-270 Assumptions about the test company having made the loss for an income year .....	389
719-275 Assumptions about nothing happening to affect direct and indirect ownership of the test company .....	391
719-280 Assumptions about the test company failing to meet the conditions in section 165-12 .....	393
<b>Same business test and change of head company</b>	394
719-285 Same business test and change of head company .....	394
<b>Bundles of losses and their available fractions</b>	395
719-300 Application .....	395
719-305 Subdivision 707-C affects utilisation of losses made by ongoing head company while it was head company .....	396
719-310 Adjustment of available fractions for bundles of losses previously transferred to ongoing head company .....	397
719-315 Further adjustment of available fractions for all bundles.....	397
719-320 Limit on utilising losses other than the prior group losses.....	398
719-325 Cancellation of all losses in a bundle.....	399
<b>Subdivision 719-H—Imputation issues</b>	400
719-425 Guide to Subdivision 719-H.....	400
<b>Operative provisions</b>	400
719-430 Transfer of franking account balance on cessation event .....	400
719-435 Distributions by subsidiary members of MEC group taken to be distributions by head company .....	401
<b>Subdivision 719-I—Bad debts</b>	401
<b>Guide to Subdivision 719-I</b>	401
719-450 What this Subdivision is about .....	401
<b>Maintaining the same ownership to be able to deduct bad debt</b>	402
719-455 Special test for deducting a bad debt because a company maintains the same owners .....	402
719-460 Assumptions about nothing happening to affect direct and indirect ownership of the test company .....	404
719-465 Assumptions about the test company failing to meet the conditions in section 165-123 .....	404

---

---

<b>Subdivision 719-J—MEC group cost setting rules: leaving cases</b>	406
<b>Guide to Subdivision 719-J</b>	406
719-500 What this Subdivision is about .....	406
719-505 Application and object of this Subdivision.....	406
719-510 Modified operation of paragraphs 711-15(1)(b) and (c) .....	406
<b>Subdivision 719-K—MEC group cost setting rules: pooling cases</b>	407
<b>Guide to Subdivision 719-K</b>	407
719-550 What this Subdivision is about .....	407
719-555 Application and object of this Subdivision.....	407
719-560 Pooled interests.....	408
719-565 Setting cost of reset interests .....	408
719-570 Cost setting amount .....	409
<b>Subdivision 719-T—Interactions between this Part and other     areas of the income tax law: special rules for MEC     groups</b>	410
<b>How Subdivision 165-CC applies to MEC groups</b>	411
719-700 Changeover times under section 165-115C or 165-115D.....	411
719-705 Additional changeover times for head company of MEC group .....	412
<b>How Subdivision 165-CD applies to MEC groups</b>	413
719-720 Alteration times under section 165-115L or 165-115M.....	413
719-725 Additional alteration times for head company of MEC group.....	413
719-730 Some alteration times only affect interests in top company.....	414
719-735 Some alteration times affect only pooled interests .....	415
<b>How indirect value shifting rules apply to a MEC group</b>	416
719-755 Effect on MEC group cost setting rules if head company is losing entity or gaining entity for indirect value shift.....	416
<b>Cancelling loss on realisation event for direct or indirect interest     in a subsidiary member of a MEC group</b>	416
719-775 Cancellation of loss .....	416
719-780 Exception for pooled interests in eligible tier-1 companies.....	418
719-785 Exception for interests in top company .....	418
719-790 Exception for interests in entity leaving MEC group.....	418
719-795 Exception if loss attributable to certain matters.....	419
<b>Division 721—Liability for payment of tax where head company     fails to pay on time</b>	420
<b>Guide to Division 721</b>	420
721-1 What this Division is about .....	420
<b>Object</b>	421
721-5 Object of this Division.....	421

---

---

<b>When this Division operates</b>	421
721-10 When this Division operates .....	421
<b>Joint and several liability of contributing member</b>	424
721-15 Head company and contributing members jointly and severally liable to pay group liability .....	424
721-17 Notice of joint and several liability for general interest charge .....	426
721-20 Limit on liability where group first comes into existence.....	426
<b>Tax sharing agreements</b>	427
721-25 When a group liability is covered by a tax sharing agreement .....	427
721-30 TSA contributing members liable for contribution amounts .....	428
721-32 Notice of general interest charge liability under TSA .....	429
721-35 When a TSA contributing member has left the group clear of the group liability .....	430
721-40 TSA liability and group liability are linked .....	430
<b>Part 3-95—Value shifting</b>	432
<b>Division 723—Direct value shifting by creating right over non-depreciating asset</b>	432
<b>Subdivision 723-A—Reduction in loss from realising non-depreciating asset</b>	432
723-1 Object .....	432
723-10 Reduction in loss from realising non-depreciating asset over which right has been created.....	433
723-15 Reduction in loss from realising non-depreciating asset at the same time as right is created over it.....	435
723-20 Exceptions .....	436
723-25 Realisation event that is only a partial realisation.....	437
723-35 Multiple rights created to take advantage of the \$50,000 threshold .....	437
723-40 Application to CGT asset that is also trading stock or revenue asset.....	438
723-50 Effects if right created over underlying asset is also trading stock or a revenue asset .....	438
<b>Subdivision 723-B—Reducing reduced cost base of interests in entity that acquires non-depreciating asset under roll-over</b>	439
723-105 Reduced cost base of interest reduced when interest realised at a loss .....	439
723-110 Direct and indirect roll-over replacement for underlying asset .....	440

---



---

<b>Division 725—Direct value shifting affecting interests in companies and trusts</b>	442
<b>Guide to Division 725</b>	442
725-1 What this Division is about .....	442
<b>Subdivision 725-A—Scope of the direct value shifting rules</b>	443
725-45 Main object.....	443
725-50 When a direct value shift has consequences under this Division .....	444
725-55 Controlling entity test .....	444
725-65 Cause of the value shift .....	444
725-70 Consequences for down interest only if there is a material decrease in its market value.....	445
725-80 Who is an affected owner of a down interest? .....	446
725-85 Who is an affected owner of an up interest? .....	446
725-90 Direct value shift that will be reversed .....	447
725-95 Direct value shift resulting from reversal .....	447
<b>Subdivision 725-B—What is a direct value shift</b>	448
725-145 When there is a <i>direct value shift</i> .....	448
725-150 Issue of equity or loan interests at a <i>discount</i> .....	449
725-155 Meaning of <i>down interests, decrease time, up interests</i> and <i>increase time</i> .....	450
725-160 What is the nature of a direct value shift?.....	451
725-165 If market value decrease or increase is only partly attributable to the scheme.....	451
<b>Subdivision 725-C—Consequences of a direct value shift</b>	451
<b>General</b>	452
725-205 Consequences depend on character of down interests and up interests.....	452
725-210 Consequences for down interests depend on pre-shift gains and losses.....	452
<b>Special cases</b>	453
725-220 Neutral direct value shifts.....	453
725-225 Issue of bonus shares or units .....	453
725-230 Off-market buy-backs.....	455
<b>Subdivision 725-D—Consequences for down interest or up interest as CGT asset</b>	455
725-240 CGT consequences; meaning of <i>adjustable value</i> .....	456
725-245 Table of <i>taxing events generating a gain</i> for interests as CGT assets .....	457
725-250 Table of consequences for adjustable values of interests as CGT assets.....	458
725-255 Multiple CGT consequences for the same down interest or up interest .....	460

---

---

<b>Subdivision 725-E—Consequences for down interest or up interest as trading stock or a revenue asset</b>	461
725-310 Consequences for down interest or up interest as trading stock .....	461
725-315 <i>Adjustable value</i> of trading stock .....	463
725-320 Consequences for down interest or up interest as a revenue asset .....	463
725-325 <i>Adjustable value</i> of revenue asset.....	464
725-335 How to work out those consequences.....	465
725-340 Multiple trading stock or revenue asset consequences for the same down interest or up interest .....	468
<b>Subdivision 725-F—Value adjustments and taxed gains</b>	468
725-365 Decreases in adjustable values of down interests (with pre-shift gains), and taxing events generating a gain.....	468
725-370 Uplifts in adjustable values of up interests under certain table items .....	470
725-375 Uplifts in adjustable values of up interests under other table items .....	472
725-380 Decreases in adjustable value of down interests (with pre-shift losses).....	474
<b>Division 727—Indirect value shifting affecting interests in companies and trusts, and arising from non-arm’s length dealings</b>	476
<b>Guide to Division 727</b>	476
727-1 What this Division is about .....	476
727-5 What is an indirect value shift? .....	477
727-10 How does this Division deal with indirect value shifts? .....	479
727-15 When does an indirect value shift have consequences under this Division?.....	479
727-25 Effect of this Division on realisations at a loss that occur before the nature or extent of an indirect value shift can be fully determined .....	480
<b>Subdivision 727-A—Scope of the indirect value shifting rules</b>	480
727-95 Main object.....	480
727-100 When an indirect value shift has consequences under this Division .....	481
727-105 Ultimate controller test.....	482
727-110 Common-ownership nexus test (if both losing and gaining entities are closely held) .....	482
727-125 No consequences if losing entity is a superannuation entity.....	483
<b>Subdivision 727-B—What is an indirect value shift</b>	483
727-150 How to determine whether a scheme results in an indirect value shift .....	483
727-155 Providing economic benefits .....	485

---

---

727-160	When an economic benefit is provided <i>in connection with a</i> scheme.....	486
727-165	Preventing double-counting of economic benefits.....	486
<b>Subdivision 727-C—Exclusions</b>		487
<b>Guide to Subdivision 727-C</b>		487
727-200	What this Subdivision is about .....	487
<b>General</b>		488
727-215	Amount does not exceed \$50,000.....	488
727-220	Disposal of asset at cost, or at undervalue if full value is not reflected in adjustable values of equity or loan interests in the losing entity .....	488
<b>Indirect value shifts involving services</b>		489
727-230	Services provided by losing entity to gaining entity for at least their direct cost.....	489
727-235	Services provided by gaining entity to losing entity for no more than a commercially realistic price .....	490
727-240	What services certain provisions apply to .....	491
727-245	How to work out certain amounts for the purposes of sections 727-230 and 727-235 .....	492
<b>Anti-overlap provisions</b>		493
727-250	Distribution by an entity to a member or beneficiary .....	493
<b>Miscellaneous</b>		494
727-260	Shift down a wholly-owned chain of entities.....	494
<b>Subdivision 727-D—Working out the market value of economic benefits</b>		495
727-300	What the rules in this Subdivision are for.....	495
727-315	Transfer, for its adjustable value, of depreciating asset acquired for less than \$1,500,000 .....	495
<b>Subdivision 727-E—Key concepts</b>		496
<b>Ultimate controller</b>		497
727-350	<i>Ultimate controller</i> .....	497
727-355	<i>Control (for value shifting purposes)</i> of a company .....	497
727-360	<i>Control (for value shifting purposes)</i> of a fixed trust .....	498
727-365	<i>Control (for value shifting purposes)</i> of a non-fixed trust .....	499
727-370	Preventing double counting for percentage stake tests .....	500
727-375	Tests in this Subdivision are exhaustive .....	500
<b>Common-ownership nexus and ultimate stake of a particular percentage</b>		500
727-400	When 2 entities have a common-ownership nexus within a period.....	500
727-405	<i>Ultimate stake</i> of a particular percentage in a company .....	502
727-410	<i>Ultimate stake</i> of a particular percentage in a fixed trust.....	503

---

---

727-415 Rules for tracing .....	504
<b>Subdivision 727-F—Consequences of an indirect value shift</b>	<b>505</b>
<b>Guide to Subdivision 727-F</b>	<b>505</b>
727-450 What this Subdivision is about .....	505
<b>Operative provisions</b>	<b>506</b>
727-455 Consequences of the indirect value shift .....	506
<b>Affected interests</b>	<b>506</b>
727-460 <i>Affected interests</i> in the losing entity .....	506
727-465 <i>Affected interests</i> in the gaining entity .....	507
727-470 Exceptions .....	507
727-520 <i>Equity or loan interest</i> and related terms .....	508
727-525 <i>Indirect equity or loan interest</i> .....	509
<b>Affected owners</b>	<b>509</b>
727-530 Who are the <i>affected owners</i> .....	509
<b>Choices about method to be used</b>	<b>511</b>
727-550 Choosing the adjustable value method .....	511
727-555 Giving other affected owners information about the choice .....	513
<b>Subdivision 727-G—The realisation time method</b>	<b>514</b>
727-600 What this Subdivision is about .....	514
<b>Operative provisions</b>	<b>515</b>
727-610 Consequences of indirect value shift .....	515
727-615 Reduction of loss on realisation event for affected interest in losing entity .....	516
727-620 Reduction of gain on realisation event for affected interest in gaining entity .....	517
727-625 Total gain reductions not to exceed total loss reductions.....	517
727-630 How cap in section 727-625 applies if affected interest is also trading stock or a revenue asset.....	518
727-635 Splitting an equity or loan interest.....	520
727-640 Merging equity or loan interests .....	520
727-645 Effect of CGT roll-over .....	521
<b>Further exclusion for certain 95% services indirect value shifts if realisation time method must be used</b>	<b>522</b>
727-700 When 95% services indirect value shift is excluded .....	522
<b>95% services indirect value shifts that are <i>not</i> excluded</b>	<b>523</b>
727-705 Another provision of the income tax law affects amount related to services by at least \$100,000 .....	523
727-710 Ongoing or recent service arrangement reduces value of losing entity by at least \$100,000 .....	524
727-715 Service arrangements reduce value of losing entity that <i>is</i> a group service provider by at least \$500,000 .....	525

---

---

727-720 Abnormal service arrangement reduces value of losing entity that is <i>not</i> a group service provider by at least \$500,000 .....	527
727-725 Meaning of <i>predominantly-services indirect value shift</i> .....	528
<b>Subdivision 727-H—The adjustable value method</b>	528
<b>Guide to Subdivision 727-H</b>	528
727-750 What this Subdivision is about .....	528
727-755 Consequences of indirect value shift .....	529
<b>Reductions of adjustable value</b>	530
727-770 Reduction under the adjustable value method .....	530
727-775 Has there been a disaggregated attributable decrease? .....	531
727-780 Working out the reduction on a <i>loss-focussed basis</i> .....	532
<b>Uplifts of adjustable value</b>	533
727-800 Uplift under the attributable increase method .....	533
727-805 Has there been a disaggregated attributable increase? .....	535
727-810 Scaling-down formula .....	536
<b>Consequences of the method for various kinds of assets</b>	537
727-830 CGT assets .....	537
727-835 Trading stock .....	538
727-840 Revenue assets .....	539
<b>Subdivision 727-K—Reduction of loss on equity or loan interests realised before the IVS time</b>	540
727-850 Consequences of scheme under this Subdivision .....	541
727-855 Presumed indirect value shift .....	542
727-860 Conditions about the prospective gaining entity .....	543
727-865 How other provisions of this Division apply to support this Subdivision .....	545
727-870 Effect of CGT roll-over .....	547
727-875 Application to CGT asset that is also trading stock or revenue asset .....	547
<b>Subdivision 727-L—Indirect value shift resulting from a direct value shift</b>	547
727-905 How this Subdivision affects the rest of this Division .....	548
727-910 Treatment of value shifted under the direct value shift .....	549

## **Part 3-90—Consolidated groups**

### **Division 700—Guide and objects**

#### **Table of sections**

##### **Guide**

- 700-1 What this Part is about
- 700-5 Overview of this Part

##### **Objects**

- 700-10 Objects of this Part

#### **Guide**

##### **700-1 What this Part is about**

This Part allows certain groups of entities to be treated as single entities for income tax purposes.

Following a choice to consolidate, subsidiary members are treated as part of the head company of the group rather than as separate income tax identities. The head company inherits their income tax history when they become subsidiary members of the group. On ceasing to be subsidiary members, they take with them an income tax history that recognises that they are different from when they became subsidiary members.

This is supported by rules that:

- (a) set the cost for income tax purposes of assets that subsidiary members bring into the group; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 700-5

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- (b) determine the income tax history that is taken into account when entities become, or cease to be, subsidiary members of the group; and
- (c) deal with the transfer of tax attributes such as losses and franking credits to the head company when entities become subsidiary members of the group.

**700-5 Overview of this Part**

- (1) The single entity rule determines how the income tax liability of a consolidated group will be ascertained. The basic principle is contained in the Core Rules in Division 701.
- (2) Essentially, a consolidated group consists of an Australian resident head company and all of its Australian resident wholly-owned subsidiaries (which may be companies, trusts or partnerships). Special rules apply to foreign-owned groups with no single Australian resident head company.
- (3) An eligible wholly-owned group becomes a consolidated group after notice of a choice to consolidate is given to the Commissioner.
- (4) This Part also contains rules which set the cost for income tax purposes of assets of entities when they become subsidiary members of a consolidated group and of membership interests in those entities when they cease to be subsidiary members of the group.
- (5) Certain tax attributes (such as losses and franking credits) of entities that become subsidiary members of a consolidated group are transferred under this Part to the head company of the group. These tax attributes remain with the group after an entity ceases to be a subsidiary member.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Objects**

### **700-10 Objects of this Part**

The objects of this Part are:

- (a) to prevent double taxation of the same economic gain realised by a consolidated group; and
- (b) to prevent a double tax benefit being obtained from an economic loss realised by a consolidated group; and
- (c) to provide a systematic solution to the prevention of such double taxation and double tax benefits that will:
  - (i) reduce the cost of complying with this Act; and
  - (ii) improve business efficiency by removing complexities and promoting simplicity in the taxation of wholly-owned groups.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 701—Core rules**

### **Table of sections**

#### **Common rule**

701-1 Single entity rule

#### **Head company rules**

701-5 Entry history rule

701-10 Cost to head company of assets of joining entity

701-15 Cost to head company of membership interests in entity that leaves group

701-20 Cost to head company of assets consisting of certain liabilities owed by entity that leaves group

701-25 Tax-neutral consequence for head company of ceasing to hold assets when entity leaves group

#### **Entity rules**

701-30 Where entity not subsidiary member for whole of income year

701-35 Tax-neutral consequence for entity of ceasing to hold assets when it joins group

701-40 Exit history rule

701-45 Cost of assets consisting of liabilities owed to entity by members of the group

701-50 Cost of certain membership interests of which entity becomes holder on leaving group

#### **Supporting provisions**

701-55 Setting the tax cost of an asset

701-58 Effect of setting the tax cost of an asset that the head company does not hold under the single entity rule

701-60 Tax cost setting amount

701-61 Assets in relation to Division 230 financial arrangement—head company's assessable income or deduction

701-65 Net income and losses for trusts and partnerships

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Exceptions**

- 701-70 Adjustments to taxable income where identities of parties to arrangement merge on joining group
- 701-75 Adjustments to taxable income where identities of parties to arrangement re-emerge on leaving group
- 701-80 Accelerated depreciation
- 701-85 Other exceptions etc. to the rules

**Common rule****701-1 Single entity rule**

- (1) If an entity is a \*subsidiary member of a \*consolidated group for any period, it and any other subsidiary member of the group are taken for the purposes covered by subsections (2) and (3) to be parts of the \*head company of the group, rather than separate entities, during that period.

*Head company core purposes*

- (2) The purposes covered by this subsection (the *head company core purposes*) are:
- (a) working out the amount of the \*head company's liability (if any) for income tax calculated by reference to any income year in which any of the period occurs or any later income year; and
- (b) working out the amount of the head company's loss (if any) of a particular \*sort for any such income year.

Note: The single entity rule would affect the head company's income tax liability calculated by reference to income years after the entity ceased to be a member of the group if, for example, assets that the entity held when it became a subsidiary member remained with the head company after the entity ceased to be a subsidiary member.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 701-5

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*Entity core purposes*

- (3) The purposes covered by this subsection (the *entity core purposes*) are:
- (a) working out the amount of the entity's liability (if any) for income tax calculated by reference to any income year in which any of the period occurs or any later income year; and
  - (b) working out the amount of the entity's loss (if any) of a particular \*sort for any such income year.

Note: An assessment of the entity's liability calculated by reference to income tax for a period when it was *not* a subsidiary member of the group may be made, and that tax recovered from it, even while it is a subsidiary member.

*What is a sort of loss?*

- (4) Each of these paragraphs identifies a *sort* of loss:
- (a) \*tax loss;
  - (b) \*film loss;
  - (c) \*net capital loss.

This subsection lists all the *sorts* of loss.

## Head company rules

### 701-5 Entry history rule

For the head company core purposes in relation to the period after the entity becomes a \*subsidiary member of the group, everything that happened in relation to it before it became a subsidiary member is taken to have happened in relation to the \*head company.

Note 1: Other provisions of this Part may affect the tax history that is inherited (e.g. asset cost base history is affected by section 701-10 and tax loss history is affected by Division 707).

Note 2: Section 73BAC of the *Income Tax Assessment Act 1936* overrides this rule for the purposes of the research and development incremental expenditure provisions.

Note 3: Section 165-212E overrides this rule for the purposes of the same business test.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**701-10 Cost to head company of assets of joining entity**

- (1) This section has effect for the head company core purposes when the entity becomes a \*subsidiary member of the group.

*Assets to which section applies*

- (2) This section applies in relation to each asset that would be an asset of the entity at the time it becomes a \*subsidiary member of the group, assuming that subsection 701-1(1) (the single entity rule) did not apply.

Note: See subsection 705-35(3) for the treatment of a goodwill asset resulting from the head company's ownership and control of the joining entity.

*Object*

- (3) The object of this section (and Division 705 which relates to it) is to recognise the cost to the \*head company of such assets as an amount reflecting the group's cost of acquiring the entity.

*Setting tax cost of assets*

- (4) Each asset's \*tax cost is set at the time the entity becomes a \*subsidiary member of the group at the asset's \*tax cost setting amount.

*Multiple setting of tax cost for same trading stock*

- (5) However, if:
- (a) the asset is \*trading stock; and
  - (b) the asset's \*tax cost is set by this section at more than one time (each of which is a **setting time**) for the same income year;

then, except where subsection (6) applies, only the amount at which the tax cost is set at the last of the setting times is to be taken into account.

- (6) If:
- (a) the \*head company's \*terminating value for the asset; or
  - (b) the \*value of the asset at the start of the income year;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 701-15

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is required to be worked out for one or more occasions when an entity (whether or not the same entity) ceases to be a \*subsidiary member of the group in the income year, then the amount at which the asset's \*tax cost is set by this section at a particular setting time is only taken into account in working out the head company's terminating value for a particular occasion if:

- (c) the setting time occurs before the occasion; and
- (d) there is no intervening setting time or occasion.

*Excluded assets*

- (7) If an asset is an excluded asset under subsection 705-35(2), its \*tax cost is not set.

Note: Excluded assets are assets such as entitlements to tax deductions.

**701-15 Cost to head company of membership interests in entity that leaves group**

- (1) If the entity ceases to be a \*subsidiary member of the group, this section has effect for the head company core purposes, so far as they relate to the income year in which the entity ceases to be a subsidiary member or any later income year.

Note: This section could have effect, for example, if an entity ceases to be a subsidiary member of the group because:

- (a) it ceases to satisfy the requirements to be a subsidiary member; or
- (b) the head company ceases to satisfy the requirements to be a head company (thereby bringing the group to an end).

*Object*

- (2) The object of this section is to preserve the alignment of the \*head company's costs for \*membership interests in each entity and its assets by recognising, when an entity ceases to be a \*subsidiary member of the group, the cost of those interests as an amount equal to the cost of the entity's assets at that time reduced by the amount of its liabilities.

Note: The head company's costs for membership interests in entities was aligned with the costs of their assets when the entities became subsidiary members of the group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Setting tax cost of membership interests*

- (3) For each \*membership interest that the \*head company of the group holds in an entity that ceases to be a \*subsidiary member, the interest's \*tax cost is set just before the entity ceases to be a subsidiary member at the interest's \*tax cost setting amount.

Note 1: The membership interests would include those that are actually held by subsidiary members of the group, but which are treated as those of the head company under the single entity rule.

Note 2: If the entity is a partnership, Subdivision 713-E sets the tax cost of interests in partnership assets, rather than membership interests in the partnership.

**701-20 Cost to head company of assets consisting of certain liabilities owed by entity that leaves group**

- (1) If the entity ceases to be a \*subsidiary member of the group, this section has effect for the head company core purposes, so far as they relate to the income year in which the entity ceases to be a subsidiary member or any later income year.

*Assets to which section applies*

- (2) This section applies in relation to each asset, consisting of a liability owed by the entity, that becomes an asset of the \*head company because subsection 701-1(1) (the single entity rule) ceases to apply to the entity when it ceases to be a \*subsidiary member. This is a liability that, ignoring that subsection, is owed to a \*member of the group.

*Object*

- (3) The object of this section is to set a cost for the asset to enable income tax consequences for the \*head company in respect of the asset to be determined.

*Setting tax cost of assets*

- (4) The asset's \*tax cost is set at the time the entity ceases to be a \*subsidiary member of the group at the asset's \*tax cost setting amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 701-25

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Note: If the entity is a partnership, Subdivision 713-E sets the tax cost of assets consisting of a partner's share of a liability owed by the partnership to a member of the group.

**701-25 Tax-neutral consequence for head company of ceasing to hold assets when entity leaves group**

- (1) If the entity ceases to be a \*subsidiary member of the group, this section has effect for the head company core purposes, so far as they relate to the income year in which the entity ceases to be a subsidiary member or any later income year.

*Assets to which section applies*

- (2) This section applies in relation to an asset if:
- (a) the asset is \*trading stock of the \*head company; and
  - (b) the asset becomes an asset of the entity because subsection 701-1(1) (the single entity rule) ceases to apply to the entity when it ceases to be a \*subsidiary member of the group; and
  - (c) the asset is not again an asset of the head company at or before the end of the income year.

*Object*

- (3) The object of this section is to ensure that there is no income tax consequence for the \*head company in respect of the asset.

Note: In the case of assets other than trading stock, the fact that the head company ceases to hold them when the single entity rules ceases to apply to them would not constitute a disposal or other event having tax consequences for the head company.

*Setting value of trading stock at tax-neutral amount*

- (4) The asset is taken to be \*trading stock of the \*head company at the end of the income year (but not at the start of the next income year) and its \*value at that time is taken to be equal to:
- (a) if the asset was trading stock of the head company at the start of the income year (including as a result of its \*tax cost being set)—the asset's value at that time; or
  - (b) if paragraph (a) does not apply and the asset is \*livestock that was acquired by natural increase—the \*cost of the asset; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) in any other case—the amount of the outgoing incurred by the head company in connection with the acquisition of the asset;

increased by the amount of any outgoing forming part of the cost of the asset that was incurred by the head company during its current holding of the asset.

Note: As a consequence of fixing the trading stock's value at the end of the income year under this subsection, no election would be available under section 70-45 to value the trading stock at that time.

## Entity rules

### 701-30 Where entity not subsidiary member for whole of income year

#### *Object*

- (1) The object of this section is to provide for a method of working out how the entity core rules apply to the entity for periods in the income year when the entity is not part of the group. The method involves treating each period separately with no netting off between them.

#### *When section has effect*

- (2) This section has effect for the entity core purposes if:
- (a) the entity is a \*subsidiary member of the group for some but not all of an income year; and
  - (b) there are one or more periods in the income year (each of which is a **non-membership period**) during which the entity is not a subsidiary member of any \*consolidated group.

#### *Tax position of each non-membership period to be worked out*

- (3) For every non-membership period, work out the entity's taxable income (if any) for the period, the income tax (if any) payable on that taxable income and the entity's loss (if any) (a **non-membership period loss**) of each \*sort for the period. Work them out:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 701-30

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- (a) as if the start and end of the period were the start and end of the income year; and
- (b) ignoring the operation of this section in relation to each other non-membership period (if any); and
- (c) so that each relevant item is either:
  - (i) allocated to only one of the non-membership periods or to a period that is all or part of the rest of the income year; or
  - (ii) apportioned among such periods (for example, by Subdivision 716-A (see note to this subsection)).

Note: Other provisions of this Part are to be applied in working out the taxable income or loss, for example:

- section 701-40 (Exit history rule); and
- Subdivision 716-A (about assessable income and deductions spread over several membership or non-membership periods); and
- section 716-850 (about grossing up threshold amounts for periods of less than 365 days).

Subdivision 716 also affects the tax position of the head company of a group of which the entity has been a subsidiary member for some but not all of the income year.

- (3A) For the purposes of working out the entity's taxable income (if any) for the non-membership period, determine:
- (a) whether the entity can \*utilise a loss of any \*sort transferred to the entity in the period; and
  - (b) if the period started at the start of the income year—whether the entity can utilise a loss of any sort:
    - (i) made by the entity, without a transfer, for an earlier income year; or
    - (ii) transferred to the entity in an earlier income year;
- as if the time just after the end of the period were the end of the income year and the entity carried on at that time the same business that it carried on just before that time. Paragraph (3)(a) has effect subject to this subsection.

Note: This means that things that happen in relation to the entity at the time it becomes a subsidiary member of the group are taken into account in determining whether the entity can utilise such a loss to affect its taxable income for the non-membership period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Income tax for the financial year*

- (4) The entity's income tax (if any) for the \*financial year concerned is the total of every amount of income tax worked out for the entity under subsection (3).

*Taxable income for the income year*

- (5) The entity's taxable income for the income year is the total of every amount of taxable income worked out for the entity under subsection (3).
- (6) The entity's income tax worked out under subsection (4) is taken to be payable on the entity's taxable income for the income year worked out under subsection (5), even if the amount of the tax differs from the amount that would be worked out by reference to that taxable income apart from subsection (5).

*Loss for the income year*

- (7) The entity has a loss of a particular \*sort for the income year if and only if it has a non-membership period loss of that sort for the non-membership period (if any) ending at the end of the income year. The amount of the loss for the income year is the amount of the non-membership period loss.

*Utilisation and transfer of non-membership period loss*

- (8) However, the provisions of this Act relating to transfer or \*utilisation of a loss of any \*sort have effect in relation to a non-membership period loss of that sort for any non-membership period as if the non-membership period loss were the entity's loss for an income year that:
- (a) started at the start of the period; and
  - (b) ended at the end of the period.
- (9) Subsection (8) has effect not only for the entity core purposes, but also (despite subsection (2)) for other purposes.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 701-35

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*Excess franking deficit tax offset for the income year*

- (10) For the purposes of applying section 205-70 in relation to an income year after the income year (the **current income year**) to which this section applies, the entity has an excess mentioned in paragraph 205-70(1)(c) (about excess franking deficit tax offsets) for the current income year only if it has such an excess for the non-membership period (if any) ending at the end of the current income year. The amount of the excess for the current income year is the amount of the excess for the non-membership period.

**701-35 Tax-neutral consequence for entity of ceasing to hold assets when it joins group**

- (1) When the entity becomes a \*subsidiary member of the group, this section has effect for the entity core purposes.

*Assets to which section applies*

- (2) This section applies in relation to an asset if the asset is \*trading stock of the entity just before it becomes a \*subsidiary member of the group.

*Object*

- (3) The object of this section is to ensure that there is no income tax consequence for the entity in respect of the asset.

Note: In the case of assets other than trading stock, the fact that the entity ceases to hold them when the single entity rule begins to apply to them would not constitute a disposal or other event having tax consequences for the entity.

*Setting value of trading stock at tax-neutral amount*

- (4) The \*value of the \*trading stock at the end of the income year that ends, or, if section 701-30 applies, of the income year that is taken by subsection (3) of that section to end, when the entity becomes a \*subsidiary member is taken to be equal to:
- (a) if the asset was trading stock of the entity at the start of the income year—the asset's value at that time; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) if paragraph (a) does not apply and the asset is \*livestock that was acquired by natural increase—the \*cost of the asset; or
- (c) in any other case—the amount of the outgoing incurred by the entity in connection with the acquisition of the asset; increased by the amount of any outgoing forming part of the cost of the asset that was incurred by the entity during its current holding of the asset.

Note: As a consequence of fixing the trading stock's value at the end of the income year under this subsection, no election would be available under section 70-45 to value the trading stock at that time.

### **701-40 Exit history rule**

- (1) If the entity ceases to be a \*subsidiary member of the group, this section has effect for the entity core purposes, so far as they relate to any thing covered by subsection (2) (an *eligible asset etc.*) after it becomes that of the entity because subsection 701-1(1) (the single entity rule) ceases to apply to the entity.

Note: Section 73BAD of the *Income Tax Assessment Act 1936* overrides this rule for the purposes of the research and development incremental expenditure provisions.

#### *Assets, liabilities and businesses covered*

- (2) This subsection covers the following:
  - (a) any asset;
  - (b) any liability or other thing that, in accordance with \*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, is a liability;
  - (c) any business;
  - (d) any registration under section 39J of the *Industry Research and Development Act 1986* for particular research and development activities;

that becomes that of the entity because subsection 701-1(1) (the single entity rule) ceases to apply to the entity when it ceases to be a \*subsidiary member of the group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 701-45

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*Head company history inherited*

- (3) Everything that happened in relation to any eligible asset etc. while it was that of the \*head company, including because of any application of section 701-5 (the entry history rule), is taken to have happened in relation to it as if it had been an eligible asset etc. of the entity.

Note 1: If the eligible asset etc. was brought into the group when an entity became a subsidiary member, section 701-5 (the entry history rule) would have had the effect that things happening to the eligible asset etc. while it was that of the entity would be taken to have happened as if it was that of the head company. Such things will in turn be taken by this subsection to have happened in relation to the eligible asset etc. as if it were that of the entity that takes the asset out of the group.

Note 2: Other provisions of this Part may affect the tax history that is inherited (e.g. asset cost base history is affected by section 701-45).

**701-45 Cost of assets consisting of liabilities owed to entity by members of the group**

- (1) If the entity ceases to be a \*subsidiary member of the group, this section has effect for the entity core purposes, so far as they relate to the income year in which the entity ceases to be a subsidiary member or any later income year.

*Assets to which section applies*

- (2) This section applies in relation to an asset if:
- (a) it becomes an asset of the entity because subsection 701-1(1) (the single entity rule) ceases to apply to the entity when it ceases to be a \*subsidiary member of the group; and
  - (b) the asset consists of a liability owed to the entity by a \*member of the group.

*Object*

- (3) The object of this section is to set the cost of the asset to enable income tax consequences for the entity in respect of the asset to be determined.

Note: In the case of other assets, the fact that the entity inherits their history under section 701-40 when the entity ceases to be a subsidiary member of the group means that the assets would be treated as having

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the same cost as they would for the head company at that time. However, assets consisting of liabilities do not have such a history because they are only recognised when the entity ceases to be a subsidiary member and the single entity rule ceases to apply.

*Setting the asset's tax cost*

- (4) The asset's \*tax cost is set at the time the entity ceases to be a \*subsidiary member of the group at the asset's \*tax cost setting amount.

Note 1: If section 701-30 (Where entity not subsidiary member for whole of income year) applies, the time the entity ceases to be a subsidiary member will be treated as the start of an income year.

Note 2: If the entity is a partnership, Subdivision 713-E sets the tax cost of a partner's interest in an asset consisting of a liability that a member of the group owes to the partnership.

**701-50 Cost of certain membership interests of which entity becomes holder on leaving group**

- (1) If:
- (a) the entity and one or more other entities cease to be \*subsidiary members of the group at the same time because of an event happening in relation to one of them; and
  - (b) when the entity ceases to be a subsidiary member, it holds an asset consisting of a \*membership interest in any of the other entities;

this section has effect for the entity core purposes.

*Object*

- (2) The cost of any \*membership interest that one of the entities holds in another is to be treated in the same way as membership interests held by the \*head company. In both cases the object is to preserve the alignment of costs for membership interests and assets (that was established when each entity became a \*subsidiary member) by recognising the cost of those interests, when it ceases to be a subsidiary member, as an amount equal to the cost of the entity's assets at that time reduced by the amount of its liabilities.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 701-55

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*Setting tax cost of membership interests*

- (3) The asset's \*tax cost is set just before the entity ceases to be a \*subsidiary member of the group at the asset's \*tax cost setting amount.

Note: If the asset consists of a membership interest in a partnership, Subdivision 713-E sets the tax cost of interests in partnership assets, rather than membership interests in the partnership.

**Supporting provisions**

**701-55 Setting the tax cost of an asset**

- (1) This section states the meaning of the expression an asset's *tax cost is set* at a particular time at the asset's \*tax cost setting amount.

*Depreciating asset provisions*

- (2) If any of Subdivisions 40-A to 40-D, sections 40-425 to 40-445 and Subdivision 328-D, and sections 73BA and 73BF of the *Income Tax Assessment Act 1936*, is to apply in relation to the asset, the expression means that the provisions apply as if:
- (a) the asset were \*acquired at the particular time for a payment equal to its \*tax cost setting amount; and
  - (b) at that time the same method of working out the decline in value were chosen for the asset as applied to it just before that time; and
  - (c) where just before that time the prime cost method applied for working out the asset's decline in value and the asset's tax cost setting amount does not exceed the joining entity's \*terminating value for the asset—at that time an \*effective life were chosen for the asset equal to the remainder of the effective life of the asset just before that time; and
  - (d) where just before that time the prime cost method applied for working out the asset's decline in value and the asset's \*tax cost setting amount exceeds the joining entity's terminating value for the asset—the \*head company were required to choose at that time an effective life for the asset in accordance with subsections 40-95(1) and (3) and any choice

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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of an effective life determined by the Commissioner were limited to one in force at that time; and

- (e) where neither paragraph (c) nor (d) applies—at that time an effective life were chosen for the asset equal to the asset's effective life just before that time.

*Trading stock provisions*

- (3) If Division 70 is to apply in relation to the asset, the expression means that the Division applies as if the asset were \*trading stock at the start of the income year in which the particular time occurs and its \*value at that time were equal to its \*tax cost setting amount.

*Qualifying security provisions*

- (4) If Division 16E of Part III of the *Income Tax Assessment Act 1936* is to apply in relation to the asset, the expression means that the Division applies as if the asset were acquired at the particular time for a payment equal to the asset's \*tax cost setting amount.

*Capital gain and loss provisions*

- (5) If Part 3-1 or 3-3 is to apply in relation to the asset, the expression means that the Part applies as if the asset's \*cost base or \*reduced cost base were increased or reduced so that the cost base or reduced cost base at the particular time equals the asset's \*tax cost setting amount.

*Division 230 (financial arrangements)*

- (5A) If Division 230 is to apply in relation to the asset, the expression means that the Division applies as if the asset were acquired at the particular time for a payment equal to:
- (a) unless paragraph (b) applies—the asset's \*tax cost setting amount; or
  - (b) if the asset's tax cost is set because an entity becomes a \*subsidiary member of a \*consolidated group, and Subdivision 230-C (fair value method), Subdivision 230-D (foreign exchange retranslation method) or Subdivision 230-F (reliance on financial reports method) is to

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 701-58

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apply in relation to the asset—the asset’s \*Division 230 starting value at the particular time.

- (5B) To avoid doubt, for the purposes of paragraph (5A)(b), determine the asset’s \*Division 230 starting value by reference to the relevant standards (as mentioned in section 230-230, 230-280 or 230-420) that apply in relation to the \*head company’s financial report for the income year in which the entity becomes a subsidiary member of the group.

*Other provisions*

- (6) If any provision of this Act that is not mentioned above is to apply in relation to the asset, the expression means that the provision applies as if the asset’s cost at that time were equal to its \*tax cost setting amount.

**701-58 Effect of setting the tax cost of an asset that the head company does not hold under the single entity rule**

- (1) This section applies if:
- (a) the \*tax cost of an asset was set at the time (the *joining time*) an entity became a \*subsidiary member of a \*consolidated group, at the asset’s \*tax cost setting amount; and
  - (b) ignoring the operation of subsection 701-1(1) (the single entity rule), the entity held the asset at the joining time; and
  - (c) taking into account the operation of subsection 701-1(1) (the single entity rule), the \*head company of the group did *not* hold the asset at the joining time.

Example: A debt owed by a member of the group to the joining entity at the joining time.

- (2) To avoid doubt, the asset’s \*tax cost setting amount mentioned in paragraph (1)(a) is not to be taken into account in applying the provisions mentioned in subsections 701-55(2), (3), (4), (5), (5A) and (6) in relation to the asset at and after the joining time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 701-60 Tax cost setting amount

The asset's *tax cost setting amount* is worked out using this table.

<b>Tax cost setting amount</b>		
<b>Item</b>	<b>If the asset's tax cost is set by:</b>	<b>The asset's tax cost setting amount is:</b>
1	section 701-10 (Cost to head company of assets of joining entity)	the amount worked out in accordance with Division 705
2	section 701-15 (Cost to head company of membership interests in entity that leaves group)	the amount worked out in accordance with section 711-15 or 711-55
3	section 701-20 (Cost to head company of assets consisting of certain liabilities owed by entity that leaves group) or section 701-45 (Cost of assets consisting of liabilities owed to entity by members of the group)	the *market value of the asset
4	section 701-50 (Cost of certain membership interests of which entity becomes holder on leaving group)	the amount worked out in accordance with section 711-55

Note 1: The tax cost setting amount of certain interests in partnership assets is worked out under Subdivision 713-E.

Note 2: The tax cost setting amount of certain assets of a life insurance company is worked out under Subdivision 713-L.

### 701-61 Assets in relation to Division 230 financial arrangement— head company's assessable income or deduction

- (1) This section applies if:
  - (a) an entity (the *joining entity*) becomes a \*subsidiary member of a \*consolidated group; and
  - (b) paragraph 701-55(5A)(b) applies in relation to one or more assets of the joining entity.
- (2) Work out if the total of the \*Division 230 starting values for those assets exceeds or falls short of the total of their \*tax cost setting amounts.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 701-65

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- (3) If there is an excess, an amount equal to 25% of that excess is included in the \*head company's assessable income for:
  - (a) the income year in which the particular time mentioned in subsection 701-55(5A) occurs; and
  - (b) each of the 3 subsequent income years.
- (4) If there is a shortfall, the \*head company is entitled to a deduction equal to 25% of that shortfall for:
  - (a) the income year in which the particular time mentioned in subsection 701-55(5A) occurs; and
  - (b) each of the 3 subsequent income years.

**701-65 Net income and losses for trusts and partnerships**

*Net income of partnerships and trusts*

- (1) If:
  - (a) another provision of this Division applies for the purpose of:
    - (i) working out the amount of the entity's liability (if any) for income tax calculated by reference to an income year; or
    - (ii) working out the amount of the entity's taxable income for an income year; and
  - (b) the entity is a trust or partnership;the provision instead applies in a corresponding way for the purpose of working out the amount of the entity's net income, as defined in the *Income Tax Assessment Act 1936*, (if any) for the income year.

Note: Subsection 701-30(3) requires non-membership periods mentioned in that subsection to be treated as the start and end of an income year. This section would therefore also apply to those periods.

*Partnership losses*

- (2) If:
  - (a) another provision of this Division applies for the purpose of working out the amount of the entity's loss (if any) of a particular \*sort for an income year; and
  - (b) the entity is a partnership;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the provision instead applies in a corresponding way for the purpose of working out the amount of an entity's partnership loss, as defined in section 90 of the *Income Tax Assessment Act 1936*, (if any) for the income year.

Note: The provision applies normally to a trust, as it can have a loss of any sort worked out in the same way as a loss of the same sort for an entity of another kind.

## Exceptions

### **701-70 Adjustments to taxable income where identities of parties to arrangement merge on joining group**

*Section applies to certain arrangements*

- (1) This section applies for the head company core purposes and the entity core purposes if, just before the time (the *joining time*) when the entity becomes a \*subsidiary member of the group, an \*arrangement is in force under which:
- (a) expenditure is to be, or has been, incurred in return for the doing of some thing; and
  - (b) the persons incurring the expenditure and \*deriving the corresponding amount (each of which is a *combining entity*) are the entity and either:
    - (i) another entity that became a subsidiary member at the same time; or
    - (ii) the \*head company.

Note 1: If expenditure incurred under an arrangement consists of a payment of loan interest or a payment of a similar kind, the expenditure would be incurred in return for the making available or continued making available of the loan principal, or other amount of a similar kind, under the arrangement.

Note 2: If expenditure incurred under an arrangement consists of a payment of rent, a lease payment or a payment of a similar kind, the expenditure would be incurred in return for the making available or continued making available of the thing rented or leased, or other thing of a similar kind, under the arrangement.

Note 3: If expenditure incurred under an arrangement consists of a payment of an insurance premium or a payment of a similar kind, the expenditure would be incurred in return for the provision or continued provision of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 701-70

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insurance against the risk concerned, or of a thing of a similar kind, under the arrangement.

*Object*

- (2) The object of this section is to align the income tax position of the combining entities at the joining time, because after that time they lose their separate tax identities under the single entity rule in subsection 701-1(1) and this would preserve any imbalance.

*Adjustment for disproportionate deductibility*

- (3) If the total of a combining entity's deductions that are allowable for:
- (a) the following income year (the *joining adjustment year*):
    - (i) if the combining entity is the \*head company and the joining time occurs at the start of an income year—the income year before that income year;
    - (ii) if the combining entity is the head company and subparagraph (i) does not apply—the income year in which the joining time occurs;
    - (iii) in any other case—the income year that ends, or, if section 701-30 applies, the income year that is taken by subsection (3) of that section to end, at the joining time; and
  - (b) all earlier income years;
- is not equal to the amount worked out under subsection (4), then:
- (c) if the total is less—the entity is entitled to deduct the difference for the joining adjustment year; and
  - (d) if it is more—the entity's assessable income for the joining adjustment year includes the difference.

*Pre-joining time proportion of total arrangement deductions*

- (4) The amount is worked out using the formula:

$$\text{Pre-joining time services proportion} \times \text{Total arrangement deductions}$$

where:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***pre-joining time services proportion*** means the proportion of all things to be done under the arrangement in return for the incurring of the expenditure represented by those things that were done before the joining time.

***total arrangement deductions*** means the total of the deductions that, ignoring this Part (other than subsection (7) of this section), would be allowable for expenditure incurred by the combining entity under the arrangement for all income years.

*Adjustment for disproportionate assessability*

- (5) If the total of the amounts included in a combining entity's assessable income in respect of amounts \*derived under the arrangement for the joining adjustment year and all earlier income years is not equal to the amount worked out under subsection (6):
- (a) if the total is less—the entity's assessable income for the joining adjustment year includes the difference; and
  - (b) if it is more—the entity is entitled to deduct the difference for the joining adjustment year.

*Pre-joining time proportion of total arrangement assessable income*

- (6) The amount is worked out using the formula:

$$\text{Pre-joining time services proportion} \times \frac{\text{Total arrangement assessable income}}{\text{Total arrangement assessable income}}$$

where:

***pre-joining time services proportion*** has the same meaning as in subsection (4).

***total arrangement assessable income*** means the total of the amounts that, ignoring this Part (other than subsection (7) of this section), would be included in the combining entity's assessable income for amounts \*derived by it under the arrangement for all income years.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 701-75

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*Modified application of section if combining entities previously members of same group*

- (7) If the combining entities were \*members of the same \*consolidated group (whether or not the group to which this section applies) on one or more previous occasions, this section applies in relation to the entities as if:
- (a) the only things to be done under the arrangement in return for the incurring of the expenditure were those things to be done after the entities ceased to be members of the same group on the previous occasion or the last of the previous occasions; and
  - (b) the only deductions allowable to an entity for expenditure incurred by it under the arrangement, and the only amounts included in an entity's assessable income in respect of amounts \*derived under the arrangement, were:
    - (i) if the entity was the \*head company of the consolidated group of which the combining entities were members on the previous occasion or last of the previous occasions—those for the income year, in which the previous occasion or the last of the previous occasions occurred, that are attributable to the period after that occasion and those for all later income years; and
    - (ii) in any other case—those for the income year that started, or, if section 701-30 applies, the income year that is taken by subsection (3) of that section to have started, when the entity ceased to be a \*subsidiary member of the group on the previous occasion or the last of the previous occasions and those for all later income years.

**701-75 Adjustments to taxable income where identities of parties to arrangement re-emerge on leaving group**

*Section applies to certain arrangements*

- (1) This section applies for the head company core purposes and the entity core purposes if the entity ceases to be a \*subsidiary member

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

of the group and, just before the time (the *leaving time*) when it does so, an \*arrangement is in force under which:

- (a) expenditure is to be, or has been, incurred in return for the doing of some thing; and
- (b) the persons incurring the expenditure and \*deriving the corresponding amount (each of which is a *separating entity*) are the entity and either:
  - (i) another entity that ceases to be a subsidiary member at the same time; or
  - (ii) the \*head company.

Note: The notes to subsection 701-70(1) on the application of that subsection to expenditure under certain kinds of arrangements are equally applicable for the purposes of this subsection.

#### *Object*

- (2) The object of this section is to align the income tax position of the separating entities at the leaving time, because from that time they have separate tax identities as a result of the single entity rule in subsection 701-1(1) ceasing to apply, and this may create an imbalance.

#### *Adjustment for disproportionate deductibility*

- (3) If the total of the deductions that are or will be allowable for expenditure incurred by the separating entity under the arrangement for:
  - (a) the following income year (the *leaving adjustment year*):
    - (i) if the separating entity is the \*head company—the income year in which the leaving time occurs;
    - (ii) in any other case—the income year that starts, or, if section 701-30 applies, the income year that is taken by subsection (3) of that section to start, at the leaving time; and
  - (b) all later income years;

is not equal to the amount worked out under subsection (4), the deductions are adjusted so that they do equal the amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 701-75

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*Post-leaving time proportion of total arrangement deductions*

- (4) The amount is worked out using the formula:

$$\text{Post-leaving time services proportion} \times \text{Total arrangement deductions}$$

where:

***post-leaving time services proportion*** means the proportion of all things to be done under the arrangement in return for the incurring of the expenditure represented by those things that are to be done after the leaving time.

***total arrangement deductions*** means the total of the deductions that, ignoring this Part, would be allowable for expenditure incurred by the separating entity under the arrangement for all income years.

*Adjustment for disproportionate assessability*

- (5) If the total of the amounts that are or will be included in its assessable income in respect of amounts \*derived under the arrangement for the leaving adjustment year and all later income years is not equal to the amount worked out under subsection (6), the amounts that are or will be included in its assessable income are adjusted so that they do equal the amount worked out under subsection (6).

*Post-leaving time proportion of total arrangement assessable income*

- (6) The amount is worked out using the formula:

$$\text{Post-leaving time services proportion} \times \text{Total arrangement assessable income}$$

where:

***post-leaving time services proportion*** has the same meaning as in subsection (4).

***total arrangement assessable income*** means the total of the amounts that, ignoring this Part, would be included in the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

separating entity's assessable income for amounts \*derived by it under the arrangement for all income years.

### **701-80 Accelerated depreciation**

- (1) This section has effect for the head company core purposes when the entity becomes a \*subsidiary member of the group.

#### *Object*

- (2) The object of this section is to preserve any entitlement to accelerated depreciation for assets that become those of the \*head company because subsection 701-1(1) (the single entity rule) applies when the entity becomes a \*subsidiary member of the group. This is only to apply where the asset's \*tax cost setting amount is not more than the entity's \*terminating value for the asset.

#### *Section applies to certain depreciating assets*

- (3) This section applies if:
- (a) a \*depreciating asset to which Division 40 applies becomes that of the \*head company because subsection 701-1(1) (the single entity rule) applies when the entity becomes a \*subsidiary member of the group; and
  - (b) just before the entity became a subsidiary member, subsection 40-10(3) or 40-12(3) of the *Income Tax (Transitional Provisions) Act 1997* applied for the purpose of the entity working out the asset's decline in value under Division 40; and
- Note: The effect of those subsections was to preserve an entitlement to accelerated depreciation.
- (c) the \*tax cost setting amount that applies in relation to the asset for the purposes of section 701-10 when it becomes an asset of the head company is not more than the entity's \*terminating value for the asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 701-85

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*Preservation of accelerated depreciation*

- (4) While the asset is held by the \*head company under subsection 701-1(1) (the single entity rule), the decline in its value under Division 40 is worked out by replacing the component in the formula in subsection 40-70(1) or 40-75(1) that includes the asset's \*effective life with the rate that would apply under subsection 42-160(1) or 42-165(1) of this Act if it had not been amended by the *New Business Tax System (Capital Allowances) Act 2001*.

**701-85 Other exceptions etc. to the rules**

The operation of each provision of this Division is subject to any provision of this Act that so requires, either expressly or impliedly.

Note: An example of such a provision is Division 707 (about the transfer of certain losses to the head company of a consolidated group). That Division modifies the effect that the inheritance of history rule in section 701-5 would otherwise have.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 703—Consolidated groups and their members

### Guide to Division 703

#### 703-1 What this Division is about

A consolidated group and a consolidatable group each consists of a head company and all the companies, trusts and partnerships that:

- (a) are resident in Australia; and
- (b) are wholly-owned subsidiaries of the head company (either directly or through other companies, trusts and partnerships).

A consolidatable group becomes consolidated at a time chosen by the company that was the head company at the time.

#### Table of sections

##### Basic concepts

703-5	What is a <i>consolidated group</i> ?
703-10	What is a <i>consolidatable group</i> ?
703-15	<b>Members</b> of a consolidated group or consolidatable group
703-20	Certain entities that <i>cannot</i> be members of a consolidated group or consolidatable group
703-25	Australian residence requirements for trusts
703-30	When is one entity a wholly-owned subsidiary of another?
703-33	Transfer time for sale of shares in company
703-35	Treating entities as wholly-owned subsidiaries by disregarding employee shares
703-37	Disregarding certain preference shares following an ADI restructure
703-40	Treating entities held through non-fixed trusts as wholly-owned subsidiaries
703-45	Subsidiary members or nominees interposed between the head company and a subsidiary member of a consolidated group or a consolidatable group

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 703-5

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**Choice to consolidate a consolidatable group**

703-50 Choice to consolidate a consolidatable group

**Consolidated group created when MEC group ceases to exist**

703-55 Creating consolidated groups from certain MEC groups

**Notice of events affecting consolidated group**

703-60 Notice of events affecting consolidated group

**Effects of choice to continue group after shelf company becomes new head company**

703-65 Application

703-70 Consolidated group continues in existence with interposed company as head company and original company as a subsidiary member

703-75 Interposed company treated as substituted for original company at all times before the completion time

703-80 Effects on the original company's tax position

**Basic concepts**

**703-5 What is a *consolidated group*?**

(1) A *consolidated group* comes into existence:

- (a) on the day specified in a choice by a company under section 703-50 as the day on and after which a \*consolidatable group is taken to be consolidated; or
- (b) as described in section 703-55 (about creating a consolidated group from a \*MEC group).

Note: The day specified in a choice under section 703-50 as the day on and after which a consolidatable group is taken to be consolidated may be a day before the choice is made.

(2) The *consolidated group* continues to exist until the \*head company of the group:

- (a) ceases to be a head company; or
- (b) becomes a member of a \*MEC group.

The consolidated group ceases to exist when one of those events happens to the head company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: The group does not cease to exist in some cases where a shelf company is interposed between the head company and its former members: see subsection 124-380(5) and section 703-70.

- (3) At any time while it is in existence, the **consolidated group** consists of the \*head company and all of the \*subsidiary members (if any) of the group at the time.

Note: A consolidated group continues to exist despite one or more entities ceasing to be subsidiary members of the group or becoming subsidiaries of the group, as long as the events described in subsection (2) do not happen to the head company. Thus a consolidated group may come to consist of a head company alone at various times.

### **703-10 What is a *consolidatable group*?**

- (1) A **consolidatable group** consists of:
- (a) a single \*head company; and
  - (b) all the \*subsidiary members of the group.
- (2) To avoid doubt, a **consolidatable group** cannot consist of a \*head company alone.

### **703-15 Members of a consolidated group or consolidatable group**

- (1) An entity is a **member** of a \*consolidated group or \*consolidatable group while the entity is:
- (a) the \*head company of the group; or
  - (b) a \*subsidiary member of the group.
- (2) At a particular time in an income year, an entity is:
- (a) a **head company** if all the requirements in item 1 of the table are met in relation to the entity; or
  - (b) a **subsidiary member** of a \*consolidated group or \*consolidatable group if all the requirements in item 2 of the table are met in relation to the entity:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 703** Consolidated groups and their members

Section 703-15

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<b>Head companies and subsidiary members of groups</b>			
<b>Column 1</b> <b>Entity's role</b> <b>in relation</b> <b>to group</b>	<b>Column 2</b> <b>Income tax</b> <b>treatment</b> <b>requirements</b>	<b>Column 3</b> <b>Australian</b> <b>residence</b> <b>requirements</b>	<b>Column 4</b> <b>Ownership</b> <b>requirements</b>
1 Head company	The entity must be a company (but not one covered by section 703-20) that has all or some of its taxable income (if any) taxed at a rate that is or equals the *corporate tax rate	The entity must be an Australian resident (but not a *prescribed dual resident)	The entity must <i>not</i> be a *wholly-owned subsidiary of another entity that meets the requirements in columns 2 and 3 of this item or, if it is, it must <i>not</i> be a subsidiary member of a *consolidatable group or *consolidated group

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Head companies and subsidiary members of groups</b>			
<b>Column 1 Entity's role in relation to group</b>	<b>Column 2 Income tax treatment requirements</b>	<b>Column 3 Australian residence requirements</b>	<b>Column 4 Ownership requirements</b>
2 Subsidiary member	The requirements are that: (a) the entity must be a company, trust or partnership (but not one covered by section 703-20); and (b) if the entity is a company—all or some of its taxable income (if any) must be taxable apart from this Part at a rate that is or equals the *corporate tax rate; and (c) the entity must <i>not</i> be a non-profit company (as defined in the <i>Income Tax Rates Act 1986</i> )	The entity must: (a) be an Australian resident (but not a *prescribed dual resident), if it is a company; or (b) comply with section 703-25, if it is a trust; or (c) be a partnership	The entity must be a *wholly-owned subsidiary of the head company of the group and, if there are interposed between them any entities, the set of requirements in section 703-45, section 701C-10 of the <i>Income Tax (Transitional Provisions) Act 1997</i> or section 701C-15 of that Act must be met

**703-20 Certain entities that *cannot* be members of a consolidated group or consolidatable group**

- (1) The object of this section is to specify certain entities that *cannot* be \*members of a \*consolidated group because of the way their income is treated for income tax purposes.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 703-20

- (2) An entity of a kind specified in an item of the table cannot be a \*member of a \*consolidated group or a \*consolidatable group at a time in an income year if the conditions specified in the item exist:

**Certain entities that cannot be members of a consolidated or consolidatable group**

<b>Item</b>	<b>An entity of this kind:</b>	<b>Cannot be a member of a consolidated group or consolidatable group if:</b>
1	An entity of any kind	At the time, the total *ordinary income and *statutory income of the entity is exempt from income tax under Division 50
2	A company	The company is a recognised medium credit union (as defined in section 6H of the <i>Income Tax Assessment Act 1936</i> ) for the income year
3	A company	The company: (a) is an approved credit union for the income year for the purposes of section 23G of the <i>Income Tax Assessment Act 1936</i> ; and (b) is <i>not</i> a recognised medium credit union (as defined in section 6H of that Act) or a recognised large credit union (as defined in that section) for the income year
5	A company	The company is a *PDF at the end of the income year
6	A company	The company is a *film licensed investment company at the time
7	A trust	The trust is: (a) a *complying superannuation entity for the income year; or (b) a *non-complying approved deposit fund or a *non-complying superannuation fund for the income year

Note: A subsidiary of a life insurance company cannot be a member of a consolidated group or consolidatable group in certain circumstances: see section 713-510.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 703-25 Australian residence requirements for trusts

A trust described in an item of the table must meet the requirements specified in the item to be able to be a \*subsidiary member of a \*consolidated group or a \*consolidatable group at a time in an income year:

<b>Australian residence requirements for trusts</b>		
<b>Item</b>	<b>A trust of this kind:</b>	<b>Can be a member of a consolidated group or consolidatable group only if these requirements are met:</b>
1	A trust (except a unit trust)	The trust must be a resident trust estate for the income year for the purposes of Division 6 of Part III of the <i>Income Tax Assessment Act 1936</i>
2	A unit trust (except a *corporate unit trust or a *public trading trust for the income year)	The trust must be: (a) a resident trust estate for the income year for the purposes of Division 6 of Part III of the <i>Income Tax Assessment Act 1936</i> ; and (b) a *resident trust for CGT purposes for the income year
3	A *corporate unit trust or a *public trading trust for the income year	The trust must be a *resident unit trust for the income year

### 703-30 When is one entity a *wholly-owned subsidiary* of another?

- (1) One entity (the *subsidiary entity*) is a *wholly-owned subsidiary* of another entity (the *holding entity*) if all the \*membership interests in the subsidiary entity are beneficially owned by:
  - (a) the holding entity; or
  - (b) one or more wholly-owned subsidiaries of the holding entity; or
  - (c) the holding entity and one or more wholly-owned subsidiaries of the holding entity.
- (2) An entity (other than the subsidiary entity) is a *wholly-owned subsidiary* of the holding entity if, and only if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 703-33

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- (a) it is a wholly-owned subsidiary of the holding entity; or
- (b) it is a wholly-owned subsidiary of a wholly-owned subsidiary of the holding entity;

because of any other application or applications of this section.

Note: This Part also operates in some cases as if an entity were a wholly-owned subsidiary of another entity, even though the entity is not covered by the definition in this section because of:

- (a) ownership of shares under certain arrangements for employee shareholding (see section 703-35); or
  - (aa) ownership of certain preference shares following an ADI restructure (see section 703-37); or
  - (b) interposed trusts that are not fixed trusts (see section 703-40).
- (3) For the purposes of this section, one entity is not prevented from being the beneficial owner of a \*membership interest in another entity merely because the first entity is or becomes:
- (a) an externally-administered body corporate within the meaning of the *Corporations Act 2001*; or
  - (b) an entity with a status under a \*foreign law similar to the status of an externally-administered body corporate under the *Corporations Act 2001*.

**703-33 Transfer time for sale of shares in company**

- (1) This section applies if:
- (a) under a contract:
    - (i) a person (the **seller**) stops being entitled to be registered as the holder of a \*share in a company at a time (the **transfer time**); and
    - (ii) another person (the **buyer**) becomes entitled to be registered as the holder of the share in the company at the transfer time; and
  - (b) as a result of the contract, the seller stops being the beneficial owner of the share, and the buyer becomes the beneficial owner of the share; and
  - (c) the seller and the buyer dealt with each other at \*arm's length in relation to the contract; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) the seller and the buyer were not \*associates of one another at any time during the period:
  - (i) starting when the contract was entered into; and
  - (ii) ending at the transfer time.
- (2) For the purposes of subsection 703-30(1):
  - (a) the seller is taken to have stopped being the beneficial owner of the share at the transfer time; and
  - (b) the buyer is taken to have become the beneficial owner of the share at the transfer time.

### **703-35 Treating entities as wholly-owned subsidiaries by disregarding employee shares**

- (1) The object of this section is to ensure that an entity (the *first entity*) is not prevented from being a \*subsidiary member of a \*consolidated group or \*consolidatable group just because there are minor holdings of \*membership interests in an entity (the *employee share scheme entity*) issued under \*arrangements for employee shareholdings. (It does not matter whether the employee share scheme entity is the first entity or is interposed between the first entity and a \*member of the group.)

Note: A company that is prevented from being a subsidiary member of a consolidated group may be a head company (so there could be 2 consolidated or consolidatable groups, instead of the one that this section ensures exists).

- (2) This Part (except Division 719) operates as if an entity that meets the requirement of subsection (3) at a particular time were a \*wholly-owned subsidiary of an entity (the *holding entity*) at the time.
- (3) The entity must be one that would be a \*wholly-owned subsidiary of the holding entity at the time if the \*membership interests in the entity that are to be disregarded under subsection (4) did not exist.
- (4) Disregard:
  - (a) each of the \*shares described in subsection (5) if the total number of those shares is not more than 1% of the number of ordinary shares in the company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 703-35

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- (b) each of the \*membership interests in an entity described in subsection (7) if the total number of those membership interests is not more than 1% of the number of membership interests of that kind in the entity.
- (5) A \*share in a company that is beneficially owned by an entity may be disregarded under subsection (4) if:
  - (a) the entity acquired (as defined in section 139G of the *Income Tax Assessment Act 1936*) the share either:
    - (i) in the circumstances described in subsection 139C(1) or (2) of that Act; or
    - (ii) by exercising a right the entity acquired (as so defined) in those circumstances; and
  - (b) all the shares in the company available for acquisition in those circumstances are ordinary shares and all the rights available for acquisition in those circumstances are rights to acquire ordinary shares; and
  - (c) if the entity acquired the share in those circumstances—at the time of the acquisition, at least 75% of the permanent employees (as defined in section 139GB of that Act) of the employer (as defined in section 139GA of that Act) were or had earlier been entitled to acquire in those circumstances:
    - (i) shares in the company or rights to acquire shares in the company; or
    - (ii) shares in a holding company (as defined in section 139GC of that Act) of the company or rights to acquire such shares; and
  - (d) the conditions in subsections 139CD(6) and (7) of that Act are met in relation to the acquisition of the share by the entity; and
  - (e) the company is not covered by section 139DF of that Act.

Note: Section 139CD of the *Income Tax Assessment Act 1936* sets out certain preconditions for shares and rights acquired under employee share schemes to be qualifying shares and qualifying rights. Section 139C of that Act explains when a share or right is acquired under an employee share scheme. Section 139DF prevents shares and rights relating to certain companies from being qualifying shares and rights.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (6) The \*share may be disregarded under subsection (4) even though the condition in paragraph (5)(c) is not met, if:
- (a) the conditions in paragraphs (5)(a), (b), (d) and (e) are met; and
  - (b) the Commissioner has made a determination under subsection 139CD(8) of the *Income Tax Assessment Act 1936* in relation to the share.
- (7) A \*membership interest of a particular kind in an entity that is beneficially owned by another entity may be disregarded under subsection (4) if:
- (a) the membership interest forms part of a stapled security (within the meaning of Division 13A of Part III of the *Income Tax Assessment Act 1936*); and
  - (b) the stapled security is treated as a \*qualifying share because of Subdivision DB of that Division.

Note: The kinds of membership interest that form part of a stapled security are an ordinary share and one or more other interests that are either shares or units in a unit trust: see section 139GCD of the *Income Tax Assessment Act 1936*.

### **703-37 Disregarding certain preference shares following an ADI restructure**

- (1) The object of this section is to ensure that, following an \*ADI restructure to which Part 4A of the *Financial Sector (Business Transfer and Group Restructure) Act 1999* applies, a body corporate is not prevented from being a \*subsidiary member of a \*consolidated group or \*consolidatable group just because the body (or another body corporate) has issued, or issues, certain preference \*shares.
- (2) This Part (except Division 719) operates as if a body corporate that meets the requirement of subsection (3) at a particular time were a \*wholly-owned subsidiary of another body corporate (the **holding body**) at the time.
- (3) The body corporate (the **preference-share issuing body**) must be one that would be a \*wholly-owned subsidiary of the holding body

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 703-37

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at the time if the \*shares in the preference share-issuing body that are to be disregarded under subsection (4) did not exist.

- (4) Disregard a \*share in the preference-share issuing body if:
- (a) a restructure instrument under Part 4A of the *Financial Sector (Business Transfer and Group Restructure) Act 1999* is in force in relation to a non-operating holding company within the meaning of that Act; and
  - (b) because of the restructure to which the instrument relates, an \*ADI becomes a subsidiary (within the meaning of that Act) of the non-operating holding company; and
  - (c) the preference share-issuing body is:
    - (i) the ADI; or
    - (ii) part of an extended licensed entity (within the meaning of the \*prudential standards) that includes the ADI; and
  - (d) the shares are covered by subsection (5).
- (5) A \*share is covered by this subsection if:
- (a) the share is a preference share; and
  - (b) any \*return on the share is fixed at the time of issue by reference to the amount subscribed; and
  - (c) the share is not a \*voting share; and
  - (d) either:
    - (i) the share is Tier 1 capital (within the meaning of the \*prudential standards); or
    - (ii) the share would be Tier 1 capital (within the meaning of the prudential standards) were it not for a limit, imposed by those standards, on the proportion of Tier 1 capital that can be made up of such shares.
- (6) Paragraph (5)(a) covers a preference share if it is issued:
- (a) by itself; or
  - (b) in combination with one or more \*schemes that are \*related schemes in relation to a scheme under which a preference share is issued.
- (7) If subsection (5) has covered a \*share, but would (apart from this subsection) stop covering the share from a particular time, then for

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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a period of 180 days after that time the subsection is taken to continue to cover the share.

**703-40 Treating entities held through non-fixed trusts as wholly-owned subsidiaries**

- (1) This section operates to ensure that an entity (the *test entity*) is not prevented from being a \*subsidiary member of a \*consolidated group or \*consolidatable group just because there is a trust that is not a \*fixed trust interposed between the test entity and the \*head company of the group.
- (2) This Part (except Division 719) operates as if the test entity were a \*wholly-owned subsidiary of the \*head company if the test entity would have been a wholly-owned subsidiary of the head company had the interposed trust been a \*fixed trust and all its objects been beneficiaries.

**703-45 Subsidiary members or nominees interposed between the head company and a subsidiary member of a consolidated group or a consolidatable group**

- (1) This section describes, for the purposes of item 2, column 4 of the table in subsection 703-15(2), a set of requirements that must be met for an entity (the *test entity*) to be a \*subsidiary member of a \*consolidated group or a \*consolidatable group at a particular time (the *test time*).
- (2) At the test time, each of the interposed entities must either:
  - (a) be a \*subsidiary member of the group; or
  - (b) hold \*membership interests in:
    - (i) the test entity; or
    - (ii) a subsidiary member of the group interposed between the \*head company of the group and the test entity; only as a nominee of one or more entities each of which is a \*member of the group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Choice to consolidate a consolidatable group

### 703-50 Choice to consolidate a consolidatable group

- (1) A company may make a choice in the \*approved form given to the Commissioner within the period described in subsection (3) that a \*consolidatable group is taken to be consolidated on and after a day that is specified in the choice and is after 30 June 2002, if the company was the \*head company of the group on the day specified.

*Choice is irrevocable*

- (2) The choice cannot be revoked, and the specification of the day cannot be amended, after the choice is made under subsection (1).

*Period for giving choice to Commissioner*

- (3) The period for giving the choice to the Commissioner:
- (a) starts at the start of the day specified in the choice; and
  - (b) ends at the end of:
    - (i) the day on which the company gives the Commissioner its \*income tax return for the income year during which the day specified in the choice occurs; or
    - (ii) the last day in the period within which the company would be required to give the Commissioner such a return if it were required to give the Commissioner such a return.

*Choice has no effect after consolidated group ceases to exist*

- (4) The choice does not have effect after the \*consolidated group that came into existence because of the choice ceases to exist. To avoid doubt, this subsection does not prevent the choice from:
- (a) being made by the company at a time when it is not a head company; or
  - (b) having effect in relation to a time before the consolidated group ceased to exist, even if that time is before the choice is made.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Choice does not have effect if it contains wrong information*

- (5) The choice does *not* have effect (and is taken not to have had effect) if the Commissioner is satisfied that the choice contains information that is incorrect in a material particular.

*Commissioner may give effect to choice despite wrong information*

- (6) Subsection (5) does not prevent the choice from having effect (and being taken to have had effect) if the Commissioner gives the company written notice that the choice has effect despite the incorrect information.

Note: Subsection (6) does not let the Commissioner make the choice effective if it did not have effect because it was not made in accordance with subsection (1). This could have happened if:

- (a) the choice was not in the approved form (for example because it did not include information the Commissioner required (whether in the form or otherwise)); or
- (b) the choice was not given to the Commissioner within the period described in subsection (3); or
- (c) the company was not the head company of a consolidatable group on the day specified in the choice.

*Choice does not have effect if company is a member of a MEC group*

- (7) The choice does *not* have effect (and is taken not to have had effect) if, on the day specified, the company was a member of a \*MEC group.

## **Consolidated group created when MEC group ceases to exist**

### **703-55 Creating consolidated groups from certain MEC groups**

- (1) A \*consolidated group comes into existence at the time a \*MEC group ceases to exist if:
- (a) the MEC group included only one \*eligible tier-1 company just before the time; and
  - (b) the MEC group ceases to exist only because the company ceases to be an eligible tier-1 company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 703-60

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- (c) the company is a \*head company as defined in section 703-15 at the time.
- (2) To avoid doubt, the \*consolidated group consists at the time of:
  - (a) the company (as the \*head company of the consolidated group); and
  - (b) every entity (if any) that was a \*subsidiary member of the \*MEC group just before that time (as a subsidiary member of the consolidated group).

**Notice of events affecting consolidated group**

**703-60 Notice of events affecting consolidated group**

- (1) Within 28 days of an event described in an item of the table, the entity described in column 3 of the item must give the Commissioner notice in the \*approved form of the event.

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<b>Notice of events</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>If this event happens:</b>	<b>Notice must be given by:</b>
1	An entity becomes a *member of a *consolidated group	The *head company of the consolidated group
2	An entity ceases to be a *subsidiary member of a *consolidated group	The *head company of the group, or the person who was its public officer just before it ceased to exist if the former subsidiary member ceases to be a *member of the group because the head company ceases to exist
3	A *consolidated group ceases to exist	The company that was the *head company of the group, or the person who was its public officer just before it ceased to exist if it ceases to be the head company of the group because it ceases to exist

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) Despite subsection (1), if:
- (a) an event described in subsection (1) happens in relation to a \*consolidated group that comes into existence on the day specified in a choice under section 703-50; and
  - (b) the event happens more than 28 days before the choice is made;
- the \*head company of the consolidated group must give the Commissioner notice in the \*approved form of the event at the same time as the choice is made.
- (3) Despite subsection (1), if:
- (a) an event described in subsection (1) happens in relation to a \*consolidated group that comes into existence at a time under subsection 703-55(1) because a \*MEC group ceased to exist at that time; and
  - (b) the \*MEC group came into existence under paragraph 719-5(1)(a) because a notice of choice under section 719-50 is given after that time; and
  - (c) the event happens more than 28 days before the notice of choice is given;
- the \*head company of the consolidated group must give the Commissioner notice in the \*approved form of the event at the same time as the notice of choice is given.

### **Effects of choice to continue group after shelf company becomes new head company**

#### **703-65 Application**

Sections 703-70 to 703-80 set out the effects if a company (the *interposed company*) chooses under subsection 124-380(5) that a \*consolidated group is to continue in existence at and after the time referred to in that subsection as the completion time.

Note: The choice is one of the conditions for a compulsory roll-over under Subdivision 124-G on an exchange of shares in the head company of a consolidated group for shares in the interposed company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 703-70

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**703-70 Consolidated group continues in existence with interposed company as head company and original company as a subsidiary member**

- (1) The \*consolidated group is taken *not* to have ceased to exist under subsection 703-5(2) because the company referred to in subsection 124-380(5) as the original company ceases to be the \*head company of the group.
- (2) To avoid doubt, the interposed company is taken to have become the \*head company of the \*consolidated group at the completion time, and the original company is taken to have ceased to be the head company at that time.

Note: A further result is that the original company is taken to have become a subsidiary member of the group at that time. Section 703-80 deals with the original company's tax position for the income year that includes the completion time.

- (3) A provision of this Part that applies on an entity becoming a \*subsidiary member of a \*consolidated group does *not* apply to an entity being taken to have become such a member as a result of this section, unless the provision is expressed to apply despite this subsection.

Note: An example of the effect of this subsection is that there is no resetting under section 701-10 of the tax cost of assets of the original company that become assets of the interposed company because of subsection 701-1(1) (the single entity rule).

- (4) To avoid doubt, subsection (3) does not affect the application of subsection 701-1(1) (the single entity rule).

**703-75 Interposed company treated as substituted for original company at all times before the completion time**

- (1) Everything that happened in relation to the original company before the completion time:
  - (a) is taken to have happened in relation to the interposed company instead of in relation to the original company; and
  - (b) is taken to have happened in relation to the interposed company instead of what would (apart from this section) be

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

taken to have happened in relation to the interposed company before that time;

just as if, at all times before the completion time:

- (c) the interposed company had been the original company; and
- (d) the original company had been the interposed company.

Note: This section treats the original company and the interposed company as having in effect exchanged identities throughout the period before the completion time, but without affecting any of the original company's other attributes.

(2) To avoid doubt, subsection (1) also covers everything that, immediately before the completion time, was taken, because of:

- (a) section 701-1 (Single entity rule); or
- (b) section 701-5 (Entry history rule); or
- (c) one or more previous applications of this section; or
- (d) section 719-90 (about the effects of a change of head company of a MEC group);

to have happened in relation to the original company.

(3) Subsections (1) and (2) have effect:

- (a) for the head company core purposes in relation to an income year ending after the completion time; and
- (b) for the entity core purposes in relation to an income year ending after the completion time; and
- (c) for the purposes of determining the respective balances of the \*franking accounts of the original company and the interposed company at and after the completion time.

(4) Subsections (1) and (2) have effect subject to:

- (a) section 701-40 (Exit history rule); and
- (b) a provision of this Act to which section 701-40 is subject because of section 701-85 (about exceptions to the core rules in Division 701).

Note: An example of provisions covered by paragraph (b) of this subsection is Subdivision 717-E (about transferring to a company leaving a consolidated group various surpluses under the CFC and FIF rules in Parts X and XI of the *Income Tax Assessment Act 1936*).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 703-80

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**703-80 Effects on the original company's tax position**

In applying section 701-30 to the original company for the income year that includes the completion time, disregard a non-membership period that starts before the completion time.

Note 1: Section 701-30 is about working out an entity's tax position for a period when it is not a subsidiary member of any consolidated group. Its application can also affect the entity's tax position in later income years.

Note 2: Under section 703-75 the interposed company inherits the original company's tax position for the part of the income year that ends before the completion time, with the consequence that the original company's taxable income, income tax payable, and losses of any sort, for that part are each nil.

Because of section 703-75 and this section, the only tax payable by the original company for the income year arises because of the application of section 701-30 to non-membership periods in the income year after the completion time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 705—Tax cost setting amount for assets where entities become subsidiary members of consolidated groups**

### **Guide to Division 705**

#### **705-1 What this Division is about**

When an entity becomes a subsidiary member of a consolidated group, the tax cost of its assets is set at a tax cost setting amount that is worked out in accordance with this Division.

#### **Table of Subdivisions**

- 705-A Basic case: a single entity joining an existing consolidated group
- 705-B Case of group formation
- 705-C Case where a consolidated group is acquired by another
- 705-D Where multiple entities are linked by membership interests
- 705-E Adjustments for errors etc.

#### **Subdivision 705-A—Basic case: a single entity joining an existing consolidated group**

#### **Guide to Subdivision 705-A**

#### **705-5 What this Subdivision is about**

When an entity becomes a subsidiary member of an existing consolidated group, the tax cost setting amount for its assets reflects the cost to the group of acquiring the entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

Section 705-5

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**Table of sections**

**Application and object**

- 705-10 Application and object of this Subdivision
- 705-15 Cases where this Subdivision does not have effect

**Tax cost setting amount for assets that joining entity brings into joined group**

- 705-20 Tax cost setting amount worked out under this Subdivision
- 705-25 Tax cost setting amount for retained cost base assets
- 705-30 What is the joining entity's terminating value for an asset?
- 705-35 Tax cost setting amount for reset cost base assets
- 705-40 Tax cost setting amount for reset cost base assets held on revenue account
- 705-45 Reduction in tax cost setting amount for accelerated depreciation assets
- 705-47 Reduction in tax cost setting amount for some privatised assets
- 705-50 Reduction in tax cost setting amount for over-depreciated assets
- 705-55 Order of application of sections 705-40, 705-45, 705-47 and 705-50
- 705-56 Modification for tax cost setting in relation to finance leases
- 705-57 Adjustment to tax cost setting amount where loss of pre-CGT status of membership interests in joining entity
- 705-58 Assets and liabilities not set off against each other
- 705-59 Exception: treatment of linked assets and liabilities

**How to work out the allocable cost amount**

- 705-60 What is the joined group's *allocable cost amount* for the joining entity?
- 705-65 Cost of membership interests in the joining entity—step 1 in working out allocable cost amount
- 705-70 Liabilities of the joining entity—step 2 in working out allocable cost amount
- 705-75 Liabilities of the joining entity—reductions for purposes of step 2 in working out allocable cost amount
- 705-80 Liabilities of the joining entity—reductions/increases for purposes of step 2 in working out allocable cost amount
- 705-85 Liabilities of the joining entity—increases for purposes of step 2 in working out allocable cost amount
- 705-90 Undistributed, taxed profits accruing to joined group before joining time—step 3 in working out allocable cost amount
- 705-93 If pre-joining time roll-over from foreign resident company—step 3A in working out allocable cost amount

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Section 705-10**

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- 705-95 Pre-joining time distributions out of certain profits—step 4 in working out allocable cost amount
- 705-100 Losses accruing to joined group before joining time—step 5 in working out allocable cost amount
- 705-105 Continuity of holding membership interests—steps 3 to 5 in working out allocable cost amount
- 705-110 If joining entity transfers a loss to the head company—step 6 in working out allocable cost amount
- 705-115 If head company becomes entitled to certain deductions—step 7 in working out allocable cost amount

**How to work out a pre-CGT factor for assets of joining entity**

- 705-125 Pre-CGT factor for assets of joining entity

**Application and object****705-10 Application and object of this Subdivision***Application*

- (1) This Subdivision has effect, subject to section 705-15, for the head company core purposes set out in subsection 701-1(2) if an entity (the **joining entity**) becomes a \*subsidiary member of a \*consolidated group (the **joined group**) at a particular time (the **joining time**).

*Object*

- (2) The object of this Subdivision is to recognise the \*head company's cost of becoming the holder of the joining entity's assets as an amount reflecting the group's cost of acquiring the entity. That amount consists of the cost of the group's \*membership interests in the joining entity, increased by the joining entity's liabilities and adjusted to take account of the joining entity's retained profits, distributions of profits, deductions and losses.
- (3) The reason for recognising the \*head company's cost in this way is to align the costs of assets with the costs of \*membership interests, and to allow for the preservation of this alignment until the entity ceases to be a \*subsidiary member, in order to:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

**Section 705-15**

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- (a) prevent double taxation of gains and duplication of losses; and
- (b) remove the need to adjust costs of membership interests in response to transactions that shift value between them, as the required adjustments occur automatically.

Note: Under Division 711, the alignment is preserved by recognising the head company's cost of membership interests in the entity if it ceases to be a subsidiary member of the group as the cost of its assets reduced by its liabilities.

**705-15 Cases where this Subdivision does not have effect**

This Subdivision does not have effect if any of the following exceptions applies:

- (a) the first exception is where the joining entity becomes a \*member of the joined group because it is a member of that group at the time it comes into existence as a \*consolidated group;

Note: See Subdivision 705-B for rules about the treatment of assets if entities become members in circumstances covered by this exception.

- (b) the second exception is where all of the members of another consolidated group become members of the joined group as a result of the \*acquisition of \*membership interests in the \*head company of the joining group;

Note: See Subdivision 705-C for rules about the treatment of assets if entities become members in circumstances covered by this exception.

- (c) the third exception is where:
  - (i) the joining entity and one or more other entities become members of the joined group at the same time as a result of an event that happens in relation to one of them; and
  - (ii) the case is not covered by the second exception;

Note: See Subdivision 705-D for rules about the treatment of assets if entities become members in circumstances covered by this exception.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Tax cost setting amount for assets that joining entity brings into joined group**

### **705-20 Tax cost setting amount worked out under this Subdivision**

If this Subdivision has effect, for the purposes of item 1 in the table in section 701-60 (Tax cost setting amount) the \*tax cost setting amount for an asset whose \*tax cost is set at the time the joining entity becomes a \*subsidiary member of the joined group is worked out under this Subdivision.

### **705-25 Tax cost setting amount for retained cost base assets**

- (1) This section states what the \*tax cost setting amount is for a \*retained cost base asset.

*Australian currency*

- (2) If the \*retained cost base asset is covered by paragraph (a) or (b) of the definition of that expression and is not covered by another subsection of this section, its \*tax cost setting amount is equal to the amount of the Australian currency concerned.

*Qualifying securities*

- (3) If the \*retained cost base asset is a qualifying security (within the meaning of Division 16E of Part III of the *Income Tax Assessment Act 1936*), the \*tax cost setting amount for the qualifying security is instead equal to the joining entity's \*terminating value for the asset.

*Entitlements to pre-paid services etc.*

- (4) If the \*retained cost base asset is covered by paragraph (c) of the definition of that expression, its \*tax cost setting amount is equal to the amount of the deductions to which the \*head company is entitled under section 701-5 (the entry history rule) in respect of the expenditure that gave rise to the entitlement.

Note: If the total amount to be treated as tax cost setting amounts for retained cost base assets exceeds the joined group's allocable cost

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

Section 705-30

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amount for the joining entity, the head company makes a capital gain equal to the excess: see CGT event L3.

*Financial arrangements to which Subdivision 250-E applies*

- (4A) The \*tax cost setting amount is instead equal to the joining entity's \*terminating value for the \*retained cost base asset if the asset is a \*financial arrangement to which Subdivision 250-E applies immediately before the joining time.

*Retained cost base asset*

- (5) A **retained cost base asset** is:

- (a) Australian currency, other than \*trading stock or \*collectables of the joining entity; or
- (b) a right to receive a specified amount of such Australian currency, other than a right that is a marketable security within the meaning of section 70B of the *Income Tax Assessment Act 1936*; or

Example: A debt or a bank deposit.

- (c) a right to have something done under an \*arrangement under which:
  - (i) expenditure has been incurred in return for the doing of the thing; and
  - (ii) the thing is required or permitted to be done, or to cease being done, after the expenditure is incurred.

Note 1: There are some additional retained cost base assets for a joining entity that is a life insurance company: see Subdivision 713-L. The tax cost setting amount for those assets is worked out under that Subdivision.

Note 2: The joining entity's right to receive lease payments under a finance lease is treated as a retained cost base asset in some circumstances (see paragraph 705-56(3)(b)).

**705-30 What is the joining entity's terminating value for an asset?**

*Trading stock*

- (1) If an asset of the joining entity is \*trading stock, the joining entity's **terminating value** for the asset is:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Section 705-30

- (a) if the asset was on hand at the start of the income year in which the joining time occurs (including because of the operation of Division 701)—its \*value at that time; or
- (b) if paragraph (a) does not apply and the asset is \*livestock that was acquired by natural increase—the \*cost of the asset; or
- (c) in any other case—the amount of the outgoing incurred by the joining entity in connection with the acquisition of the asset;

increased by the amount of any outgoing forming part of the cost of the asset that is incurred by the joining entity during its current holding of the asset.

*Qualifying securities*

- (2) If an asset of the joining entity is a qualifying security (within the meaning of Division 16E of Part III of the *Income Tax Assessment Act 1936*) that is not \*trading stock, the joining entity's **terminating value** for the asset is equal to the amount of consideration that the joining entity would need to receive, if it were to dispose of the asset just before the joining time, without an amount being assessable income of, or deductible to, the joining entity under section 159GS of the *Income Tax Assessment Act 1936*.

*Depreciating assets*

- (3) If an asset of the joining entity is a \*depreciating asset to which Division 40 applies, the joining entity's **terminating value** for the asset is equal to the asset's \*adjustable value just before the joining time.

*Financial arrangements to which Subdivision 250-E applies*

- (3A) If an asset of the joining entity is a \*financial arrangement to which Subdivision 250-E applies, the joining entity's **terminating value** for the asset is equal to the amount of consideration that the joining entity would need to receive, if it were to dispose of the asset just before the joining time, without an amount being assessable income of, or deductible to, the joining entity under Subdivision 250-E.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 705-35

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*Division 230 financial arrangements*

- (3B) If an asset of the joining entity is or is part of a \*Division 230 financial arrangement, the joining entity's terminating value for the asset is equal to the amount of consideration that the joining entity would need to receive, if it were to dispose of the asset just before the joining time, without an amount being assessable income of, or deductible to, the joining entity under Division 230.

*Other CGT assets*

- (4) If an asset of the joining entity is a \*CGT asset that is not covered by any of the above subsections, the joining entity's **terminating value** for the asset is equal to the asset's \*cost base just before the joining time.

*Other assets*

- (5) The joining entity's **terminating value** for any other asset that it holds is the amount that would be the asset's \*cost base just before the joining time if it were an asset covered by subsection (4).

**705-35 Tax cost setting amount for reset cost base assets**

- (1) For each asset of the joining entity (a **reset cost base asset**) that is not a \*retained cost base asset or an asset (an **excluded asset**) covered by subsection (2), the asset's \*tax cost setting amount is worked out by:
- (a) first working out the joined group's \*allocable cost amount for the joining entity in accordance with section 705-60; and
  - (b) then reducing that amount by the total of the \*tax cost setting amounts in accordance with section 705-25 for each retained cost base asset (but not below zero); and
  - (c) finally, allocating the result to each of the joining entity's reset cost base assets (other than excluded assets) in proportion to their \*market values.

Note 1: For an asset consisting of an entitlement to receive an amount that will be included in assessable income, the market value of the asset would take into account the tax payable on the amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Section 705-40**

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Note 1A: If a set of linked assets and liabilities includes one or more reset cost base assets, section 705-59 may affect how this section applies. In particular, that section may exclude the application of paragraph 705-35(1)(b) to retained cost base assets in the set; this in turn may affect the application of CGT event L3.

Note 2: If there are no reset cost base assets, the result is instead treated as a capital loss of the head company: see CGT event L4.

*Excluded assets*

- (2) An asset is covered by this subsection if, under any of the steps in the table in section 705-60, the joined group's \*allocable cost amount for the joining entity is reduced by an amount in respect of the asset.

Note: An example is an entitlement to a deduction, for which there is a reduction under step 2 in the table.

*Goodwill resulting from ownership and control of the joining entity*

- (3) If, just after the joining time, the \*head company has, because of its ownership and control of the joining entity, a goodwill asset associated with assets or businesses of the joined group:
- (a) for the head company core purposes, the asset's \*tax cost is set at the joining time at its \*tax cost setting amount; and
  - (b) for the purpose of doing so:
    - (i) the asset is taken to be an asset of the joining entity that becomes an asset of the head company because subsection 701-1(1) (the single entity rule) applies; and
    - (ii) it is taken to have a \*market value just before the joining time of an amount equal to its market value just after the joining time.

**705-40 Tax cost setting amount for reset cost base assets held on revenue account**

- (1) The \*tax cost setting amount for a reset cost base asset that is \*trading stock, a \*depreciating asset or a \*revenue asset must not exceed the greater of:
- (a) the asset's \*market value; and
  - (b) the joining entity's \*terminating value for the asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

Section 705-45

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- (2) If subsection (1) *reduces* the asset's \*tax cost setting amount, the amount of the reduction is allocated among the other reset cost base assets (including other \*trading stock, \*depreciating assets and \*revenue assets) other than excluded assets, so as to *increase* their tax cost setting amounts, in accordance with the principles set out in subsection (3).

Note: If any of the amount of the reduction cannot be allocated, it is instead treated as a capital loss of the head company: see CGT event L8.

- (3) These are the principles:
- (a) the allocation is to be in proportion to the \*market values of the assets;
  - (b) the amount allocated to an item of \*trading stock, to a \*depreciating asset or to a \*revenue asset must not cause its \*tax cost setting amount to contravene subsection (1);
  - (c) any of the amount that cannot be allocated is to be reallocated, to the maximum extent possible, among the remaining reset cost base assets (other than excluded assets) by applying this subsection a further one or more times.

**705-45 Reduction in tax cost setting amount for accelerated depreciation assets**

If:

- (a) an asset of the joining entity is a \*depreciating asset to which Division 40 applies; and
- (aa) just before the entity became a subsidiary member, subsection 40-10(3) or 40-12(3) of the *Income Tax (Transitional Provisions) Act 1997* applied for the purposes of the joining entity working out the asset's decline in value under Division 40; and

Note: The effect of those subsections was to preserve an entitlement to accelerated depreciation.

- (b) the asset's \*tax cost setting amount would be greater than the joining entity's \*terminating value for the asset; and
- (c) the \*head company chooses to apply this section to the asset; the asset's tax cost setting amount is reduced so that it equals the terminating value.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- Note 1: A consequence of the choice is that accelerated depreciation will apply to the asset: see section 701-80.
- Note 2: Unlike the position with a reduction in tax cost setting amount under section 705-40, the amount of the reduction is not re-allocated among other assets.

### **705-47 Reduction in tax cost setting amount for some privatised assets**

#### *Object*

- (1) The object of this section is to limit appropriately the amount the \*head company of the joined group can deduct for a \*depreciating asset it starts to \*hold because the joining entity becomes a \*subsidiary member of the group, by reference to the direct or indirect effect of the following provisions on the amount the joining entity could deduct for the asset:
- (a) former section 61A of the *Income Tax Assessment Act 1936* (about depreciation deductions for tax-exempt entities that become taxable);
  - (b) former Subdivision 57-I, and Subdivision 57-J, in Schedule 2D to the *Income Tax Assessment Act 1936* (about depreciation and capital allowance deductions);
  - (c) Division 58 of this Act (as that Division applies to a transition time or acquisition time mentioned in that Division before, on or after 1 July 2001).

#### *Reduction of tax cost setting amount*

- (2) The \*tax cost setting amount for a \*depreciating asset is reduced to the joining entity's \*terminating value for the asset if:
- (a) at a time before the joining entity became a \*subsidiary member of the joined group, the asset was \*held by an entity (whether the joining entity or another entity) that, at that time, was:
    - (i) an \*exempt Australian government agency; or
    - (ii) another entity whose \*ordinary income and \*statutory income were exempt from income tax; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

Section 705-47

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- (b) any of the following provisions directly or indirectly affected the amount the joining entity could deduct for the asset:
  - (i) former section 61A of the *Income Tax Assessment Act 1936* (about depreciation deductions for tax-exempt entities that become taxable);
  - (ii) former Subdivision 57-I, and Subdivision 57-J, in Schedule 2D to the *Income Tax Assessment Act 1936* (about depreciation and \*capital allowance deductions);
  - (iii) Division 58 of this Act (as that Division applies to a transition time or acquisition time mentioned in that Division before, on or after 1 July 2001); and
- (c) apart from this section, the tax cost setting amount for the asset would *exceed* the joining entity's terminating value for the asset.

Note 1: Unlike the position with a reduction in tax cost setting amount under section 705-40, the amount of the reduction is not re-allocated among other assets.

Note 2: Former section 61A of, or former Subdivision 57-I or Subdivision 57-J in Schedule 2D to, the *Income Tax Assessment Act 1936* or Division 58 of this Act may, for example, have *indirectly* affected the amount the joining entity could deduct for the asset because:

- (a) that section, Subdivision or Division affected the amount that could be deducted by an entity that held the asset before the joining entity and that effect extended to the joining entity because of a previous application of this subsection, roll-over relief or section 701-40 (the exit history rule); or
- (b) this subsection affected the amount the joining entity could deduct for the asset (either directly or because of section 701-40).

Note 3: Subsection (2) has effect even if, just before the joining time, the joining entity was:

- (a) an exempt Australian government agency; or
- (b) another entity whose ordinary income and statutory income were exempt from income tax.

This is because section 715-900 causes Division 58 to apply as if, just before the joining time, the joining entity's ordinary income or statutory income had become assessable income to some extent.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Exception to reduction of tax cost setting amount*

- (3) Subsection (2) does not apply if:
- (a) just before the joining time, the joining entity was neither an \*exempt Australian government agency nor another entity whose \*ordinary income and \*statutory income were exempt from income tax; and
  - (b) a condition in subsection (4) or (5) is met in relation to the period (the ***pre-joining taxable period***) between the last time for which the condition in paragraph (2)(a) is met and the joining time.
- (4) One condition for subsection (2) not to apply is that an amount was included in an entity's assessable income, or an entity could deduct an amount, because of a \*balancing adjustment event that occurred for the asset during the pre-joining taxable period.
- (5) Another condition for subsection (2) not to apply is that:
- (a) for at least some of the pre-joining taxable period, the asset was \*held by the \*head company of a \*consolidated group (the ***earlier group***) for the period (the ***earlier group period***):
    - (i) starting when (and because) an entity that had previously held the asset became a \*subsidiary member of the earlier group or when the asset started to be held by that company because of an asset sale situation described in subsection 58-5(4) involving a \*member of the earlier group as the purchaser mentioned in that subsection; and
    - (ii) ending when (and because) an entity ceased to be a subsidiary member of the earlier group or when the earlier group ceased to exist; and
  - (b) the company that was the head company of the earlier group just before the end of the earlier group period was *not*:
    - (i) an \*associate of the head company of the joined group just before the joining time; or
    - (ii) the same company as the head company of the joined group; and
  - (c) the earlier group period was at least 24 months.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 705-50

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**705-50 Reduction in tax cost setting amount for over-depreciated assets**

*Object*

- (1) The object of this section is to limit deferral of tax on profits that were not subject to tax because of \*over-depreciation of assets and were distributed to recipients untaxed because of their entitlement to the intercorporate dividend rebate.

*Reduction by amount of tax deferral resulting from over-depreciation*

- (2) If:
- (a) the \*tax cost setting amount for an asset that is \*over-depreciated at the joining time would be more than the joining entity's \*terminating value for the asset; and
  - (aa) subsection (5) does not apply to the asset; and
  - (b) before the joining time, the joining entity paid one or more unfranked or partly franked dividends to recipients entitled to a rebate of income tax under former section 46 or 46A of the *Income Tax Assessment Act 1936* on the dividends; and
  - (c) there is a tax deferral amount in relation to the dividends under subsection (3);

the tax cost setting amount for the asset is reduced by the *lesser* of the tax deferral amount and the \*over-depreciation, but not so that it becomes less than the joining entity's terminating value for the asset.

*Tax deferral amount*

- (3) For the purposes of paragraph (2)(c), there is a tax deferral amount in relation to the dividends if:
- (a) to some extent (whose amount is the ***qualifying profits amount***) the dividends, so far as they were not franked dividends or distributions included in the step 4 amount mentioned in step 4 in the table in section 705-60, were paid out of profits satisfying the following requirements:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 705-50

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- (i) the profits were not subject to income tax because of deductions for the asset's decline in value;
  - (ii) the decline in value represented the \*over-depreciation of the asset;
  - (iii) the deductions for the decline in value do not form part of a \*tax loss covered by the step 5 amount mentioned in step 5 in the table in section 705-60; and
- (b) to some extent the qualifying profits amount of the dividends was not distributed by the recipients of the dividends before the joining time directly, or indirectly through one or more interposed entities, to a taxpayer who was not entitled to a rebate of income tax under former section 46 or 46A of the *Income Tax Assessment Act 1936* on them.

The tax deferral amount is equal to the qualifying profits amount, to the extent that it was not distributed as mentioned in paragraph (b).

- (3A) A way in which the extent to which dividends were paid out of profits that were not subject to income tax may be worked out is by:
- (a) assuming that dividends were paid out of profits of income years in order from the most recent to the earliest; and
  - (b) assuming that, for any income year for which dividends were paid out of profits in accordance with paragraph (a), they were, to the extent they were not \*franked distributions, paid out of profits of that income year that were not subject to income tax before they were paid out of such profits that were subject to income tax.

*Where asset transferred with roll-over relief*

- (4) If:
- (a) an asset was transferred to the joining entity by another entity; and
  - (b) a roll-over under Subdivision 126-B applied to the transfer; and
  - (c) the other entity paid one or more dividends that, if paid by the joining entity, would have satisfied the requirements of paragraphs (2)(b) and (c) in relation to the asset;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 705-50

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the joining entity is taken for the purposes of subsection (2) to have paid the dividends.

*Assets that, under transitional provisions, effectively were not subject to subsection (1) when previously brought into a group*

(5) If:

- (a) before the joining time, the joining entity ceased to be a \*subsidiary member of a \*consolidated group (the **original group**), whether or not the current group; and
- (b) an asset was continuously held by the joining entity from when it ceased to be a member of the original group until the joining time; and
- (c) when the entity ceased to be a subsidiary member of the original group, the \*head company of that group made a choice under the *Income Tax (Transitional Provisions) Act 1997* to increase by an amount (the **transitional increase amount**) the head company's \*terminating value for the asset that was to be used in applying step 1 of the table in section 711-20 of this Act; and

(d) the asset is \*over-depreciated at the joining time; the \*tax cost setting amount for the asset, in respect of the joining entity becoming a subsidiary member of the current group, is reduced by the *lesser* of the transitional increase amount and the \*over-depreciation.

*When an asset is over-depreciated*

- (6) An asset is **over-depreciated** at a particular time if, at that time:
  - (a) the asset is a \*depreciating asset to which Division 40 applies; and
  - (b) the asset's \*market value *exceeds* its \*adjustable value; and
  - (c) the asset's \*cost *exceeds* its adjustable value.

The **over-depreciation** of the asset then is the *lesser* of the 2 excesses (or either of them if they are the same).

Note: Unlike the position with a reduction in tax cost setting amount under section 705-40, the amount of a reduction under this section is not re-allocated among other assets.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**705-55 Order of application of sections 705-40, 705-45, 705-47 and 705-50**

If more than one of sections 705-40, 705-45 and 705-50 apply:

- (a) the \*head company may choose the order in which the sections are to apply; and
- (b) if it does not, the order is as follows:
  - (i) first, section 705-40;
  - (ii) second, section 705-45;
  - (iii) third, section 705-47;
  - (iv) fourth, section 705-50.

**705-56 Modification for tax cost setting in relation to finance leases**

- (1) This section applies if, just before the joining time:
  - (a) the joining entity is the lessor or lessee under a lease of a \*depreciating asset (the *underlying asset*) to which Division 40 applies; and
  - (b) the joining entity classifies the lease, in accordance with \*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, as a finance lease.

*Joining entity is lessor*

- (2) If the joining entity is the lessor under the lease and \*holds the underlying asset just before the joining time, subsection (5) applies, in relation to the joining entity, to the asset that is the joining entity's right to receive lease payments.

Note: In this situation, the underlying asset will have its tax cost set at the joining time because it would be an asset of the joining entity at that time if the single entity rule did not apply (see section 701-10).

- (3) If the joining entity is the lessor under the lease and does *not* \*hold the underlying asset just before the joining time:
  - (a) subsection (5) applies to the underlying asset in relation to the joining entity; and
  - (b) for the purposes of this Division:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

**Section 705-56**

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- (i) the joining entity's right to receive lease payments is taken to be a \*retained cost base asset; and
- (ii) the \*tax cost setting amount of that retained cost base asset is taken to be equal to its \*market value just before the joining time.

Note: In this situation, the asset that is the joining entity's right to receive lease payments will have its tax cost set at the joining time because it would be an asset of the joining entity at that time if the single entity rule did not apply (see section 701-10).

*Joining entity is lessee*

- (4) If the joining entity is the lessee under the lease and does *not* \*hold the underlying asset just before the joining time:
  - (a) subsection (5) applies to the underlying asset in relation to the joining entity; and
  - (b) the liability that is the lessee's obligation to make lease payments is *not* taken into account under subsection 705-70(1).

Note: If the joining entity is the lessee under the lease and holds the underlying asset just before the joining time:

- (a) the underlying asset will have its tax cost set at the joining time because it would be an asset of the joining entity at that time if the single entity rule did not apply (see section 701-10); and
- (b) the liability that is the lessee's obligation to make lease payments is taken into account under subsection 705-70(1).

*Tax cost of certain assets set at nil*

- (5) If this subsection applies to an asset, in relation to the joining entity:
  - (a) the asset is *not* taken into account under paragraph 705-35(1)(b) or (c); and
  - (b) the asset's \*tax cost setting amount is taken to be nil.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**705-57 Adjustment to tax cost setting amount where loss of pre-CGT status of membership interests in joining entity***Object*

- (1) The object of this section is to ensure that provisions that cause \*membership interests in the joining entity to stop being \*pre-CGT assets, with a resultant increase in their \*cost base and \*reduced cost base, do not increase \*tax cost setting amounts for \*trading stock, \*depreciating assets or \*revenue assets of the joining entity, where those amounts are above the joining entity's \*terminating values for the assets.

*When section applies*

- (2) This section applies if:
- (a) a \*membership interest that a \*member of the joined group holds in the joining entity at the joining time had previously stopped being a \*pre-CGT asset in the circumstances covered by any of subsections (3) to (5); and
  - (b) the \*cost base or \*reduced cost base of the membership interest just after it stopped being a pre-CGT asset exceeded (the excess being the **loss of pre-CGT status adjustment amount**) its cost base or reduced cost base just before it stopped being a pre-CGT asset; and
  - (c) an asset (a **revenue etc. asset**) that is \*trading stock, a \*depreciating asset or a \*revenue asset becomes that of the \*head company of the joined group because subsection 701-1(1) (the single entity rule) applies when the joining entity becomes a \*subsidiary member of the group; and
  - (d) the revenue etc. asset's \*tax cost setting amount (after any application of section 705-40, 705-45, 705-47 or 705-50) exceeds the joining entity's \*terminating value for the asset.

*Loss of pre-CGT status because Division 149 etc. applied while interest held by member*

- (3) The first circumstance for the purpose of paragraph (2)(a) is where Division 149 of this Act, former subsection 160ZZS(1) of the *Income Tax Assessment Act 1936* or Subdivision C of Division 20

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 705-57

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of former Part IIIA of that Act applied to cause the \*membership interest to stop being a \*pre-CGT asset while the \*member held the membership interest.

*Loss of pre-CGT status because Division 149 etc. applied before current holding by member*

- (4) The second circumstance for the purpose of paragraph (2)(a) is where:
- (a) either:
    - (i) the \*member \*acquired the \*membership interest directly from another entity; or
    - (ii) the member acquired the membership interest indirectly from another entity or from itself as a result of 2 or more acquisitions; and
  - (b) Division 149 of this Act, former subsection 160ZZS(1) of the *Income Tax Assessment Act 1936* or Subdivision C of Division 20 of former Part IIIA of that Act applied to cause the membership interest to stop being a \*pre-CGT asset while the other entity held the membership interest or while the member held the membership interest on the previous occasion; and
  - (c) if subparagraph (a)(i) applies—at the time of the acquisition, the member \*controlled (for value shifting purposes) the other entity, or vice versa, or a third entity controlled (for value shifting purposes) the member and the other entity; and
  - (d) if subparagraph (a)(ii) applies—the same entity:
    - (i) was a party to each acquisition and at the time of the acquisition controlled (for value shifting purposes) the other party; or
    - (ii) was a party to each acquisition and at the time of the acquisition was controlled (for value shifting purposes) by the other party; or
    - (iii) was not a party to each acquisition but, at the time of the acquisition, controlled (for value shifting purposes) the parties to the acquisition;or any combination of subparagraphs (i) to (iii) occurred in relation to different acquisitions.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Loss of pre-CGT status because of acquisition from another entity*

- (5) The third circumstance for the purpose of paragraph (2)(a) is where:
- (a) either:
    - (i) the \*member acquired the \*membership interest after 16 May 2002 directly from another entity; or
    - (ii) the member acquired the membership interest indirectly from another entity or from itself as a result of 2 or more acquisitions, all of which took place after 16 May 2002; and
  - (b) the membership interest stopped being a \*pre-CGT asset because of the acquisition from the other entity or from the member while the member held the membership interest on a previous occasion; and
  - (c) if subparagraph (a)(i) applies—at the time of the acquisition, the member \*controlled (for value shifting purposes) the other entity, or vice versa, or a third entity controlled (for value shifting purposes) the member and the other entity; and
  - (d) if subparagraph (a)(ii) applies—the same entity:
    - (i) was a party to each acquisition and at the time of the acquisition controlled (for value shifting purposes) the other parties; or
    - (ii) was a party to each acquisition and at the time of the acquisition was controlled (for value shifting purposes) by the other party; or
    - (iii) was not a party to each acquisition but, at the time of the acquisition, controlled (for value shifting purposes) the parties to the acquisition;or any combination of subparagraphs (i) to (iii) occurred in relation to different acquisitions.

*Reduction in revenue etc. asset's tax cost setting amount*

- (6) The revenue etc. asset's \*tax cost setting amount (after any application of section 705-40, 705-45, 705-47 or 705-50) is instead the amount that would apply if, in working out the step 1 amount in the table in section 705-60, the \*cost base and \*reduced cost base of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

Section 705-58

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the \*membership interest were reduced by the sum of the loss of pre-CGT status adjustment amounts for the membership interest and all other membership interests that have loss of pre-CGT status adjustment amounts.

*Limit on reduction*

- (7) However, the reduction only takes place to the extent that it does not result in the asset's \*tax cost setting amount being less than the joining entity's \*terminating value for the asset.

Note: The reduction under this section is converted into a capital loss available over a period of 5 income years starting with the income year in which the joining time occurs: see CGT event L1.

**705-58 Assets and liabilities not set off against each other**

- (1) This Part applies separately to each asset and liability even if \*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, require them to be set off against each other.
- (2) This section has effect subject to section 705-59.

**705-59 Exception: treatment of linked assets and liabilities**

- (1) This section applies to each set of \*linked assets and liabilities that the joining entity has immediately before the joining time.
- (2) One or more assets, and one or more liabilities, that an entity has constitute a set of *linked assets and liabilities* of the entity if, and only if, in accordance with \*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board:
- (a) the total of the one or more assets is to be set off against the total of the one or more liabilities in preparing statements of the entity's financial position; and
  - (b) the net amount after the set-off is to be recognised in those statements.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Section 705-59

- (3) If the set consists only of one reset cost base asset for the purposes of section 705-35, and one or more liabilities:
- (a) first, work out the total (the *available amount*) that, apart from this section and the accounting requirement referred to in subsection (2) of this section, would be taken into account under subsection 705-70(1) (about step 2 in working out the allocable cost amount) for the one or more liabilities; and
  - (b) next, work out the consequences under this table.

**Treatment of linked assets and liabilities: single reset cost base asset case**

<b>Item</b>	<b>If the asset's *market value at the joining time:</b>	<b>This is the result for the asset:</b>	<b>This is the result for the one or more liabilities:</b>
1	is less than or equal to the available amount	its *tax cost setting amount is that market value (and the asset is <i>not</i> taken into account under paragraph 705-35(1)(c))	only the difference (if any) is taken into account under subsection 705-70(1) for the one or more liabilities
2	is greater than the available amount	its *tax cost setting amount is: (a) the available amount; plus (b) the amount worked out for the asset under section 705-35 on the basis that the asset's *market value is reduced by the available amount	the one or more liabilities are <i>not</i> taken into account under subsection 705-70(1)

Note: Paragraph 705-35(1)(c) allocates the allocable cost amount (as reduced by the tax cost setting amounts of retained cost base assets) among the joining entity's reset cost base assets.

- (4) If the set consists only of one or more \*retained cost base assets and one or more liabilities, this section does not affect their treatment.

Note: This is because the tax cost setting amount for a retained cost base asset is worked out without regard to the allocable cost amount.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

Section 705-59

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(5) In any other case:

- (a) first, work out the available amount under paragraph (3)(a); and
- (b) next, work out the consequences under this table.

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<b>Treatment of linked assets and liabilities: all other cases</b>			
<b>Item</b>	<b>In this case:</b>	<b>This is the result for the one or more assets in the set:</b>	<b>This is the result for the one or more liabilities in the set:</b>
1	there is no *retained cost base asset in the set, and the total of the respective *market values (at the joining time) of the assets in the set is less than or equal to the available amount	the *tax cost setting amount of each of the assets is that asset's market value at the joining time (and <i>none</i> of them is taken into account under paragraph 705-35(1)(c))	only the difference (if any) is taken into account under subsection 705-70(1)
2	there is no *retained cost base asset in the set, and the total of the respective *market values (at the joining time) of the assets in the set is greater than the available amount	the *tax cost setting amount of each of the assets is the sum of: (a) a share of the available amount that is proportionate to that asset's market value at the joining time; and (b) the amount worked out for the asset under section 705-35 on the basis that the asset's market value at the joining time is reduced by the share referred to in paragraph (a)	<i>none</i> is taken into account under subsection 705-70(1)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Treatment of linked assets and liabilities: all other cases**

<b>Item</b>	<b>In this case:</b>	<b>This is the result for the one or more assets in the set:</b>	<b>This is the result for the one or more liabilities in the set:</b>
3	there are one or more *retained cost base assets in the set, and the total of their respective *tax cost setting amounts is greater than or equal to the available amount	this section does not affect the treatment of the one or more assets in the set	this section does not affect the treatment of the one or more liabilities in the set
4	there are one or more *retained cost base assets in the set, and the total (the <i>retained cost base total</i> ) of their respective *tax cost setting amounts is less than the available amount	the one or more retained cost base assets are <i>not</i> taken into account under paragraph 705-35(1)(b); the *tax cost setting amount of each remaining asset in the set is worked out by applying item 1 or 2, as appropriate, of this table on the basis that: (a) the available amount is reduced by the retained cost base total; and (b) the one or more retained cost base assets are otherwise ignored	the available amount is reduced by the retained cost base total

Note 1: Paragraph 705-35(1)(b) reduces the allocable cost amount by the tax cost setting amounts of retained cost base assets. Item 4 of the table in this subsection excludes the application of paragraph 705-35(1)(b) to retained cost base assets in the set; this in turn may affect the application of CGT event L3.

Note 2: Paragraph 705-35(1)(c) then allocates the reduced allocable cost amount among the joining entity's reset cost base assets.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

Section 705-60

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- (6) In applying subsections (3), (4) and (5) of this section, disregard an asset covered by subsection 705-35(2) (assets that do not have a tax cost setting amount).
- (7) This section does not affect the application of sections 705-40, 705-45, 705-47 and 705-50 (which adjust the tax cost setting amount for a reset cost base asset).

**How to work out the allocable cost amount**

**705-60 What is the joined group's *allocable cost amount* for the joining entity?**

Work out the joined group's *allocable cost amount* for the joining entity in this way:

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<b>Working out the joined group's allocable cost amount for the joining entity</b>		
<b>Step</b>	<b>What the step requires</b>	<b>Purpose of the step</b>
1	Start with the step 1 amount worked out under section 705-65, which is about the cost of *membership interests in the joining entity held by *members of the joined group	To ensure that the allocable cost amount includes the cost of *acquiring the membership interests
2	Add to the result of step 1 the step 2 amount worked out under section 705-70, which is about the value of the joining entity's liabilities	To ensure that the joining entity's liabilities at the joining time, which are part of the joined group's cost of acquiring the joining entity, are reflected in the allocable cost amount

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Working out the joined group's allocable cost amount for the joining entity**

<b>Step</b>	<b>What the step requires</b>	<b>Purpose of the step</b>
3	Add to the result of step 2 the step 3 amount worked out under: (a) section 705-90, which is about undistributed, taxed profits accruing to the joined group before the joining time; or (b) if the joining entity is a trust (and not a *corporate tax entity)—section 713-25, which is about undistributed, realised profits accruing to the joined group before the joining time that could be distributed tax free	To increase the allocable cost amount: (a) to reflect the undistributed, taxed profits and so prevent double taxation; or (b) if the joining entity is a trust—to reflect the undistributed, realised profits that could be distributed tax free
3A	For each step 3A amount (if any) under section 705-93 (which is about pre-joining time intra-group roll-overs from foreign resident companies): (a) if the step 3A amount is an increase amount under that section—add to the result of step 3 (as affected by any previous application of this step) the step 3A amount; or (b) if the step 3A amount is a reduction amount under that section—subtract from the result of step 3 (as affected by any previous application of this step) the step 3A amount	To adjust for certain intra-group roll-overs from foreign companies before the joining time
4	Subtract from the result of step 3A the step 4 amount worked out under section 705-95, which is about pre-joining time distributions out of certain profits	To prevent the allocable cost amount reflecting return of part of the amount paid to *acquire the *membership interests in the joining entity

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

Section 705-65

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**Working out the joined group's allocable cost amount for the joining entity**

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<b>Step</b>	<b>What the step requires</b>	<b>Purpose of the step</b>
5	Subtract from the result of step 4 the step 5 amount worked out under section 705-100, which is about certain losses accruing to the joined group before the joining time	To prevent: (a) a double benefit arising from the losses; and (b) losses that cannot be transferred to the *head company, or are cancelled by the head company, under Subdivision 707-A being reinstated in an unrealised form or reducing unrealised gains.
6	Subtract from the result of step 5 the step 6 amount worked out under section 705-110, which is about losses that the joining entity transferred to the *head company under Subdivision 707-A	To stop the joined group getting benefits both through higher *tax cost setting amounts for the joining entity's assets and through losses transferred to the head company
7	Subtract from the result of step 6 the step 7 amount worked out under section 705-115, which is about certain deductions to which the *head company is entitled	To stop the joined group getting benefits both through the *tax cost of the joining entity's assets being set and through certain tax deductions of the joining entity being inherited by the head company
8	If the remaining amount is positive, it is the joined group's allocable cost amount. Otherwise the joined group's allocable cost amount is nil.	

Note: The head company may be taken to have made a capital gain, depending on the amount remaining after applying step 3A: see CGT event L2.

**705-65 Cost of membership interests in the joining entity—step 1 in working out allocable cost amount**

- (1) For the purposes of step 1 in the table in section 705-60, the step 1 amount is the sum of the following amounts for each \*membership

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 705-65

interest that \*members of the joined group hold in the joining entity at the joining time:

Note: If the joining entity is a trust, the step 1 amount may be increased by section 713-20 for settled capital that could be distributed tax free in respect of discretionary interests in the trust.

<b>Working out the step 1 amount</b>		
<b>Item</b>	<b>If the market value of the membership interest is...</b>	<b>The amount is...</b>
1	equal to or greater than its *cost base	its cost base
2	less than its *cost base but greater than its *reduced cost base	its *market value
3	less than or equal to its *reduced cost base	its reduced cost base

Note: Under section 716-855, if membership interests are pre-CGT assets that have been subject to certain roll-overs, the cost base and reduced cost base are worked out in the same way as if they were post-CGT assets.

*No indexation of cost base of pre-CGT membership interests*

- (2) If the \*membership interest is a \*pre-CGT asset, in working out its \*cost base for the purposes of subsection (1) no element is indexed.

*Adjustment if value shifting or loss transfer provision could apply*

- (3) If, on the assumption that a \*CGT event had happened just before the joining time in relation to the \*membership interest, the \*cost base or the \*reduced cost base of the membership interest would have been changed by a provision of this Act, then the cost base or reduced cost base of the membership interest that is to be used in subsection (1) of this section is instead:
- the cost base as it would have been so changed; or
  - the reduced cost base, as it would have been so changed, but ignoring the amount of any reduction resulting from the application of former subsection 160ZK(5) of the *Income Tax Assessment Act 1936*.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

**Section 705-65**

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Note: For example, a change in the cost base or reduced cost base may be required under provisions that apply where a loss transfer or value shift involving the joining entity has occurred.

(3AA) If, on the assumption that:

- (a) the \*members of the joined group had, just before the joining time, \*disposed of their \*membership interest in the joining entity; and
- (b) the consideration received by the members for the disposal were equal to the \*market value of the membership interest at that time;

they would have made a \*capital loss that section 727-615 would have reduced (because of an indirect value shift), then the \*reduced cost base of the membership interest that is to be used in subsection (1) of this section is reduced by the amount of that reduction.

*Reduction if section 165-115ZD could apply*

(3A) If, on the assumption that:

- (a) the \*members of the joined group had, just before the joining time, \*disposed of their \*membership interest in the joining entity; and
- (b) the consideration received by the members for the disposal were equal to the \*market value of the membership interest at that time;

the \*reduced cost base of the membership interest would have been reduced as a result of the operation of section 165-115ZD of this Act or the *Income Tax (Transitional Provisions) Act 1997*, then the reduced cost base of the membership interest that is to be used in subsection (1) of this section is reduced by the amount of that reduction.

*Certain provisions not to apply after joining time*

- (4) Also, if a provision mentioned in subsection (3), (3AA) or (3A) would, because of events that happened before the joining time, apply to a \*CGT event or a \*realisation event that happens after the joining time in relation to the \*members' \*membership interests in the joining entity, the provision does not so apply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Reduction in cost base under subsection 110-55(7) to be added back*

- (5) If, in working out the \*reduced cost base of the \*membership interest for the purposes of subsection (1), a reduction has taken place under subsection 110-55(7) (about certain distributions of pre-acquisition profits), the reduced cost base is increased by the amount of that reduction.

*Reduction in reduced cost base under subsection 165-115ZA(3) to be added back*

(5A) If:

- (a) in working out the \*reduced cost base of the \*membership interest for the purposes of subsection (1), a reduction has taken place under subsection 165-115ZA(3) (about alterations in ownership or control of loss companies); and
- (b) the reduction is to some extent attributable to so much of an amount that was taken into account both in working out the amount of the reduction and in working out:
- (i) the step 5 amount under section 705-100; or
- (ii) the step 6 amount under section 705-110;

the reduced cost base is, to the extent mentioned in paragraph (b), increased by:

- (c) if subparagraph (b)(i) applies—the amount of that reduction; or
- (d) if subparagraph (b)(ii) applies—the amount of that reduction multiplied by the \*corporate tax rate.

(5B) For the purposes of working out the \*cost base or \*reduced cost base of a \*membership interest under subsection (1), if:

- (a) either or both of the following things happen after the joining time:
- (i) money is paid, or becomes required to be paid, in respect of \*acquiring the membership interest;
- (ii) property is given, or becomes required to be given, in respect of acquiring the membership interest; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

Section 705-70

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- (b) because the thing happened after the joining time, it was not taken into account in working out the first element of the cost base or reduced cost base of the membership interest;

Note: This would be the case if the money was only to be paid etc. if a contingency happened after the joining time.

the thing is nevertheless so taken into account, and taken always to have been so taken into account.

*Rights and options to acquire membership interests*

- (6) For the purposes of this section, if at the joining time a \*member of the joined group holds a right or option (including a contingent right or option), created or issued by the joining entity, to acquire a \*membership interest in the joining entity, that right or option is treated as if it were a membership interest in the joining entity.

**705-70 Liabilities of the joining entity—step 2 in working out allocable cost amount**

- (1) For the purposes of step 2 in the table in section 705-60, the step 2 amount is worked out by adding up the amounts of each thing (an *accounting liability*) that, in accordance with \*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, is a liability of the joining entity at the joining time that can or must be recognised in the entity's statement of financial position.

Note: Certain liabilities of a life insurance company are worked out under Subdivision 713-L: see section 713-520.

*Where liability valued differently for joined group*

- (1A) However, if, in accordance with those \*accounting standards or statements, the amount of an accounting liability of the joining entity would be different when it became an accounting liability of the joined group, the different amount is treated as the amount of the liability.

Note: Liabilities that the joining entity owes to members of the joined group would not be excluded under subsection (1) or (1A) even though the standards or statements require that they be eliminated in consolidated accounts of a parent entity and its subsidiaries.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Exclusion where transfer of accounting liability*

- (2) An amount is not to be added for an accounting liability that arises because of the joining entity's ownership of an asset if, on \*disposal of the asset, the accounting liability will transfer to the new owner.

Example: A liability to rehabilitate a mine site, where, under legislation or a licence, the liability will be transferred to the new owner on disposal of the mine.

Note: Adjustments reducing or increasing the amount under this section are made by sections 705-75 to 705-85.

### **705-75 Liabilities of the joining entity—reductions for purposes of step 2 in working out allocable cost amount**

*Reduction for future deduction*

- (1) If some or all of an accounting liability will result in a deduction to the \*head company, the amount to be added for the accounting liability under subsection 705-70(1) is reduced by the following amount:

$$\left[ \text{Deduction} \times \frac{\text{*Corporate tax rate}}{\text{}} \right] - \text{Double-counting adjustment}$$

where:

**double-counting adjustment** means the amount of any reduction that has already occurred in the accounting liability under subsection 705-70(1) to take account of the future availability of the deduction.

*Reduction for intra-group liabilities*

- (2) If the amount of an accounting liability of the joining entity that is owed to a \*member of the joined group is more than the amount applicable under the following table, the amount to be added for the accounting liability under subsection 705-70(1) instead equals the amount applicable under the table.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 705-75

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<b>Amount applicable</b>		
<b>Item</b>	<b>If the market value of the member's asset constituted by the accounting liability is...</b>	<b>The amount applicable is...</b>
1	equal to or greater than the asset's *cost base	the asset's cost base
2	less than the asset's *cost base but greater than its *reduced cost base	the asset's *market value
3	less than or equal to the asset's *reduced cost base	the asset's reduced cost base

*Application of subsections 705-65(2), (3), (3AA) and (3A)*

- (3) Subsections 705-65(2), (3), (3AA) and (3A) apply in relation to references in subsection (2) of this section to an asset's \*cost base or \*reduced cost base in a corresponding way to that in which they apply in relation to references in the table in subsection 705-65(1) to a \*membership interest's cost base or reduced cost base.

*Application of subsection 705-65(4)*

- (4) Subsection 705-65(4) applies in relation to assets mentioned in subsection (2) of this section in a corresponding way to that in which it applies in relation to members' \*membership interests.

*Reduction in reduced cost base under subsection 165-115ZA(3) to be added back*

- (5) If:
- (a) in working out the \*reduced cost base of a \*member's asset for the purposes of subsection (2), a reduction has taken place under subsection 165-115ZA(3) (about alterations in ownership or control of loss companies); and
  - (b) the reduction is to some extent attributable to so much of an amount that was taken into account both in working out the amount of the reduction and in working out:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 705-80

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- (i) the step 5 amount under section 705-100; or
  - (ii) the step 6 amount under section 705-110;
- the reduced cost base is, to the extent mentioned in paragraph (b), increased by:
- (c) if subparagraph (b)(i) applies—the amount of that reduction; or
  - (d) if subparagraph (b)(ii) applies—the amount of that reduction multiplied by the \*corporate tax rate.

**705-80 Liabilities of the joining entity—reductions/increases for purposes of step 2 in working out allocable cost amount***Adjustment for unrealised gains and losses*

- (1) If:
- (a) for income tax purposes, an accounting liability, or a change in the amount of an accounting liability, (other than one owed to a \*member of the joined group) is taken into account at a later time than is the case in accordance with \*accounting standards or statements of accounting concepts made by the Australian Accounting Standards Board; and

Example: Accrued employee leave entitlements or foreign exchange gains and losses.

- (b) assuming that, for income tax purposes the accounting liability or change were taken into account at the same time as is the case in accordance with those standards or statements, the joined group's allocable cost amount would be different;

Note: The difference would arise because subsection 705-70(1) includes income tax liabilities and steps 3 and 5 of the table in section 705-60 are affected by the time at which changes in liabilities are taken into account for income tax purposes.

then the amount to be added under subsection 705-70(1) for the accounting liability is:

- (c) if the difference is an increase—increased by the amount of the increase; and
- (d) if the difference is a decrease—decreased by the amount of the decrease.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 705-85

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*Use of reliable estimate*

- (2) In working out for the purposes of subsection (1) an amount at a particular time or in respect of a particular period, use the most reliable basis for estimation that is available.

Example: The amount of a change in liability for employee leave entitlements over a period.

**705-85 Liabilities of the joining entity—increases for purposes of step 2 in working out allocable cost amount**

*Increase in step 2 amount for employee share interests*

- (1) If any \*membership interest (an *employee share interest*) in the joining entity needed to be disregarded under section 703-35 in order for the joining entity to be a \*wholly-owned subsidiary of the \*head company at the joining time, the step 2 amount worked out under section 705-70 is increased by the sum of the \*market values of those interests, reduced in each case by the reduction amount (if any) worked out under subsection (2) of this section.

*Reduction amount*

- (2) There is a **reduction amount** if the \*market value of the employee share interest at the time it was \*acquired by the employee is more than the consideration paid or given for its acquisition. The reduction amount is worked out by multiplying the market value of the employee share interest at that time by the factor worked out using the formula:

$$\frac{\text{Market value of head company's membership interests}}{\text{Market value of all membership interests}} \times \frac{\left[ \begin{array}{l} \text{*Market value of} \\ \text{employee share} \\ \text{interest at time} \\ \text{of *acquisition} \end{array} \right] - \left[ \begin{array}{l} \text{Consideration} \\ \text{paid or given} \\ \text{for acquisition} \\ \text{of employee} \\ \text{share interest} \end{array} \right]}{\text{Market value of employee share interest at time of acquisition}}$$

where:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 705-90

*market value of all membership interests* means the \*market value of all \*membership interests in the joining entity just before the employee share interest was \*acquired.

*market value of head company's membership interests* means the \*market value, just before the employee share interest was \*acquired, of any \*membership interests that the \*head company held, directly or indirectly in the joining entity, continuously from that time until the joining time.

*Increase to cover certain rights, options and certain equity interests*

- (3) The step 2 amount worked out under section 705-70 is increased by:
- (a) the \*market value of any right or option (including a contingent right or option), created or issued by the joining entity, to acquire a \*membership interest in the joining entity, where that right or option is held at the joining time by a person other than a \*member of the joined group; and
  - (b) the market value of each thing that, in accordance with \*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, is equity in the joining entity at the joining time, where the thing is also a \*debt interest.

*Increase to cover ADI restructure preference share interests*

- (4) If any \*share in the joining entity needed to be disregarded under section 703-37 in order for the joining entity to be a \*wholly-owned subsidiary of the \*head company at the joining time, the step 2 amount worked out under section 705-70 is increased by the sum of the \*market values of those shares.

**705-90 Undistributed, taxed profits accruing to joined group before joining time—step 3 in working out allocable cost amount**

- (1) For the purposes of step 3 in the table in section 705-60, the step 3 amount is worked out in accordance with this section unless the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

**Section 705-90**

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joining entity is a trust that is *not* a \*corporate tax entity at the joining time.

Note: If the joining entity is such a trust, the step 3 amount is instead worked out in accordance with section 713-25.

*Undistributed profits*

- (2) First work out the undistributed profits of the joining entity at the joining time. These are the amounts that, in accordance with \*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, are retained profits of the joining entity that could be recognised in the joining entity's statement of financial position if that statement were prepared as at the joining time.
- (2A) However, if a loss that did not accrue to the joined group before the joining time (subsection (8) states what it means for a loss to accrue to the joined group before the joining time) would be taken into account in working out the undistributed profits, the loss is not so taken into account.

*Extent to which tax paid on undistributed profits*

- (3) Then work out how much of the undistributed profits does not exceed the amount worked out using the following formula as at the joining time:

$$\begin{array}{l} \text{Balance of *franking account} \\ \text{(worked out on assumptions} \\ \text{in subsection (4))} \end{array} \times \frac{1 - \text{*corporate tax rate}}{\text{*Corporate tax rate}}$$

*Assumptions for purposes of subsection (3)*

- (4) The assumptions are that the joining entity's franking account balance at the end of the income year that ends, or, if section 701-30 applies, of the income year that is taken by subsection (3) of that section to end, at the joining time had been adjusted to take account of franking credits or franking debits that would arise if the following were paid just before the joining time:
- (a) the income tax, or refund of income tax, on the joining entity's taxable income for that income year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 705-90

- (b) any income tax, or refund of income tax, that has not yet been paid (regardless of whether it has become payable or due for payment) on the joining entity's taxable income for any earlier income year, other than one excluded by subsection (5).

*Exclusion of certain income years where previous membership of a consolidated group*

- (5) If the joining entity was previously a \*subsidiary member of a \*consolidated group, any income year earlier than the one that started, or, if section 701-30 applies, the one that is taken by subsection (3) of that section to have started, when the joining entity ceased to be a subsidiary member of that group is excluded for the purposes of paragraph (4)(b) of this section.

*Undistributed profits must have accrued to joined group*

- (6) Next, work out the extent to which the undistributed profits that satisfy the requirements of subsection (3) accrued to the joined group before the joining time (subsection (7) states what it means for a profit to accrue to the joined group before the joining time). The result is the step 3 amount.

*Profit accruing to the joined group before the joining time*

- (7) A profit accrued to the joined group before the joining time if, on the following assumptions:
- (a) that it was distributed to holders of \*membership interests as it accrued; and
  - (b) that entities interposed between the \*head company and the joining entity successively distributed any of it immediately after receiving it;

it would have been received by the entity that is the head company at the joining time, in respect of membership interests that it held continuously until that time either directly or indirectly through interposed entities.

Note: If an entity interposed between the head company and the joining entity is a non-fixed trust, this subsection may involve determining

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

**Section 705-90**

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how a power of appointment would have been exercised.  
Section 713-50 lists matters to have regard to in determining this.

*Loss accruing to the joined group before the joining time*

- (8) A loss accrued to the joined group before the joining time if and to the extent that, assuming that as it arose it were instead a profit that was accruing, a distribution of that profit would have been a distribution made to the joined group out of profits that accrued to the joined group before the joining time.

*Use of reliable estimates*

- (9) In working out:
- (a) for the purposes of subsection (4), the amount of income tax, or refund of income tax, on the joining entity's taxable income for a particular income year and the extent to which it has not yet been paid; or
  - (b) for the purposes of subsection (7), the amount of a profit that accrued to the joined group during a particular period; or
  - (c) for the purposes of subsection (8), the amount of a loss that accrued to the joined group during a particular period;
- use the most reliable basis for estimation that is available.
- (10) Without limiting paragraph (9)(b), a way in which, for the purposes of subsection (7), the amount of a profit that accrued to the joined group during a particular period may be worked out is by:
- (a) assuming that profits of income years were distributed in order from the most recent to the earliest; and
  - (b) assuming that, for any income year for which distributions were paid out of profits in accordance with paragraph (a), they were, to the extent they were not \*franked distributions, paid out of profits of that income year that were not subject to income tax before they were paid out of such profits that were subject to income tax.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**705-93 If pre-joining time roll-over from foreign resident company—step 3A in working out allocable cost amount**

*When there is a step 3A amount*

- (1) For the purposes of step 3A in the table in section 705-60, there is a step 3A amount if:
  - (a) before the joining time:
    - (i) there was a roll-over under Subdivision 126-B (a ***Subdivision 126-B roll-over***) in relation to a <sup>\*</sup>CGT event that happened in relation to an asset (the ***roll-over asset***); or
    - (ii) former section 160ZZO of the *Income Tax Assessment Act 1936* applied in relation to a disposal (a ***section 160ZZO roll-over***) of an asset (also the ***roll-over asset***); and
  - (b) the originating company in relation to the Subdivision 126-B roll-over, or the transferor in relation to the section 160ZZO roll-over, was a foreign resident; and
  - (c) the recipient company in relation to the Subdivision 126-B roll-over, or the transferee in relation to the section 160ZZO roll-over, was an Australian resident and was not the entity that became the <sup>\*</sup>head company of the joined group; and
  - (d) between the Subdivision 126-B roll-over, or the section 160ZZO roll-over, and the joining time, no other CGT event happened in relation to the roll-over asset for which there was not a Subdivision 126-B roll-over or a section 160ZZO roll-over; and
  - (e) the roll-over asset is not a <sup>\*</sup>pre-CGT asset at the joining time; and
  - (f) the roll-over asset becomes that of the head company of the joined group because subsection 701-1(1) (the single entity rule) applies when the joining entity becomes a <sup>\*</sup>subsidiary member of the group.

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<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 705-95

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*What the step 3A amount is*

- (2) The step 3A amount is:
- (a) if, as a result of the Subdivision 126-B roll-over mentioned in subparagraph (1)(a)(i), or the section 160ZZO roll-over mentioned in subparagraph (1)(a)(ii), a \*capital loss of the originating company was disregarded or a capital loss of the transferor was not incurred—an increase amount equal to the capital loss; or
  - (b) if, as a result of the Subdivision 126-B roll-over mentioned in subparagraph (1)(a)(i), or the section 160ZZO roll-over mentioned in subparagraph (1)(a)(ii), a \*capital gain of the originating company was disregarded or a capital gain of the transferor did not accrue—a reduction amount equal to the capital gain.

**705-95 Pre-joining time distributions out of certain profits—step 4 in working out allocable cost amount**

For the purposes of step 4 in the table in section 705-60, the step 4 amount is the sum of all distributions made by the joining entity before the joining time that:

- (a) the \*head company receives directly, or would receive indirectly if entities interposed between the head company and the joining entity successively distributed any distribution they received immediately after receiving it; and
- (b) were made out of profits:
  - (i) that did *not* accrue to the joined group before the joining time (see subsection 705-90(7)); or
  - (ii) that accrued to the joined group before the joining time and recouped losses of any \*sort that accrued to the joined group before that time (see subsection 705-90(8)).

Note: As well as subsection 705-90(7), paragraph 705-90(9)(b) and subsection 705-90(10) are relevant to working out whether or not profits accrued to the joined group before the joining time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**705-100 Losses accruing to joined group before joining time—step 5 in working out allocable cost amount**

- (1) For the purposes of step 5 in the table in section 705-60, the step 5 amount is the sum of all losses of any \*sort of the joining entity that:
  - (a) had not been \*utilised by the joining entity for the income year in which the joining time occurred or any earlier income year; and
  - (b) accrued to the joined group before the joining time (see subsection 705-90(8)).
- (2) However, a loss is not to be taken into account under subsection (1) to the extent that it reduced the undistributed profits comprising the step 3 amount in the table in section 705-60.

**705-105 Continuity of holding membership interests—steps 3 to 5 in working out allocable cost amount**

If:

- (a) a \*membership interest that a \*member of the joined group held in the joining entity at the joining time was taken under this Act to have been \*acquired by the member for its \*market value at a particular time (the *market value time*); or
- (b) the \*cost base and \*reduced cost base of a membership interest that a member of the joined group held in the joining entity at the joining time were, before that time, changed on one or more occasions by this Act so that they equalled the market value of the membership interest at a particular time (the last of which times is also the *market value time*);

then, for the purpose of sections 705-90, 705-95, 705-100 and 713-25, the \*head company is taken not to have held that membership interest, either directly or indirectly, before the market value time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 705-110

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**705-110 If joining entity transfers a loss to the head company—step 6 in working out allocable cost amount**

- (1) For the purposes of step 6 in the table in section 705-60, the step 6 amount is worked out by multiplying the sum of the losses mentioned in subsection (2) by the \*corporate tax rate.
- (2) The losses are the joining entity's losses of any \*sort that:
  - (a) were not \*utilised by the joining entity for the income year in which the joining time occurred or any earlier income year; and
  - (b) did not accrue to the joined group before the joining time (see subsection 705-90(8)); and
  - (c) are transferred to the \*head company under Subdivision 707-A; and
  - (d) are not cancelled under section 707-145.

**705-115 If head company becomes entitled to certain deductions—step 7 in working out allocable cost amount**

- (1) For the purposes of step 7 in the table in section 705-60, the step 7 amount is worked out using the following formula:

$$\text{Owned deductions} + \left[ \frac{\text{Acquired deductions}}{\text{General company tax rate}} \right]$$

where:

**acquired deductions** means all deductions covered by subsection (2) that are not owned deductions.

**owned deductions** means the sum of all deductions for which the following requirements are satisfied:

- (a) the deduction is covered by subsection (2);
- (b) assuming the expenditure that gave rise to the deduction were instead a profit that accrued at the time the expenditure was incurred, a distribution of that profit would have been a distribution made to the joined group out of profits that accrued to the joined group before the joining time (see subsection 705-90(7)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) This subsection covers any deduction to which the \*head company becomes entitled under section 701-5 as a result of the joining entity becoming a \*subsidiary member of the joined group, other than a deduction for expenditure:
- (a) that is, forms part of or reduces, the cost of an asset of the joining entity that becomes an asset of the head company because subsection 701-1(1) (the single entity rule) applies; or
  - (b) to which section 110-40 (about expenditure on assets acquired before 7.30 pm on 13 May 1997) applies; or
  - (c) to the extent that the expenditure reduced the undistributed profits comprising the step 3 amount in the table in section 705-60.

## How to work out a pre-CGT factor for assets of joining entity

### 705-125 Pre-CGT factor for assets of joining entity

#### *Object*

- (1) Because intra-group \*membership interests in the joining entity are disregarded under subsection 701-1(1) (the single entity rule), the object of this section is to provide a mechanism to ensure that the benefit of the pre-CGT status of those interests is not lost. That mechanism involves working out a factor by which the pre-CGT status can be attached to the joining entity's assets and then recognised in membership interests held in an entity that owns the assets on ceasing to be a \*subsidiary member of the joined group.

#### *Pre-CGT factor to be worked out for certain assets*

- (2) A **pre-CGT factor** is worked out under this section for each asset of the joining entity at the joining time, other than one that, in accordance with \*accounting standards, is a current asset.

Note: A pre-CGT factor is not worked out for current assets because they would, in the ordinary course of operations of the joining entity, be consumed or disposed of within 12 months.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 705-125

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*How to work out pre-CGT factor*

- (3) The pre-CGT factor is the amount (not exceeding 1) worked out by dividing:
- (a) the sum of:
    - (i) for each \*membership interest in the joining entity held by the \*head company that is a \*pre-CGT asset of the head company—the interest’s \*market value at the joining time; and
    - (ii) for each membership interest in the joining entity held by a \*subsidiary member that has a pre-CGT factor—the interest’s market value at the joining time multiplied by its pre-CGT factor;
- by:
- (b) the sum of the market values, at the joining time, of all the joining entity’s assets for which a pre-CGT factor is to be worked out.

Note: The treatment of membership interests in an entity ceasing to be a member of the joined group as pre-CGT assets of members of the group could be manipulated to produce too many pre-CGT assets if the pre-CGT factor of an asset were not limited to 1 by the above subsection.

*Modification if joining entity is a trust*

- (4) If the joining entity is a trust, a \*membership interest in it is not taken into account under paragraph (3)(a) unless the membership interest is either a unit or an interest in the trust.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 705-B—Case of group formation**

### **Guide to Subdivision 705-B**

#### **705-130 What this Subdivision is about**

When a consolidated group comes into existence, the tax cost setting amount for the assets of each entity that becomes a subsidiary member is worked out by modifying the rules in Subdivision 705-A, so that the amount reflects the cost to the group of acquiring the entity.

#### **Table of sections**

##### **Application and object**

705-135 Application and object of this Subdivision

##### **Modified application of Subdivision 705-A**

705-140 Subdivision 705-A has effect with modifications

705-145 Order in which tax cost setting amounts are to be worked out where subsidiary members have membership interests in other subsidiary members

705-147 Adjustment in working out step 3A of allocable cost amount to take account of membership interests held by subsidiary members in other such members

705-150 Adjustment to result of step 3A in working out allocable cost amount where pre-formation time roll-over from head company to member of wholly-owned group

705-155 Adjustments to restrict step 4 reduction of allocable cost amount to effective distributions to head company in respect of direct membership interests

705-160 Adjustment to allocation of allocable cost amount to take account of owned profits or losses of certain entities that become subsidiary members

705-163 Modified application of section 705-57

705-165 Working out pre-CGT factors where subsidiary members have membership interests in other subsidiary members

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 705-135

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**Application and object**

**705-135 Application and object of this Subdivision**

*Application*

- (1) This Subdivision has effect for the head company core purposes set out in subsection 701-1(2) if one or more entities become \*subsidiary members of a \*consolidated group at the time (the **formation time**) it comes into existence as a consolidated group.

Note: This is the first exception to Subdivision 705-A: see paragraph 705-15(a).

*Object*

- (2) The object of this Subdivision is to modify the rules in Subdivision 705-A (which basically determine the tax cost setting amount for assets of an entity joining an existing \*consolidated group) so that they have effect, and take account of different circumstances that apply, when a consolidated group comes into existence.

Note: The main circumstance is where one of the entities has membership interests in another. In such a case, the order in which the rules in Subdivision 705-A are applied will affect the tax cost setting amounts for the assets of the entities.

**Modified application of Subdivision 705-A**

**705-140 Subdivision 705-A has effect with modifications**

- (1) Subdivision 705-A has effect in relation to each entity becoming a \*subsidiary member of the \*consolidated group at the formation time in the same way as that Subdivision has effect in relation to an entity becoming a subsidiary member of a consolidated group in circumstances covered by that Subdivision.
- (2) However, that effect of Subdivision 705-A is subject to modifications set out in this Subdivision.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**705-145 Order in which tax cost setting amounts are to be worked out where subsidiary members have membership interests in other subsidiary members***Object*

- (1) The object of this section is to ensure that where, on becoming \*subsidiary members, entities hold assets consisting of \*membership interests in other subsidiary members, the \*head company's cost of becoming the holder of the assets of all of the entities that become subsidiary members correctly reflects the group's cost of acquiring the entities.

*Tax cost setting amounts to be worked out from top down*

- (2) If, on becoming \*subsidiary members, entities hold \*membership interests in any other entities that become subsidiary members, the \*tax cost setting amounts for the assets of entities holding membership interests must be worked out before the tax cost setting amounts for the assets of the entities in which the membership interests are held.

Note: The tax cost setting amount in respect of assets of any subsidiary member in which the head company, but no other subsidiary member, holds membership interests can be worked out in any order in relation to the calculations for other subsidiary members.

*Tax cost setting amount for higher entity's membership interests to be used in working out lower entity's tax cost setting amount*

- (3) The tax cost setting amount worked out for assets of an entity mentioned in subsection (2) consisting of \*membership interests in another such entity is to be used as the amount for those interests under subsection 705-65(1) (step 1 of allocable cost amount) in working out the tax cost setting amount for assets of that other entity.

Note 1: Subsection 705-65(1) adds together amounts worked out in accordance with section 705-65 representing the cost of the membership interests that each member of the group holds in the entity. If any of those membership interests is held by another subsidiary member, subsection (3) above will replace the amount otherwise applicable with the tax cost setting amount that will have

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

**Section 705-147**

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been worked out for the interests in accordance with subsection (2) above.

Note 2: The tax cost setting amount worked out for the membership interests has no relevance other than for the purpose mentioned in subsection (3). This is because, under the single entity principle, intra group membership interests are ignored while entities are members of the group. If an entity ceases to be a member, section 701-15 and Division 711 set the tax cost of membership interests in the entity at that time.

*Value shifting etc. provisions not to apply to later CGT events involving membership interests*

- (4) However, despite subsection (3), subsection 705-65(4) (which prevents the later operation of value shifting etc. provisions) still applies to the \*membership interests.

*Rights and options to acquire membership interests*

- (5) For the purposes of this section, if, on becoming a \*subsidiary member, an entity holds a right or option (including a contingent right or option), created or issued by another entity that becomes a subsidiary member at the same time, to acquire a \*membership interest in that other entity, that right or option is treated as if it were a membership interest in that other entity.

**705-147 Adjustment in working out step 3A of allocable cost amount to take account of membership interests held by subsidiary members in other such members**

*Object*

- (1) The object of this section is to modify the effect that section 705-93 (step 3A of allocable cost amount) has in accordance with this Subdivision so that it takes account of \*membership interests that entities that become \*subsidiary members hold in other such entities.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Apportionment of step 3A amount among first level interposed entities*

(2) If:

- (a) under section 705-93, in its application in accordance with this Subdivision, there is a step 3A amount for the purpose of working out the group's \*allocable cost amount for an entity (the **subject entity**) that becomes a \*subsidiary member of the group at the formation time; and
- (b) at that time one or more entities (the **first level entities**), that become subsidiary members of the group and in which the \*head company holds \*membership interests, are interposed between the head company and the subject entity;

then the step 3A amount is apportioned among the first level entities and the subject entity on the following basis:

- (c) each first level entity has the following proportion of the step 3A amount:

$$\frac{\text{*Market value of first level entity's direct and indirect membership interests in subject entity}}{\text{*Market value of all membership interests in subject entity}}$$

\*Market value of all membership interests in subject entity

where:

**market value of all membership interests in subject entity** means the \*market value, at the formation time, of all \*membership interests in the subject entity that are held by entities that become \*members of the group at that time.

**market value of first level entity's direct and indirect membership interests in subject entity** means so much of the \*market value of all membership interests in the subject entity (as defined above) as is attributable to \*membership interests that the first level entity holds directly, or indirectly through other interposed entities that become \*subsidiary members of the group at the formation time; and

- (d) the subject entity has the remainder of the step 3A amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 705-147

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*Step 3A amount for assets consisting of membership interests held by subsidiary members in other subsidiary members*

(3) If:

(a) before the formation time:

(i) there was a roll-over under Subdivision 126-B (a ***Subdivision 126-B roll-over***) in relation to a \*CGT event that happened in relation to an asset (the ***roll-over asset***); or

(ii) former section 160ZZO of the *Income Tax Assessment Act 1936* applied in relation to a disposal (a ***section 160ZZO roll-over***) of an asset (also the ***roll-over asset***); and

(b) the originating company in relation to the Subdivision 126-B roll-over, or the transferor in relation to the section 160ZZO roll-over, was a foreign resident; and

(c) the recipient company in relation to the Subdivision 126-B roll-over, or the transferee in relation to the section 160ZZO roll-over, was an Australian resident and was not the entity that became the \*head company of the group; and

(d) between the Subdivision 126-B roll-over, or the section 160ZZO roll-over, and the formation time, no other CGT event happened in relation to the roll-over asset for which there was not a Subdivision 126-B roll-over or a section 160ZZO roll-over; and

(e) the roll-over asset is a \*membership interest in an entity that becomes a \*subsidiary member at the formation time, other than one that is held at that time by the entity that becomes the head company of the group;

then, subject to subsection (5), there is under section 705-93 a step 3A amount for the purpose of working out the group's \*allocable cost amount for the entity (the ***subject entity***) that holds the roll-over asset at the formation time.

*What the step 3A amount is*

(4) The step 3A amount is:

(a) if, as a result of the Subdivision 126-B roll-over mentioned in subparagraph (3)(a)(i), or the section 160ZZO roll-over

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 705-150

mentioned in subparagraph (3)(a)(ii), a \*capital loss of the originating company was disregarded or a capital loss of the transferor was not incurred—an increase amount equal to the capital loss; or

- (b) if, as a result of the Subdivision 126-B roll-over mentioned in subparagraph (3)(a)(i), or the section 160ZZO roll-over mentioned in subparagraph (3)(a)(ii), a \*capital gain of the originating company was disregarded or a capital gain of the transferor did not accrue—a reduction amount equal to the capital gain.

*Apportionment of step 3A amount among first level interposed entities*

- (5) If at the formation time one or more entities, that become \*subsidiary members of the group and in which the \*head company holds \*membership interests, are interposed between the head company and the subject entity, then the step 3A amount is apportioned among those entities and the subject entity in the same way as a step 3A amount is apportioned under subsection (2).

**705-150 Adjustment to result of step 3A in working out allocable cost amount where pre-formation time roll-over from head company to member of wholly-owned group**

*Object*

- (1) The object of this section is to ensure that, in working out the group's \*allocable cost amount for certain entities that become \*subsidiary members of the group at the formation time, an adjustment is made to take account of roll-overs under Subdivision 126-B or former section 160ZZO of the *Income Tax Assessment Act 1936* before the formation time.

*When section applies*

- (2) This section applies if:
- (a) before the formation time, there was a roll-over under Subdivision 126-B or former section 160ZZO of the *Income Tax Assessment Act 1936* in relation to a \*CGT event (the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 705-150

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*head company roll-over event*) that happened in relation to an asset (the *head company roll-over asset*), where:

- (i) an entity (the *head company roll-over recipient*) that becomes a \*subsidiary member of the group was the recipient company in relation to the roll-over; and
  - (ii) the originating company in relation to that roll-over was the entity that becomes the \*head company of the group; and
- (b) between the roll-over and the formation time, no other CGT event happened in relation to the head company roll-over asset:
- (i) for which there was another roll-over satisfying the requirements of paragraph (a); or
  - (ii) for which there was not a roll-over under Subdivision 126-B or former section 160ZZO of the *Income Tax Assessment Act 1936*; and
- (c) the head company roll-over asset is not a \*pre-CGT asset at the formation time; and
- (d) the sum of the \*cost bases of all of the \*head company's \*CGT assets just before the head company roll-over event exceeded or was less than the sum of the cost bases of all of the head company's CGT assets just after the head company roll-over event (the excess or shortfall being the *head company roll-over adjustment amount*).

*Adjustment to result of step 3A in allocable cost amount for head company roll-over recipient*

- (3) For the purpose of working out the group's \*allocable cost amount for the head company roll-over recipient, the result of step 3A in the table in section 705-60 is increased (if the head company roll-over adjustment is an excess), or reduced (if the head company roll-over adjustment amount is a shortfall), by the amount worked out as follows:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Section 705-150

$$\frac{\text{*Market value of *head company's *membership interests in head company roll-over recipient}}{\text{Market value of all membership interests in head company roll-over recipient}} \times \text{Head company roll-over adjustment amount}$$

where:

***market value of all membership interests in head company roll-over recipient*** means the \*market value, at the formation time, of all \*membership interests in the head company roll-over recipient that are held by entities that become \*members of the group at that time.

*Adjustment to result of step 3A in allocable cost amount for interposed entity*

- (4) Also, if this section applies, for the purpose of working out the group's \*allocable cost amount for any entity (the ***target entity***) that:
- (a) becomes a \*subsidiary member of the group at the formation time; and
  - (b) is interposed at that time between the \*head company and the head company roll-over recipient; and
  - (c) is the first or only such interposed entity;
- the result of step 3A in the table in section 705-60 is increased (if the head company roll-over adjustment is an excess), or reduced (if the head company roll-over adjustment amount is a shortfall), by the amount worked out as follows:

$$\frac{\text{*Market value of head company's indirect membership interests in head company roll-over recipient}}{\text{*Market value of all membership interests in head company roll-over recipient}} \times \text{Head company roll-over adjustment amount}$$

where:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 705-155

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*market value of all membership interests in head company roll-over recipient* has the same meaning as in subsection (3).

*market value of head company's indirect membership interests in head company roll-over recipient* means so much of the \*market value, at the formation time, of the \*head company's \*membership interests in the target entity as is attributable to membership interests that the entity holds directly, or indirectly through other interposed entities that become \*subsidiary members of the group at the formation time, in the head company roll-over recipient.

Note: If, after applying this section, the amount remaining as a result of step 3A in the table in section 705-60 is negative, the head company makes a capital gain equal to that amount: see CGT event L2.

**705-155 Adjustments to restrict step 4 reduction of allocable cost amount to effective distributions to head company in respect of direct membership interests**

*Object*

- (1) The object of this section is to ensure that, in working out the group's \*allocable cost amount for entities that become \*subsidiary members of the group at the formation time, the reduction under step 4 in the table in section 705-60 (about pre-formation time distributions out of certain profits) is made only for profits that have been effectively distributed to the \*head company in respect of its direct \*membership interests in the entities. This ensures consistency with the ordering rule in section 705-145.

*When section applies*

- (2) This section applies to a distribution (the *subject distribution*) to the extent that the following conditions are satisfied:
  - (a) the distribution is made by an entity (the *subject entity*) that becomes a \*subsidiary member of the group at the formation time;
  - (b) in working out the group's \*allocable cost amount for the subject entity there would, apart from this section, be a reduction under step 4 in the table in section 705-60 for the distribution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Step 4 reduction only if subject distribution is made to head company etc.*

- (3) There is no reduction as mentioned in paragraph (2)(b) for the subject distribution unless:
- (a) the subject distribution is made to the \*head company of the group; or
  - (b) the reduction is in accordance with subsection (5).

*Step 4 reduction for effective distribution to head company*

- (4) If:
- (a) at the formation time, the \*head company of the group has a direct \*membership interest in the subject entity; and
  - (b) the head company acquired the membership interest directly from another entity, or indirectly as a result of one or more acquisitions from other entities, where:
    - (i) former section 160ZZO of the *Income Tax Assessment Act 1936* applied to each acquisition; or
    - (ii) there was a roll-over under Subdivision 126-B for each acquisition;or a combination of these happened; and
  - (c) while it held the membership interest, the entity, or one of the entities, mentioned in paragraph (b) (the **recipient of the further distribution**) received a distribution (the **further distribution**) of some of the subject distribution from the subject entity;

the consequences in subsections (5) and (6) apply.

*Reduction for further distribution that remains with recipient*

- (5) If:
- (a) the following happen:
    - (i) by the formation time, any of the further distribution (the **eligible reduction amount**) had not again been distributed by the recipient of the further distribution;
    - (ii) the recipient of the further distribution does not become a \*subsidiary member of the group at the formation time; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 705-155

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(b) the following happen:

- (i) by the formation time, any of the further distribution (the *eligible reduction amount*) had been distributed by the recipient of the further distribution to another entity directly, or indirectly through successive distributions by interposed entities;
- (ii) that other entity does not become a subsidiary member of the group at the formation time; or

(c) both of the above paragraphs apply;

then, in working out the group's \*allocable cost amount for the subject entity, the reduction under step 4 in the table in section 705-60 for the subject distribution only takes place to the extent that it equals the sum of all eligible reduction amounts.

*Step 1 reduced cost base adjustment to reverse effect of reduction for further distribution*

(6) Also, if former subsection 160ZK(5) of the *Income Tax Assessment Act 1936* or subsection 110-55(7) of this Act applied to the further distribution, then for the purposes of step 1 in the table in section 705-60 in working out the group's \*allocable cost amount for the subject entity:

- (a) the reference in subsection 705-65(3) to a reduction resulting from the application of former subsection 160ZK(5) of the *Income Tax Assessment Act 1936*; and
- (b) the reference in subsection 705-65(5) to a reduction that has taken place under subsection 110-55(7);

include a reference to the reduction in the \*reduced cost base of the membership interest in the subject entity resulting from the application of former subsection 160ZK(5) of the *Income Tax Assessment Act 1936*, or subsection 110-55(7) of this Act, to the further distribution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**705-160 Adjustment to allocation of allocable cost amount to take account of owned profits or losses of certain entities that become subsidiary members***Object*

- (1) The object of this section is to prevent a distortion under section 705-35 in the allocation of \*allocable cost amount to an entity that becomes a \*subsidiary member of the group where that entity has direct or indirect \*membership interests in another entity that has certain profits or tax losses when it becomes a subsidiary member.

*Adjustment to allocation of allocable cost amount where direct interest in entity with profits/losses*

- (2) If:
- (a) an entity becomes a \*subsidiary member of the group at the formation time; and
  - (b) the entity has \*membership interests in a second entity that becomes a subsidiary member of the group at that time; and
  - (c) in working out the group's \*allocable cost amount for the second entity:
    - (i) an amount is required to be added (the ***second entity's profit/loss adjustment amount***) under step 3 in the table in section 705-60 (about profits accruing before becoming a subsidiary member of the group); or
    - (ii) an amount is required to be subtracted (also the ***second entity's profit/loss adjustment amount***) under step 5 in the table in section 705-60 (about losses accruing before becoming a subsidiary member of the group);

then, for the purposes of working out under section 705-35 the \*tax cost setting amount for the assets of the first entity, the \*market value of the first entity's membership interests in the second entity is reduced (in a subparagraph (c)(i) case) or increased (in a subparagraph (c)(ii) case) by the first entity's interest in the second entity's profit/loss adjustment amount (see subsection (3)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 705-160

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*First entity's interest in second entity's profit/loss adjustment amount*

- (3) The first entity's interest in the second entity's profit/loss adjustment amount is worked out using the formula:

$$\frac{\text{*Market value of first entity's *membership interests in second entity}}{\text{*Market value of all *membership interests in second entity}} \times \text{Second entity's profit/loss adjustment amount}$$

*Adjustment to allocation of allocable cost amount for indirect interest in entity with profits/losses*

- (4) If:
- (a) an entity becomes a \*subsidiary member of the group at the formation time; and
  - (b) the entity has \*membership interests in a second entity that becomes a subsidiary member of the group at that time; and
  - (c) the second entity has, directly or indirectly through one or more interposed entities that become subsidiary members of the group at the formation time, membership interests in a third entity that becomes a subsidiary member of the group at that time; and
  - (d) in working out the group's \*allocable cost amount for the third entity:
    - (i) an amount is required to be added (the ***third entity's profit/loss adjustment amount***) under step 3 in the table in section 705-60 (about profits accruing before becoming a subsidiary member of the group); or
    - (ii) an amount is required to be subtracted (also the ***third entity's profit/loss adjustment amount***) under step 5 in the table in section 705-60 (about losses accruing before becoming a subsidiary member of the group);

then, for the purposes of working out under section 705-35 the \*tax cost setting amount for the assets of the first entity, the \*market value of the first entity's membership interests in the second entity is reduced (in a subparagraph (d)(i) case) or increased (in a

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 705-163

subparagraph (d)(ii) case) by the first entity's interest in the third entity's profit/loss adjustment amount (see subsection (5)).

*First entity's interest in third entity's profit/loss adjustment amount*

- (5) The first entity's interest in the third entity's profit/loss adjustment amount is worked out using the formula:

$$\frac{\text{*Market value of first entity's membership interests in third entity held through second entity}}{\text{*Market value of all *membership interests in third entity}} \times \text{Third entity's profit/loss adjustment amount}$$

where:

***market value of first entity's membership interests in third entity held through second entity*** means the \*market value of all \*membership interests in the third entity that the first entity holds indirectly through the second entity (including through that entity and one or more other entities that become \*subsidiary members of the group and are interposed between the second entity and the third entity).

### 705-163 Modified application of section 705-57

*Object*

- (1) The object of this section is to ensure that, in working out \*tax cost setting amounts for \*trading stock, \*depreciating assets or \*revenue assets of entities that become \*subsidiary members of the group at the formation time, section 705-57 (about loss of pre-CGT status of certain \*membership interests) only applies if the \*membership interests held directly by the \*head company of the group are affected.

*Modified application of section 705-57—basic modification*

- (2) For the purposes of applying section 705-57 in accordance with this Subdivision, a reference in that section to a \*membership interest that a \*member of the joined group holds in the joining entity at the joining time is taken to be a reference to a

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

Section 705-163

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\*membership interest that the \*head company of the \*consolidated group holds directly in an entity becoming a \*subsidiary member at the formation time.

*Modified application of section 705-57—additional modifications where section 705-145 applies*

- (3) Also, if an entity (the **first entity**) that becomes a \*subsidiary member holds a \*membership interest (the **subject membership interest**) in another entity (the **second entity**) that becomes a subsidiary member, section 705-57 (as modified in accordance with subsection (2)) is to be applied in relation to the subject membership interest as follows.
- (4) First work out whether there would be a reduction under that section in the \*tax cost setting amount for the subject membership interest that is used as mentioned in subsection 705-145(3) (the **subsection 705-145(3) tax cost setting amount**) if:
  - (a) the subject membership interest, if it is not a revenue etc. asset of the first entity, were taken to be such an asset; and
  - (b) paragraphs 705-57(2)(c) and (d) and subsection 705-57(7) did not apply to the subject membership interest.
- (5) Next, if there would be such a reduction (whose amount is the **notional section 705-57 reduction amount**):
  - (a) apply section 705-57 to reduce the \*tax cost setting amount for any revenue etc. asset of the second entity; and
  - (b) if the second entity holds a \*membership interest in another entity that becomes a \*subsidiary member—apply section 705-57 in relation to that interest in accordance with subsection (3) of this section;and for those purposes:
  - (c) the subject membership interest is taken to be a membership interest that the \*head company of the group holds directly in the second entity at the formation time; and
  - (d) the requirements of paragraphs 705-57(2)(a) and (b) are taken to be satisfied in relation to the subject membership interest; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 705-163

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- (e) the subject membership interest is taken to have a \*cost base and \*reduced cost base equal to the subsection 705-145(3) tax cost setting amount; and
- (f) the subject membership interest is taken to have a loss of pre-CGT status adjustment amount equal to the notional section 705-57 reduction amount.

Note: If the head company actually held any membership interests in the second entity, or if other entities becoming subsidiary members held membership interests in the second entity to which this subsection also applied, those membership interests would also be taken into account in working out the reduction under paragraph (a) and in applying paragraph (b).

*Section 705-57 not to apply where membership interests effectively acquired on normal market basis*

- (6) If:
  - (a) apart from this subsection, subsection 705-57(6) would apply in accordance with this Subdivision to the revenue etc. assets of an entity (the **subject entity**) that becomes a \*subsidiary member of the group at the formation time; and
  - (b) at the formation time, the \*head company of the group holds all of the \*membership interests in the subject entity; and
  - (c) subsection 705-57(6) would apply because a circumstance covered by subsection 705-57(4) (about loss of pre-CGT status because Division 149 etc. applied) existed; and
  - (d) the application of Division 149 of this Act, or the provision of the *Income Tax Assessment Act 1936*, as mentioned in paragraph 705-57(4)(b) of this Act happened because the entity that became the \*head company of the group (the **potential head entity**) \*acquired all of the \*membership interests in the other entity mentioned in that paragraph directly or indirectly from another entity (the **vendor**); and
  - (e) at the time of the acquisition, the potential head entity did not control (for value shifting purposes) the vendor, and vice-versa, and another entity did not control (for value shifting purposes) the potential head entity and the vendor; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 705-165**

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- (f) the acquisition, or each of the acquisitions, mentioned in subsection 705-57(4) was a \*same asset roll-over or was one to which any of former sections 160ZZN to 160ZZOC, 160ZZPA and 160ZZPJ of the *Income Tax Assessment Act 1936* applied;

then subsection 705-57(6) does not apply as mentioned in paragraph (a) of this subsection.

**705-165 Working out pre-CGT factors where subsidiary members have membership interests in other subsidiary members**

*Object*

- (1) The object of this section is to ensure that where, on becoming \*subsidiary members, entities hold \*membership interests in other subsidiary members, the pre-CGT status of membership interests held by the \*head company, and not the pre-CGT status of membership interests held by other entities, is used to work out the \*pre-CGT factor under section 705-125 for assets of the other subsidiary members.

*Pre-CGT factor to be worked out from top down*

- (2) If, on becoming \*subsidiary members, entities hold \*membership interests in any other entities that become subsidiary members, the \*pre-CGT factor for the assets of entities holding membership interests must be worked out before the pre-CGT factor for the assets of the entities in which the membership interests are held.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 705-C—Case where a consolidated group is acquired by another**

### **Guide to Subdivision 705-C**

#### **705-170 What this Subdivision is about**

When a consolidated group is acquired by another consolidated group, modifications are made to the operation of Division 701 (the core rules) and Subdivision 705-A (tax cost setting amount where a single entity joins a consolidated group) basically to ensure that the tax cost setting amount for assets of the acquired group that become those of the acquiring group reflects the cost to the latter group of acquiring the former.

#### **Table of sections**

##### **Application and object**

705-175 Application and object of this Subdivision

##### **Modified application of Division 701 in relation to acquired group etc.**

705-180 Modifications of Division 701

##### **Modified application of Subdivision 705-A in relation to acquiring group**

705-185 Subdivision 705-A has effect with modifications

##### **Modifications of Subdivision 705-A for the purposes of this Subdivision**

705-190 Modified application of section 705-50

705-195 Modified application of subsection 705-65(6)

705-200 Modified application of section 705-85

705-205 Modified application of section 705-125

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 705-175

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**Application and object**

**705-175 Application and object of this Subdivision**

*Application*

- (1) This Subdivision applies if all of the \*members of a \*consolidated group (the **acquired group**) become members of another consolidated group (the **acquiring group**) at a particular time (the **acquisition time**) as a result of the \*acquisition of \*membership interests in the \*head company of the acquired group.

*Object*

- (2) The object of this Subdivision is:
  - (a) to modify the rules in Division 701 (the core rules) to complement the treatment of the acquired group as a single entity that applied before the acquisition time; and
  - (b) to modify Subdivision 705-A (which basically determines the tax cost setting amount for assets of an entity joining a consolidated group) to ensure that the \*tax cost setting amount for assets of the acquired group that become those of the acquiring group reflects the cost to the latter group of acquiring the former.

**Modified application of Division 701 in relation to acquired group etc.**

**705-180 Modifications of Division 701**

*Certain provisions of Division 701 not to apply*

- (1) If, because an entity ceases to be a \*subsidiary member of the acquired group when this Subdivision applies, a provision of Division 701 (other than section 701-25) would otherwise apply, in relation to the acquired group for the head company core purposes set out in subsection 701-1(2) or for the entity core purposes set out in subsection 701-1(3), the provision does not so apply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Modified application of section 701-5*

- (2) Section 701-5 (the entry history rule) applies in relation to the acquiring group for the head company core purposes set out in subsection 701-1(2) as if entities that are or have been the \*subsidiary members of the acquired group were or had been parts of the \*head company of the acquired group.

*Modified application of section 701-25*

- (3) The application of section 701-25 (which ensures tax-neutral consequences for a head company ceasing to hold assets when an entity leaves a group), in relation to the acquired group for the head company core purposes set out in subsection 701-1(2) and for the entity core purposes set out in subsection 701-1(3), is modified as follows:
- (a) the reference in subsection (4) of that section to the end of the income year is taken to be a reference to the end of the income year that ends or, if subsection 701-30(3) as modified by subsection (4) of this section applies, of the income year that is taken to end, when the entity ceases to be a \*subsidiary member of the acquired group;
  - (b) the section applies (as modified by paragraph (a) of this subsection) to the entity that is the \*head company of the acquired group ceasing to be a \*member of that group in the same way as it applies to an entity that is a subsidiary member of that group ceasing to be a subsidiary member.

*Modified application of section 701-30*

- (4) If the acquired group only exists for part of the income year, section 701-30 (about an entity not being a subsidiary member of a group for a whole income year) applies in relation to the acquired group for the head company core purposes in the same way as it applies to work out the taxable income, tax payable on that taxable income and loss of each \*sort for an entity for a non-membership period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 705-185

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**Modified application of Subdivision 705-A in relation to acquiring group**

**705-185 Subdivision 705-A has effect with modifications**

- (1) Subdivision 705-A has effect in relation to the acquiring group for the head company core purposes set out in subsection 701-1(2) as if:
- (a) the only \*member of the acquired group that is a joining entity of the acquiring group were the entity that, just before the acquisition time, was the \*head company of the acquired group; and
  - (b) the operation of this Part for the head company core purposes in relation to the head company and the entities that were \*subsidiary members of the acquired group continued to have effect for the purposes of Subdivision 705-A.

Note 1: This means that for Subdivision 705-A purposes the subsidiary members of the acquired group are treated as part of the head company of that group, and as a result their assets (other than e.g. internal membership interests) have their tax costs set at the acquisition time.

Note 2: It also means e.g. that for Subdivision 705-A purposes the terminating values of the assets of those subsidiary members are worked out as if the assets were those of the head company at the acquisition time, and hence will be based (if applicable) on the tax cost setting amounts for assets that were set at the time entities became subsidiary members of the acquired group.

- (2) However, that effect of Subdivision 705-A is subject to modifications set out in this Subdivision.

Note: The modifications of Subdivision 705-A made in this Subdivision constitute the second exception to Subdivision 705-A: see paragraph 705-15(b).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Modifications of Subdivision 705-A for the purposes of this Subdivision****705-190 Modified application of section 705-50***Object*

- (1) The object of this section is to ensure that there is no reduction in the \*tax cost setting amount of \*over-depreciated assets that were brought into the acquired group by an entity on becoming a \*subsidiary member, where the over-depreciation will already be corrected as a result of distributions made to the acquired group before that time.

*Exclusion of pre-joining distributions to members of acquired group*

- (2) If, before it became a \*subsidiary member of the acquired group, an entity that is a subsidiary member of the acquired group at the acquisition time paid a dividend to which paragraph 705-50(2)(b) applies, paragraph 705-50(3)(b) also has effect as if the reference in that paragraph to a taxpayer who was not entitled to a rebate of income tax under former section 46 or 46A of the *Income Tax Assessment Act 1936* included a reference to:
  - (a) if the acquired group existed at that time—a \*member of that group; or
  - (b) if not—an entity that later became a member of that group.

**705-195 Modified application of subsection 705-65(6)***Object*

- (1) The object of this section is to ensure that certain rights or options held by \*members of the acquiring group that are part of the cost of acquiring the acquired group are taken into account in working out the acquiring group's \*allocable cost amount for the acquired group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

Section 705-200

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*Certain rights or options relating to the acquired group to be treated in same way as membership interests under step 1 of allocable cost amount*

- (2) Subsection 705-65(6) has effect as if it also treated as a \*membership interest in the \*head company of the acquired group a right or option (including a contingent right or option), created or issued by a \*subsidiary member of the acquired group, to acquire a membership interest in the subsidiary member, where that right or option was held at the acquisition time by a \*member of the acquiring group.

**705-200 Modified application of section 705-85**

*Object*

- (1) The object of this section is to ensure that if any of the following are not held by \*members of either group:
- (a) certain employee share interests in \*subsidiary members of the acquired group;
  - (b) certain rights or options to acquire \*membership interests in subsidiary members of the acquired group;
  - (c) certain preference share interests in subsidiary members of the acquired group;
- and are therefore part of the cost of acquiring the acquired group, they increase the acquiring group's \*allocable cost amount for the acquired group.

*Increase for certain membership interests in subsidiary members of acquired group*

- (2) Subsections 705-85(1), (2) and (4) have effect as if a \*membership interest in a \*subsidiary member of the acquired group were a membership interest in the \*head company of that group.

*Increase for certain rights and options to acquire membership interests in subsidiary members of acquired group*

- (3) Paragraph 705-85(3)(a) has effect as if it also increased the step 2 amount worked out under section 705-70 by the \*market value of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

any right or option (including a contingent right or option), created or issued by a \*subsidiary member the acquired group, to acquire a \*membership interest in the subsidiary member, where that right or option was held at the acquisition time by a person other than a \*member of the acquiring group or acquired group.

### **705-205 Modified application of section 705-125**

#### *Object*

- (1) The object of this section is to make it clear that, in view of the fact that \*pre-CGT factors are worked out for assets of the acquired group on acquisition by the acquiring group, pre-CGT factors formerly worked out for assets of entities when they became \*subsidiary members of the acquired group cease to have any relevance.

#### *Pre-CGT factors for assets of members on joining acquired groups no longer relevant*

- (2) Section 705-125 (which provides for a pre-CGT factor to be worked out for assets of the acquired group) has effect as if a note were added at the end of the section stating that \*pre-CGT factors worked out for assets of entities when they became \*subsidiary members of the acquired group cease to have any relevance when the acquired group ceases to exist in circumstances in which this Subdivision applies.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

Section 705-210

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**Subdivision 705-D—Where multiple entities are linked by membership interests**

**Guide to Subdivision 705-D**

**705-210 What this Subdivision is about**

When entities that are linked by membership interests join a consolidated group, the tax cost setting amount for the assets of each entity that becomes a subsidiary member is worked out by modifying the rules in Subdivision 705-A, so that the amount reflects the cost to the group of acquiring the entities.

**Table of sections**

**Application and object**

705-215 Application and object of this Subdivision

**Modified application of Subdivision 705-A**

705-220 Subdivision 705-A has effect with modifications

705-225 Order in which tax cost setting amounts are to be worked out where linked entities have membership interests in other linked entities

705-227 Adjustment in working out step 3A of allocable cost amount to take account of membership interests held by linked entities in other linked entities

705-230 Adjustments to restrict step 4 reduction of allocable cost amount to effective distributions to head company in respect of direct membership interests

705-235 Adjustment to allocation of allocable cost amount to take account of owned profits or losses of certain linked entities

705-240 Modified application of section 705-57

705-245 Working out pre-CGT factors where subsidiary members have membership interests in other subsidiary members

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Application and object

### 705-215 Application and object of this Subdivision

#### *Application*

- (1) This Subdivision has effect for the head company core purposes set out in subsection 701-1(2) if:
  - (a) 2 or more entities (each of which is a *linked entity*) become members of a \*consolidated group at the same time as a result of an event that happens in relation to one of them; and
  - (b) the case is not covered by Subdivision 705-C.

Note: This is the third exception to Subdivision 705-A: see paragraph 705-15(c). In order for this Subdivision to have effect, one of the entities would need to hold directly or indirectly, just before the joining time, membership interests in all of the other entities.

Example: Entities A and B are not members of a consolidated group, but members of such a group, together with entity A, jointly hold all the membership interests in entity B. Members of the group then acquire all the membership interests in entity A and as a result of this event both entities, which are linked by the membership interests that one holds in the other, become members of the group.

#### *Object*

- (2) The object of this Subdivision is to modify the rules in Subdivision 705-A (which basically determine the tax cost setting amount for assets of an entity joining an existing consolidated group) so that they take account of the different circumstances that apply where linked entities join.

## Modified application of Subdivision 705-A

### 705-220 Subdivision 705-A has effect with modifications

- (1) Subdivision 705-A has effect in relation to each linked entity becoming a \*subsidiary member of the \*consolidated group in the same way as that Subdivision operates in relation to an entity becoming a subsidiary member of a consolidated group in circumstances covered by that Subdivision.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 705-225

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- (2) However, that effect of Subdivision 705-A is subject to modifications set out in this Subdivision.

**705-225 Order in which tax cost setting amounts are to be worked out where linked entities have membership interests in other linked entities**

*Object*

- (1) The object of this section is to ensure that where, on becoming \*subsidiary members, linked entities hold assets consisting of \*membership interests in other linked entities, the \*head company's cost of becoming the holder of the assets of all of the linked entities correctly reflects the group's cost of acquiring the linked entities.

*Tax cost setting amounts to be worked out from top down*

- (2) The \*tax cost setting amounts for the assets of linked entities holding \*membership interests must be worked out before the tax cost setting amounts for the assets of the linked entities in which the membership interests are held.

Note: The tax cost setting amount in respect of assets of any linked entity in which members of the group, but no linked entity, hold membership interests can be worked out in any order in relation to the calculations for other linked entities.

*Tax cost setting amount for higher linked entity's membership interests to be used in working out lower linked entity's tax cost setting amount*

- (3) The \*tax cost setting amount worked out for assets of a linked entity mentioned in subsection (2) consisting of \*membership interests in another such entity is to be used as the amount for those interests under subsection 705-65(1) (step 1 of allocable cost amount) in working out the tax cost setting amount for assets of that other linked entity.

Note 1: Subsection 705-65(1) adds together amounts worked out in accordance with section 705-65 representing the cost of the membership interests that each member of the group holds in the linked entity. If any of those membership interests is held by another

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Section 705-227**

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linked entity, subsection (3) of this section will replace the amount otherwise applicable with the tax cost setting amount that will have been worked out for the interests in accordance with subsection (2) of this section.

Note 2: The tax cost setting amount worked out for the membership interests has no relevance other than for the purpose mentioned in subsection (3) of this subsection. This is because, under the single entity principle, intra group membership interests are ignored while entities are members of the group. If an entity ceases to be a member, section 701-15 and Division 711 set the tax cost of membership interests in the entity at that time.

*Value shifting etc. provisions not to apply to later CGT events involving membership interests*

- (4) However, despite subsection (3), subsection 705-65(4) (which prevents the later operation of value shifting etc. provisions) still applies to the \*membership interests.

*Rights and options to acquire membership interests*

- (5) For the purposes of this section, if, on becoming a \*subsidiary member, a linked entity holds a right or option (including a contingent right or option), created or issued by another linked entity, to acquire a \*membership interest in that other linked entity, that right or option is treated as if it were a membership interest in that other linked entity.

**705-227 Adjustment in working out step 3A of allocable cost amount to take account of membership interests held by linked entities in other linked entities**

*Object*

- (1) The object of this section is to modify the effect that section 705-93 (step 3A of allocable cost amount) has in accordance with this Subdivision so that it takes account of \*membership interests that linked entities hold in other linked entities at the time (the *linked entity joining time*) when the linked entities become \*subsidiary members of the group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 705-227

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*Apportionment of step 3A amount among first level interposed entities*

(2) If:

- (a) under section 705-93, in its application in accordance with this Subdivision, there is a step 3A amount for the purpose of working out the group's \*allocable cost amount for a particular linked entity (the **subject entity**); and
- (b) at the linked entity joining time, one or more of the linked entities (the **first level entities**) in which the \*head company holds \*membership interests are interposed between the head company and the subject entity;

then the step 3A amount is apportioned among the first level entities and the subject entity on the following basis:

- (c) each first level entity has the following proportion of the step 3A amount:

$$\frac{\text{*Market value of first level entity's direct and indirect membership interests in subject entity}}{\text{*Market value of all membership interests in subject entity}}$$

where:

**market value of all membership interests in subject entity** means the \*market value, at the linked entity joining time, of all \*membership interests in the subject entity that are held by entities that become \*members of the group at that time.

**market value of first level entity's direct and indirect membership interests in subject entity** means so much of the \*market value of all membership interests in the subject entity (as defined above) as is attributable to \*membership interests that the first level entity holds directly, or indirectly through other linked entities; and

- (d) the subject entity has the remainder of the step 3A amount.

*Step 3A amount for assets consisting of membership interests held by linked entities in other linked entities*

(3) If:

- (a) before the linked entity joining time:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) there was a roll-over under Subdivision 126-B (a ***Subdivision 126-B roll-over***) in relation to a \*CGT event that happened in relation to an asset (the ***roll-over asset***); or
  - (ii) former section 160ZZO of the *Income Tax Assessment Act 1936* applied in relation to a disposal (a ***section 160ZZO roll-over***) of an asset (also the ***roll-over asset***); and
- (b) the originating company in relation to the Subdivision 126-B roll-over, or the transferor in relation to the section 160ZZO roll-over, was a foreign resident; and
  - (c) the recipient company in relation to the Subdivision 126-B roll-over, or the transferee in relation to the section 160ZZO roll-over, was an Australian resident and was not the entity that became the \*head company of the group; and
  - (d) between the Subdivision 126-B roll-over, or the section 160ZZO roll-over, and the linked entity joining time, no other CGT event happened in relation to the roll-over asset for which there was not a Subdivision 126-B roll-over or a section 160ZZO roll-over; and
  - (e) the roll-over asset is a \*membership interest in a linked entity, other than one that is held at that time by the entity that becomes the head company of the group;
- then, subject to subsection (5), there is under section 705-93 a step 3A amount for the purpose of working out the group's \*allocable cost amount for the linked entity (the ***subject entity***) that holds the roll-over asset at the linked entity joining time.

*What the step 3A amount is*

- (4) The step 3A amount is:
  - (a) if, as a result of the Subdivision 126-B roll-over mentioned in subparagraph (3)(a)(i), or the section 160ZZO roll-over mentioned in subparagraph (3)(a)(ii), a \*capital loss of the originating company was disregarded or a capital loss of the transferor was not incurred—an increase amount equal to the capital loss; or
  - (b) if, as a result of the Subdivision 126-B roll-over mentioned in subparagraph (3)(a)(i), or the section 160ZZO roll-over

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 705-230

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mentioned in subparagraph (3)(a)(ii), a \*capital gain of the originating company was disregarded or a capital gain of the transferor did not accrue—a reduction amount equal to the capital gain.

*Apportionment of step 3A amount among first level interposed entities*

- (5) If at the linked entity joining time one or more linked entities, in which the \*head company holds \*membership interests, are interposed between the head company and the subject entity, then the step 3A amount is apportioned among those entities and the subject entity in the same way as a step 3A amount is apportioned under subsection (2).

**705-230 Adjustments to restrict step 4 reduction of allocable cost amount to effective distributions to head company in respect of direct membership interests**

*Object*

- (1) The object of this section is to ensure that, in working out the group's \*allocable cost amount for the linked entities, the reduction under step 4 in the table in section 705-60 (about pre-formation time distributions out of certain profits) is made only for profits that have been effectively distributed to the \*head company in respect of its direct \*membership interests in the entities. This ensures consistency with the ordering rule in section 705-225.

*When section applies*

- (2) This section applies to a distribution to the extent that the following conditions are satisfied:
- (a) the distribution is made by a linked entity;
  - (b) in working out the group's \*allocable cost amount for the linked entity there would, apart from this section, be a reduction under step 4 in the table in section 705-60 for the distribution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Step 4 reduction only if subject distribution is made to head company*

- (3) There is no reduction as mentioned in subsection (2) for the distribution unless it is made to the \*head company of the group.

**705-235 Adjustment to allocation of allocable cost amount to take account of owned profits or losses of certain linked entities**

*Object*

- (1) The object of this section is to prevent a distortion under section 705-35 in the allocation of \*allocable cost amount to a linked entity where that entity has direct or indirect \*membership interests in another linked entity that has certain profits or tax losses.

*Adjustment to allocation of allocable cost amount where direct interest in linked entity with profits/losses*

- (2) If:
- (a) a linked entity has \*membership interests in a second linked entity; and
  - (b) in working out the group's \*allocable cost amount for the second linked entity:
    - (i) an amount is required to be added (the ***second linked entity's profit/loss adjustment amount***) under step 3 in the table in section 705-60 (about profits accruing before becoming a subsidiary member of the group); or
    - (ii) an amount is required to be subtracted (also the ***second linked entity's profit/loss adjustment amount***) under step 5 in the table in section 705-60 (about losses accruing before becoming a subsidiary member of the group);

then, for the purposes of working out under section 705-35 the \*tax cost setting amount for the assets of the first linked entity, the \*market value of the first linked entity's membership interests in the second linked entity is reduced (in a subparagraph (b)(i) case)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 705-235

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or increased (in a subparagraph (b)(ii) case) by the first linked entity's interest in the second linked entity's profit/loss adjustment amount (see subsection (3)).

*First linked entity's interest in second linked entity's profit/loss adjustment amount*

- (3) The first linked entity's interest in the second linked entity's profit/loss adjustment amount is worked out using the formula:

$$\frac{\text{*Market value of first linked entity's *membership interests in second linked entity}}{\text{*Market value of all *membership interests in second linked entity}} \times \text{Second linked entity's profit/loss adjustment amount}$$

*Adjustment to allocation of allocable cost amount for indirect interest in linked entity with profits/losses*

- (4) If:
- (a) a linked entity has \*membership interests in a second linked entity; and
  - (b) the second linked entity has, directly or indirectly through one or more interposed linked entities, membership interests in a third linked entity; and
  - (c) in working out the group's \*allocable cost amount for the third linked entity:
    - (i) an amount is required to be added (the ***third linked entity's profit/loss adjustment amount***) under step 3 in the table in section 705-60 (about profits accruing before becoming a subsidiary member of the group); or
    - (ii) an amount is required to be subtracted (also the ***third linked entity's profit/loss adjustment amount***) under step 5 in the table in section 705-60 (about losses accruing before becoming a subsidiary member of the group);

then, for the purposes of working out under section 705-35 the \*tax cost setting amount for the assets of the first linked entity, the \*market value of the first linked entity's membership interests in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 705-240

the second linked entity is reduced (in a subparagraph (c)(i) case) or increased (in a subparagraph (c)(ii) case) by the first linked entity's interest in the third linked entity's profit/loss adjustment amount (see subsection (5)).

*First linked entity's interest in third linked entity's profit/loss adjustment amount*

- (5) The first linked entity's interest in the third linked entity's profit/loss adjustment amount is worked out using the formula:

$$\frac{\text{*Market value of first linked entity's membership interests in third linked entity held through second linked entity}}{\text{*Market value of all *membership interests in third linked entity}} \times \text{Third linked entity's profit/loss adjustment amount}$$

where:

*market value of first linked entity's membership interests in third linked entity held through second linked entity* means the \*market value of all \*membership interests in the third linked entity that the first linked entity holds indirectly through the second linked entity (including through that entity and one or more other linked entities that are interposed between the second linked entity and the third linked entity).

### 705-240 Modified application of section 705-57

*Object*

- (1) The object of this section is to ensure that, in working out \*tax cost setting amounts for \*trading stock, \*depreciating assets or \*revenue assets of the linked entities, section 705-57 (about loss of pre-CGT status of certain membership interests) only applies if the \*membership interests held directly by the \*head company of the group are affected.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 705-240

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*Modified application of section 705-57—basic modification*

- (2) For the purposes of applying section 705-57 in accordance with this Subdivision, a reference in that section to a \*membership interest that a \*member of the joined group holds in the joining entity at the joining time is taken to be a reference to a membership interest that the \*head company of the \*consolidated group holds directly in a linked entity at the time the linked entity becomes a \*subsidiary member.

*Modified application of section 705-57—additional modifications where section 705-225 applies*

- (3) Also, if a linked entity (the **first linked entity**) holds a \*membership interest (the **subject membership interest**) in another linked entity (the **second linked entity**), section 705-57 (as modified in accordance with subsection (2)) is to be applied in relation to the subject membership interest as follows.
- (4) First work out whether there would be a reduction under that section in the \*tax cost setting amount for the subject membership interest that is used as mentioned in subsection 705-225(3) (the **subsection 705-225(3) tax cost setting amount**) if:
- (a) the subject membership interest, if it is not a revenue etc. asset of the first linked entity, were taken to be such an asset; and
  - (b) paragraphs 705-57(2)(c) and (d) and subsection 705-57(7) did not apply to the subject membership interest.
- (5) Next, if there would be such a reduction (whose amount is the **notional section 705-57 reduction amount**):
- (a) apply section 705-57 to reduce the \*tax cost setting amount for any revenue etc. asset of the second linked entity; and
  - (b) if the second linked entity holds a \*membership interest in another linked entity—apply section 705-57 in relation to that interest in accordance with subsection (3) of this section; and for those purposes:
    - (c) the subject membership interest is taken to be a membership interest that the \*head company of the group holds directly in the second linked entity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) the requirements of paragraphs 705-57(2)(a) and (b) are taken to be satisfied in relation to the subject membership interest; and
- (e) the subject membership interest is taken to have a \*cost base and \*reduced cost base equal to the subsection 705-225(3) tax cost setting amount; and
- (f) the subject membership interest is taken to have a loss of pre-CGT status adjustment amount equal to the notional section 705-57 reduction amount.

Note: If the head company actually held any membership interests in the second linked entity, or if other linked entities held membership interests in the second linked entity to which this subsection also applied, those membership interests would also be taken into account in working out the reduction under paragraph (a) and in applying paragraph (b).

### **705-245 Working out pre-CGT factors where subsidiary members have membership interests in other subsidiary members**

#### *Object*

- (1) The object of this section is to ensure that, where linked entities hold \*membership interests in other linked entities, the pre-CGT status of membership interests held by the \*head company, and not the pre-CGT status of membership interests held by other linked entities, is used to work out the \*pre-CGT factor under section 705-125 for assets of the other linked entities.

#### *Pre-CGT factor to be worked out from top down*

- (2) If linked entities hold \*membership interests in any other linked entities, the \*pre-CGT factor for the assets of linked entities holding membership interests must be worked out before the pre-CGT factor for the assets of the linked entities in which the membership interests are held.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 705** Tax cost setting amount for assets where entities become subsidiary members of consolidated groups

Section 705-300

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**Subdivision 705-E—Adjustments for errors etc.**

**Guide to Subdivision 705-E**

**705-300 What this Subdivision is about**

Errors in making tax cost setting amount calculations are reversed by means of an immediate capital gain or loss if it would be unreasonable to require the calculations to be re-done.

**Table of sections**

**Operative provisions**

705-305	Object of this Subdivision
705-310	Operation of Part IVA of the <i>Income Tax Assessment Act 1936</i>
705-315	Errors that attract special adjustment action
705-320	Tax cost setting amounts taken to be correct

**Operative provisions**

**705-305 Object of this Subdivision**

The object of this Subdivision is to avoid the time and expense involved in correcting errors affecting \*tax cost setting amount calculations. This is done by providing for \*capital gains or \*capital losses to reverse the errors.

**705-310 Operation of Part IVA of the *Income Tax Assessment Act 1936***

To avoid doubt, this Subdivision does not limit the operation of Part IVA of the *Income Tax Assessment Act 1936*.

**705-315 Errors that attract special adjustment action**

- (1) Section 705-320 (about later adjustments to correct \*tax cost setting amount calculation errors) applies if the conditions in this section are satisfied.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Tax cost setting amount taken into account*

- (2) The first condition is that the \*head company of a \*consolidated group worked out a \*tax cost setting amount, in purported compliance with this Division, for an asset of an entity that becomes a \*subsidiary member of the group that is an asset of a kind referred to in section 705-35 as a reset cost base asset.

*Error in calculation*

- (3) The second condition is that:
- (a) the \*head company made one or more errors in working out the \*tax cost setting amount; and
  - (b) those errors caused the tax cost setting amount to differ from its correct amount.

If the errors caused the tax cost setting amount to be more, the difference is an **overstated amount**. If the errors caused the tax cost setting amount to be less, the difference is an **understated amount**.

*Unreasonable to require recalculation*

- (4) The third condition is that, having regard to the following factors:
- (a) the net size of the errors compared to the size of the \*allocable cost amount for the joining entity;
  - (b) the number of \*tax cost setting amounts that would have to be recalculated, and the difficulty of making the recalculations;
  - (c) the number of adjustments, in assessments that could be amended and in future \*income tax returns, that would be necessary to correct the errors;
  - (d) the difficulty in obtaining any necessary information;
- it is not reasonable to require a recalculation of the amounts involved.

*Exception where error due to fraud or evasion*

- (5) However, the conditions in this section are *not* satisfied if the errors were to any extent due to fraud or evasion.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 705-320

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*Requirement to notify*

- (6) The \*head company of the \*consolidated group must, as soon as practicable after becoming aware that it made one or more errors in working out the \*tax cost setting amount, notify the Commissioner in the \*approved form:
- (a) that it had made the errors; and
  - (b) of the amount of the overstated amount or understated amount.

**705-320 Tax cost setting amounts taken to be correct**

- (1) For the purposes of this Act (other than this Subdivision) and for the purposes of the *Taxation Administration Act 1953*, any \*tax cost setting amounts that were worked out by the \*head company, so far as they were due to the errors, are taken to have been correct if the conditions in section 705-315 are satisfied.

Note 1: If the conditions in section 705-315 are satisfied, CGT event L6 happens (see section 104-525).

Note 2: Subsection (1) means that the Commissioner cannot amend any assessments necessary to correct the errors, and that (except as mentioned in subsection (2)) no offences or administrative penalties arise in respect of the errors.

- (2) Subsection (1) does not apply for the purposes of determining whether there is an offence against section 8N of the *Taxation Administration Act 1953*, or an administrative penalty under section 284-75 or 284-145 in Schedule 1 to that Act, in relation to statements made before the Commissioner became aware of the errors.

Note 1: Section 8N of the *Taxation Administration Act 1953* deals with false or misleading statements. Sections 284-75 and 284-145 in Schedule 1 to that Act set out the circumstances in which an entity is liable for an administrative penalty.

Note 2: The offence and administrative penalty provisions however apply on a modified basis—see subsection 8W(1C) of the *Taxation Administration Act 1953*, and subsections 284-80(2) and 284-150(2) in Schedule 1 to that Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Division 707—Losses for head companies when entities become members etc.**

### **Table of Subdivisions**

- 707-A Transfer of previously unutilised losses to head company
- 707-B Can a transferred loss be utilised?
- 707-C Amount of transferred losses that can be utilised
- 707-D Special rules about losses

### **Subdivision 707-A—Transfer of previously unutilised losses to head company**

#### **Guide to Subdivision 707-A**

##### **707-100 What this Subdivision is about**

A loss made but not utilised by an entity before the time it becomes a member of a consolidated group is transferred to the head company of the group at that time if the entity could have utilised the loss had the entity not become a member of the group.

##### **Table of sections**

- 707-105 Who can utilise the loss?

##### **Objects**

- 707-110 Objects of this Subdivision

##### **Application**

- 707-115 What losses this Subdivision applies to

##### **Transfer of loss from joining entity to head company**

- 707-120 Transfer of loss from joining entity to head company
- 707-125 Modified same business test for companies' post-1999 losses

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 707** Losses for head companies when entities become members etc.

Section 707-105

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707-130 Modified pattern of distributions test

707-135 Transferring loss transferred to joining entity because same business test was passed

**Effect of transfer of loss**

707-140 Effect of transfer of loss

**Cancelling the transfer of the loss**

707-145 Cancelling the transfer of the loss

**What happens if the loss is not transferred?**

707-150 Loss cannot be utilised for income year ending after the joining time

**707-105 Who can utilise the loss?**

(1) If the loss is transferred, the head company is treated for income years ending after the transfer as having made the loss, so the head company can utilise the loss for those income years to the extent permitted by:

- (a) the general rules (outside this Part) about an entity utilising a loss it has made; and
- (b) the special rules about transferred losses in the other Subdivisions of this Division that supplement and modify those general rules.

Note: If the entity from which the loss was transferred became a subsidiary member of the consolidated group, the entity cannot utilise the loss for those income years because of section 701-1 (single entity rule) and section 707-140.

(2) If the loss is *not* transferred, then, for an income year ending after the time the entity became a member of the consolidated group, the loss cannot be utilised by any entity.

Note: The loss will not be transferred if the entity would not have been able to utilise it or if the transfer is cancelled under section 707-145.

**Objects**

**707-110 Objects of this Subdivision**

(1) The main objects of this Subdivision are:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) to provide for the transfer of a loss from an entity (the *joining entity*) becoming a \*member of a \*consolidated group to the \*head company of the group (so the head company may be able to \*utilise it), if the joining entity could have utilised the loss if it had not become a member of the group; and
- (b) to prevent the utilisation by any entity of a loss made by the joining entity, if the joining entity could not have utilised the loss if it had not become a member of the group.

*Utilising a loss*

- (2) An entity *utilises* a loss:
  - (a) in the case of a \*tax loss—to the extent it is deducted from an amount of the entity's assessable income or \*exempt income; and
  - (b) in the case of a \*net capital loss—to the extent that it is applied to reduce an amount of the entity's \*capital gains.

**Application****707-115 What losses this Subdivision applies to**

- (1) This Subdivision applies to a loss of any \*sort if:
  - (a) an entity (the *joining entity*) becomes a \*member of a \*consolidated group (the *joined group*) at a time (the *joining time*) in an income year (the *joining year*); and
  - (b) the loss was made by the joining entity for an income year ending before the joining time.

Note 1: If the joining entity had a loss transferred to it by a previous operation of this Subdivision (when the entity was the head company of a consolidated group), this Subdivision operates later as if the joining entity had made the loss. See section 707-140.

Note 2: Section 707-405 may affect the income year for which the joining entity is treated as having made the loss, if the joining entity made the loss and the loss is referable to part of an income year.

- (2) This Subdivision applies to the loss only to the extent to which the loss is *not* utilised or otherwise reduced for:
  - (a) an income year ending before the joining time; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 707-120

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- (b) a non-membership period mentioned in section 701-30 that ended before the joining time.

**Transfer of loss from joining entity to head company**

**707-120 Transfer of loss from joining entity to head company**

- (1) At the joining time, the loss is transferred from the joining entity to the \*head company of the joined group (even if they are the same entity), to the extent (if any) that the loss could have been \*utilised by the joining entity for an income year consisting of the \*trial year if:
  - (a) at the joining time, the joining entity had not become a \*member of the joined group (but had been a \*wholly-owned subsidiary of the head company if the joining entity is not the head company); and
  - (b) the amount of the loss that could be utilised for the trial year were not limited by the joining entity's income or gains for the trial year.

*What is the trial year?*

- (2) The *trial year* is the period:
  - (a) starting at the *latest* of these times:
    - (i) the time 12 months before the joining time;
    - (ii) the time the joining entity came into existence;
    - (iii) the time the joining entity last ceased to be a \*subsidiary member of a \*consolidated group, if the joining entity had been a member of a consolidated group before the joining time but was not a \*member of a consolidated group just before the joining time; and
  - (b) ending just after the joining time.

*Same business test involving trial year*

- (3) When working out whether the joining entity carried on the same business throughout the \*trial year (or a period including the trial year) as it carried on at a particular time, assume that the entity

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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carried on at and just after the joining time the same business that it carried on just before the joining time.

*Transfer of loss for income year overlapping trial year*

- (4) If the loss was made by the joining entity for an income year all or part of which occurs in the \*trial year, the transfer of the loss under subsection (1) is not prevented by the fact that the loss was made for that income year.

**707-125 Modified same business test for companies' post-1999 losses**

- (1) This section operates if:
- (a) the joining entity made the loss for an income year starting after 30 June 1999; and
  - (b) section 165-13 or subsection 165-15(2) or (3) or 166-5(5) or (6) is relevant to working out (under subsection 707-120(1)) whether the loss is transferred *from* the joining entity.
- (2) Work out whether the loss is transferred on the basis that section 165-13 required the joining entity to satisfy the \*same business test for:
- (a) the period (the *same business test period*) consisting of:
    - (i) the \*trial year; and
    - (ii) the income year that included the \*test time worked out for section 165-13 for the joining entity (disregarding paragraph (b) of this subsection), if that income year started before the trial year; and
  - (b) the time (the *test time*) just before the end of the income year for which the loss was made by the joining entity.
- (3) Work out whether the loss is transferred on the basis that:
- (a) subsection 165-15(2) specified that the period (the *same business test period*) for the \*same business test consisted of:
    - (i) the \*trial year; and
    - (ii) the income year in which the person began to control, or became able to control, the voting power in the company, if that income year started before the trial year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 707-125

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- (b) subsection 165-15(3) required the same business test to be applied to the company's business immediately before the time (the *test time*) just before the end of the income year for which the loss was made by the joining entity.
- (4) If Subdivision 166-A would apply to the joining entity for an income year consisting of the \*trial year, work out whether the loss is transferred on the basis that:
  - (a) subsection 166-5(5) treated the joining entity as having satisfied the condition in section 165-13 if the joining entity satisfied the \*same business test for the period (the *same business test period*) consisting of:
    - (i) the trial year; and
    - (ii) the income year described in subsection (5) of this section, if that income year started before the trial year; and
  - (b) subsection 166-5(6) required the same business test to be applied to the \*business that the joining entity carried on at the time (the *test time*) just before the end of the income year for which the loss was made by the joining entity.

Note: Subdivision 166-A applies to widely held companies and eligible Division 166 companies unless they choose that Subdivision 165-A apply to them without the modifications made by Subdivision 166-A.

- (5) For the purposes of subparagraph (4)(a)(ii), the income year is:
  - (a) the income year in which occurred the first time mentioned in subsection 166-5(6); or
  - (b) the income year of the joining entity containing the time at which the joining entity is taken under subsection 707-210(5) to fail to meet the condition in section 165-12, if that subsection is relevant to working out whether the joining entity can \*utilise the loss.

Note 1: Section 707-205 affects the start of the test period if the joining entity made the loss under a previous operation of this Subdivision.

Note 2: Section 707-210 is about whether a company can utilise certain losses transferred to it under this Subdivision from a company.

- (6) Subsection (4) of this section has effect despite subsection 707-210(6).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: Subsection 707-210(6) modifies section 166-5 for working out whether a company can utilise certain losses transferred to it under this Subdivision from a company.

### **707-130 Modified pattern of distributions test**

- (1) This section operates for the purpose of working out (under subsection 707-120(1)) whether the loss is transferred *from* the joining entity, if section 267-20 in Schedule 2F to the *Income Tax Assessment Act 1936* is relevant for that purpose.

Note 1: That section is relevant if the joining entity has been a non-fixed trust (as defined in that Schedule) at any time in the period from the start of the income year in which the entity made the loss until the time it became a subsidiary member of the joined group (and was not an excepted trust, as defined in that Schedule, at all times in the period).

Note 2: That section prevents an entity from utilising a tax loss unless the entity meets the conditions in subsection 267-30(2) (if applicable) and section 267-35 in that Schedule by passing the pattern of distributions test for certain income years.

- (2) Section 267-30 in that Schedule has effect as if the income year mentioned in that section were the joining year, and not the <sup>\*</sup>trial year.

Note: Section 267-30 in that Schedule requires the joining entity to pass the pattern of distributions test for the income year mentioned in that section if that entity distributed income or capital in that income year or within 2 months after the end of that income year.

- (3) Section 267-35 in that Schedule has effect as if the reference in that section to an earlier income year were to an income year earlier than the joining year.

- (4) Disregard each distribution (if any) of income or capital (within the meaning of that Schedule) made by the joining entity after the joining time, so far as it was made from an amount of the entity's income or capital attributable to a time after the joining time, in working out:

- (a) whether section 267-30 in that Schedule requires the joining entity to pass the pattern of distributions test (as defined in that Schedule); and
- (b) whether the joining entity passes that test as required by section 267-30 or 267-35 in that Schedule.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 707-135

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Note: Disregarding that percentage of a distribution may affect a test year distribution of income or a test year distribution of capital, as those terms are defined in section 269-65 in that Schedule, and thus affect whether the joining entity passes the pattern of distributions test under section 269-60 in that Schedule.

**707-135 Transferring loss transferred to joining entity because same business test was passed**

- (1) This section operates if the loss had been transferred to the joining entity (by a previous operation of this Subdivision) because the entity *from* which the loss was transferred carried on during a particular period the same business as it carried on at a particular time.
- (2) The loss is *not* transferred from the joining entity to the \*head company of the joined group (despite section 707-120), unless the joining entity satisfies the \*same business test for:
  - (a) the \*trial year (the *same business test period*); and
  - (b) the time (the *test time*) just before the end of the income year in which the loss was transferred to the joining entity.

**Effect of transfer of loss**

**707-140 Effect of transfer of loss**

- (1) To the extent that the loss is transferred under section 707-120 from the joining entity to the \*head company of the joined group, this Act operates (except so far as the contrary intention appears) for the purposes of income years ending after the transfer as if:
  - (a) the head company had made the loss for the income year in which the transfer occurs; and
  - (b) the joining entity had not made the loss for the income year for which the joining entity actually made the loss.

*Head company may utilise loss for income year of transfer*

- (2) The \*head company is not prevented from \*utilising the loss for the income year in which the transfer occurs merely because this Act operates as if the head company had made the loss (to the extent of the transfer) for that year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Debt forgiveness in income year for which loss is made*

- (3) If a debt of the \*head company of the joined group is forgiven (as defined in Subdivision 245-B in Schedule 2C to the *Income Tax Assessment Act 1936*) in the income year in which the transfer occurs, subsections 245-105(5) and (6) in that Schedule operate as if the head company had made the loss for an earlier income year.

Note: This subsection has the effect that the loss may be reduced in accordance with one of those subsections by applying the total net forgiven amount for the income year in which the transfer occurs.

## **Cancelling the transfer of the loss**

### **707-145 Cancelling the transfer of the loss**

- (1) The \*head company of the joined group may choose to cancel the transfer of the loss.
- (2) If the \*head company of the joined group does so, this Act (except this section) operates for all income years ending after the transfer as if it had not occurred under section 707-120.
- (3) The choice cannot be revoked.

## **What happens if the loss is not transferred?**

### **707-150 Loss cannot be utilised for income year ending after the joining time**

To the extent that the loss is *not* transferred under section 707-120 from the joining entity to the \*head company of the joined group, the loss cannot be \*utilised by any entity for an income year ending after the joining time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 707-200

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## Subdivision 707-B—Can a transferred loss be utilised?

### Guide to Subdivision 707-B

#### 707-200 What this Subdivision is about

This Subdivision modifies rules about a company maintaining the same ownership to be able to utilise a loss transferred to it under Subdivision 707-A, and specifies what things happening before the transfer are to be taken into account in working out whether the company can utilise the loss.

#### Table of sections

##### Operative provisions

- 707-205 Modified period for test for maintaining same ownership  
707-210 Utilisation of certain losses transferred from a company depends on company that made the losses earlier

#### Operative provisions

##### 707-205 Modified period for test for maintaining same ownership

- (1) This section modifies Divisions 165 and 166 for the purposes of working out whether a company can \*utilise a loss of any \*sort that it made because of a transfer under Subdivision 707-A.
- (2) Subdivision 165-A and Division 166 operate for those purposes as if the \*loss year started at the time of the transfer.

Note 1: This means that the ownership test period defined by subsection 165-12(1) and the test period defined by subsection 166-5(2) start at the time of the transfer.

Note 2: Without this section, those periods would start at the start of the income year in which the transfer occurred, so events occurring before the transfer (such as changes in holdings of voting power, rights to dividends or rights to capital) could affect whether the company could utilise the tax loss or net capital loss.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**707-210 Utilisation of certain losses transferred from a company depends on company that made the losses earlier**

- (1) This section has effect for the purposes of working out whether a company (the *latest transferee*) can \*utilise for an income year a loss it made because of a \*COT transfer from a company (the *latest transferor*).
- (1A) A transfer of a loss under Subdivision 707-A from a company to a company is a *COT transfer* of the loss if the transfer occurs because:
- (a) the transferor meets the conditions in section 165-12; and
  - (b) the conditions in one or more of paragraphs 165-15(1)(a), (b) and (c) do not exist in relation to the transferor.

*Meeting conditions in section 165-12*

- (2) The latest transferee is taken to meet the conditions in section 165-12 for the income year in relation to the loss if and only if the company (the *test company*) described in subsection (3) would have met those conditions for the income year had the circumstances described in subsection (4) existed.

Note 1: The latest transferee and the test company may be the same company.

Note 2: Section 707-405 may affect the income year for which the test company is treated as having made the loss, if the loss is referable to part of an income year.

- (3) The test company is the first company to make the loss. However, if:
- (a) the loss was made by the latest transferor because of one or more earlier transfers of the loss under Subdivision 707-A from a company to a company; and
  - (b) one or more of those earlier transfers was *not* a \*COT transfer;
- the test company is the company *to* which the loss was transferred in the most recent transfer described in paragraph (b).
- (4) The circumstances are that:
- (a) the test company was *not* treated by Subdivision 707-A for the income year as not having made the loss; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 707-210

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- (b) if the test company made the loss apart from that Subdivision and transferred the loss to itself under that Subdivision—the test company was *not* treated by that Subdivision for the income year as having made the loss for the income year in which the transfer occurred; and
- (c) nothing happened, after the time the loss was transferred from the test company to the \*head company of a \*consolidated group, to \*membership interests or voting power:
  - (i) in an entity that was at that time a \*subsidiary member of the group; or
  - (ii) in an entity that was at that time interposed between the test company and the head company;  
that would affect whether the test company would meet the conditions in section 165-12 for the income year; and
- (d) if the loss has later been transferred under that Subdivision to the head company of another consolidated group—nothing happened, after the time of the later transfer, to membership interests or voting power:
  - (i) in the later transferor; or
  - (ii) in an entity that was at that time interposed between the later transferor and the head company;  
that would affect whether the test company would meet the conditions in section 165-12 for the income year.

*Failing to meet conditions in section 165-12*

- (5) The latest transferee is taken to fail to meet a condition in section 165-12 only at:
  - (a) the first time the test company would have failed to meet the condition had the circumstances described in subsection (4) existed; or
  - (b) the test time described in subsection 166-5(6) for the test company, if Division 166 is relevant to working out whether the test company could have \*utilised the loss had the circumstances described in subsection (4) existed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Same business test applying to latest transferee under Division 166*

- (6) If subsection 166-5(5) affects whether the latest transferee can \*utilise the loss for the income year because the latest transferee is a \*widely held company or an \*eligible Division 166 company, or both, during the year, subsection 166-5(6) operates as if it required the \*same business test to be applied to the \*business the latest transferee carried on just before the time described in subsection (5) of this section.

*If the test company made the loss because of a transfer*

- (7) If the test company made the loss because of a transfer under Subdivision 707-A from another entity, Divisions 165 and 166 operate in relation to the test company for the purposes of subsection (2) as if the test company's \*loss year started at the time of the transfer.

### **Subdivision 707-C—Amount of transferred losses that can be utilised**

#### **Guide to Subdivision 707-C**

#### **707-300 What this Subdivision is about**

Losses transferred to the head company of a consolidated group under Subdivision 707-A can be utilised for an income year only against a fraction of the income or gains remaining after the company has utilised other losses and deductions.

#### **Table of sections**

##### **Object**

707-305 Object of this Subdivision

##### **How much of a transferred loss can be utilised?**

707-310 How much of a transferred loss can be utilised?

707-315 What is a *bundle* of losses?

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 707-305

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- 707-320 What is the *available fraction* for a bundle of losses?
- 707-325 *Modified market value* of an entity becoming a member of a consolidated group
- 707-330 Losses transferred from former head company
- 707-335 Limit on utilising transferred losses if circumstances change during income year
- 707-340 Utilising transferred losses while exempt income remains
- 707-345 Other provisions are subject to this Subdivision

## Object

### 707-305 Object of this Subdivision

- (1) The main object of this Subdivision is to limit, in a way that gives effect to the principles in subsections (2) and (3), the amount of losses transferred under Subdivision 707-A that can be \*utilised for an income year by the transferee.
- (2) One principle is that the transferee is to \*utilise the transferred losses for an income year only to the extent to which it has income or gains for the income year remaining after reduction by its other losses and deductions.
- (3) The other principle is that the amount of a transferred loss that the transferee can \*utilise is to reflect the amount of the loss that the transferor could have \*utilised for the income year if the transferor of the loss (whether the original maker of the loss or not) had not *become* a \*member of a \*consolidated group at the time of the transfer.
- (4) To give effect to those principles, this Subdivision operates on the assumption that, if each transferor of a loss to the transferee had not become a \*member of a \*consolidated group at the time of the transfer:
  - (a) all the transferors of transferred losses to the transferee would have made income or gains for the year whose total did not exceed the transferee's income or gains for the year remaining after reduction by its other losses and deductions; and
  - (b) a particular transferor's income or gains for the year would have equalled a fraction of the transferee's income or gains

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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for the year remaining after reduction by its other losses and deductions.

- (5) The fraction is worked out by reference to the transferor's \*market value at the time of the transfer (on the assumption that market value reflects capacity to generate income or gains in future).

### **How much of a transferred loss can be utilised?**

#### **707-310 How much of a transferred loss can be utilised?**

- (1) This section limits the amount of losses in a particular \*bundle of losses transferred under Subdivision 707-A that can be \*utilised by the transferee. The limit is set by reference to the \*available fraction for the bundle.

Note: Section 707-335 of this Act and section 707-350 of the *Income Tax (Transitional Provisions) Act 1997* set different limits on utilising losses in a bundle of losses in certain circumstances.

#### *Basic rule*

- (2) The transferee cannot \*utilise more of the losses in the \*bundle than the transferee would have been able to utilise (apart from this section) under the conditions in subsections (3), (4) and (5).
- (3) The first condition is that the only amount of the transferee's \*ordinary income, \*statutory income or gains (if any) of a kind described in column 1 of an item of the table for the income year is the \*available fraction of the amount worked out as described in column 2 of the item having regard to:
- (a) the transferee's \*ordinary income, \*statutory income or gains for the income year apart from this section; and
  - (b) the transferee's deductions for the income year and losses, *except* losses transferred to the transferee under Subdivision 707-A.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 707-310

<b>Income and gains</b>	
<b>Column 1</b> <b>The transferee's ordinary income, statutory income or gains of this kind:</b>	<b>Column 2</b> <b>Are worked out by reference to this amount:</b>
1 *Capital gains	The result of: (a) step 2 of the method statement in subsection 102-5(1); or (b) step 3 of the method statement in section 165-111;  (as appropriate) for the transferee and the income year
3 *Exempt film income	The transferee's *net exempt film income for the income year remaining after deduction of the transferee's *film losses (if any)
4 *Assessable film income	The transferee's *net assessable film income for the income year remaining after deduction of the transferee's *film losses (if any)
5 *Exempt income other than *exempt film income	The amount of the transferee's *net exempt income for the income year that would have remained after deducting from it the transferee's *tax losses (if any), assuming the amount of that income were what it would have been had the transferee <i>not</i> had *exempt film income for the year
6 Assessable income that is not attributable to *capital gains and is not *assessable film income	The amount (if any) that would have been the transferee's taxable income (if any) for the income year if the transferee had <i>not</i> had for the income year: (a) any *net capital gain; or (b) any *net assessable film income;  reduced by the amount (the <i>transferee's grossed-up franking offset amount</i> ) worked out in accordance with paragraph (3A)(c)

(3A) For the purposes of subsection (3):

- (a) the transferee's \*tax losses to which paragraph (b) of, or the table in, that subsection applies are to be worked out on the assumption that the transferee chooses to deduct under

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

subsection 36-17(2) all of the tax losses and that subsection 36-17(5) does not apply to that choice; and

- (b) except as mentioned in paragraph (a) of this subsection, amounts worked out as described in column 2 of an item of the table in subsection (3) are to be worked out making the same choices as the transferee actually makes in working out its taxable income as stated in its \*income tax return for the income year; and
- (c) the transferee's grossed-up franking offset amount mentioned in column 2 of item 6 in the table is the amount worked out using the formula:

$$\frac{1}{\text{*Corporate tax rate for the income year}} \times \text{Franking offsets}$$

where:

**franking offsets** means the total amount of \*tax offsets to which the transferee is entitled for the income year under Division 207 and Subdivision 210-H (except those that are subject to the refundable tax offset rules because of section 67-25).

- (4) The second condition is that once the amounts of the transferee's income or gains have been worked out under subsection (3) they are *not* reduced by:
  - (a) deductions, or losses, other than losses in the \*bundle; or
  - (b) taxes or expenses described in subsection 375-805(4) (which is about \*net exempt film income).

Note: One of the effects of subsection (4) is that, for working out how much of a film loss in the bundle can be deducted from the transferee's net exempt film income or net assessable film income:

- (a) the transferee's net exempt film income will be the same as its exempt film income worked out under subsection (3); and
  - (b) the transferee's net assessable film income will be the same as its assessable film income worked out under subsection (3).
- (5) The third condition is that once the amounts of the transferee's \*exempt income have been worked out under subsection (3), assume that the transferee had no losses, outgoings or taxes

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 707-315

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described in subsection 36-20(1) (which is about \*net exempt income), in working out how much of a \*tax loss in the \*bundle can be deducted from the transferee's net exempt income.

**707-315 What is a *bundle* of losses?**

- (1) A ***bundle*** of losses comes into existence at the time (the ***initial transfer time***) a loss of any \*sort that has not previously been transferred under Subdivision 707-A is transferred under that Subdivision from an entity (the ***real loss-maker***) to the \*head company of a \*consolidated group (the ***joined group***).
- (2) At the initial transfer time, the ***bundle*** consists of every loss (regardless of its \*sort) that:
  - (a) is transferred at that time under that Subdivision from the real loss-maker to the \*head company of the joined group; and
  - (b) has not been transferred under that Subdivision before that time.

Note: For certain purposes, section 707-327 of the *Income Tax (Transitional Provisions) Act 1997* treats the bundle as including certain other losses too.

- (3) The ***bundle*** still exists at a later time if it includes at that later time at least one loss of any \*sort that could be \*utilised or otherwise reduced by an entity for an income year ending after that time (even if one or more losses have ceased to be included in the bundle before that later time).

Note: A bundle continues to exist even if the losses in it are transferred again under Subdivision 707-A after the initial transfer time.

- (4) A loss ceases to be included in a \*bundle at the first time for which it is true that the loss cannot be \*utilised or otherwise reduced by any entity for an income year ending after that time.
- (5) If, had a loss been made by a company as assumed under a provision of Division 170, the loss would have been transferred under Subdivision 707-A, this Subdivision and other provisions that relate to or may affect the \*available fractions for one or more \*bundles of losses (including sections 707-140 and 719-325) operate as if the transfer had occurred.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 707-320

Note: Section 707-140 provides for a choice to cancel a transfer under Subdivision 707-A. Section 719-325 provides for a choice to cancel all losses in certain bundles of losses. A choice under one of those sections may result in a bundle not coming into existence, or not being in existence after a certain time.

- (6) To avoid doubt, a choice under section 707-145 or 719-325, as it operates because of subsection (5) of this section, relating to the loss does not affect or prevent:
- (a) a transfer of the loss that would have occurred under Subdivision 707-A as described in another application of that subsection involving a different company; or
  - (b) \*utilisation of the loss by the company that actually made the loss and is different from the company assumed under Division 170 to have made the loss.

Note: Therefore a choice under section 707-145 or 719-325, as operating because of subsection (5) of this section, will be able to cause only one bundle not to exist, and will not affect the existence of other bundles that are treated as existing because of other operations of that subsection.

**707-320 What is the *available fraction* for a bundle of losses?**

- (1) The *available fraction* for a \*bundle of losses at a time is:

$$\frac{\text{*Modified market value of the real loss-maker at the initial transfer time}}{\text{Transferee's adjusted market value at the initial transfer time}}$$

where:

***transferee's adjusted market value at the initial transfer time***

means the amount that would be the \*market value, at the initial transfer time, of the transferee to which the losses in the \*bundle were transferred at that time if:

- (a) the transferee did not have a loss of any \*sort for an income year ending before that time; and
- (b) the balance of the transferee's \*franking account were nil at that time.

Note: The value for the transferee will be worked out on the basis that subsidiary members of the consolidated group headed by the transferee are part of the transferee, because of section 701-1 (the single entity rule).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 707-320

- (2) However, if an event described in an item of the table happens, the *available fraction* for the \*bundle is reduced or maintained just after the event by multiplying it by the factor identified in the item:

Factors affecting the available fraction		
Item	Event	Factor
1	One or more losses in the *bundle are transferred for the second or subsequent time	The lesser of 1 and this fraction: $\frac{\text{*Market value of the transferor at the time of the transfer}}{\text{*Market value of the transferee at the time of the transfer}}$
2	At the same time as the losses in the *bundle were most recently transferred, losses in one or more other bundles were transferred from the same transferor to the same transferee, and the losses in the bundle or one of the other bundles had not been transferred before	The result of dividing the <i>lesser</i> of: (a) the available fraction (apart from this subsection) for the bundle of losses that had not been transferred before; and (b) 1; by the sum of the available fractions for all the bundles (apart from this item applying to transfers at the time)
3	The company to which the losses in the *bundle were most recently transferred has transferred to it at a later time losses in one or more other bundles	$1 - \frac{\text{Total of the available fractions for the other bundles just after the later time}}{\text{Total of the available fractions for the other bundles just after the later time}}$
4	There is an increase in the *market value of the company to which the losses in the *bundle were most recently transferred, because of an event described in subsection 707-325(4) (but not covered by subsection 707-325(5))	$\frac{\text{*Market value of the company just before the event}}{\text{*Market value of the company just before the event} + \text{Amount of the increase}}$
5	The available fractions (apart from this item) for all the *bundles of losses most recently made by the company that most recently made the losses in the bundle total more than 1.000	$\frac{1}{\text{The total}}$

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) If the transfer under Subdivision 707-A of one or more losses in a \*bundle causes events described in 2 or more items of the table in subsection (2) to happen and require calculations of the available fraction for that bundle and for one or more other bundles:
- (a) make the calculations required by those items in the order in which the items appear in the table; and
  - (b) take account of the results of a calculation under an earlier item in making a calculation under a later item.
- (4) For a \*bundle of losses:
- (a) subject to paragraph (b)—the *available fraction* is worked out to 3 decimal places, rounding up if the fourth decimal place is 5 or more; or
  - (b) if the available fraction worked out under paragraph (a) is 0.000 and, if it were worked out to more decimal places, it would include one or more non-zero digits—the *available fraction* is worked out to the number of decimal places that includes the first or only such digit, rounding up if the next decimal place is 5 or more.
- Examples:        For 0.000328, the available fraction is 0.0003. For 0.000086, the available fraction is 0.00009.
- (4A) Subsections (1) and (2) have effect subject to subsection (4).
- (5) If, apart from this subsection, the *available fraction* for a \*bundle of losses would need to be worked out by dividing a number by 0, work out the available fraction by dividing the number by 1.
- (6) The *available fraction* for a \*bundle of losses is 0 if, apart from this subsection, it would be negative.

### **707-325 Modified market value of an entity becoming a member of a consolidated group**

#### *Basic rule*

- (1) The *modified market value* of an entity that becomes a \*member of a \*consolidated group at a particular time is the amount that would be the \*market value of the entity at that time if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 707-325

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- (a) the entity had no loss of any \*sort for any income year, and the balance of its \*franking account at that time were nil; and
- (b) the \*subsidiary members of the group at that time were separate entities and not just parts of the \*head company of the group; and
- (c) the entity's market value did *not* include an amount attributable (directly or indirectly) to a \*membership interest in a member of the group (other than the entity):
  - (i) that is a \*corporate tax entity; or
  - (ii) that transferred a loss under Subdivision 707-A to the head company of the group at or before that time; and
- (d) the contribution to the entity's market value made by a trust (other than one that is a member described in paragraph (c)) were limited to the amount attributable to the entity's \*fixed entitlements (if any) at that time to income or capital of the trust that is *not* attributable (directly or indirectly) to a membership interest in such a member.

Note 1: Section 707-330 affects the modified market value of an entity that becomes a subsidiary member of the consolidated group, if the entity was the head company of another consolidated group just beforehand.

Note 2: Section 707-325 of the *Income Tax (Transitional Provisions) Act 1997* provides for an entity's modified market value to be increased in certain circumstances for the purposes of working out the available fraction for a bundle of losses transferred from the entity.

*Rule to prevent inflation of modified market value*

- (2) However, if:
  - (a) one or more of the events described in subsection (4) occurred in the 4 years before the time; and
  - (b) the amount worked out under subsection (1) *exceeds* what it would have been if none of those events had occurred;the ***modified market value*** of the entity at the time is the amount worked out under subsection (1), reduced by the amount worked out under subsection (3).
- (3) The amount of the reduction is the *lesser* of:
  - (a) the excess described in paragraph (2)(b); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the total increase in the \*market value of the entity that occurred immediately after each event mentioned in paragraph (2)(a) because of the event.
- (4) These are the events:
- (a) an injection of capital into the entity or an entity that was an \*associate of the entity (or of the trustee of the entity, if the entity is a trust) at the time of the injection;
  - (b) a transaction that:
    - (i) did not take place at arm's length; and
    - (ii) involved the entity or an entity that was an associate of the entity (or of the trustee of the entity, if the entity is a trust) at the time of the transaction.
- (5) For the purposes of paragraph (2)(a), disregard an injection of capital if, and only if, it is made:
- (a) into a \*listed public company through a \*dividend reinvestment \*scheme involving the issue of a \*share in the company to an entity that held a share in the company before the injection; or
  - (b) in association with the acquisition of a \*share in a company in relation to which:
    - (i) the conditions in subsection 703-35(5) are met; or
    - (ii) the conditions in paragraphs 703-35(5)(a), (b), (d) and (e) are met and in relation to which the Commissioner has made a determination under subsection 139CD(8) of the *Income Tax Assessment Act 1936*; or
  - (c) in association with the acquisition of a \*share, in a body corporate, in relation to which the conditions in subsection 703-37(4) are met.

Note 1: Section 703-35 of this Act and section 139CD of the *Income Tax Assessment Act 1936* deal with shares acquired under arrangements for employee shareholdings.

Note 2: Section 703-37 of this Act deals with certain preference shares following an ADI restructure.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 707-330

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**707-330 Losses transferred from former head company**

- (1) This section has effect for working out the \*available fraction for a \*bundle of losses if:
  - (a) an entity (the *ex-head company*) becomes a \*subsidiary member of a \*consolidated group (the *bigger group*) at a time (the *joining time*); and
  - (b) just before the joining time the ex-head company was the \*head company of another consolidated group (the *old group*); and
  - (c) at the joining time the losses are transferred under Subdivision 707-A from the ex-head company to the head company of the bigger group.
- (2) Work out the ex-head company's \*modified market value or \*market value as if each \*member of the bigger group that had been a \*subsidiary member of the old group just before the joining time were a part of the ex-head company, and not a separate member of the bigger group, when the transfer occurred.
- (3) Also, work out the ex-head company's \*modified market value as if each \*subsidiary member of the old group had been a part of the ex-head company while it was a subsidiary member of the old group.

**707-335 Limit on utilising transferred losses if circumstances change during income year**

- (1) This section limits the amount of losses in a particular \*bundle of losses transferred under Subdivision 707-A that can be \*utilised by the transferee for an income year if:
  - (a) the losses in the bundle are transferred to the transferee after the start of the income year; or
  - (b) the value of the \*available fraction for the bundle changes at a time within the period (the *transferee's loss-holding period*) described in subsection (2).
- (2) The transferee's loss-holding period:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 707-340

- (a) starts at the start of the income year or, if the losses in the \*bundle were transferred to the transferee from another entity during the income year, at the time of the transfer; and
  - (b) ends when one of these events occurs:
    - (i) the income year ends;
    - (ii) the transferee becomes a \*subsidiary member of a \*consolidated group.
- (3) The transferee cannot \*utilise for the income year more of the losses than is reasonable having regard to:
- (a) the method in section 707-310 for working out the maximum amount of the losses the transferee could utilise for the income year (apart from this section); and
  - (b) the number of days in the transferee's loss-holding period; and
  - (c) the value or values of the \*available fraction for the \*bundle during the transferee's loss-holding period; and
  - (d) the number of days in the transferee's loss-holding period for which the available fraction for the bundle has a particular value; and
  - (e) the principle that, if the transferee transferred the losses to itself under Subdivision 707-A after the start of the income year, the amount of the losses it can utilise for the income year should be worked out as if:
    - (i) the losses had been included in the bundle from the start of the income year; and
    - (ii) the available fraction for the bundle had been 1 from the start of the income year until the time of the transfer; and
  - (f) any other relevant matters.
- (4) Section 707-310 has effect subject to this section.

**707-340 Utilising transferred losses while exempt income remains***Transferred film losses and net exempt film income*

- (1) If:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 707-340

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- (a) the transferee of \*film losses in a \*bundle of losses has deducted from its \*net exempt film income for an income year an amount of those losses that:
  - (i) is equal to the amount of \*exempt film income worked out under subsection 707-310(3) for the transferee and the bundle; or
  - (ii) if section 707-335 affects the transferee's utilisation of losses in the bundle—is reasonable, having regard to that section; and
- (b) the transferee still has net exempt film income for the year and film losses remaining in the bundle;

the fact the transferee still has net exempt film income does not stop it deducting film losses remaining in the bundle from its \*net assessable film income for the year.

*Transferred tax losses and net exempt income*

(2) If:

- (a) the transferee of \*tax losses (other than \*film losses) in a \*bundle of losses has deducted from its \*net exempt income for an income year an amount of its tax losses (other than film losses) in the bundle that:
  - (i) is equal to the amount of \*exempt income worked out under subsection 707-310(3) for the transferee and the bundle; or
  - (ii) if section 707-335 affects the transferee's utilisation of losses in the bundle—is reasonable, having regard to that section; and
- (b) the transferee still has net exempt income for the year and tax losses (other than film losses) remaining in the bundle;

the fact the transferee still has net exempt income does not stop it deducting tax losses (other than film losses) remaining in the bundle from its assessable income for the year.

*Limit on deduction*

- (3) This section does not allow the deduction for an income year of an amount of losses in a \*bundle so as to exceed the limit set by

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

section 707-310 or 707-335 on \*utilisation for the year of losses of that \*sort in the bundle.

### **707-345 Other provisions are subject to this Subdivision**

The rules in this Subdivision are additional to the provisions of this Act about \*utilising losses that are outside this Subdivision. Those provisions have effect subject to this Subdivision.

### **Subdivision 707-D—Special rules about losses**

#### **Table of sections**

707-400	Head company's business before and after consolidation not compared
707-410	Exit history rule does not treat entity as having made a loss

### **707-400 Head company's business before and after consolidation not compared**

- (1) If:
  - (a) the \*same business test applies to a company that becomes a \*head company of a \*consolidated group at a time; and
  - (b) apart from this section, the same business test period would start before that time and end after it;the *same business test period* starts at that time (and ends when it would end apart from this section), for the purposes of that application of the same business test.
- (2) Subsection (1) does not apply for the purposes of working out whether the company can transfer to itself a loss under section 707-120.

### **707-410 Exit history rule does not treat entity as having made a loss**

- (1) To avoid doubt, if the \*head company of a \*consolidated group makes a loss of a particular \*sort and an entity ceases to be a \*subsidiary member of the group, the entity is *not* taken because of section 701-40 (the exit history rule):
  - (a) to have made the loss; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 707** Losses for head companies when entities become members etc.

Section 707-410

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- (b) to have made another loss of the same sort because of the circumstances that caused the head company to make the loss.
- (2) It does not matter whether the \*head company makes the loss because of a transfer under Subdivision 707-A (whether from the entity or another entity) or because of another provision.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 709—Other rules applying when entities become subsidiary members etc.**

### **Table of Subdivisions**

- 709-A Franking accounts
- 709-B Imputation issues
- 709-C Treatment of excess franking deficit tax offsets when entity becomes a subsidiary member of a consolidated group
- 709-D Deducting bad debts

### **Subdivision 709-A—Franking accounts**

#### **Guide to Subdivision 709-A**

#### **709-50 What this Subdivision is about**

Only the head company of a consolidated group has an operating franking account. The subsidiary members' franking accounts do not operate while they are subsidiary members. Debits or credits that would otherwise arise in subsidiary members' franking accounts arise instead in the head company's franking account.

#### **Table of sections**

##### **Object**

- 709-55 Object of this Subdivision

##### **Treatment of franking accounts at joining time**

- 709-60 Nil balance franking account for joining entity

##### **Treatment of subsidiary member's franking account**

- 709-65 Subsidiary member's franking account does not operate

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 709-55

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**Treatment of head company's franking account**

- 709-70 Credits arising in head company's franking account
- 709-75 Debits arising in head company's franking account

**Franking distributions by subsidiary member**

- 709-80 Subsidiary member's distributions on employee shares and certain preference shares taken to be distributions by the head company
- 709-85 Non-share distributions by subsidiary members taken to be distributions by head company
- 709-90 Subsidiary member's distributions to foreign resident taken to be distributions by head company

**Payment of group liability by former subsidiary member**

- 709-95 Payment of group liability by former subsidiary member
- 709-100 Refund of income tax to former subsidiary member

**Object**

**709-55 Object of this Subdivision**

The object of this Subdivision is for each \*consolidated group to operate what is in substance a single \*franking account, by ensuring that:

- (a) there is a nil balance in the franking accounts of entities becoming \*subsidiary members of the group; and
- (b) the franking accounts of those subsidiary members do not operate while they are subsidiary members; and
- (c) debits or credits that would otherwise arise in the franking accounts of the subsidiary members arise instead in the franking account of the \*head company of the group; and
- (d) the head company is the only \*member of the group that can frank distributions.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Treatment of franking accounts at joining time

### 709-60 Nil balance franking account for joining entity

- (1) This section operates if an entity (the *joining entity*) becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*).
- (2) If the joining entity's \*franking account is in surplus just before the joining time:
  - (a) a debit equal to the \*franking surplus arises at the joining time in the joining entity's franking account; and
  - (b) a credit equal to the franking surplus arises at the joining time in the franking account of the \*head company of the group.
- (3) If the joining entity's \*franking account is in deficit just before the joining time:
  - (a) a credit equal to the \*franking deficit arises at the joining time in the joining entity's franking account; and
  - (b) the joining entity is liable to pay \*franking deficit tax as if the joining entity's income year had ended just before the joining time; and
  - (c) despite item 5 of the table in section 205-15, a credit does not arise under that item in the joining entity's franking account because of that liability.

## Treatment of subsidiary member's franking account

### 709-65 Subsidiary member's franking account does not operate

The \*franking account of an entity that is a \*subsidiary member of a \*consolidated group does not operate during the period:

- (a) beginning just after the entity becomes a subsidiary member of the group; and
- (b) ending when the entity ceases to be a subsidiary member of the group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 709-70

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## Treatment of head company's franking account

### 709-70 Credits arising in head company's franking account

(1) This section operates if a credit would arise in the \*franking account of a \*subsidiary member of a \*consolidated group at a time (the *crediting time*) apart from section 709-65.

(2) A credit arises in the \*franking account of the \*head company of the group at the crediting time.

Note: A credit can also arise in the head company's franking account at any time under section 205-15.

(3) The amount of the credit is the same as the amount of the credit that would arise in the \*franking account of the \*subsidiary member.

(4) This section does not apply to a credit arising in the \*subsidiary member's \*franking account under paragraph 709-60(3)(a).

Note: Such a credit arises if the entity that became the subsidiary member had a deficit in its franking account just before the time it became the subsidiary member. The credit equals the deficit, creating a nil balance in the account from that time.

### 709-75 Debits arising in head company's franking account

(1) This section operates if a debit would arise in the \*franking account of a \*subsidiary member of a \*consolidated group at a time (the *debiting time*) apart from section 709-65.

(2) A debit arises in the \*franking account of the \*head company of the group at the debiting time.

Note: A debit can also arise in the head company's franking account at any time under section 205-30.

(3) The amount of the debit is the same as the amount of the debit that would arise in the \*franking account of the \*subsidiary member.

(4) This section does not apply to a debit arising in the \*subsidiary member's \*franking account under paragraph 709-60(2)(a).

Note: Such a debit arises if the entity that became the subsidiary member had a surplus in its franking account just before the time it became the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

subsidiary member. The debit equals the surplus, creating a nil balance in the account from that time.

## Franking distributions by subsidiary member

### **709-80 Subsidiary member's distributions on employee shares and certain preference shares taken to be distributions by the head company**

- (1) This section operates if:
- (a) a \*subsidiary member of a \*consolidated group makes a \*frankable distribution; and
  - (b) the distribution is made because an entity (the *shareholder*) owns a \*share in the subsidiary member; and
  - (c) the share must be disregarded under subsection 703-35(4) or 703-37(4); and
  - (d) the distribution is made to the shareholder, or to another entity because the shareholder owns the share; and
  - (e) the entity to which the distribution is made is not a \*member of the group.

Note 1: Subsection 703-35(4) requires certain shares held under employee share schemes to be disregarded.

Note 2: Subsection 703-37(4) requires certain preference shares to be disregarded following an ADI restructure.

- (2) Part 3-6 operates as if the \*distribution were a \*frankable distribution made by the \*head company of the group to a \*member of the head company.

Note: Part 3-6 deals with imputation.

### **709-85 Non-share distributions by subsidiary members taken to be distributions by head company**

- (1) This section operates if:
- (a) an entity holds a \*non-share equity interest in a \*subsidiary member of a \*consolidated group; and
  - (b) the subsidiary member makes a \*non-share distribution to the entity as holder of the interest; and
  - (c) the distribution is a \*frankable distribution; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 709-90

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- (d) the entity to which the distribution is made is not a \*member of the group.
- (2) Part 3-6 operates as if the \*distribution were a \*frankable distribution made by the \*head company of the group to a \*member of the head company.

Note: Part 3-6 deals with imputation.

**709-90 Subsidiary member's distributions to foreign resident taken to be distributions by head company**

Part 3-6 operates as if a \*frankable distribution made by a \*subsidiary member of a \*consolidated group (the *foreign-held subsidiary*) were a frankable distribution made by the \*head company of the group to a \*member of the head company if:

- (a) the foreign-held subsidiary meets the set of requirements in section 703-45, section 701C-10 of the *Income Tax (Transitional Provisions) Act 1997* or section 701C-15 of that Act; and
- (b) the frankable distribution is made to a foreign resident.

Note: Part 3-6 deals with imputation.

**Payment of group liability by former subsidiary member**

**709-95 Payment of group liability by former subsidiary member**

- (1) This section operates if:
  - (a) an entity (the *former subsidiary*) ceases to be a \*subsidiary member of a \*consolidated group (the *old group*) at a particular time (the *leaving time*); and
  - (b) at or after the leaving time, the former subsidiary:
    - (i) \*pays a PAYG instalment for which it was jointly and severally liable under subsection 721-15(1) because it was a subsidiary member of the old group; or
    - (ii) \*pays income tax for which it was jointly and severally liable under that subsection because it was a subsidiary member of the old group; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) apart from this section, a \*franking credit would arise under section 205-15 in the \*franking account of the former subsidiary at a time (the *crediting time*) because of that payment.
- (2) The credit:
- (a) does not arise at the crediting time in the \*franking account of the former subsidiary; and
  - (b) instead, arises at the crediting time in the franking account of the entity that was the \*head company of the old group at the leaving time.

### **709-100 Refund of income tax to former subsidiary member**

- (1) This section operates if:
- (a) an entity (the *former subsidiary*) ceases to be a \*subsidiary member of a \*consolidated group (the *old group*) at a particular time (the *leaving time*); and
  - (b) at or after the leaving time, the former subsidiary \*receives a refund of income tax for which it was jointly and severally liable under subsection 721-15(1) because it was a subsidiary member of the old group; and
  - (c) apart from this section, a \*franking debit would arise under section 205-30 in the \*franking account of the former subsidiary at a time (the *debiting time*) because of that payment.
- (2) The debit:
- (a) does not arise at the debiting time in the \*franking account of the former subsidiary; and
  - (b) instead, arises at the debiting time in the franking account of the entity that was the \*head company of the old group at the leaving time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 709-B—Imputation issues

### Guide to Subdivision 709-B

#### 709-150 What this Subdivision is about

This Subdivision modifies the way Division 208 (exempting entities and former exempting entities) operates in relation to consolidated groups.

#### Table of sections

##### Operative provisions

709-155	Testing consolidated groups
709-160	Subsidiary member is exempting entity
709-165	Subsidiary member is former exempting entity
709-170	Head company and subsidiary are exempting entities
709-175	Head company is former exempting entity

#### Operative provisions

##### 709-155 Testing consolidated groups

- (1) To determine whether a \*consolidated group is an \*exempting entity or \*former exempting entity, the tests in Division 208 are applied to the \*head company of the group.
- (2) However, there are some additional rules that can alter the way that Division 208 applies to a \*consolidated group. These are set out in sections 709-160 to 709-175.
- (3) In applying those rules to an entity that is a \*member of a \*consolidated group:
  - (a) Division 208 is to be applied before those rules; and
  - (b) that Division is to be applied just after the entity became a member of the group but, for a \*subsidiary member, it is to be applied on the assumption that the subsidiary was not a member of the group at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) Except as mentioned in paragraph (3)(b), Division 208 has no application to a \*subsidiary member of a \*consolidated group.

### **709-160 Subsidiary member is exempting entity**

- (1) This section operates if:
- (a) the \*head company of a \*consolidated group is neither an exempting entity nor a \*former exempting entity; and
  - (b) a \*corporate tax entity becomes a \*subsidiary member of the group at a time (the *joining time*); and
  - (c) the entity is an \*exempting entity at the joining time.
- (2) These rules apply to the \*consolidated group.

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#### **Rules applying to \*consolidated group**

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<b>Item</b>	<b>Rule</b>
1	The *head company becomes a *former exempting entity at the joining time
2	The *head company has both a *franking account and an *exempting account
3	If the *subsidiary member's *franking account has a *franking surplus at the joining time: <ol style="list-style-type: none"> <li>(a) a debit equal to that surplus arises in that account at the joining time; and</li> <li>(b) a credit equal to that surplus arises in the *exempting account of the *head company at the joining time</li> </ol>
4	Subsection 709-60(2) (about franking surplus) does not apply to the *subsidiary member
5	Item 1 of the table in section 208-115 does not apply to the *head company
6	Item 1 of the table in section 208-120 does not apply to the *head company
7	Item 1 of the table in section 208-130 does not apply to the *head company
8	Item 1 of the table in section 208-145 does not apply to the *head company
	Note 1: If the subsidiary's franking account is in deficit, it will be liable for franking deficit tax: see subsection 709-60(3).
	Note 2: The subsidiary's franking account does not operate while it is a member of the group: see section 709-65.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 709-165

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**709-165 Subsidiary member is former exempting entity**

- (1) This section operates if:
  - (a) the \*head company of a \*consolidated group is neither an exempting entity nor a \*former exempting entity; and
  - (b) a \*corporate tax entity becomes a \*subsidiary member of the group at a time (also the *joining time*); and
  - (c) the entity is a \*former exempting entity at the joining time.
- (2) These rules apply to the \*consolidated group.

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**Rules applying to \*consolidated group**

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Item	Rule
1	The *head company becomes a *former exempting entity at the joining time
2	The *head company has both a *franking account and an *exempting account
3	If the *subsidiary member's *exempting account has an *exempting surplus at the joining time: <ol style="list-style-type: none"><li>(a) a debit equal to that surplus arises in that account at the joining time; and</li><li>(b) a credit equal to that surplus arises in the exempting account of the *head company at the joining time</li></ol>
4	If the *subsidiary member's *exempting account has an *exempting deficit at the joining time: <ol style="list-style-type: none"><li>(a) a credit equal to that deficit arises in that account at the joining time; and</li><li>(b) a debit equal to that deficit arises in the subsidiary's *franking account just before the joining time</li></ol>
5	The *subsidiary member's *exempting account does not operate during the period: <ol style="list-style-type: none"><li>(a) starting just after the joining time; and</li><li>(b) ending when the entity ceases to be a subsidiary member of the group</li></ol>
6	Item 1 of the table in section 208-115 does not apply to the *head company
7	Item 1 of the table in section 208-120 does not apply to the *head company
8	Item 1 of the table in section 208-130 does not apply to the *head company
9	Item 1 of the table in section 208-145 does not apply to the *head company

Note 1: Any surplus in the subsidiary's franking account will be transferred to the head company's franking account: see subsection 709-60(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 2: If the subsidiary's franking account is in deficit, it will be liable for franking deficit tax: see subsection 709-60(3). This deficit may be increased by item 4 in the table in subsection (2).

Note 3: The subsidiary's franking account does not operate while it is a member of the group: see section 709-65.

### **709-170 Head company and subsidiary are exempting entities**

There is no change to the status of the \*head company of a \*consolidated group if:

- (a) the head company is an \*exempting entity; and
- (b) a \*corporate tax entity becomes a \*subsidiary member of the group at a time (also the *joining time*); and
- (c) the entity is an exempting entity at the joining time.

Note 1: If the subsidiary's franking account is in surplus, that surplus will be transferred to the head company's franking account: see subsection 709-60(2).

Note 2: If the subsidiary's franking account is in deficit, it will be liable for franking deficit tax: see subsection 709-60(3).

Note 3: The subsidiary's franking account does not operate while it is a member of the group: see section 709-65.

### **709-175 Head company is former exempting entity**

- (1) Subsection (2) operates if:
  - (a) the \*head company of a \*consolidated group is a \*former exempting entity; and
  - (b) a \*corporate tax entity becomes a \*subsidiary member of the group at a time (also the *joining time*); and
  - (c) the entity is an \*exempting entity at the joining time.
- (2) These rules apply to the \*consolidated group.

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#### **Rules applying to \*consolidated group**

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<b>Item</b>	<b>Rule</b>
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1	There is no change to the status of the *head company
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 709** Other rules applying when entities become subsidiary members etc.

Section 709-175

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**Rules applying to \*consolidated group**

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**Item Rule**

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- 2 If the subsidiary member's \*franking account has a \*franking surplus at the joining time:
- (a) a debit equal to that surplus arises in that account at the joining time; and
  - (b) a credit equal to that surplus arises in the \*exempting account of the \*head company at the joining time
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- 3 Subsection 709-60(2) (about franking surplus) does not apply to the \*subsidiary member
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Note 1: If the subsidiary's franking account is in deficit, it will be liable for franking deficit tax: see subsection 709-60(3).

Note 2: The subsidiary's franking account does not operate while it is a member of the group: see section 709-65.

- (3) Subsection (4) operates if:
- (a) the \*head company of a \*consolidated group is a \*former exempting entity; and
  - (b) a \*corporate tax entity becomes a \*subsidiary member of the group at a time (also the *joining time*); and
  - (c) the entity is a \*former exempting entity at the joining time.
- (4) These rules apply to the \*consolidated group.
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**Rules applying to \*consolidated group**

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**Item Rule**

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- 1 There is no change to the status of the \*head company
- 

- 2 If the \*subsidiary member's \*exempting account has an \*exempting surplus at the joining time:
- (a) a debit equal to that surplus arises in that account at the joining time; and
  - (b) a credit equal to that surplus arises in the exempting account of the \*head company at the joining time
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- 3 If the \*subsidiary member's \*exempting account has an \*exempting deficit at the joining time:
- (a) a credit equal to that deficit arises in that account at the joining time; and
  - (b) a debit equal to that deficit arises in the subsidiary's \*franking account just before the joining time
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Rules applying to \*consolidated group****Item Rule**

- 4 The \*subsidiary member's \*exempting account does not operate during the period:
- (a) starting just after the joining time; and
  - (b) ending when the entity ceases to be a subsidiary member of the group

Note 1: If the subsidiary's franking account is in deficit, it will be liable for franking deficit tax: see subsection 709-60(3). This deficit may be increased by item 3 in the table in subsection (4).

Note 2: The subsidiary's franking account does not operate while it is a member of the group: see section 709-65.

- (5) There is no change to the status of the \*head company of a \*consolidated group if:
- (a) the head company is a \*former exempting entity; and
  - (b) a \*corporate tax entity becomes a \*subsidiary member of the group; and
  - (c) the entity is neither an \*exempting entity nor a former exempting entity at the joining time.

Note 1: If the subsidiary's franking account is in surplus, that surplus will be transferred to the head company's franking account: see subsection 709-60(2).

Note 2: If the subsidiary's franking account is in deficit, it will be liable for franking deficit tax: see subsection 709-60(3).

Note 3: The subsidiary's franking account does not operate while it is a member of the group: see section 709-65.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Subdivision 709-C—Treatment of excess franking deficit tax offsets when entity becomes a subsidiary member of a consolidated group**

**Guide to Subdivision 709-C**

**709-180 What this Subdivision is about**

This Subdivision provides that any excess in the tax offset arising from a franking deficit tax liability of an entity that becomes a subsidiary member of a consolidated group is transferred to the head company of the group.

**Table of sections**

709-185	Joining entity's excess franking deficit tax offsets transferred to head company
709-190	Exit history rule not to treat leaving entity as having a franking deficit tax offset excess

**709-185 Joining entity's excess franking deficit tax offsets transferred to head company**

- (1) This section operates if:
- (a) an entity (the *joining entity*) becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*); and
  - (b) the joining entity is entitled to a \*tax offset under section 205-70 for the income year that ends or, if subsection 701-30(3) applies, that is taken by subsection (3) of that section to end, at the joining time; and
  - (c) the offset exceeds (the excess being the *joining entity's excess*) the amount that would have been the joining entity's income tax liability for that income year if it did not have that offset (but had all its other tax offsets).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Transfer of excess to head company*

- (2) For the purpose of applying subsection 205-70(1) to the \*head company of the \*consolidated group for the income year in which the joining time occurs:
- (a) if the head company does not, after taking into account any application of this section to any other entity that became a \*subsidiary member of the group before the joining time, have an excess mentioned in paragraph 205-70(1)(c) for the previous income year—the head company is taken to have an excess mentioned in that paragraph for the previous income year equal to the joining entity's excess; and
  - (b) if the head company does have such an excess—that excess is taken to be increased by the amount of the joining entity's excess.

*Joining entity prevented from utilising excess in later income years*

- (3) For the purpose of applying subsection 205-70(1) to the joining entity for any income year after that in which the joining time occurs, the joining entity's excess is disregarded.

**709-190 Exit history rule not to treat leaving entity as having a franking deficit tax offset excess**

To avoid doubt, if:

- (a) the \*head company of a \*consolidated group is entitled to a \*tax offset under section 205-70 for an income year; and
- (b) the offset exceeds the amount that would have been the head company's income tax liability for that income year if it did not have that offset (but had all its other tax offsets); and
- (c) an entity ceases to be a \*subsidiary member of the group in the income year;

the entity is *not* taken because of section 701-40 (the exit history rule):

- (d) to have the excess mentioned in paragraph (b); or
- (e) to have another excess of that kind because of the circumstances that caused the head company to have the excess.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 709-D—Deducting bad debts

### Guide to Subdivision 709-D

#### 709-200 What this Subdivision is about

An entity can deduct a bad debt that:

- (a) has for a period been owed to a member of a consolidated group; and
- (b) has for another period been owed to an entity that was not a member of that group;

only if each entity that has been owed the debt for such a period could have deducted the debt had it been written off as bad at the end of the period. This applies even if the debt is owed to the same entity for different periods.

#### Table of sections

##### Application and object

709-205 Application of this Subdivision

709-210 Object of this Subdivision

##### Limit on deduction of bad debt

709-215 Limit on deduction of bad debt

##### Extension of Subdivision to debt/equity swap loss

709-220 Limit on deduction of swap loss

#### Application and object

##### 709-205 Application of this Subdivision

- (1) This Subdivision affects whether an entity (the *claimant*) that is or has been a \*member of a \*consolidated group and writes off a debt,

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

or part of a debt, as bad may deduct the debt or part if the conditions in subsection (2) exist.

Note: This Subdivision affects similarly whether an entity that is or has been a member of a consolidated group and extinguishes a debt as part of a debt/equity swap may deduct a loss resulting from the swap. See section 709-220.

- (2) The conditions are that, in the time starting when the debt was incurred (whether to the claimant or another entity) and ending when the claimant wrote off the debt or part:
- (a) the debt was owed to an entity (whether the claimant or another entity) for a period (a *debt test period*) when the entity was a \*member of a \*consolidated group; and
  - (b) the debt was owed to an entity (whether the claimant or another entity) for a period (also a *debt test period*) when the entity was a *not* a member of that group.

Note 1: The debt must have been owed to the claimant for at least one of the debt test periods for the claimant to have been able to write it off.

Note 2: One effect of section 701-1 (Single entity rule) is that a debt is taken to be owed to the head company of a consolidated group while the debt is owed to a subsidiary member of the group.

- (3) Ignore section 701-5 (Entry history rule) and section 701-40 (Exit history rule) in identifying a debt test period.

Note: Subsection (3) does not affect sections 701-5 and 701-40 so far as they operate to treat the debt, or part of the debt, as having been included in the claimant's assessable income. That inclusion is generally a condition under section 25-35 for the claimant to be able to deduct the debt.

- (4) This Subdivision does not apply in relation to a debt merely because it is assigned:
- (a) from an entity that is a \*member of a \*consolidated group to an entity that is not a member of that group; or
  - (b) from an entity that is not a member of a consolidated group to an entity that is a member of a consolidated group; or
  - (c) from an entity that is a member of a consolidated group to an entity that is a member of another consolidated group.

This subsection has effect despite subsections (1) and (2).

Note: There is not an assignment of a debt from one entity to another merely because section 701-1 (Single entity rule) starts or ceases to apply in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 709-210

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relation to the entities so that the debt ceases to be a debt owed to one entity and becomes a debt owed to the other entity.

**709-210 Object of this Subdivision**

The main object of this Subdivision is to ensure that the claimant can deduct the debt, or part of it, only if each entity that was owed the debt for a debt test period could have deducted the debt if it had been written off as bad at the end of the period.

**Limit on deduction of bad debt**

**709-215 Limit on deduction of bad debt**

- (1) The claimant can deduct the debt, or part of the debt, if, and only if:
  - (a) section 8-1 or 25-35 permits the deduction (ignoring subsection 25-35(5) and the provisions mentioned in that subsection); and
  - (b) the condition in subsection (2) is met for each debt test period.
- (2) The condition is that the entity that was owed the debt for the debt test period could have deducted the debt for an income year (the ***debt test income year***) starting and ending at the times identified in subsection (3) if:
  - (a) the entity had written off the debt as bad at the end of the period; and
  - (b) these provisions (the ***modified provisions***) had effect as described in this section:
    - (i) sections 165-123 and 165-126 (which are about conditions that must be met for a company to be able to deduct a bad debt);
    - (ii) sections 266-35, 266-85, 266-120, 266-160 and 267-25 in Schedule 2F to the *Income Tax Assessment Act 1936* (which are about conditions that must be met for certain kinds of trusts to be able to deduct a bad debt);
    - (iii) other provisions of this Act so far as they relate to a section listed in subparagraph (i) or (ii); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(c) these provisions did not apply:

- (i) subsections 165-120(2) and (3);
- (ii) section 63G of the *Income Tax Assessment Act 1936*;
- (iii) section 267-65 in Schedule 2F to that Act.

Note 1: Some of the other provisions of this Act that relate to a section listed in subparagraph (2)(b)(i) are sections 165-120, 165-129 and 165-132 and Subdivision 166-C.

Note 2: Some of the other provisions of this Act that relate to a section listed in subparagraph (2)(b)(ii) are sections 266-40, 266-45, 266-90, 266-125, 266-165, 267-30, 267-35, 267-40 and 267-45 in Schedule 2F to the *Income Tax Assessment Act 1936*.

*Debt test income year*

(3) The table shows when the debt test income year starts and ends.

<b>Start and end of debt test income year</b>			
<b>If:</b>	<b>The start of the debt test income year is:</b>	<b>The end of the debt test income year is:</b>	
1 Both these conditions are met:	The later of these	The end of the	
(a) the entity that is owed the debt for the debt test period is the claimant;	times (or either of them if they are the same):	income year in which the write-off time occurs	
(b) the period ends at the time (the <i>write-off time</i> ) the claimant actually writes off the debt or part of the debt	(a) the start of the income year in which the write-off time occurs;		
	(b) the start of the debt test period		
2 Either:	The later of these	The end of the debt	
(a) the entity that is owed the debt for the debt test period is <i>not</i> the claimant; or	times (or either of them if they are the same):	test period	
(b) that entity is the claimant but that period ends before the claimant actually writes off the debt or part of the debt	(a) 12 months before the end of the debt test period;		
	(b) the start of the debt test period		

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 709-215

*Continuity periods, ownership test periods and test periods*

- (4) For the purposes of subsection (2), the modified provisions have effect as if:
- (a) the \*first continuity period started at the start time shown in the table and ended at the start of the debt test income year; and
  - (b) the \*second continuity period were the debt test income year or, for the purposes of section 165-123 and Subdivision 166-C defining periods by reference to the second continuity period, the period:
    - (i) starting at the start of the debt test income year; and
    - (ii) ending at the end time shown in the table; and
  - (c) each section listed in subparagraph (2)(b)(ii) specified that the test period identified in the section:
    - (i) started at the start time shown in the table; and
    - (ii) ended at the end time shown in the table.

**Start time and end time**

<b>If:</b>	<b>The start time is:</b>	<b>The end time is:</b>
1 All these conditions are met: (a) the entity that is owed the debt for the debt test period is the claimant; (b) the period ends at the time (the <i>write-off time</i> ) the claimant actually writes off the debt or part of the debt; (c) the claimant is the *head company of a *consolidated group at the write-off time	The start of the debt test period	The end of the income year in which the write-off time occurs
2 All these conditions are met: (a) the entity that is owed the debt for the debt test period is the claimant; (b) the period ends at the time (the <i>write-off time</i> ) the claimant actually writes off the debt or part of the debt; (c) the claimant is <i>not</i> the *head company of a *consolidated group at the write-off time	Just before the start of the debt test period	The end of the income year in which the write-off time occurs

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 709-215

**Start time and end time**

<b>If:</b>	<b>The start time is:</b>	<b>The end time is:</b>
<p>3 The debt test period:</p> <p>(a) starts at a time other than a time when the entity that is owed the debt for the period ceases to be a *member of a *consolidated group; and</p> <p>(b) ends when the entity becomes a member of such a group;</p> <p>(whether or not the entity was the *head company of another such group during the period)</p>	The start of the debt test period	Just after the end of the debt test period
<p>4 Both these conditions are met:</p> <p>(a) the entity that is owed the debt for the debt test period is the *head company of a *consolidated group;</p> <p>(b) the period ends when:</p> <p>(i) a *subsidiary member of the group becomes a *member of another consolidated group; or</p> <p>(ii) the entity ceases to be the head company of the group without becoming a member of another consolidated group</p>	The start of the debt test period	The end of the debt test period
<p>5 The debt test period:</p> <p>(a) starts when the entity that is owed the debt for the period ceases to be a *member of a *consolidated group; and</p> <p>(b) ends later when the entity becomes a member of a consolidated group</p>	Just before the start of the debt test period	Just after the end of the debt test period

(5) For the purposes of subsection (2), the modified provisions have effect as if section 267-25 in Schedule 2F to the *Income Tax Assessment Act 1936* applied in relation to debts whether they were incurred in the income year or an earlier income year.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 709-220

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*Test time for same business test under section 165-126*

- (6) For the purposes of subsection (2), the modified provisions have effect as if subsection 165-126(2) specified that the test time were the later of these times (or either of them if they are the same):
- (a) the first time at which it is not practicable to show that the company will meet the conditions in section 165-123 (as modified by this section);
  - (b) the time just after the start of the debt test period.

*Business at and just after the end of the debt test period*

- (7) If:
- (a) the debt test period ends when the entity that was owed the debt for the period becomes a \*member of a \*consolidated group; and
  - (b) under the modified provisions, the \*business that the entity carried on at or just after the end of the period is relevant to the question whether the entity could have deducted the debt as described in subsection (2);
- those provisions have effect for the purposes of that subsection as if the entity carried on at those times the business it carried on just before the end of the period.

**Extension of Subdivision to debt/equity swap loss**

**709-220 Limit on deduction of swap loss**

*Object*

- (1) The object of this section is to limit the circumstances in which an entity can deduct a swap loss (as defined in section 63E of the *Income Tax Assessment Act 1936*) resulting from a debt/equity swap (as defined in that section) to circumstances similar to those in which this Subdivision lets an entity deduct a debt it writes off as bad.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Modified operation of sections 709-205, 709-210 and 709-215*

- (2) Sections 709-205, 709-210 and 709-215 (except subsection 709-215(2)) apply in relation to the extinction (however described) of a debt as part of a debt/equity swap in the same way as they apply in relation to the writing off of a debt as bad.
- (3) Subsection 709-215(1):
  - (a) applies in relation to a swap loss from a debt/equity swap in the same way as it applies in relation to a debt, or part of a debt; and
  - (b) applies as if paragraph 709-215(1)(a) referred to subsection 63E(3) of the *Income Tax Assessment Act 1936* instead of sections 8-1 and 25-35.
- (4) This section has effect despite subsection 63E(5) of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 711-1

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**Division 711—Tax cost setting amount for membership interests where entities cease to be subsidiary members of consolidated groups**

**Guide to Division 711**

**711-1 What this Division is about**

If an entity ceases to be a subsidiary member of a consolidated group, the tax cost setting amount for the group's membership interests in the entity reflects the group's cost for the entity's net assets.

**Table of sections**

**Application and object of this Division**

711-5 Application and object of this Division

**Tax cost setting amount for membership interests etc.**

711-10 Tax cost setting amount worked out under this Division

711-15 Tax cost setting amount where no multiple exit

711-20 What is the old group's allocable cost amount for the leaving entity?

711-25 Terminating values of assets that the leaving entity takes with it—step 1 in working out allocable cost amount

711-30 What is the head company's terminating value for an asset?

711-35 If head company becomes entitled to certain deductions—step 2 in working out allocable cost amount

711-40 Liabilities owed to the leaving entity by members of the old group—step 3 in working out allocable cost amount

711-45 Liabilities etc. owed by the leaving entity—step 4 in working out allocable cost amount

711-55 Tax cost setting amount for membership interests where multiple exit

711-65 Membership interests treated as having been acquired before 20 September 1985—simple case

711-70 Membership interests treated as having been acquired before 20 September 1985—multiple exit case

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Application and object of this Division****711-5 Application and object of this Division***Application*

- (1) This Division has effect:
  - (a) for the head company core purposes set out in subsection 701-1(2); and
  - (b) for the entity core purposes set out in subsection 701-1(3);if an entity (the *leaving entity*) ceases to be a \*subsidiary member of a \*consolidated group (the *old group*) at a particular time (the *leaving time*).

*Object*

- (2) The object of this Division is, when entities cease to be \*subsidiary members, to preserve the alignment of the \*head company's costs for \*membership interests in entities and their assets that is established when entities become subsidiary members.

Note: The reasons for preserving this alignment are set out in subsection 705-10(3).

- (3) This is achieved by recognising the \*head company's cost for those interests, just before the leaving time, as an amount equal to the cost of the leaving entity's assets at the leaving time reduced by the amount of its liabilities.
- (4) If multiple entities cease to be \*subsidiary members at the same time, the cost of any \*membership interests that one holds in another is treated in a similar way.

**Tax cost setting amount for membership interests etc.****711-10 Tax cost setting amount worked out under this Division**

If this Division applies, the amount of the following is worked out under the Division:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Section 711-15**

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- (a) the \*tax cost setting amount for the purposes of item 2 in the table in section 701-60 for each \*membership interest in the leaving entity that \*members of the old group held; and
- (b) if 2 or more entities cease to be \*subsidiary members of the group at the same time because of an event happening in relation to one of them—the tax cost setting amount for the purposes of item 4 in the table in that section for each membership interest that the leaving entity holds in any of the other entities.

**711-15 Tax cost setting amount where no multiple exit**

- (1) The \*tax cost setting amount for each \*membership interest in the leaving entity that \*members of the old group held, where paragraph 711-10(b) does not apply, is worked out by:
  - (a) first, working out the old group's \*allocable cost amount for the leaving entity in accordance with section 711-20; and
  - (b) next, if there is more than one class of membership interests in the leaving entity—allocating the allocable cost amount to each class in proportion to the \*market value of all of the membership interests in the class; and
  - (c) next, allocating the result under paragraph (a) or (b) to each of the membership interests, or membership interests in the class, by dividing the result by the number of those membership interests; and
  - (d) finally, if the leaving entity is a trust—for each membership interest in the trust that satisfies these conditions:
    - (i) it is neither a unit nor an interest in the trust;
    - (ii) the member of the old group that held it began to hold it only because money or property was settled on the trust;
    - (iii) it either had no \*cost base or it had a cost base of nil;reducing the result under paragraph (c) to nil.

Note: Compare the treatment of such interests when an entity joins a group: see section 713-20.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Section 711-20***Rights and options to acquire membership interests*

- (2) For the purposes of this section, if at the leaving time a \*member of the old group holds a right or option (including a contingent right or option), created or issued by the leaving entity, to acquire a \*membership interest in the leaving entity, that right or option is treated as if:
- (a) it were a membership interest in the leaving entity; and
  - (b) it were of a different class than any other membership interest in the leaving entity.

**711-20 What is the old group's allocable cost amount for the leaving entity?**

- (1) Work out the old group's *allocable cost amount* for the leaving entity in this way:

**Working out the old group's allocable cost amount for the leaving entity**

<b>Step</b>	<b>What the step requires</b>	<b>Purpose of the step</b>
1	Start with the step 1 amount worked out under section 711-25, which is about the *terminating values of assets that the leaving entity takes with it when it ceases to be a *subsidiary member.	To ensure that the allocable cost amount includes the cost of the assets.
2	Add to the result of step 1 the step 2 amount worked out under section 711-35, which is about the value of deductions inherited by the leaving entity that are not reflected in the *terminating value of the assets that the leaving entity takes with it.	To ensure that the value of the deductions is reflected in the allocable cost amount.
3	Add to the result of step 2 the step 3 amount worked out under section 711-40, which is about liabilities owed by *members of the old group to the leaving entity at the leaving time.	To ensure that the liabilities, which are not recognised while the leaving entity is taken to be part of the *head company by subsection 701-1(1), are reflected in the allocable cost amount.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 711** Tax cost setting amount for membership interests where entities cease to be subsidiary members of consolidated groups

Section 711-25

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**Working out the old group's allocable cost amount for the leaving entity**

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<b>Step</b>	<b>What the step requires</b>	<b>Purpose of the step</b>
4	Subtract from the result of step 3 the step 4 amount worked out under section 711-45, which is about: (a) the liabilities that the leaving entity takes with it when it ceases to be a *subsidiary member; and (b) *membership interests in the leaving entity that are not held by *members of the old group.	To ensure that the allocable cost amount is reduced to reflect the liabilities and the *market value of the membership interests.
5	If the amount remaining after step 4 is positive, it is the old group's allocable cost amount for the leaving entity. Otherwise the old group's allocable cost amount is nil.	

Note: If the amount remaining after step 4 is negative, the head company is taken to have made a capital gain equal to the amount: see CGT event L5.

*Recalculation in order to work out amount of capital loss*

- (2) If it is necessary to work out whether the \*head company makes a capital loss for a \*CGT event that happens at or after the leaving time in relation to any of the \*membership interests, the old group's allocable cost amount for the leaving entity is instead worked out as if the head company's \*terminating value for any asset covered by subsection 705-30(4) (as it applies for the purposes of section 711-30) were instead equal to the asset's \*reduced cost base just before the leaving time.

**711-25 Terminating values of assets that the leaving entity takes with it—step 1 in working out allocable cost amount**

- (1) For the purposes of step 1 in the table in subsection 711-20(1), the step 1 amount is worked out by adding up the \*head company's \*terminating values of all the assets that the head company holds at the leaving time because the leaving entity is taken by subsection 701-1(1) (the single entity rule) to be a part of the head company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Goodwill*

- (2) If loss of control and ownership of the leaving entity by the \*head company would decrease the \*market value of the goodwill associated with assets or businesses of the old group (other than those of the leaving entity), the head company's \*cost base of the asset consisting of goodwill that it holds at the leaving time because of its control and ownership of the leaving entity is added to the step 1 amount.

Note: If the asset arose because the head company acquired control and ownership of a joining entity, subsection 705-35(3) would have applied in relation to the joining entity. The asset could also have arisen e.g. because the head company acquired a business from an entity without acquiring the entity.

*Increase in step 1 amount for certain former privatised assets*

- (3) If:
- (a) the \*head company of the old group \*holds a \*depreciating asset at the leaving time because the leaving entity is taken by subsection 701-1(1) (the single entity rule) to be a part of the head company; and
  - (b) the asset's \*tax cost was set at the \*tax cost setting amount when an entity (whether the leaving entity or another entity) became a \*subsidiary member of the old group; and
  - (c) the tax cost setting amount for the asset was reduced because of section 705-47 (which is about certain assets that were \*privatised assets);
- the amount of the reduction is added to the step 1 amount.

*Increase in step 1 amount for certain privatised assets*

- (4) If:
- (a) the \*head company of the old group \*holds a \*depreciating asset at the leaving time because the leaving entity is taken by subsection 701-1(1) (the single entity rule) to be a part of the head company; and
  - (b) the first element of the \*cost of the asset was worked out by reference to subsection 58-70(5) because a \*member of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 711** Tax cost setting amount for membership interests where entities cease to be subsidiary members of consolidated groups

**Section 711-30**

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old group acquired the asset as described in subsection 58-5(4) on or after 1 July 2002; and

- (c) the amount of the first element of the cost of the asset is *less* than the amount it would have been apart from item 11 of the table in subsection 40-180(2) (which makes subsection 58-70(5) relevant to working out that element);

the difference between the amounts is added to the step 1 amount.

**711-30 What is the head company's *terminating value* for an asset?**

- (1) The \*head company's *terminating value* for an asset that it holds at the leaving time because the leaving entity is taken by subsection 701-1(1) to be a part of the head company is worked out as follows.
- (2) The amount is worked out by applying section 705-30 in a corresponding way to the way that section applies to work out the \*terminating value for an asset that a joining entity holds at the joining time.
- (3) However, that amount is the asset's \*market value at the leaving time if:
  - (a) the asset is a right to receive lease payments under a lease; and
  - (b) the asset's \*tax cost was set when an entity (whether the leaving entity or another entity) became a \*subsidiary member of the old group; and
  - (c) the asset was taken to be a \*retained cost base asset for the purposes of Division 705 when its tax cost was set, because of paragraph 705-56(3)(b).

**711-35 If head company becomes entitled to certain deductions—  
step 2 in working out allocable cost amount**

- (1) For the purposes of step 2 in the table in subsection 711-20(1), the step 2 amount is worked out using the following formula:

$$\text{Owned deductions} + \left[ \frac{\text{Acquired deductions} \times \text{*General company tax rate}}{\text{tax rate}} \right]$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

where:

***acquired deductions*** means all deductions covered by subsection (2) for expenditure that constituted an acquired deduction of the \*head company under subsection 705-115(1) when an entity (whether or not the leaving entity) became a \*subsidiary member of the old group.

***owned deductions*** means the sum of all deductions covered by subsection (2) that are not acquired deductions.

- (2) This subsection covers any deduction to which the leaving entity becomes entitled under section 701-40 as a result of the leaving entity ceasing to be a \*subsidiary member of the old group, other than a deduction for expenditure:
- (a) that is, forms part of or reduces, the cost of an asset that becomes an asset of the leaving entity because subsection 701-1(1) (the single entity rule) ceases to apply; or
  - (b) to which section 110-40 (about expenditure on assets acquired before 7.30 pm on 13 May 1997) applies.

### **711-40 Liabilities owed to the leaving entity by members of the old group—step 3 in working out allocable cost amount**

- (1) For the purposes of step 3 in the table in subsection 711-20(1), the step 3 amount is the total, for all liabilities owed by \*members of the old group to the leaving entity at the leaving time, of the \*market values of the corresponding assets of the leaving entity.

*Where cost of liability is less than its market value*

- (2) However, if subsection (3) applies to any of the liabilities, the cost amount mentioned in that subsection, instead of the \*market value, is to be used under subsection (1) for the liability in working out the step 3 amount.
- (3) This subsection applies to a liability if:
- (a) the \*member of the old group would have made a \*capital gain or a \*capital loss for the \*CGT event that, disregarding

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 711-45

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subsection 701-1(1) (the single entity principle), would have happened when the liability arose; and

- (b) the amount (the *cost amount*) of:
- (i) if the CGT event is or would have been CGT event D1—the \*incidental costs; or
  - (ii) if the CGT event is CGT event D2, D3 or F1—the expenditure incurred; or
  - (iii) in any other case—the \*cost base or \*reduced cost base; that would be taken into account is less than the \*market value of the liability.

**711-45 Liabilities etc. owed by the leaving entity—step 4 in working out allocable cost amount**

- (1) For the purposes of step 4 in the table in subsection 711-20(1), the step 4 amount is worked out by adding up the amounts of each thing (an *accounting liability*) that, in accordance with \*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, is a liability of the leaving entity at the leaving time that can or must be identified in the entity's statement of financial position.

*Exclusion where transfer of accounting liability*

- (2) An amount is not to be added for an accounting liability that arises because of the leaving entity's ownership of an asset if, on \*disposal of the asset, the accounting liability will transfer to the new owner.

Example: A liability to rehabilitate a mine site, where, under legislation or a licence, the liability will be transferred to the new owner on disposal of the mine.

*Exclusion where liability is obligation to make finance lease payments*

- (2A) An amount is not to be added for an accounting liability that is the leaving entity's obligation as lessee to make lease payments under a lease, if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 711-45

- (a) subsection 705-56(4) applied in relation to the liability, at a time when an entity (whether the leaving entity or another entity) became a \*subsidiary member of the old group; and
- (b) the liability was *not* taken into account under subsection 705-70(1) at that time, because of paragraph 705-56(4)(b).

*Reduction for future deduction*

- (3) If some or all of an accounting liability will result in a deduction to the leaving entity, the amount to be added for the accounting liability is reduced by the following amount:

$$\left[ \text{Deduction} \times \frac{\text{*General company}}{\text{tax rate}} \right] - \text{Double-counting adjustment}$$

where:

***double-counting adjustment*** means the amount of any reduction that has already occurred in the accounting liability under subsection (1) to take account of the future availability of the deduction.

*Amount for intra-group liabilities*

- (4) If an accounting liability of the leaving entity is owed to a \*member of the old group, the amount to be added for the liability is the \*market value of the corresponding asset of the member.

*Adjustment for unrealised gains and losses*

- (5) If, for income tax purposes, an accounting liability, or a change in the amount of an accounting liability, (other than one owed to a \*member of the old group) is taken into account at a later time than is the case in accordance with \*accounting standards or statements of accounting concepts made by the Australian Accounting Standards Board, the amount to be added for the accounting liability is equal to the payment that would be necessary to discharge the liability just before the leaving time without an amount being included in the assessable income of, or allowable as a deduction to, the \*head company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 711** Tax cost setting amount for membership interests where entities cease to be subsidiary members of consolidated groups

Section 711-45

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Note: An example is accrued employee leave entitlements or foreign exchange gains and losses.

*Increase in step 4 amount for employee share interests*

- (6) If any \*membership interest (an **employee share interest**) in the leaving entity needed to be disregarded under section 703-35 in order for the leaving entity to be a \*wholly-owned subsidiary of the \*head company at the leaving time, the step 4 amount is increased by the sum of the \*market values of those interests.

*Increase to cover ADI restructure preference share interests*

- (6A) If any \*share in the leaving entity needed to be disregarded under section 703-37 in order for the leaving entity to be a \*wholly-owned subsidiary of the \*head company at the leaving time, the step 4 amount is increased by the sum of the \*market values of those shares.

*Increase to cover certain equity interests*

- (7) The step 4 amount is increased by the \*market value of each thing that, in accordance with \*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, is equity in the leaving entity at the leaving time, where the thing is also a \*debt interest.

*Adjustment where amount of liability differed for purpose of calculating allocable cost amount on entry*

- (8) If:
- (a) a leaving entity's liability mentioned in any preceding subsection was taken into account in working out the \*allocable cost amount for a \*subsidiary member (whether or not the leaving entity) of the old group in accordance with Division 705 (the **entry ACA**); and
  - (b) the amount (the **entry amount**) of the liability that was so taken into account is different from the amount (the **exit amount**) of the liability taken into account in applying the subsection; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(c) the entry ACA was different from what it would have been if the exit amount, instead of the entry amount, had been taken into account in working it out;

then, for the purpose of applying the subsection, the liability is taken to be of an amount equal to the entry amount.

### **711-55 Tax cost setting amount for membership interests where multiple exit**

- (1) If 2 or more entities cease to be \*subsidiary members of the old group at the same time because of an event happening in relation to one of them, the \*tax cost setting amount for each \*membership interest mentioned in paragraphs 711-10(a) and (b) is worked out in accordance with this section.

#### *Object*

- (2) The object of this section is to ensure that the \*tax cost setting amount for \*membership interests that each entity holds in another entity reflects a proportion of the other entity's cost for its net assets.

#### *Tax cost setting amounts to be worked out for certain membership interests in all of the entities*

- (3) A \*tax cost setting amount must be worked out for each \*membership interest (the **subject interest**) that one of the entities holds in another of the entities just before the leaving time, and this must be done:
- (a) by applying section 711-15 to the subject interest as if:
- (i) a reference in that section, or any provision of this Division that relates to it, to any membership interest that \*members of the old group hold in the leaving entity were a reference to the subject interest; and
  - (ii) a reference in that section, or any provision of this Division that relates to it, to liabilities owed by members of the old group included a reference to liabilities owed by any of the entities that cease to be

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 711** Tax cost setting amount for membership interests where entities cease to be subsidiary members of consolidated groups

**Section 711-55**

---

\*subsidiary members of the old group at the leaving time; and

- (b) by working out the tax cost setting amount for membership interests in entities that are held by other entities before working out the tax cost setting amount for membership interests in those other entities.

*Tax cost setting amount for membership interests acquired by head company*

- (4) Then work out the \*tax cost setting amount mentioned in paragraph 711-10(a) for the \*membership interests held by the \*head company in the same way as under section 711-15.

Note: In doing so, tax cost setting amounts worked out under subsection (3) of this section for membership interests held by the leaving entity in other entities will be taken into account in working out the allocable cost amount for the leaving entity. Those tax cost setting amounts will in turn have been affected by any other tax cost setting amounts worked out under subsection (3) for membership interests in other entities.

*Tax cost setting amount for membership interests acquired by leaving entity*

- (5) The \*tax cost setting amount mentioned in paragraph 711-10(b) for \*membership interests of which the leaving entity becomes the holder will be one of the tax cost setting amounts worked out under subsection (3) of this section.

Example: Companies A, B, C, D and E are all subsidiary members that leave the old group at the same time. Just before the leaving time, company A owned shares in company B and company C, and company B owned shares in companies D and E.

First, work out company A's tax cost setting amount for membership interests in company C and company B's tax cost setting amount for membership interests in companies D and E by applying section 711-15 in accordance with paragraph (3)(a) above.

Next, work out company A's tax cost setting amount for membership interests in company B under that section as so applied, taking into account the tax cost setting amount just worked out for company B's assets consisting of shares in companies D and E.

Finally, work out the head company's tax cost setting amount for membership interests in company A under section 711-15 in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 711-65

accordance with subsection (4) above, taking into account the tax cost setting amounts worked out for companies B and C.

**711-65 Membership interests treated as having been acquired before 20 September 1985—simple case***When this section applies*

- (1) This section applies if:
- (a) any of the assets (a *pre-CGT factor asset*), that the \*head company of the old group holds at the leaving time because the leaving entity is taken by subsection 701-1(1) to be a part of the head company, has a \*pre-CGT factor under section 705-125; and
  - (b) section 711-70 (about the multiple exit of \*subsidiary members) does not apply; and
  - (c) the leaving entity does not cease to be a subsidiary member of the old group where Subdivision 705-C (about the old group joining another consolidated group) applies.

*Interests treated as if purchased before 20 September 1985*

- (2) If this section applies, a number of the \*membership interests in the leaving entity that \*members of the old group hold are taken to have been acquired before 20 September 1985.

Note: Because of the deemed acquisition of the membership interests, this section is the only basis on which any of these interests can be pre-CGT assets.

*Number of pre-CGT membership interests*

- (3) The number is the result of the formula in subsection (4), rounded down to:
- (a) the nearest whole number if the result is not already a whole number; or
  - (b) zero if the result is a number more than zero but less than one.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 711** Tax cost setting amount for membership interests where entities cease to be subsidiary members of consolidated groups

Section 711-65

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*Formula*

- (4) The formula is:

$$\text{Number of * membership interests in leaving entity held by *members of old group} \times \text{Leaving entity's pre-CGT proportion}$$

where:

***leaving entity's pre-CGT proportion*** is the amount worked out under subsection (5).

*Pre-CGT proportion*

- (5) Work out the leaving entity's pre-CGT proportion in this way:

*Leaving entity's pre-CGT proportion*

- Step 1. For each \*pre-CGT factor asset, multiply its \*market value before the leaving time by its \*pre-CGT factor.
- Step 2. Add up all the results of step 1.
- Step 3. Add up the \*market values of all the assets that the \*head company holds at the leaving time because the leaving entity is taken by section 701-1 to be a part of the head company.
- Step 4. Divide the result of step 2 by the result of step 3.

*Dealing with classes of membership interests*

- (6) If there are 2 or more classes of \*membership interests in the leaving entity, this section operates separately in relation to each class as if the interests in that class were all the interests in the entity.

*Allocation of the number to particular membership interests*

- (7) The \*head company must choose which particular \*membership interests comprise the number worked out under subsection (2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Modification if leaving entity is a trust*

- (8) If the leaving entity is a trust, a \*membership interest in it is not taken into account under this section unless the membership interest is either a unit or an interest in the trust.

**711-70 Membership interests treated as having been acquired before 20 September 1985—multiple exit case**

- (1) If 2 or more entities (*multiple exit entities*) cease to be \*subsidiary members of the old group at the same time because of an event happening in relation to one of them (other than where Subdivision 705-C applies), a number of the \*membership interests (*subject interests*) held in any multiple exit entity by:
- (a) \*members of the old group; or
  - (b) other multiple exit entities; or
  - (c) any combination of paragraphs (a) and (b);
- are taken to have been acquired before 20 September 1985.

*Numbers to be worked out first for bottom entities*

- (2) Numbers are to be worked out first for subject interests in multiple exit entities that do not themselves hold any of the subject interests in other multiple exit entities.

*Numbers to be worked out progressively up to those subject interests held only by members of the old group*

- (3) If the holders of other subject interests are or include multiple exit entities, numbers must be worked out for the former subject interests before both the latter and any subject interests whose holders consist entirely of \*members of the old group.

*How to work out the numbers*

- (4) The number for subject interests in a particular multiple exit entity that is required to be worked out under subsection (2) or (3) is worked out by applying subsections 711-65(3) to (6) as if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 711** Tax cost setting amount for membership interests where entities cease to be subsidiary members of consolidated groups

**Section 711-70**

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- (a) a reference in those subsections to \*membership interests that members of the old group hold in the leaving entity were a reference to the subject interests; and
- (b) assets (*previously numbered assets*) of the multiple exit entity consisting of other subject interests for which a number has been worked out as required by subsection (2) or (3) of this section were assets that the \*head company holds at the leaving time because the entity is taken by section 701-1 to be a part of the \*head company; and
- (c) each previously numbered asset were treated as having a \*pre-CGT factor of 1.

**Example:** Companies A, B, C, D and E are all subsidiary members that leave the old group at the same time. Just before the leaving time, company A owned shares in company B and company C, and company B owned shares in companies D and E.

First, work out company A's number for membership interests in company C and company B's number for membership interests in companies D and E.

Next, work out company A's number for membership interests in company B, taking into account the number just worked out for company B's assets consisting of shares in companies D and E.

Finally, work out the old group's number for membership interests in company A, taking into account the numbers worked out for its assets consisting of shares in companies B and C.

**Note:** Because of the deemed acquisition of the membership interests, this section is the only basis on which any of the subject interests can be pre-CGT assets.

*Allocation of the number to particular membership interests*

- (5) The \*head company must:
  - (a) choose which particular \*membership interests comprise any number worked out under this section; and
  - (b) if any \*membership interest that is so chosen is held by a multiple exit entity—inform that entity of the fact.

*Modification if leaving entity is a trust*

- (6) A \*membership interest in a trust that is one of the multiple exit entities is not taken into account under this section unless the membership interest is either a unit or an interest in the trust.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Division 713—Rules for particular kinds of entities**

### **Table of Subdivisions**

713-A	Trusts
713-C	Some unit trusts treated like head companies of consolidated groups
713-E	Partnerships
713-L	Life insurance companies
713-M	General insurance companies

### **Subdivision 713-A—Trusts**

#### **Table of sections**

##### **Working out a joined group's allocable cost amount for a joining trust**

713-20	Increasing the step 1 amount for settled capital that could be distributed tax free in respect of discretionary interests
713-25	Undistributed, realised profits that accrue to joined group before joining time and could be distributed tax free—step 3 in working out allocable cost amount

##### **Determining destination of distribution by non-fixed trust**

713-50	Factors to consider
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## Working out a joined group's allocable cost amount for a joining trust

### 713-20 Increasing the step 1 amount for settled capital that could be distributed tax free in respect of discretionary interests

- (1) The object of this section is to increase the step 1 amount worked out under section 705-65 (for the purpose of working out the joined group's allocable cost amount) if:
- (a) the joining entity is a trust; and
  - (b) some or all of the \*membership interests in the trust are neither units nor interests in the trust; and
  - (c) some or all of the trust capital is settled capital that could be distributed tax free at the joining time.

The increase in the step 1 amount takes account of the settled capital that could be distributed tax free.

Note 1: As a result, the settled capital that could be distributed tax free is treated in a way that is analogous to the group's cost of acquiring the trust: see subsection 705-10(2).

Note 2: Paragraph (1)(b) reflects the position that a distribution in respect of a unit or interest in the trust is generally covered by CGT event E4 and so is not tax-free: see section 104-70.

- (2) The step 1 amount worked out under section 705-65 is increased by the amount worked out under the following method statement if, at the joining time, there are \*membership interests (the *discretionary interests*) in the trust each of which satisfies these conditions:
- (a) it is neither a unit nor an interest in the trust;
  - (b) the entity that owned it at the joining time began to own it only because money or property was settled on the trust;
  - (c) it either has no \*cost base or it has a cost base of nil.

Note: If a membership interest has a cost base greater than nil, the cost base is already taken into account in working out the step 1 amount under section 705-65.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Method statement*

Step 1. Add up:

- (a) each amount settled on the trust before or at the joining time; and
- (b) the \*market value of each item of property settled on the trust before or at the joining time, worked out as at when the item was settled;

except to the extent that that amount or market value forms part of the \*cost base of a \*membership interest in the trust that was taken into account in working out the step 1 amount under section 705-65.

Step 2. Work out how much of the step 1 amount would have been paid in respect of the discretionary interests if, at the joining time:

- (a) the entire trust capital and trust income had been realised and distributed; and
- (b) the trust had ended.

Note: This may involve determining how a power of appointment would have been exercised. Section 713-50 lists matters to have regard to in determining this.

Step 3. Reduce the step 2 amount by so much of it as:

- (a) would have been included in the assessable income of any \*member of the trust who owned any of the discretionary interests at the joining time; or
- (b) would have been taken into account in working out a \*capital gain or \*capital loss made by such a member.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 713-20

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<p>Step 4. Work out how much of the step 1 amount consists of one or more of these:</p> <ul style="list-style-type: none"> <li>(a) an amount settled on the trust directly by the *head company of the *consolidated group (whether or not the group was in existence when the amount or item was settled on the trust);</li> <li>(b) an amount settled on the trust directly by any other entity <i>not</i> excluded by subsection (3) (which covers entities that are not independent and unconnected donors to the trust);</li> <li>(c) the *market value of an item of property settled on the trust directly by the head company;</li> <li>(d) the market value of an item of property settled on the trust directly by any other entity <i>not</i> excluded by subsection (3).</li> </ul> <p>Step 5. The step 1 amount worked out under section 705-65 is increased by the <i>lesser</i> of:</p> <ul style="list-style-type: none"> <li>(a) the step 3 amount worked out under this method statement; and</li> <li>(b) the step 4 amount worked out under this method statement.</li> </ul>
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(3) This subsection excludes these entities for the purposes of step 4 of the method statement in subsection (2):

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**Entities that are not independent and unconnected donors to the trust**

**Item This entity is excluded:**

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1	An entity that is a *member of the *consolidated group at the joining time
2	An entity that has been a *member of the *consolidated group at any time before the joining time, even if it was not such a member when it settled the amount or item of property on the joining entity

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Entities that are not independent and unconnected donors to the trust**

**Item    This entity is excluded:**

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3	An entity that, because of a *scheme, will or may become a *member of the *consolidated group at some time after the joining time
4	An entity that, when the amount or item of property was settled on the joining entity, was an *associate of an entity covered by item 1, 2 or 3
5	An entity that, in settling the amount or item of property on the joining entity, acted in accordance with the directions, instructions or wishes of one or more entities, at least one of which is covered by item 1, 2, 3 or 4 (whether those directions, instructions or wishes were communicated directly or indirectly, including through interposed entities)
6	A company or trust that an entity covered by item 1, 2 or 3 would be taken to *control (for value shifting purposes) when the company or trust settled the amount or item of property on the joining entity, if each entity covered by item 1, 2, 3 or 4 had been at that time an *associate of every other entity covered by item 1, 2, 3 or 4
7	A partnership if, when the partnership settled the amount or item of property on the joining entity, a *member of the partnership was an entity covered by item 1, 2, 3, 4 or 6

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**713-25 Undistributed, realised profits that accrue to joined group before joining time and could be distributed tax free—step 3 in working out allocable cost amount**

- (1) For the purposes of step 3 in the table in section 705-60, if the joining entity is a trust, the step 3 amount is the sum of the trust's realised profits, to the extent that:
- (a) they accrued to the joined group before the joining time (as defined in subsection 705-90(7)); and
  - (b) as at the joining time, they have not been distributed to \*members of the trust; and
  - (c) if each of them were distributed as mentioned in paragraphs 705-90(7)(a) and (b):
    - (i) they would be distributed *otherwise* than in respect of a unit or an interest in the trust; or
    - (ii) their non-assessable parts for the purposes of section 104-70 would be disregarded in working out

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 713-50

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whether or not a \*capital gain had been made because of CGT event E4;

except to the extent that they recouped losses of any \*sort that accrued to the joined group before the joining time (as defined in subsection 705-90(8)).

Note: If the joining entity, or an entity interposed between the head company and the joining entity, is a non-fixed trust, this section may involve determining how a power of appointment would have been exercised. Section 713-50 lists matters to have regard to in determining this.

*Trusts not covered*

- (2) Subsection (1) does not apply to a trust that is a \*corporate tax entity at the joining time.

Note: This excludes corporate unit trusts and public trading trusts, which are covered by the imputation system.

**Determining destination of distribution by non-fixed trust**

**713-50 Factors to consider**

In working out, for the purposes of this Part, how much of something a \*non-fixed trust would have distributed to an entity, or in respect of a \*membership interest in the trust, have regard to all relevant factors, including:

- (a) the pattern of any previous distributions by the trust; and
- (b) by whom the trust has from time to time been \*controlled (for value shifting purposes).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 713-C—Some unit trusts treated like head companies of consolidated groups**

### **Guide to Subdivision 713-C**

#### **713-120 What this Subdivision is about**

A corporate unit trust or public trading trust can sometimes choose to form a consolidated group and be treated like a company and head company of the group. The treatment affects the trust, the trustee and other entities connected with the trust (such as members of the trust and entities the trustee holds membership interests in).

#### **Table of sections**

##### **Object of this Subdivision**

713-125 Object of this Subdivision

##### **Choice to form a consolidated group**

713-130 Choosing to form a consolidated group

##### **Effects of choice**

713-135 Effects of choice

713-140 Modifications of the applied law

### **Object of this Subdivision**

#### **713-125 Object of this Subdivision**

- (1) The main object of this Subdivision is to provide, by the means described in subsections (2) and (3), for certain unit trusts to be treated like companies, and therefore like \*head companies of \*consolidated groups, with consequent effects on other entities including:
  - (a) the trustees; and
  - (b) \*members of the trusts; and
  - (c) entities the trustees hold \*membership interests in.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 713-130

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- (2) The first means is letting a \*corporate unit trust, or \*public trading trust, that could become the \*head company of a \*consolidated group if the trust were a company, choose to form such a group (with other entities as \*subsidiary members).
- (3) The second means is changing the way in which the law relating to income tax applies on and after the time the choice takes effect, so that law (with some modifications) applies in relation to the trust or the trustee (as appropriate) in a way corresponding to the way in which that law applies in relation to a company.

Note: The law relating to income tax includes legislation relating to associated imposts (such as those connected with the imputation system).

### **Choice to form a consolidated group**

#### **713-130 Choosing to form a consolidated group**

A trust may make a choice under section 703-50 (Choice to consolidate a consolidatable group), as if the trust were a company (the *assumed company*), but only if:

- (a) the assumed company could make the choice, if it beneficially owned the \*membership interests in other entities that are legally owned by the trustee; and
- (b) the day specified in the choice is the first day of an income year for which the trust is a \*corporate unit trust or a \*public trading trust.

Note: Assuming that a trust is a company also involves assuming:

- (a) that the company has characteristics of the trust, such as the location of the central management and control (which is relevant to residence), the business of the trust, not being incorporated etc.; and
- (b) that membership interests in the trust are membership interests in the company (owned by the same persons and in the same way as membership interests in the trust are owned); and
- (c) that the company's taxable income is taxed at the same rate as the trust's net income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Effects of choice

### 713-135 Effects of choice

(1) If the trust makes the choice, the law (the *applied law*) described in subsection (2) applies in relation to the trust in a way corresponding to the way in which that law applies to a company. The applied law applies in that way in relation to the trust or trustee (as appropriate):

- (a) with the appropriate modifications (including those described in section 713-140, so far as they are appropriate); and
- (b) in relation to all times at or after the start of the day specified in the choice; and
- (c) so far as it is relevant to the operation of the applied law in relation to the trust and a time at or after the start of that day—in relation to a time when the trust existed before the start of that day.

Note 1: The application of the applied law in this way affects not only the trust and the trustee but also other entities connected with the trust, such as members of the trust and entities in which the trustee holds membership interests. Some examples of that effect are that:

- (a) a consolidated group comes into existence on the day specified in the choice; and
- (b) there may be a scrip for scrip roll-over for an entity exchanging its shares in a company for membership interests in the trust.

Note 2: The application of the applied law in this way involves treatment of characteristics, things and persons relating to the trust corresponding to the treatment by the applied law of analogous characteristics, things and persons relating to a company (as envisaged in the note to section 713-130). These are some examples of analogous things and analogous persons:

- (a) units in the trust and shares in a company;
- (b) unitholders in the trust and shareholders in a company;
- (c) trust voting interests and voting shares in a company.

(2) The applied law is:

- (a) this Act (other than this Subdivision); and
- (b) an Act that imposes any impost payable under this Act; and
- (c) the *Income Tax Rates Act 1986*; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 713-140

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- (d) the *Taxation Administration Act 1953*, so far as it relates to an Act covered by paragraph (a), (b) or (c); and
  - (e) any other Act, so far as it relates to an Act covered by paragraph (a), (b), (c) or (d); and
  - (f) regulations and other legislative instruments under an Act covered by any of the preceding paragraphs.
- (3) Subsection (1) does not make an entity liable to a criminal, civil or administrative penalty.

Note: An entity is liable to such a penalty under the applied law only if that law, as it applies apart from subsection (1), makes the entity liable.

**713-140 Modifications of the applied law**

*Overview*

- (1) This section describes modifications of the applied law in its application in relation to a trust or trustee under section 713-135, but does not limit the modifications of that law that are appropriate for the purposes of that section.

*General modifications*

- (2) A reference in the applied law to a thing or person described in column 2 of an item of the table includes a reference to a thing or person described in column 3 of the item.

<b>General modifications</b>		
<b>Column 1 Item</b>	<b>Column 2 A reference in the applied law to:</b>	<b>Column 3 Includes a reference to:</b>
1	A body corporate	The trust or trustee (as appropriate)
2	A dividend	A distribution from the trust, so far as the distribution is from profits
3	A share capital account	The amount of the trust estate that is <i>not</i> attributable to profits

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**General modifications**

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Column 1 Item	Column 2 A reference in the applied law to:	Column 3 Includes a reference to:
4	A director (of a company, body corporate or corporation)	The trustee or, if the trustee is a body corporate, a director of the trustee (as appropriate)

Note: An expression in column 2 of an item of the table has the meaning that the expression has in the provision of the applied law containing the reference.

(3) The trust is not covered by a reference in the applied law to a trust.

Note: Subsections (3) and (4) of this section do not affect an entity's liability for criminal, civil and administrative penalties under the applied law, as those subsections modify (so far as appropriate) the applied law as it applies because of subsection 713-135(1), and that subsection does not affect liability for such penalties (see subsection 713-135(3)).

(4) The trustee is not covered by a reference in the applied law to a trustee (except a reference in section 254 of the *Income Tax Assessment Act 1936*).

Note: Section 254 of the *Income Tax Assessment Act 1936* deals with obligations and liabilities of trustees.

*Modifications of specific provisions*

(5) A provision of an Act identified in an item of the table is modified as set out in the item.

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**Modifications of specific provisions**

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Item	Act(s)	Provision	Modification
1	<i>Income Tax Assessment Act 1936</i>	Subsection 128TK(2)	The subsection has effect as if it did not refer to the purposes of Division 4 of Part 3.6 of the <i>Corporations Act 2001</i> .
2	<i>Income Tax Assessment Act 1936</i>	Paragraph 128TK(4)(b)	The paragraph has effect as if it referred to a person or firm who is eligible to consent to being appointed as the auditor of a company in accordance with the <i>Corporations Act 2001</i> .

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 713-200

<b>Modifications of specific provisions</b>			
<b>Item</b>	<b>Act(s)</b>	<b>Provision</b>	<b>Modification</b>
3	<i>Income Tax Assessment Act 1936</i>	Division 13A of Part III	The Division does not apply in relation to a share or right acquired under an employee share scheme (within the meaning of that Division) before the day specified in the choice if the Division did not apply in relation to the share or right before that day.
4	<i>Income Tax Assessment Act 1997 and Income Tax (Transitional Provisions) Act 1997</i>	Part 3-90 (of each Act)	The Part has effect as if an entity were a *wholly-owned subsidiary of the trust if the entity would have been one had the trustee owned beneficially *membership interests in the entity that the trustee owned legally.

**Subdivision 713-E—Partnerships**

**Guide to Subdivision 713-E**

**713-200 What this Subdivision is about**

This Subdivision modifies tax cost setting rules in Divisions 701, 705 and 711 so that they take account of the special characteristics of partnerships. The modifications apply in these situations:

- (a) an entity that is a partner in a partnership becomes a subsidiary member of a consolidated group;
- (b) a partnership becomes, or ceases to be, a subsidiary member of a consolidated group.

**Table of sections**

**Objects**

713-205 Objects of this Subdivision

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Partnership cost setting interests etc.**

- 713-210 Partnership cost setting interests
- 713-215 Terminating value for partnership cost setting interest

**Setting tax cost of partnership cost setting interests**

- 713-220 Set tax cost of partnership cost setting interests if partner joins consolidated group
- 713-225 Tax cost setting amount for partnership cost setting interest
- 713-230 Reduction in allocable cost amount if partnership asset is over-depreciated

**Special rules where partnership joins consolidated group**

- 713-235 Partnership joins group—set tax cost of partnership assets
- 713-240 Partnership joins group—tax cost setting amount for partnership asset
- 713-245 Partnership joins group—pre-CGT factor for partnership asset

**Special rules where partnership leaves consolidated group**

- 713-250 Partnership leaves group—standard provisions modified
- 713-255 Partnership leaves group—tax cost setting amount for partnership cost setting interests
- 713-260 Partnership leaves group—tax cost setting amount for assets consisting of being owed certain liabilities
- 713-265 Partnership leaves group—adjustments to leaving partner's allocable cost amount
- 713-270 Partnership leaves group—certain partnership cost setting interests treated as having been acquired before 20 September 1985

## Objects

### 713-205 Objects of this Subdivision

- (1) The first object of this Subdivision is to ensure that if:
  - (a) an entity that is a partner in a partnership becomes a \*subsidiary member of a \*consolidated group; and
  - (b) the partnership does not become a \*subsidiary member of the group;the provisions mentioned in subsection (3) operate as if the \*partnership cost setting interests of the entity in the partnership were the entity's only assets relating to the partnership.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 713-205

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Note: In general, the head company of the consolidated group is treated as a partner in the partnership, in accordance with section 701-1 (the single entity rule).

- (2) The second object of this Subdivision is to ensure that where a partnership becomes a \*subsidiary member of a \*consolidated group, the provisions mentioned in subsection (3) operate:
- (a) as if the group became the holder of the assets of the partnership; and
  - (b) to set the \*tax cost of the assets of the partnership at an appropriate amount, taking into account the taxation treatment of partnerships.

Note: While the partnership is a subsidiary member of the group, it loses its separate tax identity (under the single entity rule in subsection 701-1(1)). Therefore, in general, the assets of the partnership are treated as assets of the head company of the group and partnership cost setting interests in the partnership are ignored.

- (3) The provisions are:
- (a) section 701-10 (about setting the tax cost of assets of an entity joining a group); and
  - (b) Subdivision 705-A; and
  - (c) any other provision of this Act giving Subdivision 705-A a modified effect in circumstances other than those covered by that Subdivision.

Note: An example of provisions covered by paragraph (c) are the provisions of Subdivision 705-B giving Subdivision 705-A a modified effect when a consolidated group is formed.

- (4) The third object of this Subdivision is to ensure that, where a partnership ceases to be a \*subsidiary member of a \*consolidated group, the provisions mentioned in subsection (5) operate:
- (a) as if the group's \*partnership cost setting interests were the group's only assets relating to the partnership; and
  - (b) to set the \*tax cost of those interests at an appropriate amount, taking into account the fact that the group ceases to be the holder of the assets of the partnership.

- (5) The provisions are:
- (a) sections 701-15 and 701-50 (about setting the tax cost of membership interests in an entity that leaves the group); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) sections 701-20 and 701-45 (about the cost of assets consisting of certain liabilities owed by or to an entity that leaves the group); and
- (c) Division 711.

### **Partnership cost setting interests etc.**

#### **713-210 Partnership cost setting interests**

A *partnership cost setting interest* in a partnership is the asset that is comprised of:

- (a) an interest in an asset of the partnership; or
- (b) an interest in the partnership that is not covered by paragraph (a);

but does not include an asset that is comprised of a \*membership interest in the partnership.

Note 1: A partner may have more than one partnership cost setting interest that relates to an asset of the partnership (see section 106-5).

Note 2: A partnership cost setting interest may relate to an asset of the partnership, but the asset of the partnership is not a partnership cost setting interest in the partnership.

#### **713-215 Terminating value for partnership cost setting interest**

- (1) This section modifies the way in which the \*terminating value of a \*partnership cost setting interest in a partnership is worked out under section 705-30.
- (2) For the purposes of this Subdivision, the \*terminating value of the \*partnership cost setting interest at a time is:
  - (a) if the interest relates to an asset of the partnership—the interest's individual share of the terminating value of that asset (worked out in accordance with subsection (3)) at that time; or
  - (b) otherwise—the terminating value of the interest at that time worked out under section 705-30.
- (3) To work out the amount of the \*terminating value of the asset of the partnership mentioned in paragraph (2)(a), apply section 705-30 as if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 713-220

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- (a) the time mentioned in subsection (2) were the joining time mentioned in that section; and
- (b) the partnership were, at the time mentioned in subsection (2), the joining entity mentioned in that section.

**Setting tax cost of partnership cost setting interests**

**713-220 Set tax cost of partnership cost setting interests if partner joins consolidated group**

- (1) This section applies if an entity (the *joining entity*) that is a partner in a partnership becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*).

Note: If the partnership becomes a subsidiary member of the group at the joining time, the application of this section is affected by section 713-235.

- (2) In applying the provisions mentioned in subsection 713-205(3) in relation to the joining entity:
  - (a) work out the \*tax cost setting amount for each \*partnership cost setting interest in the partnership that the joining entity holds at the joining time, in accordance with section 713-225; and
  - (b) except for the purposes of section 713-235 (which applies only if the partnership joins the group), do not work out tax cost setting amounts for the assets of the partnership; and
  - (c) do not work out tax cost setting amounts for the \*membership interests in the partnership held by the joining entity.

Note 1: Because of paragraphs (b) and (c), no amount of allocable cost amount for the joining entity is allocated to the assets of the partnership, or to membership interests in the partnership held by the joining entity.

Note 2: If assets of the partnership are held on revenue account, the related partnership cost setting interests held by the joining entity have their tax cost set at the joining time. However, that tax cost does not alter calculations of the net income or exempt income of the partnership, or of a partnership loss, for the purposes of section 92 of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**713-225 Tax cost setting amount for partnership cost setting interest**

- (1) This section modifies the way in which the \*tax cost setting amounts are worked out under Division 705 for the \*partnership cost setting interests mentioned in paragraph 713-220(2)(a).

*Partnership cost setting interest takes character of partnership asset—general*

- (2) Work out the \*tax cost setting amounts for those \*partnership cost setting interests as if any partnership cost setting interest that relates to an asset (the ***underlying partnership asset***) of the partnership were an asset of the same kind as the underlying partnership asset.

Note: The kinds of assets mentioned in subsection (2) include the following:

- (a) retained cost base assets;
- (b) reset cost base assets that are held on revenue account (however, if such assets are trading stock or depreciating assets, the special rule in subsection (4) will apply) or on capital account;
- (c) excluded assets (see subsection (3));
- (d) current assets (within the meaning of subsection 705-125(2)).

Example: The partnership has an asset that is Australian currency (which is a retained cost base asset). A partnership cost setting interest of the joining entity in that asset is treated as a retained cost base asset for the purpose of working out the tax cost setting amounts for the joining entity's partnership cost setting interests in the partnership.

*Partnership cost setting interest takes character of partnership asset—excluded assets*

- (3) If:
- (a) tax cost setting amounts were to be worked out for the assets of the partnership under Division 705; and
  - (b) in working out those amounts, the underlying partnership asset mentioned in subsection (2) would be an excluded asset for the purposes of section 705-35;

then subsection (2) operates so that the \*tax cost setting amounts for those \*partnership cost setting interests are worked out as if any partnership cost setting interest that relates to the underlying

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 713-225

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partnership asset were an excluded asset for the purposes of section 705-35.

*Special character of partnership cost setting interest in partnership asset that is trading stock or depreciating asset*

- (4) Despite subsection (2), if an asset of the partnership is \*trading stock or a \*depreciating asset, work out the \*tax cost setting amounts for those \*partnership cost setting interests as if:
- (a) a partnership cost setting interest relating to that asset were a \*retained cost base asset; and
  - (b) the tax cost setting amount for that partnership cost setting interest were equal to its \*terminating value (worked out in accordance with section 713-215).

*Reduction in allocable cost amount for over-depreciated partnership assets*

- (5) If one or more assets of the partnership are \*over-depreciated at the joining time, reduce the group's allocable cost amount for the joining entity in accordance with section 713-230.

*Partnership liabilities—working out allocable cost amount*

- (6) If:
- (a) according to \*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, a thing (the **partnership liability**) is a liability of the partnership at the joining time that can or must be recognised in the partnership's statement of financial position; and
  - (b) for that reason, the partnership liability is not an accounting liability of the joining entity at the joining time for the purposes of section 705-70;
- then sections 705-70, 705-75 and 705-80 operate as if the partnership liability were an accounting liability of the joining entity at the joining time, to the extent of the joining entity's individual share of the partnership liability.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Partnership deductions—working out allocable cost amount*

- (7) Section 705-115 operates as if:
- (a) a deduction to which the partnership is entitled (the ***partnership deduction***) were a deduction to which the joining entity was entitled, to the extent of the joining entity's individual share of the partnership deduction; and
  - (b) the deduction to which the joining entity was entitled were of the same kind as the partnership deduction.

Note: These kinds of deductions include acquired deductions and owned deductions (within the meaning of section 705-115).

**713-230 Reduction in allocable cost amount if partnership asset is over-depreciated**

- (1) The object of this section is to reduce the group's allocable cost amount for the joining entity, if one or more assets of the partnership are \*over-depreciated at the joining time. The amount of the reduction is calculated under section 705-50 in relation to the joining entity's \*partnership cost setting interests (the ***reduction interests***) relating to those assets.
  - (2) Reduce the allocable cost amount mentioned in subsection 713-225(5) by the reduction amount worked out under subsection (3).
  - (3) The reduction amount is the total of the amounts that would be reduced under section 705-50 for all the reduction interests if:
    - (a) this Subdivision did not include subsection 713-225(5) or this section; and
    - (b) subsection 713-225(4) did not apply to any of the reduction interests; and
- Note: This means that the reduction interests would be treated as over-depreciated assets, in accordance with subsection 713-225(2).
- (c) the \*adjustable value of a particular reduction interest were equal to its individual share of the adjustable value of the asset of the partnership to which it relates; and
  - (d) the \*cost of the interest were equal to its individual share of the cost of the asset of the partnership to which it relates; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 713-235

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(e) section 705-50 did not include subsection 705-50(4).

### Special rules where partnership joins consolidated group

#### 713-235 Partnership joins group—set tax cost of partnership assets

- (1) This section applies if a partnership becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*).
- (2) In applying the provisions mentioned in subsection 713-205(3) in relation to the partnership:
  - (a) do not work out an allocable cost amount for the partnership; and
  - (b) work out the \*tax cost setting amount for each asset of the partnership covered by subsection (3), in accordance with section 713-240.

Note: If a partner in the partnership becomes a subsidiary member of the group at the joining time, tax cost setting amounts are worked out for the assets of the partner (including partnership cost setting interests) before tax cost setting amounts are worked out for the assets of the partnership.

- (3) An asset of the partnership at the joining time is covered by this subsection, unless it would be an excluded asset for the purposes of section 705-35 on the assumption that tax cost setting amounts were worked out for the assets of the partnership under Division 705 (instead of section 713-240).

#### 713-240 Partnership joins group—tax cost setting amount for partnership asset

- (1) Work out the \*tax cost setting amounts for the assets covered by subsection 713-235(3) as follows:
  - (a) firstly, add up the subsection (2) amounts for all the partnership cost setting interests in the partnership at the joining time (the result is the *partnership cost pool*);

Note 1: Partnership cost setting interests held by a partner that becomes a subsidiary member of the group at the joining time are included in the calculation in paragraph (a). The operation of the cost setting rules in relation to that partner at the joining time may affect the subsection (2) amounts for those interests.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 713-240

Note 2: Partnership cost setting interests are included in the calculation in paragraph (a), even if the cost setting rules have not applied in relation to the interests (for example, if the interests were acquired directly by the head company).

- (b) secondly, work out the tax cost setting amounts for the assets covered by subsection 713-235(3) that are \*retained cost base assets, in accordance with section 705-25;
- (c) thirdly, work out the tax cost setting amounts for the rest of the assets covered by subsection 713-235(3), in accordance with subsection (3).

*Subsection (2) amount for a partnership cost setting interest*

- (2) For the purposes of paragraph (1)(a), the subsection (2) amount for a \*partnership cost setting interest is the amount specified in the following table:

<b>Working out the subsection (2) amount</b>		
<b>Item</b>	<b>If the market value of the partnership cost setting interest is ...</b>	<b>the subsection (2) amount for the partnership cost setting interest is ...</b>
1	equal to or greater than its *cost base	its cost base
2	less than its *cost base but greater than its *reduced cost base	its *market value
3	less than or equal to its *reduced cost base	its reduced cost base

*Allocating partnership cost pool to partnership assets that are not retained cost base assets*

- (3) Work out the \*tax cost setting amounts for the assets mentioned in paragraph (1)(c) by applying sections 705-35, 705-40, 705-45 and 705-47 to those assets, as if:
  - (a) the partnership were, at the joining time, the joining entity mentioned in those sections; and
  - (b) the assets of the partnership were the assets covered by subsection 713-235(3); and

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 713-245

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- (c) the allocable cost amount mentioned in paragraph 705-35(1)(a) were the partnership cost pool.
- (4) For the purposes of this section, section 104-510 (CGT event L3) applies as if the group's allocable cost amount for the entity mentioned in that section were the partnership cost pool.

**713-245 Partnership joins group—pre-CGT factor for partnership asset**

- (1) The \*pre-CGT factor for each asset covered by subsection 713-235(3) is worked out under subsections (2) and (3) (instead of subsection 705-125(3)).
- (2) Firstly, identify the \*partnership cost setting interests (the *pre-CGT interests*) in the partnership, relating to assets of the partnership, for which there is a \*pre-CGT factor at the joining time.

Note: The pre-CGT factor for such a partnership cost setting interest is worked out at the time the partner holding the interest became a subsidiary member of the group (whether that time is the joining time or was an earlier time).

- (3) Secondly, work out the \*pre-CGT factor for each asset covered by subsection 713-235(3) in this way:

*Partnership assets' pre-CGT factor*

- Step 1. For each pre-CGT interest, multiply its \*market value at the joining time by its \*pre-CGT factor.
- Step 2. Add up all the results of step 1.
- Step 3. Add up the \*market values of all the assets of the partnership at the joining time.
- Step 4. Divide the result of step 2 by the result of step 3.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Special rules where partnership leaves consolidated group

### 713-250 Partnership leaves group—standard provisions modified

- (1) This section applies if a partnership ceases to be a \*subsidiary member of a \*consolidated group at a time (the *leaving time*).

Note: The section applies whether or not any partner that is a subsidiary member of the group also ceases to be a subsidiary member at the leaving time.

- (2) Apply the provisions mentioned in subsection 713-205(5) subject to the modifications in the provisions that follow under this \*group heading.

### 713-255 Partnership leaves group—tax cost setting amount for partnership cost setting interests

#### *Overview*

- (1) Instead of working out \*tax cost setting amounts for \*membership interests in the partnership, a special rule requires \*partnership cost setting interests in the partnership to be worked out. Where other entities cease to be \*subsidiary members at the same time, the normal tax cost setting amount rules are applied for membership interests in the other entities, but the special rule is applied for partnership cost setting interests in the partnership.

*Tax cost setting amounts for membership interests in partnership not to be worked out*

- (2) Do not work out \*tax cost setting amounts for \*membership interests in the partnership.

*Partnership is only entity that exists—tax cost setting amount for partnership cost setting interests*

- (3) Except where the partnership ceases to be a \*subsidiary member in circumstances covered by subsection (5), work out in accordance with subsection (4) the \*tax cost setting amount just before the leaving time for each \*partnership cost setting interest in the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 713-260

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partnership held by a partner that is a \*member of the group just before the leaving time.

*Tax cost setting amount*

- (4) The \*tax cost setting amount is equal to the partner's individual share of the \*terminating value of the partnership asset to which the \*partnership cost setting interest relates.

Note: For income tax purposes there is no disposal by the head company of any assets of the partnership when it ceases to be a subsidiary member of the group.

*Multiple exit case—tax cost setting amounts for both partnership cost setting interests in partnership and membership interests in other entities*

- (5) If the partnership is one of 2 or more entities that cease to be \*subsidiary members of the old group at the same time because of an event happening in relation to one of them, apply section 711-55 as if:
- (a) except in paragraph 711-55(3)(a), a reference to \*membership interests in an entity, or to the \*tax cost setting amount for such interests, where the entity is the partnership, were a reference to \*partnership cost setting interests in the partnership, or to the tax cost setting amount for such interests; and
  - (b) paragraph 711-55(3)(a) were replaced by a requirement that, where the entity in which the membership interests mentioned in subsection 711-55(3) are held is the partnership, subsection (4) of this section is to be applied in working out the tax cost setting amount of the partnership cost setting interests in the partnership.

**713-260 Partnership leaves group—tax cost setting amount for assets consisting of being owed certain liabilities**

- (1) This section applies if:
- (a) when the partnership ceases to be a \*subsidiary member of the group, a partner remains a \*member of the group; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) an asset becomes an asset of the \*head company because subsection 701-1(1) (the single entity rule) ceases to apply to the partnership when it ceases to be a subsidiary member; and
  - (c) the asset is, ignoring that subsection:
    - (i) the partner's interest in an asset of the partnership consisting of a liability of a member of the group owed to the partnership; or
    - (ii) the partner's share of a liability of the partnership owed to a member of the group.
- (2) The asset's \*tax cost is set at the leaving time at a \*tax cost setting amount equal to the \*market value of the asset.

**713-265 Partnership leaves group—adjustments to leaving partner's allocable cost amount**

- (1) This section has effect in working out the group's \*allocable cost amount for a partner in the partnership, if the partner ceases to be a \*subsidiary member of the group at the leaving time.
- (2) Section 711-35 operates as if:
- (a) a deduction to which the partnership becomes entitled (the *partnership deduction*) were a deduction to which the partner becomes entitled, to the extent of the partner's individual share of the partnership deduction; and
  - (b) the deduction to which the partner becomes entitled were of the same kind as the partnership deduction.
- Note: These kinds of deductions include acquired deductions and owned deductions (within the meaning of section 711-35).
- (3) Section 711-40 operates as if a liability owed by \*members of the group to the partnership at the leaving time were a liability owed by members of the group to the partner at that time, to the extent of the partner's individual share of the liability.
- (4) If:
- (a) according to \*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, a thing (the *partnership liability*) is a

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 713-270

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liability of the partnership at the leaving time that can or must be recognised in the partnership's statement of financial position; and

- (b) for that reason, the partnership liability is not an accounting liability of the partner at the leaving time for the purposes of section 711-45;

then section 711-45 operates as if the partnership liability were an accounting liability of the partner at the leaving time, to the extent of the partner's individual share of the partnership liability.

**713-270 Partnership leaves group—certain partnership cost setting interests treated as having been acquired before 20 September 1985**

- (1) This section applies if any of the assets of the partnership at the leaving time has a \*pre-CGT factor under section 713-245.
- (2) Apply section 711-65 (simple case where assets have a pre-CGT factor) as if:
- (a) the \*pre-CGT factor were a pre-CGT factor under section 705-125; and
  - (b) instead of applying to \*membership interests in the partnership, section 711-65 applied to \*partnership cost setting interests that relate to the asset of the partnership; and
  - (c) if the pre-CGT factor for the asset is 1, the number of those partnership cost setting interests worked out under subsection (2) of that section were all of those partnership cost setting interests; and
  - (d) if the pre-CGT factor for the asset is less than 1, each partnership cost setting interest (the *actual interest*) consisted of 2 separate partnership cost setting interests that relate to the asset, as follows:
    - (i) one partnership cost setting interest, comprised of the fraction of the actual interest that equals the pre-CGT factor, with a pre-CGT factor of 1 for the purposes of paragraph (c) of this subsection;
    - (ii) the other partnership cost setting interest, equal to the remainder of the actual interest, that is not one of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

number of partnership cost setting interests that is worked out under subsection (2) of that section.

- (3) Apply section 711-70 (multiple exit case where assets have a pre-CGT factor) as if:
- (a) a reference in that section to \*membership interests in an entity, where that entity is the partnership, were a reference to \*partnership cost setting interests that relate to the assets of the partnership; and
  - (b) the requirement in subsection (4) of that section to apply subsections 711-65(3) to (6) in relation to a particular entity were, where the entity is the partnership, a requirement to apply subsection (2) of this section.

## **Subdivision 713-L—Life insurance companies**

### **Guide to Subdivision 713-L**

#### **713-500 What this Subdivision is about**

This Subdivision sets out special rules for:

- (a) a life insurance company that becomes, or ceases to be, a member of a consolidated group; and
- (b) the head company of a consolidated group where a life insurance company is a subsidiary member of the group.

#### **Table of sections**

##### **General modifications for life insurance companies**

- 713-505 Head company treated as a life insurance company
- 713-510 Certain subsidiaries of life insurance companies cannot be members of consolidated group

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 713-500

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**Life insurance companies' liabilities on joining consolidated group**

713-511 Treatment of certain liabilities for income year when life insurance company joins consolidated group

**Tax cost setting rules for life insurance companies joining consolidated group**

713-515 Certain assets taken to be retained cost base assets where life insurance company joins group

713-520 Valuing certain liabilities where life insurance company joins group

713-525 Obligation to value certain assets and liabilities at joining time

**Losses of life insurance companies joining consolidated group**

713-530 Treatment of certain losses of life insurance company

**Losses of life insurance companies' subsidiaries joining consolidated group**

713-535 Losses of entities whose membership interests are complying superannuation/FHSA assets of life insurance company

713-540 Losses of entities whose membership interests are segregated exempt assets of life insurance company

**Imputation rules for life insurance companies joining consolidated group**

713-545 Treatment of franking surplus in franking account of life insurance subsidiary joining group

713-550 Treatment of head company's franking account after joining

**Annuity payable by life insurance company to another member of a consolidated group**

713-553 Special rules relating to segregated exempt assets

713-555 Transfer from segregated exempt assets because policyholder and life insurance company are in group

713-560 If valuation of segregated exempt assets is delayed

**Liabilities for life insurance companies leaving consolidated group**

713-565 Treatment of certain liabilities for income year when life insurance company leaves consolidated group

**Losses for life insurance companies leaving consolidated group**

713-570 Certain losses transferred to leaving company

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Tax cost setting rules for life insurance companies leaving consolidated group**

- 713-575 Terminating value of certain assets where life insurance company leaves group
- 713-580 Valuing certain liabilities where life insurance company leaves group
- 713-585 Obligation to value certain assets and liabilities at leaving time

**General modifications for life insurance companies**

**713-505 Head company treated as a life insurance company**

This Act, and the *Income Tax Rates Act 1986*, apply to the \*head company of a \*consolidated group as if it were a \*life insurance company for an income year if one or more life insurance companies are \*subsidiary members of the group at any time during that year.

**713-510 Certain subsidiaries of life insurance companies cannot be members of consolidated group**

- (1) An entity cannot be a \*subsidiary member of a \*consolidated group or \*consolidatable group of which a \*life insurance company is a \*member if:
- (a) the life insurance company owns, either directly or indirectly through one or more interposed entities, all the \*membership interests in the entity and either:
    - (i) some, but not all, of the membership interests described in subsection (3) (the *key interests*) are \*complying superannuation/FHSA assets of the life insurance company; or
    - (ii) some, but not all, of the key interests are \*segregated exempt assets of the life insurance company; or
  - (b) the life insurance company owns, either directly or indirectly through one or more interposed entities, only some of the membership interests in the entity and any of the key interests are complying superannuation/FHSA assets or segregated exempt assets of the life insurance company.

Note: The entity could, however, be a member of another consolidated group or consolidatable group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 713-511

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- (2) An entity cannot continue to be a \*subsidiary member of a \*consolidated group of which a \*life insurance company is a \*member if:
- (a) the life insurance company owns, either directly or indirectly through one or more interposed entities, all the \*membership interests in the entity and, had the entity not been a subsidiary member of the group, either:
    - (i) some, but not all, of the membership interests described in subsection (3) (the *key interests*) would be \*complying superannuation/FHSA assets of the life insurance company; or
    - (ii) some, but not all, of the key interests would be \*segregated exempt assets of the life insurance company; or
  - (b) the life insurance company owns, either directly or indirectly through one or more interposed entities, only some of the membership interests in the entity and, had the entity not been a subsidiary member of the group, any of the key interests would be complying superannuation/FHSA assets or segregated exempt assets of the life insurance company.
- (3) The key interests are the \*membership interests the \*life insurance company owns directly in:
- (a) the entity; or
  - (b) an interposed entity.

**Life insurance companies' liabilities on joining consolidated group**

**713-511 Treatment of certain liabilities for income year when life insurance company joins consolidated group**

- (1) This section affects how paragraph 320-15(1)(h) and section 320-85 apply if:
- (a) a \*life insurance company becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*); and
  - (b) just before the joining time, the life insurance company had one or more liabilities under the \*net risk components of life insurance policies.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 713-515

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Note: Paragraph 320-15(1)(h) and section 320-85 both operate on the basis of a comparison of the value of the company's liabilities under the net risk components of life insurance policies at the end of the current year with the value of those liabilities at the end of the previous year, so that:

- (a) that paragraph includes an amount in the company's assessable income for the current year if the value at the end of the current year is less than the value at the end of the previous income year; and
  - (b) that section allows a deduction for the current year if the value at the end of the current year is more than the value at the end of the previous income year.
- (2) The object of this section is to ensure that the \*head company of the \*consolidated group bears the income tax consequences relating to a change in \*value of the liabilities only after the joining time.

Note: The life insurance company bears the income tax consequences relating to a change in value of the liabilities before the joining time, because section 701-30 ensures that paragraph 320-15(1)(h) and section 320-85 apply in relation to a part of the income year before that time when the company was not a subsidiary member of a consolidated group as if that part were an income year.

- (3) Paragraph 320-15(1)(h) and section 320-85 apply for the head company core purposes set out in section 701-1 (Single entity rule) as if the \*value of the liabilities at the end of the last income year ending before the joining time were the value of the liabilities (for the \*life insurance company) just before the joining time.

### **Tax cost setting rules for life insurance companies joining consolidated group**

#### **713-515 Certain assets taken to be retained cost base assets where life insurance company joins group**

- (1) If an entity that becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*) is a \*life insurance company, these assets are *retained cost base assets*:
- (a) a \*complying superannuation/FHSA asset, or a \*segregated exempt asset, of the company; and
  - (b) another asset of the company that is held by the company for the purpose of discharging its liabilities under the \*net

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 713-520

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- investment component of ordinary life insurance policies (except policies that provide for \*participating benefits or \*discretionary benefits under \*life insurance business carried on in Australia); and
- (c) for a life insurance company that has demutualised under Division 9AA of Part III of the *Income Tax Assessment Act 1936* where, in the period starting just after the company demutualises and ending at the joining time, all of the \*membership interests in the company were owned by the same group—a goodwill asset of the company.
- (2) If the \*retained cost base asset is covered by paragraph (1)(a) or (b), its \*tax cost setting amount is:
- (a) for the purposes of working out the tax cost setting amounts for reset cost base assets (see section 705-35)—the asset's \*transfer value just before the joining time; and
- (b) for all other purposes—the asset's \*terminating value.
- (3) If the \*retained cost base asset is covered by paragraph (1)(c), its \*tax cost setting amount is the embedded value (see subsection 121AM(1) of the *Income Tax Assessment Act 1936*) on the applicable accounting day (see subsection 121AM(3) of that Act) of the \*life insurance company concerned reduced by the net value of shareholders' assets held by the company on that day.
- (4) The *net investment component of ordinary life insurance policies* is the component of \*life insurance policies (except \*exempt life insurance policies and \*complying superannuation/FHSA life insurance policies) that:
- (a) is the component in respect of the part of those policies that has not been reinsured under a \*contract of reinsurance; and
- (b) is not the \*net risk component of those policies.

**713-520 Valuing certain liabilities where life insurance company joins group**

- (1) Despite section 705-70, if the joining entity mentioned in step 2 in the table in section 705-60 is a \*life insurance company, the joining entity's liabilities mentioned in this section are to be valued as mentioned in this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The value of the joining entity's \*complying superannuation/FHSA liabilities (if any) is the amount worked out under section 320-190 at the joining time.
- (3) The value of the joining entity's \*exempt life insurance policy liabilities (if any) is the amount worked out under section 320-245 at the joining time.
- (4) Subsection (5) applies to a liability of the joining entity if:
  - (a) the liability is under the \*net risk component of a \*life insurance policy; and
  - (b) the joining entity could deduct under section 320-80 an amount for the \*risk component of claims paid under the policy had it not become a \*member of the \*consolidated group.
- (5) The value of that liability is the \*current termination value of the \*net risk component of the \*life insurance policy at the joining time (calculated by an \*actuary).
- (6) The value of the joining entity's liabilities under the \*net investment component of ordinary life insurance policies is the amount worked out for those liabilities under subsection 320-190(2) as if those liabilities were \*complying superannuation/FHSA liabilities.

### **713-525 Obligation to value certain assets and liabilities at joining time**

Division 320 has effect as if the time when a \*life insurance company becomes a \*subsidiary member of a \*consolidated group were a \*valuation time for the purposes of sections 320-175 and 320-230.

Note: This means that there must be a valuation of the complying superannuation/FHSA assets and complying superannuation/FHSA liabilities under section 320-175 (with the consequences set out in section 320-180), and a valuation of the segregated exempt assets and exempt life insurance policy liabilities under section 320-230 (with the consequences set out in section 320-235), as at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Losses of life insurance companies joining consolidated group

### 713-530 Treatment of certain losses of life insurance company

- (1) This section applies if:
  - (a) a \*life insurance company becomes a \*member of a \*consolidated group at a time (the *joining time*); and
  - (b) just before the joining time, the life insurance company had either:
    - (i) a \*tax loss of the \*complying superannuation/FHSA class; or
    - (ii) a \*net capital loss from \*complying superannuation/FHSA assets.
- (2) This Act operates (except so far as the contrary intention appears) for the purposes of income years ending after the joining time as if:
  - (a) the \*head company of the \*consolidated group had made the loss for the income year in which the joining time occurs; and
  - (b) the \*life insurance company had not made the loss for the income year for which it made the loss.
- (3) The \*head company is not prevented from \*utilising the loss for the income year in which the joining time occurs merely because this Act operates as if the head company had made the loss for that year.
- (4) Division 707 does not apply in relation to the \*net capital loss or the \*tax loss at the joining time.

## Losses of life insurance companies' subsidiaries joining consolidated group

### 713-535 Losses of entities whose membership interests are complying superannuation/FHSA assets of life insurance company

- (1) This section applies if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) a \*life insurance company becomes a \*member of a \*consolidated group at a time (the *joining time*); and
  - (b) at the joining time, the life insurance company owns, either directly or indirectly through one or more interposed entities, all the \*membership interests in yet another entity (the *life insurance subsidiary*) that becomes a \*subsidiary member of the group at that time; and
  - (c) all the following membership interests are \*complying superannuation/FHSA assets of the life insurance company:
    - (i) the membership interests (if any) that the life insurance company owns directly in the life insurance subsidiary;
    - (ii) the membership interests (if any) that the life insurance company owns directly in the interposed entities; and
  - (d) the \*head company of the group makes a \*tax loss or \*net capital loss under Subdivision 707-A because of a transfer from the life insurance subsidiary.
- (2) This Act operates for the purposes of income years ending after the transfer as if:
- (a) the \*tax loss were of the \*complying superannuation/FHSA class; or
  - (b) the \*net capital loss were from \*complying superannuation/FHSA assets.
- (3) Subdivisions 707-B, 707-C and 707-D do not affect the \*utilisation of the loss by the \*head company of the \*consolidated group.

**713-540 Losses of entities whose membership interests are segregated exempt assets of life insurance company**

- (1) This section applies if:
- (a) a \*life insurance company becomes a \*member of a \*consolidated group at a time (the *joining time*); and
  - (b) at the joining time, the life insurance company owns, either directly or indirectly through one or more interposed entities, all the \*membership interests in yet another entity (the *life insurance subsidiary*) that becomes a \*subsidiary member of the group at that time; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 713-545

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- (c) all the following membership interests are \*segregated exempt assets of the life insurance company:
  - (i) the membership interests (if any) that the life insurance company owns directly in the life insurance subsidiary;
  - (ii) the membership interests (if any) that the life insurance company owns directly in the interposed entities.
- (2) A \*tax loss or \*net capital loss of the life insurance subsidiary for an income year ending before the joining time cannot be \*utilised by the life insurance subsidiary for an income year ending after that time.

Note: This prevents the loss from being transferred to the head company of the consolidated group under Subdivision 707-A (because it means the life insurance subsidiary could not have utilised the loss for the trial year). As a result, section 707-150 prevents any other entity from utilising the loss for an income year ending after the joining time.

### **Imputation rules for life insurance companies joining consolidated group**

#### **713-545 Treatment of franking surplus in franking account of life insurance subsidiary joining group**

- (1) This section applies if:
  - (a) a \*life insurance company becomes a \*member of a \*consolidated group at a time (the *joining time*); and
  - (b) at the joining time, the life insurance company owns, either directly or indirectly through one or more interposed entities, \*membership interests in yet another entity (the *life insurance subsidiary*) that becomes a \*subsidiary member of the group at that time; and
  - (c) the life insurance subsidiary's \*franking account is in surplus just before the joining time.
- (2) Paragraph 709-60(2)(b) does not apply in relation to the life insurance subsidiary.
- (3) A \*franking credit arises at the joining time in the \*franking account of the \*head company of the group. The amount of the credit is the amount worked out under subsection (4).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) The amount is equal to the amount of the \*franking credit that would arise in the \*life insurance company's \*franking account just before the joining time under item 5 of the table in subsection 219-15(2) if:
- (a) the life insurance subsidiary made a \*franked distribution to the life insurance company just before the joining time; and
  - (b) the amount of the franking credit on the distribution were equal to the surplus mentioned in paragraph (1)(c).
- (5) The \*head company of the group is entitled to a \*tax offset for the income year in which the joining time occurs. The amount of the tax offset is:
- (a) if all the \*membership interests (if any) that the \*life insurance company owns directly in the life insurance subsidiary, and all the membership interests (if any) that the life insurance company owns directly in interposed entities, are \*segregated exempt assets of the life insurance company—the surplus mentioned in paragraph (1)(c), reduced by the amount worked out under subsection (4); or
  - (b) if all the membership interests (if any) that the life insurance company owns directly in the life insurance subsidiary, and all the membership interests (if any) that the life insurance company owns directly in interposed entities, are \*complying superannuation/FHSA assets of the life insurance company—the amount worked out under subsection (6); or
  - (c) otherwise—nil.
- (6) The amount is worked out using the following formula (or is nil if it would otherwise be negative):

$$\left( \text{Surplus mentioned in paragraph (1)(c)} - \text{Amount worked out under subsection (4)} \right) \times \frac{\text{Complying superannuation/FHSA class tax rate}}{\text{Ordinary class tax rate}}$$

where:

***complying superannuation/FHSA class tax rate*** means the rate of tax in respect of the \*complying superannuation/FHSA class of the taxable income of a \*life insurance company for the income year in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 713-550

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which the joining time occurs (see paragraph 23A(b) of the *Income Tax Rates Act 1986*).

**ordinary class tax rate** means the rate of tax in respect of the \*ordinary class of the taxable income of a life insurance company for the income year in which the joining time occurs (see paragraph 23A(a) of the *Income Tax Rates Act 1986*).

**713-550 Treatment of head company's franking account after joining**

Sections 709-70 and 709-75 do not apply in relation to a \*subsidiary member of a \*consolidated group if:

- (a) the subsidiary member is a \*life insurance company; or
- (b) a life insurance company that is a \*member of the group owns \*membership interests, either directly or indirectly through one or more interposed entities, in the subsidiary member.

**Annuity payable by life insurance company to another member of a consolidated group**

**713-553 Special rules relating to segregated exempt assets**

*Conditions for sections 713-555 and 713-560 to apply*

- (1) Sections 713-555 and 713-560 apply only if both the conditions in subsections (2) and (3) are met.

Note: Each of those sections sets out extra conditions that must also be met for the section to apply.

- (2) The first condition is that there is a time (the *fusion time*) when it starts to be the case that both these entities (the *fused entities*) are \*members of a single \*consolidated group:
  - (a) a \*life insurance company;
  - (b) an entity (the *policyholder*) holding an \*exempt life insurance policy (the *fused entities' policy*) that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (i) was issued when the policyholder and the life insurance company were not both members of a single consolidated group; and
  - (ii) provided for the life insurance company to pay an \*immediate annuity to the policyholder.
- (3) The second condition is that the \*head company of the \*consolidated group determines the following amounts:
- (a) the total \*transfer value of the head company's \*segregated exempt assets;
  - (b) the amount of the head company's \*exempt life insurance policy liabilities;
- as at a time (the *determination time*) that is the fusion time or, if the head company does not determine those amounts as at the fusion time, the first time after the fusion time as at which the head company determines those amounts.

Note: If the life insurance company becomes a subsidiary member of the consolidated group, that company's segregated exempt assets become segregated exempt assets of the head company of the group because of section 701-5 (Entry history rule) and section 713-505 (Head company treated as a life insurance company).

*Object of sections 713-555 and 713-560*

- (4) The object of sections 713-555 and 713-560 is to ensure that the \*head company of the \*consolidated group:
- (a) does not have excessive amounts included in its assessable income because section 701-1 (Single entity rule) treats the fused entities as one so liabilities under the fused entities' policy do not contribute to the amount of the head company's \*exempt life insurance policy liabilities as at the determination time; and
  - (b) has amounts included in its assessable income, or is allowed deductions, to reflect what would have happened to the fused entities if they had not both been \*members of the group at any time between the fusion time and the determination time when they were both members of the group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 713-555

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**713-555 Transfer from segregated exempt assets because  
policyholder and life insurance company are in group**

*Application*

- (1) This section applies if:
- (a) as at the determination time, the total \*transfer value of the \*segregated exempt assets of the \*head company of the \*consolidated group exceeds the amount of that company's \*exempt life insurance policy liabilities, wholly or partly because:
    - (i) those assets include assets out of which exempt life insurance policy liabilities attributable to the fused entities' policy were to have been discharged; and
    - (ii) while both the fused entities are members of the group, the liability to pay the \*annuity is taken not to exist for the head company core purposes set out in section 701-1 (Single entity rule), because one or more applications of that section treat the fused entities as one entity; and
  - (b) because of that excess, the head company transfers under subsection 320-235(1) or 320-250(2), from its segregated exempt assets, assets (the *policy assets*) whose total transfer value equals the amount of the excess attributable to the matters described in subparagraphs (a)(i) and (ii).

However, this section does not apply if the policyholder ceases to be a \*member of the consolidated group between the fusion time and the determination time.

Note: Subsections 320-235(1) and 320-250(2) require a life insurance company to transfer assets from its segregated exempt assets if, at certain times, the total transfer value of the segregated exempt assets exceeds the amount of the company's exempt life insurance policy liabilities.

*Policy assets' transfer value not included in assessable income*

- (2) Paragraph 320-15(1)(f) does not apply to the transfer of the policy assets.

Note: Paragraph 320-15(1)(f) includes in a life insurance company's assessable income the transfer values of assets transferred by the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

company from the company's segregated exempt assets under subsection 320-235(1) or 320-250(2).

*Extra assessable income if policy is not a qualifying security*

- (3) If the fused entities' policy is not a qualifying security (as defined in section 159GP of the *Income Tax Assessment Act 1936*), the assessable income of the \*head company of the \*consolidated group for the income year in which the company transfers the policy assets includes the amount worked out using the formula:

$$\begin{array}{r} \text{Total *transfer value} \\ \text{of the policy assets} \end{array} - \begin{array}{r} \text{Reduced purchase price} \\ \text{of the annuity} \end{array}$$

where:

***reduced purchase price of the annuity*** means the reduced purchase price of the \*annuity as at the determination time worked out under subsection (3A) as if the determination time (rather than the fusion time) had been the first time at which both the fused entities were \*members of the \*consolidated group.

- (3A) For the purposes of subsection (3), work out the reduced purchase price of the \*annuity as follows:
- (a) first, work out the purchase price (within the meaning of section 27H of the *Income Tax Assessment Act 1936*) of the annuity;
  - (b) next, reduce that purchase price by the total of the amounts excluded from assessable income under paragraph 27H(1)(a) of that Act as deductible amounts in relation to the annuity.

*Assessable income or deduction if policy is a qualifying security*

- (4) If the fused entities' policy is a qualifying security (as defined in section 159GP of the *Income Tax Assessment Act 1936*), section 159GS (Balancing adjustment on transfer of qualifying security) of that Act applies as if:
- (a) the \*head company of the \*consolidated group:
    - (i) had been the holder (as defined in section 159GP of that Act) of the policy; and
    - (ii) had transferred the policy when it transferred the policy assets; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 713-560

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- (b) the transfer price had equalled the total \*transfer value of the policy assets; and
- (c) the determination time (rather than the fusion time) had been the first time at which both the fused entities were \*members of the consolidated group.

Note: If the policyholder becomes a subsidiary member of the consolidated group, section 701-5 (Entry history rule) treats the head company as if anything that had happened to the policyholder before it became a subsidiary member of the group had happened to the head company.

**713-560 If valuation of segregated exempt assets is delayed**

*Application*

- (1) This section applies if there is a period (the *gap*) between:
  - (a) the fusion time; and
  - (b) the determination time or the time at which the policyholder ceases to be a \*member of the \*consolidated group, whichever is earlier;when the fused entities are both members of the consolidated group.

*Continuation of exempt life insurance policy during the gap*

- (2) For the head company core purposes mentioned in section 701-1 (Single entity rule), Division 320 applies in relation to the fused entities' policy as if it continued to be an \*exempt life insurance policy during the gap, even though both the fused entities were \*members of the \*consolidated group.

*Transfer from segregated assets to provide for annuity payments*

- (3) During the gap, the \*head company of the \*consolidated group may transfer an asset from the head company's \*segregated exempt assets to provide for payments of the \*immediate annuity under the fused entities' policy.

*Effect of transfer*

- (4) If the \*head company of the \*consolidated group transfers an asset under subsection (3):

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) section 320-255 applies to the asset in the same way as that section applies to an asset transferred under subsection 320-250(2); and
- (b) whichever one of subsections (5) and (6) is relevant affects the \*head company of the \*consolidated group for the income year in which the gap occurs.

*Income if policy is not a qualifying security*

- (5) If the fused entities' policy is not a qualifying security (as defined in section 159GP of the *Income Tax Assessment Act 1936*), the \*head company's assessable income includes the amount that, if the fused entities had not been \*members of the \*consolidated group:
  - (a) would have been included in the policyholder's assessable income under section 27H of that Act in connection with the policy; and
  - (b) would have been \*derived in the gap.

*Income or deduction if policy is a qualifying security*

- (6) If the fused entities' policy is a qualifying security (as defined in section 159GP of the *Income Tax Assessment Act 1936*):
  - (a) the \*head company's assessable income includes the amount (if any) that, if the fused entities had not been \*members of the \*consolidated group:
    - (i) would have been included in the policyholder's assessable income under section 159GQ of that Act in connection with the policy; and
    - (ii) would have been attributable to the gap; or
  - (b) the head company may deduct the amount (if any) that, if the fused entities had not been members of the consolidated group:
    - (i) would have been a deduction allowable to the policyholder under section 159GQ of that Act in connection with the policy; and
    - (ii) would have been attributable to the gap.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Liabilities for life insurance companies leaving consolidated group

### 713-565 Treatment of certain liabilities for income year when life insurance company leaves consolidated group

- (1) This section affects how paragraph 320-15(1)(h) and section 320-85 apply if:
- (a) a \*life insurance company ceases to be a \*subsidiary member of a \*consolidated group at a time (the *leaving time*); and
  - (b) at the leaving time, the \*life insurance company has one or more liabilities under the \*net risk components of life insurance policies.

Note: Paragraph 320-15(1)(h) and section 320-85 both operate on the basis of a comparison of the value of a life insurance company's liabilities under the net risk components of life insurance policies at the end of the current year with the value of those liabilities at the end of the previous year, so that:

- (a) that paragraph includes an amount in the company's assessable income for the current year if the value at the end of the current year is less than the value at the end of the previous income year; and
  - (b) that section allows a deduction for the current year if the value at the end of the current year is more than the value at the end of the previous income year.
- (2) The object of this section is to ensure that:
- (a) the \*head company of the \*consolidated group bears the income tax consequences relating to a change in \*value of the liabilities before the leaving time; and
  - (b) the \*life insurance company bears the income tax consequences relating to a change in value of the liabilities after the leaving time.

#### *Head company's income or deduction from liabilities*

- (3) For the head company core purposes set out in section 701-1 (Single entity rule) relating to the income year in which the leaving time occurs (but not later income years), paragraph 320-15(1)(h) and section 320-85 have effect as if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the \*head company of the \*consolidated group had the liabilities at the end of that income year; and
- (b) the \*value of the liabilities at the end of that income year had been the amount that was actually the value of the liabilities (for the \*life insurance company) at the leaving time.

*Life insurance company's income or deduction from liabilities*

- (4) For the entity core purposes set out in section 701-1 (Single entity rule) relating to the \*life insurance company and the income year in which the leaving time occurs, paragraph 320-15(1)(h) and section 320-85 have effect as if the \*value of the liabilities at the end of the previous income year had been the amount that was actually the value of the liabilities (for the life insurance company) at the leaving time.

## **Losses for life insurance companies leaving consolidated group**

### **713-570 Certain losses transferred to leaving company**

- (1) This section applies if:
  - (a) a \*life insurance company ceases to be a \*subsidiary member of a \*consolidated group at a time (the *leaving time*); and
  - (b) ignoring section 713-505, at the leaving time, no other \*member of the group is a life insurance company that has a \*complying superannuation/FHSA asset pool; and
  - (c) at the leaving time, the \*head company has either:
    - (i) a \*tax loss of the \*complying superannuation/FHSA class; or
    - (ii) a \*net capital loss from \*complying superannuation/FHSA assets.
- (2) This Act operates (except so far as the contrary intention appears) for the purposes of income years ending after the leaving time as if:
  - (a) the \*life insurance company had made the loss for the income year in which the leaving time occurs; and
  - (b) the \*head company had not made the loss for the income year for which it made the loss.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 713-575

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Note: Section 707-410 (Exit history rule does not treat entity as having made a loss) does not prevent the life insurance company from having the loss under this section, because that section merely states that the company is not taken under section 701-40 (Exit history rule) to have made a loss.

- (3) The \*life insurance company is not prevented from \*utilising the loss for the income year in which the leaving time occurs merely because this Act operates as if the life insurance company had made the loss for that year.

**Tax cost setting rules for life insurance companies leaving consolidated group**

**713-575 Terminating value of certain assets where life insurance company leaves group**

- (1) This section applies if a \*life insurance company (the *leaving entity*) ceases to be a \*subsidiary member of a \*consolidated group at a time (the *leaving time*).
- (2) For the purposes of applying section 711-25 in relation to the leaving entity, the \*head company's *terminating value* for an asset that it holds at the leaving time because the leaving entity is taken by subsection 701-1(1) to be a part of the head company is the \*transfer value of the asset at the leaving time, if the asset is:
- (a) a \*complying superannuation/FHSA asset, or a \*segregated exempt asset, of the head company; or
  - (b) held by the head company for the purpose of discharging its liabilities under the \*net investment component of ordinary life insurance policies (except policies that provide for \*participating benefits or \*discretionary benefits under \*life insurance business carried on in Australia).

**713-580 Valuing certain liabilities where life insurance company leaves group**

- (1) Despite section 711-45, if the leaving entity mentioned in step 4 in the table in section 711-20 is a \*life insurance company, the leaving entity's liabilities mentioned in this section are to be valued as mentioned in this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) To avoid doubt, those liabilities are the liabilities that become those of the leaving entity because section 701-1 (Single entity rule) ceases to apply to the leaving entity when it ceases to be a \*subsidiary member of the group.
- (3) The value of the leaving entity's \*complying superannuation/FHSA liabilities (if any) is the amount worked out under section 320-190 at the leaving time.
- (4) The value of the leaving entity's \*exempt life insurance policy liabilities (if any) is the amount worked out under section 320-245 at the leaving time.
- (5) Subsection (6) applies to a liability of the leaving entity if:
  - (a) the liability is under the \*net risk component of a \*life insurance policy; and
  - (b) the leaving entity could deduct under section 320-80 an amount for the \*risk component of claims paid under the policy on or after the time it ceased to be a \*member of the \*consolidated group.
- (6) The value of that liability is the \*current termination value of the \*net risk component of the \*life insurance policy at the leaving time (calculated by an \*actuary).
- (7) The value of the leaving entity's liabilities under the \*net investment component of ordinary life insurance policies is the amount worked out for those liabilities under subsection 320-190(2) as if those liabilities were \*complying superannuation/FHSA liabilities.

### **713-585 Obligation to value certain assets and liabilities at leaving time**

Division 320 has effect as if the time when a \*life insurance company ceases to be a \*subsidiary member of a \*consolidated group were a \*valuation time for the purposes of sections 320-175 and 320-230.

Note: This means that there must be a valuation of the complying superannuation/FHSA assets and complying superannuation/FHSA liabilities under section 320-175 (with the consequences set out in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 713-700

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section 320-180), and a valuation of the segregated exempt assets and exempt life insurance policy liabilities under section 320-230 (with the consequences set out in section 320-235), as at that time.

**Subdivision 713-M—General insurance companies**

**Guide to Subdivision 713-M**

**713-700 What this Subdivision is about**

This Subdivision sets out special rules for a general insurance company becoming or ceasing to be a subsidiary member of a consolidated group.

**Table of sections**

**Tax cost setting rules for general insurance companies joining consolidated group**

713-705 Certain assets taken to be retained cost base assets where general insurance company joins group

**Liabilities and reserves of general insurance companies joining and leaving consolidated groups**

713-710 Treatment of liabilities and reserves for income year when general insurance company joins or leaves group

713-715 If general insurance company joins consolidated group

713-720 If general insurance company leaves consolidated group

**Tax cost setting rules for general insurance companies joining consolidated group**

**713-705 Certain assets taken to be retained cost base assets where general insurance company joins group**

(1) This section applies if:

- (a) a \*general insurance company becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) that company has demutualised under Division 9AA of Part III of the *Income Tax Assessment Act 1936*; and
  - (c) in the period starting just after the company demutualises and ending at the joining time, all of the \*membership interests in the company were owned by the same group.
- (2) A goodwill asset of the company just before the joining time is a ***retained cost base asset***.
- (3) The goodwill asset's \*tax cost setting amount is its amount (worked out in accordance with subsection 121AN(2) of the *Income Tax Assessment Act 1936*) on the applicable accounting day (see subsection 121AN(4) of that Act).

### **Liabilities and reserves of general insurance companies joining and leaving consolidated groups**

#### **713-710 Treatment of liabilities and reserves for income year when general insurance company joins or leaves group**

Sections 713-715 and 713-720 affect how sections 321-10, 321-15, 321-50 and 321-55 in Schedule 2J to the *Income Tax Assessment Act 1936* (the ***affected sections***) apply in relation to these values (the ***affected values***):

- (a) the value of the outstanding claims liability of a \*general insurance company under \*general insurance policies that is worked out under section 321-20 in Schedule 2J to the *Income Tax Assessment Act 1936*;
- (b) the value of the unearned premium reserve of a general insurance company under general insurance policies that is worked out under section 321-60 in that Schedule.

Note 1: Sections 321-10 and 321-15 in that Schedule both operate on the basis of a comparison of the value of the outstanding claims liability of a general insurance company at the end of the current year with the value of that liability at the end of the previous income year, so that:

- (a) section 321-10 includes an amount in the company's assessable income for the current year if the value at the end of the current year is less than the value at the end of the previous income year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 713-715

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- (b) section 321-15 allows a deduction for the current year if the value at the end of the current year is more than the value at the end of the previous income year.

Note 2: Sections 321-50 and 321-55 in that Schedule both operate on the basis of a comparison of the value of the unearned premium reserve of a general insurance company at the end of the current year with the value of that reserve at the end of the previous income year, so that:

- (a) section 321-50 includes an amount in the company's assessable income for the current year if the value at the end of the current year is less than the value at the end of the previous income year; and
- (b) section 321-55 allows a deduction for the current year if the value at the end of the current year is more than the value at the end of the previous income year.

**713-715 If general insurance company joins consolidated group**

- (1) This section applies if a \*general insurance company becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*).
- (2) The object of this section is to ensure that the \*head company of the \*consolidated group bears the income tax consequences relating to changes after the joining time in the affected values.

Note: The general insurance company bears the income tax consequences relating to a change in the affected values before the joining time, because section 701-30 ensures that the affected sections apply in relation to a part of the income year before that time when the company was not a subsidiary member of a consolidated group as if that part were an income year.

- (3) The affected sections apply for the head company core purposes set out in section 701-1 (Single entity rule) as if each of the affected values at the end of the last income year ending before the joining time were the amount that would have been that value had that income year ended just before the joining time.

**713-720 If general insurance company leaves consolidated group**

- (1) This section applies if a \*general insurance company ceases to be a \*subsidiary member of a \*consolidated group at a time (the *leaving time*) in an income year (the *leaving year*).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The object of this section is to ensure that:
- (a) the \*head company of the \*consolidated group bears the income tax consequences relating to changes before the leaving time in the affected values; and
  - (b) the \*general insurance company bears the income tax consequences relating to changes after the leaving time in the affected values.

*Head company's income or deduction*

- (3) For the head company core purposes set out in section 701-1 (Single entity rule) relating to the leaving year (but not later income years), the affected sections have effect as if each of the affected values at the end of the leaving year for the \*head company of the \*consolidated group were increased by the relevant value for the \*general insurance company at the end of the previous income year worked out under subsection (5).

*General insurance company's income or deduction*

- (4) For the entity core purposes set out in section 701-1 (Single entity rule) relating to the \*general insurance company and the leaving year, the affected sections have effect as if each of the affected values for the general insurance company at the end of the previous income year were worked out under subsection (5).

*Working out affected values at the end of the previous income year*

- (5) Work out each of the affected values for the \*general insurance company at the end of the previous income year as if it had ended at the leaving time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 715—Interactions between this Part and other areas of the income tax law**

### **Table of Subdivisions**

715-A	Treatment of unrealised losses existing when ownership or control of a company changes before or during consolidation
715-B	How Subdivision 165-CD applies to consolidated groups and leaving entities
715-C	Common rules for the purposes of Subdivisions 715-A and 715-B
715-D	Treatment of company's deferred losses under Subdivision 170-D on joining a consolidated group
715-F	Interactions with Division 230 (financial arrangements)
715-G	How value shifting rules apply to a consolidated group
715-H	Cancelling loss on realisation event for direct or indirect interest in a subsidiary member of a consolidated group
715-J	Entry history rule and choices
715-K	Exit history rule and choices
715-U	Effect on conduit foreign income
715-V	Entity ceasing to be exempt from income tax on becoming subsidiary member of consolidated group
715-W	Effect on arrangements where CGT roll-overs are obtained

### **Subdivision 715-A—Treatment of unrealised losses existing when ownership or control of a company changes before or during consolidation**

#### **Table of sections**

##### **Object**

715-15	Object of this Subdivision
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Effect on Subdivision 165-CC of a company becoming a member of a consolidated group**

- 715-25 Subdivision 165-CC stops applying to earlier changeover time
- 715-30 Meaning of *165-CC tagged asset*
- 715-35 Meaning of *final RUNL*

**165-CC tagged assets that affect tax cost setting amounts**

- 715-50 Step 1 amount is reduced if membership interest in subsidiary member is 165-CC tagged asset and same business test is failed
- 715-55 Step 2 amount is affected if liability of subsidiary member is 165-CC tagged asset of another group member and same business test is failed

**165-CC tagged assets that form loss denial pools of head company when consolidated group is formed**

- 715-60 Assets that the head company already owns
- 715-70 Assets of subsidiary member that become those of head company

**How Subdivision 165-CC applies to consolidated groups**

- 715-75 Extension of single entity rule and entry history rule

**Effect on Subdivision 165-CC of entity leaving consolidated group**

- 715-80 Application of sections 715-85 to 715-110
- 715-85 First changeover time for leaving company at or after leaving time
- 715-90 How same business test applies if leaving time is changeover time for leaving company
- 715-95 If ownership and control of leaving entity have *not* changed since head company's last changeover time
- 715-100 First choice: adjustable values of leaving assets reduced to nil
- 715-105 Second choice: head company's final RUNL applied in reducing adjustable values of leaving assets that are loss assets
- 715-110 Third choice: loss denial pool of leaving entity created

**Effect of assets in loss denial pool of head company becoming assets of leaving entity**

- 715-120 What happens
- 715-125 First choice: adjustable values of leaving assets reduced to nil
- 715-130 Second choice: pool's loss denial balance applied in reducing adjustable values of leaving assets that are loss assets
- 715-135 Third choice: loss denial pool of leaving entity created

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 715-15

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**Effect of first and second choices on various kinds of assets**

715-145 Effect of choice on adjustable value of leaving asset

**General provisions about loss denial pools**

715-155 When asset leaves pool

715-160 How loss denial balance is applied to losses realised on assets in pool

715-165 When pool ceases to exist

**Choices under this Subdivision**

715-175 When choice must be made

715-180 Head company to notify leaving entity of choice

715-185 Leaving entity may choose to cancel loss denial pool by reducing adjustable values of assets in the pool

**Object**

**715-15 Object of this Subdivision**

- (1) The object of this Subdivision is to give effect to the purposes of Subdivision 165-CC (about change of ownership or control of a company that has an unrealised net loss) in these cases:
  - (a) on formation of a \*consolidated group, a \*CGT asset held directly by the \*head company is affected by that Subdivision, and the \*same business test is failed;
  - (b) on an entity becoming a \*subsidiary member of a consolidated group, an asset consisting of:
    - (i) a \*membership interest that a \*member of the group (including a chosen transitional entity under Division 701 of the *Income Tax (Transitional Provisions) Act 1997*) holds in the entity; or
    - (ii) a liability that the entity owes to such a member; is affected by that Subdivision, and the same business test is failed;
  - (c) on a company becoming a subsidiary member:
    - (i) a CGT asset of the company that becomes an asset of the head company is affected by that Subdivision; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) because the company is a chosen transitional entity, the asset does not have its tax cost reset; and
- (iii) the same business test is failed;
- (d) on an entity ceasing to be a subsidiary member, a CGT asset of the head company that becomes an asset of the entity is affected by that Subdivision, and the same business test is failed.

Note: Subdivision 165-CC also affects an entity that has deferred losses under Subdivision 170-D on assets that it formerly owned. Subdivision 715-D gives effect to the purposes of Subdivision 165-CC if such an entity becomes a member of a consolidated group.

- (2) This Subdivision achieves its object by supplementing and modifying the application of Subdivision 165-CC to take account of how the rest of this Part treats \*members of a \*consolidated group (in particular the provisions about entities becoming or ceasing to be members).

### **Effect on Subdivision 165-CC of a company becoming a member of a consolidated group**

#### **715-25 Subdivision 165-CC stops applying to earlier changeover time**

- (1) At and after the time (the *membership time*) when a company becomes a \*member of a \*consolidated group, Subdivision 165-CC does not apply to the company in relation to a \*changeover time that happened before the membership time, except for the purposes of section 715-30 (which defines *165-CC tagged asset*).

Note 1: Subdivision 165-CC is about change of ownership or control of a company that has an unrealised net loss.

Note 2: If the company has 165-CC tagged assets at the membership time, there are further consequences under this Subdivision and Subdivision 715-D.

Also, Subdivision 165-CC can apply to the head company of the group in relation to a changeover time that happens for it at or after the membership time. See section 715-75.

- (2) Subsection (1) continues to have effect even if the company later stops being a \*member of the group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 715-30

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**715-30 Meaning of 165-CC tagged asset**

A \*CGT asset is a **165-CC tagged asset** of a company at a particular time if, and only if:

- (a) that time is at or after the most recent \*changeover time (if any) for the company; and
- (b) at that changeover time, the company had an unrealised net loss under section 165-115E; and
- (c) the asset is covered by subsection 165-115A(1A) as applying to that changeover time; and
- (d) the company would not, at that changeover time, satisfy the maximum net asset value test under section 152-15; and
- (e) if the company has chosen under subsection 165-115A(1B) in relation to that changeover time—the company \*acquired the asset for \$10,000 or more.

**715-35 Meaning of final RUNL**

A company's **final RUNL** at a particular time (the **test time**) is the amount that would have been the company's \*residual unrealised net loss at the time of:

- (a) if no event that subsection 165-115BB(2) refers to as a relevant event actually happens at the test time—a notional event of that kind happening at the test time; or
- (b) otherwise—a notional event of that kind that happens at the test time, and that the company determines under paragraph 165-115BB(1)(b) to have happened *later* than each event that actually happened at that time.

Note: This Subdivision reduces a company's final RUNL as amounts of it are applied for various purposes.

**165-CC tagged assets that affect tax cost setting amounts**

**715-50 Step 1 amount is reduced if membership interest in subsidiary member is 165-CC tagged asset and same business test is failed**

- (1) The amount taken into account under subsection 705-65(1) (about the cost of membership interests in the joining entity) for a

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

\*membership interest that a \*member of the joined group holds in the joining entity at the joining time is reduced if:

- (a) apart from this section, the amount would be the membership interest's \*reduced cost base (if appropriate, as modified by a later provision of section 705-65); and
  - (b) the membership interest is at that time a \*165-CC tagged asset of that member, and that member owned it at the \*changeover time for that member; and
  - (c) that member's \*final RUNL just before the joining time was greater than nil; and
  - (d) that member does *not* satisfy the \*same business test for:
    - (i) the period (the *same business test period*) consisting of the \*head company's \*trial year; and
    - (ii) the time (the *test time*) just before the \*changeover time.
- (2) If at the joining time that \*member holds:
- (a) 2 or \*more membership interests in the joining entity; or
  - (b) at least one membership interest in the joining entity, and at least one membership interest in another member of the joined group;

this section applies to each such membership interest in whichever order that member determines.

*Amount of reduction*

- (3) The amount taken into account under subsection 705-65(1) is reduced to the \*membership interest's \*market value at the joining time.
- (4) However, if that member's \*final RUNL (as reduced by any previous reductions under this section) is *less than* the difference between:
  - (a) the \*reduced cost base referred to in paragraph (1)(a); and
  - (b) the \*market value referred to in subsection (3);
 the amount taken into account under subsection 705-65(1) is instead reduced by that final RUNL.
- (5) That \*final RUNL is reduced by the amount of the reduction under subsection (3) or (4).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 715-55

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*Rights and options to acquire membership interests*

- (6) Subsection 705-65(6) (which treats rights and options as membership interests) also applies for the purposes of this section.

**715-55 Step 2 amount is affected if liability of subsidiary member is 165-CC tagged asset of another group member and same business test is failed**

- (1) The amount (the *comparison amount*) applicable under the table in subsection 705-75(2) (about reduction of the step 2 amount) for an accounting liability of the joining entity that is owed to a \*member of the joined group at the joining time is reduced if:
- (a) apart from this section, the comparison amount would be the \*reduced cost base (if appropriate, as modified by a later provision of section 705-75) of the asset of that member that is constituted by the accounting liability; and
  - (b) the asset is at that time a \*165-CC tagged asset of that member, and that member owned it at the \*changeover time; and
  - (c) that member's \*final RUNL just before the joining time (as reduced by any reductions under section 715-50) was greater than nil; and
  - (d) that member does *not* satisfy the \*same business test for:
    - (i) the period (the *same business test period*) consisting of the \*head company's \*trial year; and
    - (ii) the time (the *test time*) just before the \*changeover time.

Note: Paragraph (1)(c) has the effect that if both this section and section 715-50 apply to the same member of the joined group, section 715-50 is applied before this section.

- (2) If at the joining time that \*member holds:
- (a) 2 or \*more assets constituted by accounting liabilities of the joining entity; or
  - (b) at least one asset constituted by an accounting liability of the joining entity, and at least one asset constituted by an accounting liability of another member of the group;
- this section applies to each such asset in whichever order that member determines.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Amount of reduction*

- (3) The comparison amount is reduced to the asset's \*market value at the joining time.
- (4) However, if that member's \*final RUNL (as reduced by any previous reductions under section 715-50 or this section) is *less than* the difference between:
  - (a) the \*reduced cost base referred to in paragraph (1)(a); and
  - (b) the asset's \*market value at the joining time;
 the comparison amount is instead reduced by that final RUNL.
- (5) That \*final RUNL is reduced by the amount of the reduction under subsection (3) or (4).

### **165-CC tagged assets that form loss denial pools of head company when consolidated group is formed**

#### **715-60 Assets that the head company already owns**

- (1) At the time (the *formation time*) when a \*consolidated group comes into existence under paragraph 703-5(1)(a), a *loss denial pool* of the \*head company is created if:
  - (a) the formation time is *not* a \*changeover time for the head company; and
  - (b) at the formation time, the head company owns a \*CGT asset:
    - (i) that is a \*165-CC tagged asset of the head company at that time; and
    - (ii) that it owned at the \*changeover time; and
    - (iii) that is not a \*membership interest in a \*member of the group; and
    - (iv) that is not a right or option (including a contingent right or option), created or issued by a member of the group, to acquire such a membership interest; and
    - (v) that is not constituted by a liability owed to the head company by a member of the group;
 or 2 or more such assets; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 715-70

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- (c) the head company's \*final RUNL just before the formation time (as reduced by any reductions under section 715-50 or 715-55) was greater than nil; and
- (d) the head company does *not* satisfy the \*same business test for:
  - (i) the period (the *same business test period*) consisting of the head company's \*trial year; and
  - (ii) the time (the *test time*) just before the \*changeover time.

Note: Paragraph (1)(c) has the effect that if the head company has 165-CC tagged assets that are affected by section 715-50 or 715-55 (because they are membership interests in, or accounting liabilities owed by, another group member), those sections are applied before this section.

- (2) When it is created, the pool consists of the one or more \*CGT assets referred to in paragraph (1)(b), and its *loss denial balance* is equal to the \*final RUNL referred to in paragraph (1)(c).

Note 1: The pool is distinct from any other loss denial pool of the head company, for example, one created at the formation time under section 715-70.

Note 2: 170-D deferred losses on 165-CC tagged assets of the head company may be added to the pool by subsection 715-355(1).

**715-70 Assets of subsidiary member that become those of head company**

- (1) At the time (the *formation time*) when an entity becomes a \*subsidiary member of a \*consolidated group, a *loss denial pool* of the \*head company of the group is created if:
  - (a) the formation time is *not* a \*changeover time for the head company; and
  - (b) the entity is a chosen transitional entity under Division 701 of the *Income Tax (Transitional Provisions) Act 1997*; and
  - (c) subsection (2) or (4) of this section is satisfied.

Note 1: If the entity is a chosen transitional entity, section 701-15 of the *Income Tax (Transitional Provisions) Act 1997* prevents:

- section 701-10 (cost to head company of assets of joining entity); and
- subsection 701-35(4) (setting value of trading stock at tax-neutral amount);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 715-70

of this Act from applying to the entity's assets in relation to the formation time.

Note 2: The pool is distinct from any other loss denial pool of the head company, for example, one created under this section because another entity becomes a subsidiary member of the group at the formation time.

*Joining entity has 165-CC tagged assets*

(2) This subsection is satisfied if:

- (a) a \*CGT asset of the entity, or each of 2 or more CGT assets of the entity:
  - (i) is a \*165-CC tagged asset of the entity at the formation time; and
  - (ii) was owned by the entity at the \*changeover time; and
  - (iii) is not a \*membership interest in a \*member of the group; and
  - (iv) is not a right or option (including a contingent right or option), created or issued by a member of the group, to acquire such a membership interest; and
  - (v) is not constituted by a liability owed to the entity by a member of the group at the formation time; and
- (b) the entity's \*final RUNL just before the formation time (as reduced by any reductions under section 715-50 or 715-55) was greater than nil; and
- (c) the entity does *not* satisfy the \*same business test for:
  - (i) the period (the *same business test period*) consisting of the entity's \*trial year; and
  - (ii) the time (the *test time*) just before the \*changeover time.

Note: Paragraph (2)(b) has the effect that if the entity has 165-CC tagged assets that are affected by section 715-50 or 715-55 (because they are membership interests in, or accounting liabilities owed by, another group member), those sections are applied before this section.

(3) When it is created because of subsection (2), the pool consists of the one or more \*CGT assets referred to in paragraph (2)(a), and its **loss denial balance** is equal to the \*final RUNL referred to in paragraph (2)(b).

Note: 170-D deferred losses on 165-CC tagged assets of the head company may be added to the pool by subsection 715-355(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 715-75

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*Entity has loss denial pool*

- (4) This subsection is satisfied if, just before the formation time, the entity had a \*loss denial pool.
- (5) When it is created because of subsection (4), the \*head company's loss denial pool:
  - (a) consists of the one or more \*CGT assets of which the entity's loss \*denial pool consisted; and
  - (b) has a **loss denial balance** equal to the \*loss denial balance of the entity's loss denial pool;  
just before the formation time.

**How Subdivision 165-CC applies to consolidated groups**

**715-75 Extension of single entity rule and entry history rule**

- (1) Subsection 701-1(1) (Single entity rule) and section 701-5 (Entry history rule) also have effect for all the purposes of Subdivision 165-CC (about change of ownership or control of a company that has an unrealised net loss).

Note: One consequence of this is that the head company is the only member of a consolidated group that can have a changeover time and be subject to consequences under Subdivision 165-CC. The head company is treated as owning all CGT assets owned by group members, and as making relevant losses.

- (2) This section is not intended to limit the effect that subsection 701-1(1) and section 701-5 have apart from this section.

**Effect on Subdivision 165-CC of entity leaving consolidated group**

**715-80 Application of sections 715-85 to 715-110**

Sections 715-85 to 715-110 apply if, at a particular time (the **leaving time**), an entity (the **leaving entity**) ceases to be a \*subsidiary member of a \*consolidated group.

Note 1: If a changeover time happened to the head company at or after the group came into existence and before the leaving time, Subdivision 165-CC does *not* apply to the head company at and after

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the leaving time, in respect of assets that leave with the leaving entity, in relation to the changeover time.

This is because the head company can no longer make a capital loss, or become entitled to a deduction, in respect of a CGT event happening to any of those assets.

Note 2: If, just before the leaving time, the head company had a loss denial pool, see section 715-120.

### **715-85 First changeover time for leaving company at or after leaving time**

If the leaving entity is a company, its first \*changeover time at or after the leaving time is determined:

- (a) on the basis that the reference time under subsection 165-115A(2A) is the one that would be used in determining whether the leaving time was a changeover time for the *head company*; and
- (b) making the additional assumptions in section 715-290.

Note: If the leaving entity is a trust, it cannot have a changeover time (because Subdivision 165-CC applies only to companies), so section 715-95 applies to it instead: see subsection 715-95(2).

### **715-90 How same business test applies if leaving time is changeover time for leaving company**

- (1) This section applies if:
  - (a) the leaving entity is a company; and
  - (b) the leaving time is a \*changeover time for the leaving entity.
- (2) In applying to the leaving entity for the \*changeover time that is the leaving time, subsection 165-115B(3) has effect as if it provided that the time just after the changeover time were the *test time* for applying section 165-13 to the company.

Note: This ensures that the same business test is applied to the business that the leaving entity carries on at the leaving time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 715-95

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**715-95 If ownership and control of leaving entity have *not* changed since head company's last changeover time**

- (1) This section applies if:
  - (a) the leaving entity is a company; and
  - (b) the leaving time is *not* a \*changeover time for the leaving entity; and
  - (c) just before the leaving time, the \*head company owned at least one \*CGT asset:
    - (i) that was a \*165-CC tagged asset just before the leaving time; and
    - (ii) that it owned at the latest changeover time for the head company at or after the group came into existence and before the leaving time; and
  - (d) at least one asset covered by paragraph (c) is an asset (a **leaving asset**) that becomes an asset of the leaving entity at the leaving time because subsection 701-1(1) (Single entity rule) ceases to apply to the entity; and
  - (e) the head company's \*final RUNL at the leaving time is greater than nil.
- (2) This section also applies if the leaving entity is a trust.
- (3) If the \*head company does *not* satisfy the \*same business test for:
  - (a) the period (the **same business test period**) starting at the *earlier* of:
    - (i) the time 12 months before the leaving time; and
    - (ii) when the head company came into existence; and ending just before the leaving time; and
  - (b) the time (the **test time**) just before the \*changeover time; the head company must make one of the choices for which sections 715-100, 715-105 and 715-110 provide.

Note: For provisions about making one of these choices, see sections 715-175 to 715-185.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**715-100 First choice: adjustable values of leaving assets reduced to nil**

The first choice is to reduce the \*adjustable value of each leaving asset to nil. The choice has effect accordingly, just before the leaving time. The \*head company's \*final RUNL is *not* reduced because of it.

Note: The consequences of the choice are worked out under section 715-145.

**715-105 Second choice: head company's final RUNL applied in reducing adjustable values of leaving assets that are loss assets**

- (1) The second choice is to reduce under this section the \*adjustable value of each leaving asset (a *loss asset*) for which the \*head company would have had a notional capital loss, or notional revenue loss, under section 165-115F at the time (the *test time*) just before the leaving time if the test time had been a \*changeover time for the head company. The choice has effect accordingly.

Note: The consequences of the choice are worked out under this section and section 715-145.

- (2) If:
- (a) 2 or more entities cease to be \*subsidiary members of the \*consolidated group at the leaving time; and
  - (b) 2 or more of them make the second choice;
- the choices have effect in whichever order the \*head company determines.
- (3) This section applies to each of the loss assets in order, according to their respective \*adjustable values (apart from this section) at the test time: from largest to smallest. (If an asset has more than one such adjustable value, use the greater or greatest of them.)
- (4) At the test time, the \*adjustable value of the loss asset is reduced to the asset's \*market value at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 715-110

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- (5) However, if the \*head company's \*final RUNL at the leaving time (as reduced by any previous reductions under this section) is *less than* the difference between:
- (a) the \*adjustable value of the loss asset (apart from this section) at the test time; and
  - (b) the asset's \*market value at the test time;
- the adjustable value is instead reduced at the test time by that final RUNL.
- (6) That \*final RUNL is reduced by the amount of the reduction under subsection (4) or (5). If 2 or more such reductions are made for the same asset (because it has 2 or more different characters), that final RUNL is reduced by the greater or greatest of the reductions.

**715-110 Third choice: loss denial pool of leaving entity created**

- (1) The third choice can be made only if every asset covered by paragraph 715-95(1)(c) is a leaving asset. The choice is to have a ***loss denial pool*** of the leaving entity created at the leaving time, consisting of every leaving asset. (To avoid doubt, the choice can be made even if the leaving entity is not a company.)
- (2) A choice under this section has effect accordingly. The pool is distinct from any other loss denial pool of the leaving entity.
- (3) When the pool is created, its ***loss denial balance*** is equal to the \*head company's \*final RUNL at the leaving time.

Note: If the head company makes this choice, the leaving entity can choose to cancel the loss denial pool by reducing reduced cost bases of assets in the pool: see section 715-185.

**Effect of assets in loss denial pool of head company becoming assets of leaving entity**

**715-120 What happens**

- (1) This section applies if:
- (a) at a particular time (the ***leaving time***), an entity (the ***leaving entity***) ceases to be a \*subsidiary member of a \*consolidated group; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) just before the leaving time, the \*head company had a \*loss denial pool; and
  - (c) at the leaving time, at least one \*CGT asset (a *leaving asset*) that was in the pool just before that time becomes a CGT asset of the leaving entity because subsection 701-1(1) (Single entity rule) ceases to apply to the entity;
- (2) Each leaving asset leaves the \*loss denial pool at the leaving time.
- (3) If:
- (a) the leaving entity is a company and the leaving time is *not* a \*changeover time for the leaving entity; or
  - (b) the leaving entity is a trust;
- the \*head company must make one of the choices for which sections 715-125, 715-130 and 715-135 provide.

For provisions about making one of these choices, see sections 715-175 to 715-185.

### **715-125 First choice: adjustable values of leaving assets reduced to nil**

The first choice is to reduce the \*adjustable value of each leaving asset to nil. The choice has effect accordingly, just before the leaving time. The \*loss denial balance of the \*head company's \*loss denial pool is *not* reduced because of it.

Note: The consequences of the choice are worked out under section 715-145.

### **715-130 Second choice: pool's loss denial balance applied in reducing adjustable values of leaving assets that are loss assets**

- (1) The second choice is to reduce under this section the \*adjustable value of each leaving asset (a *loss asset*) for which the \*head company would have had a notional capital loss, or notional revenue loss, under section 165-115F at the time (the *test time*) just before the leaving time if the test time had been a \*changeover time for the head company. The choice has effect accordingly.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 715-135

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Note: The consequences of the choice are worked out under this section and section 715-145.

- (2) If:
- (a) 2 or more entities cease to be \*subsidiary members of the \*consolidated group; and
  - (b) 2 or more of them make the second choice;
- the choices have effect in the same order as the entities cease being subsidiary members. If 2 or more of the entities ceased at the same time, their choices have effect in whichever order the \*head company determines.
- (3) This section applies to each of the loss assets in order, according to their respective \*adjustable values (apart from this section) at the test time: from largest to smallest. (If an asset has more than one such adjustable value, use the greater or greatest of them.)
- (4) At the test time, the \*adjustable value of the loss asset is reduced to the asset's \*market value at that time.
- (5) However, if the \*loss denial balance (as reduced by any previous reductions under this section or section 715-160) of the \*head company's \*loss denial pool is *less than* the difference between:
- (a) the \*adjustable value of the loss asset (apart from this section) at the test time; and
  - (b) the asset's \*market value at the test time;
- the adjustable value is instead reduced at the test time by that loss denial balance.
- (6) That \*loss denial balance is reduced at the leaving time by the amount of the reduction under subsection (3) or (4). If 2 or more such reductions are made for the same asset (because it has 2 or more different characters), that loss denial balance is reduced by the greater or greatest of the reductions.

**715-135 Third choice: loss denial pool of leaving entity created**

- (1) The third choice can be made only if every asset that was in the \*loss denial pool just before the leaving time is a leaving asset. The choice is to have a *loss denial pool* of the leaving entity created at the leaving time, consisting of every leaving asset. (To avoid

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

doubt, the choice can be made even if the leaving entity is not a company.)

- (2) A choice under this section has effect accordingly. The pool is distinct from any other loss denial pool of the leaving entity.
- (3) When the leaving entity's loss denial pool is created, its **loss denial balance** equals the loss denial balance of the head company's loss denial pool (as reduced by any previous reductions under section 715-130 or 715-160).

Note: If the head company makes this choice, the leaving entity can choose to cancel the loss denial pool by reducing reduced cost bases of assets in the pool: see section 715-185.

- (4) The head company's \*loss denial pool ceases to exist when the leaving entity's loss denial pool is created.

### Effect of first and second choices on various kinds of assets

#### 715-145 Effect of choice on adjustable value of leaving asset

- (1) This section has effect for the purposes of determining the consequences of a choice under any of sections 715-100, 715-105, 715-125, 715-130 and 715-185 (the **choice provisions**) for a leaving asset.
- (2) The asset's **adjustable value** at the time (the **test time**) just before the leaving time is worked out under this table. (If the asset is covered by 2 or more items, there are consequences for it under the choice provisions and this section in respect of each of the items.)

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#### **Adjustable value at the test time**

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<b>Item</b>	<b>If:</b>	<b>Its adjustable value is:</b>
1	the asset is a *CGT asset	its *reduced cost base
2	the asset is an item of *trading stock of the *head company at the test time, and became part of the *head company's *trading stock in the income year (the <b>test year</b> ) in which the test time occurs	its *cost

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 715-155

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**Adjustable value at the test time**

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Item	If:	Its adjustable value is:
3	the asset is an item of *trading stock of the *head company at the test time, item 2 does not apply, and at the end of the last income year before the test year, the item was *valued at its *cost	its *cost
4	the asset is an item of *trading stock of the *head company at the test time and neither of items 2 and 3 applies	its *value as trading stock of the head company on hand at the start of the income year in which the test time occurs
5	the asset is a *depreciating asset	worked out under section 40-85
6	the asset is a *revenue asset	the total of the amounts that would be subtracted from the gross disposal proceeds in calculating any profit or loss on disposal of the asset by the head company

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- (3) If any of the choice provisions reduces at the test time the asset's \*adjustable value, the thing identified for the asset under the table in subsection (2) of this section is reduced by the same amount.
- (4) Subsection (3) has effect for the purposes of working out under section 711-30 the \*head company's \*terminating value for the asset at the leaving time.

**General provisions about loss denial pools**

**715-155 When asset leaves pool**

A \*CGT asset leaves a \*loss denial pool:

- (a) just after a \*realisation event happens to the asset, unless the realisation event is the ending of an income year (in the case of an item of \*trading stock); or
- (b) as mentioned in subsection 715-120(2) (when it becomes an asset of the leaving entity).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**715-160 How loss denial balance is applied to losses realised on assets in pool**

- (1) If, apart from this section, a loss would be \*realised for income tax purposes by a \*realisation event that happens to a \*CGT asset when it is in a \*loss denial pool of an entity, the loss is reduced by the lesser of:
  - (a) the amount of the loss; and
  - (b) the pool's \*loss denial balance (as reduced by any previous reductions under section 715-130 or this subsection);and the loss denial balance is reduced by the same amount.
- (2) Subsection (1) applies to \*realisation events in the order in which they happen. If 2 or more happen at the same time, it applies to them in whichever order the entity determines.
- (3) Subsection (1) reduces a \*loss denial balance after section 715-130 does, unless the \*realisation event happens *before* the leaving time referred to in that section.

**715-165 When pool ceases to exist**

- (1) A \*loss denial pool of a company ceases to exist when there is a \*changeover time for the company.

Note: The CGT assets in the pool then become subject to the application of Subdivision 165-CC (about change of ownership or control of a company that has an unrealised net loss).

- (2) A \*loss denial pool of any entity ceases to exist:
  - (a) when there are no \*CGT assets, and no \*170-D deferred losses, in the pool; or
  - (b) just after the \*loss denial balance becomes nil; or
  - (c) when the entity becomes a \*subsidiary member of a \*consolidated group; or
  - (d) as mentioned in subsection 715-135(4).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Choices under this Subdivision

### 715-175 When choice must be made

- (1) A choice under section 715-95 or 715-120 must be made within 6 months after the leaving time, or within a further period allowed by the Commissioner.
- (2) After that 6 months, or that further period, the head company is taken to have made the first choice under section 715-100 or 715-125 unless it is established that the head company made a different choice within that 6 months or further period.

### 715-180 Head company to notify leaving entity of choice

- (1) Within one month after making a choice under section 715-95 or 715-120, or within a further period allowed by the Commissioner, the head company must give the leaving entity written notice of the choice.
- (2) If the choice is to have a \*loss denial pool of the leaving entity created at the leaving time, the notice must also specify the pool's \*loss denial balance at that time.

### 715-185 Leaving entity may choose to cancel loss denial pool by reducing adjustable values of assets in the pool

- (1) Within 6 months after a \*loss denial pool is created under section 715-110 or 715-135, or within a further period allowed by the Commissioner, the leaving entity may choose to be treated as if the \*head company had instead made:
  - (a) the first choice under section 715-100 or 715-125; or
  - (b) the second choice under section 715-105 or 715-130;as specified by the leaving entity in its choice.
- (2) If the leaving entity makes a choice under subsection (1):
  - (a) the \*loss denial pool ceases to exist just after the leaving time; and
  - (b) at the leaving time, the \*adjustable value of each \*CGT asset in the pool is reduced to what it would have been at that time

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

if the head company had instead made the choice specified by the leaving entity in its choice.

- (3) The choice by the leaving entity does not affect how subsection 715-135(4) applies to the \*head company.

Note: This means that the head company's loss denial pool still ceases to exist.

### **Subdivision 715-B—How Subdivision 165-CD applies to consolidated groups and leaving entities**

#### **Table of sections**

##### **How Subdivision 165-CD applies to consolidated groups**

- 715-215 Extension of single entity rule and entry history rule
- 715-225 Working out adjusted unrealised loss using individual asset method
- 715-230 No reductions or other consequences for interests subject to loss cancellation under Subdivision 715-H

##### **How Subdivision 165-CD applies to leaving entity that is a company**

- 715-240 Application of sections 715-245 to 715-260
- 715-245 If ownership or control of leaving entity has altered since head company's last alteration time or formation of group
- 715-250 If head company has had an alteration time but ownership and control of leaving entity have not altered since
- 715-255 Consequences if leaving entity is a loss company at the leaving time
- 715-260 If neither of sections 715-245 and 715-250 applies

##### **How Subdivision 165-CD applies to leaving entity that is a trust**

- 715-270 Subdivision 165-CD applies

### **How Subdivision 165-CD applies to consolidated groups**

#### **715-215 Extension of single entity rule and entry history rule**

- (1) Subsection 701-1(1) (Single entity rule) and section 701-5 (Entry history rule) also have effect for all the purposes of Subdivision 165-CD (about reductions after alterations in ownership or control of loss company).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 715-225

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Note: One consequence of this is that the head company is the only member of a consolidated group that can have an alteration time and be subject to reductions or other consequences under Subdivision 165-CD. The head company is treated as owning all CGT assets owned by group members, and as making relevant losses.

Another consequence is for working out who has a relevant equity interest or relevant debt interest in a company that has an alteration time at which it is a loss company but not a member of a consolidated group. Interests in the loss company that are owned by subsidiary members of the group are treated as being owned by the head company.

- (2) This section is not intended to limit the effect that subsection 701-1(1) and section 701-5 have apart from this section.

**715-225 Working out adjusted unrealised loss using individual asset method**

- (1) For the purposes of:
- (a) using the \*individual asset method to work out whether the \*head company of a \*consolidated group has an adjusted unrealised loss under section 165-115U at an \*alteration time; or
  - (b) working out under section 165-115W whether the head company of a consolidated group has a trading stock decrease at an alteration time;
- step 1 of the method statement in subsection 165-115U(1), or step 2 of the method statement in subsection 165-115W(1), does *not* apply to an amount that was counted in respect of a \*CGT asset at an earlier time if:
- (c) at the time (the *joining time*) when an entity became a \*subsidiary member of the group, the asset became an asset of the head company because of subsection 701-1(1) (Single entity rule); and
  - (d) the earlier time is an \*alteration time that happened in respect of the entity before the joining time;

unless the entity is a chosen transitional entity under Division 701 of the *Income Tax (Transitional Provisions) Act 1997*.

Note: If the joining entity is a chosen transitional entity, section 701-15 of the *Income Tax (Transitional Provisions) Act 1997* prevents:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Section 715-230

- section 701-10 (cost to head company of assets of joining entity); and
- subsection 701-35(4) (setting value of trading stock at tax-neutral amount);

of this Act from applying to the assets of the joining entity in relation to the joining time.

If the joining entity is *not* a chosen transitional entity, it is assumed that the process of resetting the tax costs of its assets will bring their tax costs into closer alignment to their market values, and so remove the need to consider unrealised losses on those assets that existed before the joining time.

(2) This section has effect despite section 701-5 (Entry history rule).

### **715-230 No reductions or other consequences for interests subject to loss cancellation under Subdivision 715-H**

If section 715-610 reduces a loss that would otherwise be \*realised for income tax purposes by a \*realisation event that happens to an interest in, or a debt owed by, a company, sections 165-115ZA and 165-115ZB do not apply (and are taken never to have applied) to the interest or debt, in relation to an \*alteration time that happened for the company during the ownership period referred to in subsection 715-610(2).

Note 1: Section 715-610 is about cancelling a loss on a realisation event for a direct or indirect interest in a subsidiary member of a consolidated group.

Note 2: Sections 165-115ZA and 165-115ZB are about the consequences that an alteration time for a loss company has for relevant equity interests and relevant debt interests in the company.

### **How Subdivision 165-CD applies to leaving entity that is a company**

#### **715-240 Application of sections 715-245 to 715-260**

Sections 715-245 to 715-260 affect how Subdivision 165-CD (about reductions after alterations in ownership or control of loss company) applies to a company (the *leaving entity*) at and after the time (the *leaving time*) when it ceases to be a \*subsidiary member

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 715-245

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of a \*consolidated group that came into existence at a particular time (the *formation time*).

Note: If a trust ceases to be a subsidiary member of a consolidated group: see section 715-270.

**715-245 If ownership or control of leaving entity has altered since head company's last alteration time or formation of group**

- (1) This section applies if the leaving time would be an \*alteration time for the leaving entity if:
  - (a) the reference time under subsection 165-115L(2) or 165-115M(2) were:
    - (i) if at least one alteration time has occurred in relation to the \*head company of the \*consolidated group since the formation time and before the leaving time—the time just after the most recent such alteration time; or
    - (ii) otherwise—the formation time; and
  - (b) the additional assumptions in section 715-290 were made.

- (2) The leaving time is an *alteration time* for the leaving entity.

Note: One consequence of this is that the reference time for working out the leaving entity's *next* alteration time is the time just after the leaving time.

- (3) The leaving entity is a *loss company* at that \*alteration time if, and only if, it has an \*adjusted unrealised loss at that time. If so, that adjusted unrealised loss is the leaving entity's *overall loss* at that time.

Note 1: Subsection (4) affects how the leaving entity works out its adjusted unrealised loss at the leaving time in some cases.

Note 2: If the leaving entity is a loss company at the leaving time, section 715-255 provides for the consequences.

- (4) If the leaving entity uses the \*individual asset method of working out its \*adjusted unrealised loss at that \*alteration time, then for the purposes of:
  - (a) step 1 of the method statement in subsection 165-115U(1); and
  - (b) the method statement in subsection 165-115W(1);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the leaving entity is taken to have had no earlier alteration time.

**715-250 If head company has had an alteration time but ownership and control of leaving entity have not altered since**

- (1) This section applies if:
  - (a) at least one \*alteration time has occurred in relation to the \*head company of the \*consolidated group since the formation time and before the leaving time; and
  - (b) the leaving time is *not* an \*alteration time for the leaving entity under subsection 715-245(2).
- (2) The leaving time is an **alteration time** for the leaving entity.
- (3) However, for the purposes of determining when the leaving entity's *next* \*alteration time happens, the reference time under subsection 165-115L(2) or 165-115M(2) is the time just after the most recent alteration time for the \*head company *before* the leaving time.
- (4) The leaving entity is a **loss company** at the leaving time if, and only if, the \*head company would have had an \*adjusted unrealised loss at the most recent \*alteration time (the **head company alteration time**) for the head company before the leaving time if that adjusted unrealised loss (if any) were worked out on the basis that:
  - (a) the head company chooses whether the \*individual asset method or the \*global method is used; and
  - (b) a \*CGT asset is taken into account only if:
    - (i) the head company owned it at the head company alteration time; and
    - (ii) it becomes a CGT asset of the leaving entity at the leaving time because subsection 701-1(1) (the single entity rule) ceases to apply to the entity; and
  - (c) if the individual asset method is used, then for the purposes of:
    - (i) step 1 of the method statement in subsection 165-115U(1); and
    - (ii) the method statement in subsection 165-115W(1);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 715-255

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the head company had no earlier alteration time.

- (5) If the leaving entity is a \*loss company at the leaving time, its *overall loss* at that time is the \*adjusted unrealised loss worked out under subsection (4).

**715-255 Consequences if leaving entity is a loss company at the leaving time**

- (1) If:
- (a) section 715-245 or 715-250 applies; and
  - (b) the leaving entity is a \*loss company at the leaving time; the head company must choose whether subsection (2) or (3) of this section has effect for the purposes of applying, to each \*membership interest in the leaving entity, in relation to the time just before the leaving time, whichever of these provisions is appropriate:
    - (c) subsection 701-55(3) (about trading stock);
    - (d) subsection 701-55(5), but only so far as it relates to working out the \*reduced cost base of a \*membership interest that was \*acquired on or after 20 September 1985;
    - (e) subsection 701-55(6) (about revenue assets).

Note: Section 701-55 is about setting the tax cost of an asset.

- (2) If the \*head company chooses this subsection, the interest's \*tax cost setting amount (apart from this section) just before the leaving time is reduced to nil.
- (3) If the \*head company chooses this subsection, the interest's \*tax cost setting amount (apart from this section) just before the leaving time is reduced by the adjustment amount under section 165-115ZB, which is calculated on the basis that:
- (a) just before the leaving time, all the \*membership interests in the leaving entity constituted a single relevant equity interest under section 165-115X that the head company had in the leaving entity; and
  - (b) the adjustment amount is worked out and applied in accordance with subsection 165-115ZB(6), but disregarding

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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the paragraphs of that subsection except paragraphs 165-115ZB(6)(a) and (d).

- (4) The \*head company's choice must be made within 6 months after the leaving time, or within a further period allowed by the Commissioner.
- (5) After that 6 months, or that further period, the head company is taken to have chosen subsection (2) unless it is established that the head company made a different choice within that 6 months or further period.

*Rights and options to acquire membership interests*

- (6) Subsection 711-15(2) (which treats rights and options as membership interests) also applies for the purposes of this section, on the basis that the \*consolidated group referred to in section 715-240 is the old group referred to in that subsection.

**715-260 If neither of sections 715-245 and 715-250 applies**

- (1) This section applies if:
  - (a) no \*alteration time has occurred in relation to the \*head company of the \*consolidated group since the formation time and before the leaving time; and
  - (b) the leaving time is *not* an \*alteration time for the leaving entity under subsection 715-245(2).
- (2) The leaving entity's first \*alteration time after the leaving time is determined:
  - (a) on the basis that the reference time under subsection 165-115L(2) or 165-115M(2) is the time just after the formation time; and
  - (b) making the additional assumptions in section 715-290.
- (3) If the leaving entity uses the \*individual asset method of working out its \*adjusted unrealised loss at that first \*alteration time, then for the purposes of:
  - (a) step 1 of the method statement in subsection 165-115U(1); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 715-270

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- (b) the method statement in subsection 165-115W(1);  
the leaving entity is taken to have had no earlier alteration time.

**How Subdivision 165-CD applies to leaving entity that is a trust**

**715-270 Subdivision 165-CD applies**

- (1) At and after the time (the *leaving time*) when a trust ceases to be a \*subsidiary member of a \*consolidated group, Subdivision 165-CD (about reductions after alterations in ownership or control of loss company) applies to the trust on the basis set out in this section.
  - (2) The trust is taken to be a company.
  - (3) The leaving time is the only *alteration time* in respect of the trust.
  - (4) The trust is a *loss company* at that time if, and only if, it has an \*adjusted unrealised loss at that time. If so, that adjusted unrealised loss is its *overall loss* at that time.
  - (5) If the trust is a \*loss company at the leaving time, the \*head company must choose whether subsection (6) or (7) of this section has effect for the purposes of applying, to each \*membership interest in the trust, in relation to the time just before the leaving time, whichever of these provisions is appropriate:
    - (a) subsection 701-55(3) (about trading stock);
    - (b) subsection 701-55(5), but only so far as it relates to working out the \*reduced cost base of a \*membership interest that was \*acquired on or after 20 September 1985;
    - (c) subsection 701-55(6) (about revenue assets).
- Note: Section 701-55 is about setting the tax cost of an asset.
- (6) If the \*head company chooses this subsection, the interest's \*tax cost setting amount (apart from this section) just before the leaving time is reduced to nil.
  - (7) If the \*head company chooses this subsection, the interest's \*tax cost setting amount (apart from this section) just before the leaving time is reduced by the adjustment amount under section 165-115ZB, which is calculated on the basis that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) just before the leaving time:
  - (i) all the \*membership interests in the leaving entity constituted a single relevant equity interest under section 165-115X that the \*head company had in the leaving entity; and
  - (ii) each of those interests was an equity under section 165-115X that the \*head company had in the leaving entity; and
- (b) the adjustment amount is worked out and applied in accordance with subsection 165-115ZB(6), but disregarding the paragraphs of that subsection except paragraphs 165-115ZB(6)(a) and (d).
- (8) The \*head company's choice must be made within 6 months after the leaving time, or within a further period allowed by the Commissioner.
- (9) After that 6 months, or that further period, the head company is taken to have chosen subsection (6) unless it is established that the head company made a different choice within that 6 months or further period.

*Rights and options to acquire membership interests*

- (10) Subsection 711-15(2) (which treats rights and options as membership interests) also applies for the purposes of this section, on the basis that the \*consolidated group is the old group referred to in that subsection.

**Subdivision 715-C—Common rules for the purposes of Subdivisions 715-A and 715-B**

**715-290 Additional assumptions to be made when using reference time**

The additional assumptions to be made are that, throughout the period starting at the reference time and ending just before the leaving time:

- (a) the leaving entity was in existence; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 715-310

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- (b) the \*head company held and beneficially owned all the \*membership interests in the leaving entity (instead of whoever actually did); and
- (c) those membership interests remained the same; and
- (d) the head company directly controlled the voting power in the leaving entity.

**Subdivision 715-D—Treatment of company’s deferred losses under Subdivision 170-D on joining a consolidated group**

**Table of sections**

**Key terminology**

715-310 What is a *170-D deferred loss*, and when it *revives*

**Deferred loss on 165-CC tagged asset**

715-355 Head company’s own deferred losses at formation time

715-360 Deferred losses brought in by subsidiary member

715-365 How loss denial balance is applied when 170-D deferred loss revives

**Key terminology**

**715-310 What is a *170-D deferred loss*, and when it *revives***

- (1) A \*capital loss, deduction, or partner’s share of a deduction, that section 170-270 (about transactions within linked groups) requires to be disregarded is a *170-D deferred loss* made:
  - (a) by the company that paragraph 170-255(1)(a) refers to as the originating company; and
  - (b) at the time of the event that paragraph refers to as the deferral event; and
  - (c) on the \*CGT asset \*acquired by the other entity referred to in that paragraph.
- (2) The \*170-D deferred loss *revives* at the time when section 170-275 (as applying in relation to the deferral event) treats the originating

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

company as having made a \*capital loss, or having become entitled to a deduction, in respect of that asset.

## Deferred loss on 165-CC tagged asset

### 715-355 Head company's own deferred losses at formation time

- (1) This section applies if, at the time (the *formation time*) when a \*consolidated group comes into existence, the \*head company has (otherwise than because of section 701-5 (Entry history rule)) a \*170-D deferred loss that:
  - (a) it made on a \*CGT asset that is a \*165-CC tagged asset of the head company because of paragraph 165-115A(1A)(b) (which covers CGT assets on which it has 170-D deferred losses); and
  - (b) has not \*revived.
- (2) If a \*loss denial pool of the \*head company is created under section 715-60 at the formation time, each \*170-D deferred loss of that kind that the head company has at that time is added to the loss denial pool at that time.
- (3) Otherwise, a *loss denial pool* of the \*head company is created at the formation time if:
  - (a) the formation time is *not* a \*changeover time for the head company; and
  - (b) the head company's \*final RUNL just before the formation time (as reduced by any reductions under section 715-50 or 715-55) was greater than nil; and
  - (c) the head company does *not* satisfy the \*same business test for:
    - (i) the period (the *same business test period*) consisting of the head company's \*trial year; and
    - (ii) the time (the *test time*) just before the \*changeover time.

Note: Paragraph (3)(b) has the effect that if the head company has 165-CC tagged assets that are affected by section 715-50 or 715-55 (because they are membership interests in, or accounting liabilities owed by, another group member), those sections are applied before this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 715-360

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- (4) When it is created because of subsection (3), the pool consists of each \*170-D deferred loss covered by subsection (2), and its **loss denial balance** is equal to the \*final RUNL referred to in paragraph (3)(b).

Note: The pool is distinct from any other loss denial pool of the head company, for example, one created at the formation time under section 715-360.

**715-360 Deferred losses brought in by subsidiary member**

- (1) This section applies if, just before the time (the **membership time**) when a company (the **deferred loss company**) becomes a \*subsidiary member of a \*consolidated group, it had a \*170-D deferred loss that:
- (a) it made on a \*CGT asset that is a \*165-CC tagged asset of the company at the membership time because of paragraph 165-115A(1A)(b) (which covers CGT assets on which it has 170-D deferred losses); and
  - (b) as at the membership time has not \*revived.
- (2) If a \*loss denial pool of the \*head company is created under subsection 715-70(2) because of the deferred loss company becoming a \*subsidiary member of the group, each \*170-D deferred loss of that kind that the deferred loss company had just before the membership time is added to the loss denial pool at that time.
- (3) Otherwise, a **loss denial pool** of the \*head company is created at the membership time if:
- (a) the membership time is *not* a \*changeover time for the head company; and
  - (b) the deferred loss company's \*final RUNL just before the membership time (as reduced by any reductions under section 715-50 or 715-55) was greater than nil; and
  - (c) the deferred loss company does *not* satisfy the \*same business test for:
    - (i) the period (the **same business test period**) consisting of the deferred loss company's \*trial year; and
    - (ii) the time (the **test time**) just before the \*changeover time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 715-365

Note 1: The 170-D deferred losses become those of the head company at the formation time because of section 701-5 (Entry history rule).

Note 2: Paragraph (3)(b) has the effect that if the deferred loss company has other 165-CC tagged assets affected by section 715-50 or 715-55 (because the membership time is when the group comes into existence, and the other 165-CC tagged assets are membership interests in, or accounting liabilities owed by, another group member), those sections are applied before this section.

- (4) When it is created because of subsection (3), the pool consists of each 170-D deferred loss covered by subsection (2), and its **loss denial balance** is equal to the \*final RUNL referred to in paragraph (3)(b).

Note: The pool is distinct from any other loss denial pool of the head company, for example, one created under this section because another entity becomes a subsidiary member of the group at the membership time.

### **715-365 How loss denial balance is applied when 170-D deferred loss revives**

- (1) If a \*170-D deferred loss on a \*CGT asset is in a \*loss denial pool of an entity when the loss \*revives, the \*capital loss or deduction that section 170-275 would, apart from this section, treat the entity as having made or become entitled to at that time in respect of the asset is reduced by the lesser of:
- (a) the amount of the capital loss or deduction; and
  - (b) the pool's \*loss denial balance (as reduced by any previous reductions under section 715-130, subsection 715-160(1) or this subsection);
- and the loss denial balance is reduced by the same amount.
- (2) Subsection (1) applies to \*170-D deferred losses in the order in which they \*revive. If 2 or more revive at the same time, it applies to them in whichever order the entity determines.
- (3) Subsection (1) reduces a \*loss denial balance before section 715-130 does, unless the \*realisation event happens *after* the leaving time referred to in that section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 715-375

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**Subdivision 715-F—Interactions with Division 230 (financial arrangements)**

**Table of sections**

715-375	Cost setting—amount of liability that is Division 230 financial arrangement
715-380	Exit history rule not to affect certain matters related to Division 230 financial arrangements
715-385	Exit history rule and elective methods applying to Division 230 financial arrangements

**715-375 Cost setting—amount of liability that is Division 230 financial arrangement**

- (1) Subsection (2) applies if:
  - (a) an entity (the *joining entity*) becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*); and
  - (b) a thing (the *accounting liability*) is, in accordance with \*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, a liability of the joining entity at the joining time that can or must be recognised in the entity's statement of financial position; and
  - (c) the accounting liability is or is part of a \*Division 230 financial arrangement.
- (2) For the purposes of Division 230, treat the \*head company of the group as starting to have the accounting liability at the joining time.
- (3) Subsection (4) applies if:
  - (a) the requirements in subsection (1) are met; and
  - (b) Subdivision 230-C (fair value method), Subdivision 230-D (foreign exchange retranslation method) or Subdivision 230-F (reliance on financial reports method) is to apply in relation to the accounting liability after the joining time.
- (4) For as long as Subdivision 230-C, 230-D or 230-F applies in relation to the accounting liability, treat the amount of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

accounting liability as its \*Division 230 starting value at the joining time for the purposes of those Subdivisions and Subdivision 230-G.

### **715-380 Exit history rule not to affect certain matters related to Division 230 financial arrangements**

#### *Spreading fees gain or loss*

- (1) Subsection (2) applies if:
  - (a) an entity (the **leaving entity**) ceases to be a \*subsidiary member of a \*consolidated group at a time (the **leaving time**); and
  - (b) but for the cessation of membership and section 701-40 (the exit history rule), the \*head company of the group would spread a fees gain or loss mentioned in section 230-160 over a period that ended after the leaving time.
- (2) Despite section 701-40 (the exit history rule), the \*head company of the \*consolidated group continues to spread the fees gain or loss over that period, in accordance with section 230-160.

#### *Assessable income and deductions under section 701-61*

- (3) Subsection (4) applies if:
  - (a) an entity (the **leaving entity**) ceases to be a \*subsidiary member of a \*consolidated group at a time (the **leaving time**); and
  - (b) but for the cessation of membership and section 701-40 (the exit history rule):
    - (i) an amount would be included in the assessable income of the \*head company of the group under section 701-61 for an income year ending after the leaving time; or
    - (ii) the head company of the group would be entitled to a deduction under section 701-61 for an income year ending after the leaving time.
- (4) Despite section 701-40 (the exit history rule), the amount is included in the assessable income of the \*head company for the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 715-385

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income year, or the head company is entitled to the deduction for the income year.

**715-385 Exit history rule and elective methods applying to Division 230 financial arrangements**

- (1) Subsection (2) applies if:
  - (a) an entity (the *leaving entity*) ceases to be a \*subsidiary member of a \*consolidated group at a time (the *leaving time*); and
  - (b) the \*head company of the group has a \*Division 230 financial arrangement at the leaving time because the leaving entity is taken by subsection 701-1(1) (the single entity rule) to be a part of the head company; and
  - (c) after the leaving time, the leaving entity makes an election of a kind mentioned in section 230-220 (fair value method), 230-265 (foreign exchange retranslation method), 230-325 (hedging method) or 230-410 (reliance on financial reports method).
- (2) For the purposes of determining whether the election applies to the financial arrangement, disregard paragraphs 230-220(1)(d), 230-265(1)(d), 230-325(a) and 230-410(1)(b)).

**Subdivision 715-G—How value shifting rules apply to a consolidated group**

**Table of sections**

715-410	Extension of single entity rule and entry history rule
715-450	No reductions or other consequences for interests subject to loss cancellation under Subdivision 715-H

**715-410 Extension of single entity rule and entry history rule**

- (1) Subsection 701-1(1) (Single entity rule) and section 701-5 (Entry history rule) also have effect for all the purposes of Part 3-95 (Value shifting).

Note: One consequence of this for the operation of Division 727 (about indirect value shifting affecting interests in companies and trusts, and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 715-450

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arising from non-arm's length dealings) is that economic benefits provided by or to a subsidiary member of a consolidated group are treated as provided by or to the head company of the group. As a result:

- the head company is the only group member that can be a losing entity or gaining entity for an indirect value shift; and
- economic benefits provided by one group member to another are treated as provided by the head company to itself, and so have no relevance to Division 727.

Another consequence is that the head company is treated as owning all interests owned by group members in a losing entity or gaining entity that is not a group member.

- (2) This section is not intended to limit the effect that subsection 701-1(1) and section 701-5 have apart from this section.

### **715-450 No reductions or other consequences for interests subject to loss cancellation under Subdivision 715-H**

If section 715-610 reduces a loss that would otherwise be \*realised for income tax purposes by a \*realisation event that happens to an \*equity or loan interest in an entity:

- (a) the loss is not subject to reduction under Division 723 (Direct value shifting by creating right over non-depreciating asset) or 727 (Indirect value shifting); and
- (b) the interest's \*adjustable value is not, and is taken never to have been, reduced under Division 725 because of a \*direct value shift during the ownership period referred to in subsection 715-610(2); and
- (c) the interest's \*adjustable value is not, and is taken never to have been, reduced under Division 727 because of an \*indirect value shift during that period.

Note: Section 715-610 is about cancelling a loss on a realisation event for a direct or indirect interest in a subsidiary member of a consolidated group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 715-610

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**Subdivision 715-H—Cancelling loss on realisation event for direct or indirect interest in a subsidiary member of a consolidated group**

**Table of sections**

715-610	Cancellation of loss
715-615	Exception for interests in entity leaving consolidated group
715-620	Exception if loss attributable to certain matters

**715-610 Cancellation of loss**

- (1) This section reduces to nil a loss that would otherwise be \*realised for income tax purposes by a \*realisation event that happens to an \*equity or loan interest (the *realised interest*) in an entity (the *first entity*) when it is owned by another entity (the *owner*), if the conditions in subsections (2) and (4) are met.
- (2) The first condition is that, at some time during the period (the *ownership period*) when the owner owned the realised interest:
  - (a) the first entity was a \*subsidiary member of a \*consolidated group, and the owner was *not* a \*member of the group; or
  - (b) the realised interest was an \*external indirect equity or loan interest in a subsidiary member of a consolidated group; or
  - (c) the realised interest was an \*equity or loan interest in an entity that, at that time:
    - (i) owned an equity or loan interest in a subsidiary member of a consolidated group; and
    - (ii) was *not* a member of the group; or
  - (d) the realised interest was an \*equity or loan interest in an entity that owned at that time an external indirect equity or loan interest in a subsidiary member of a consolidated group.
- (3) An \*equity or loan interest in an entity (the *test entity*) is an *external indirect equity or loan interest* in a \*subsidiary member of a \*consolidated group if, and only if, neither the owner of the interest nor the test entity is a member of the group and:
  - (a) the test entity owns an equity or loan interest in the subsidiary member; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the test entity owns an equity or loan interest that is an external indirect equity or loan interest in the subsidiary member because of one or more other applications of this subsection.
- (4) The second condition is that, at the same or a different time during the ownership period:
  - (a) the owner was, or \*controlled (for value shifting purposes), the \*head company of a \*consolidated group because of which the first condition is satisfied; or
  - (b) the owner was an \*associate of an entity that, at the same or a different time during the ownership period, was, or controlled (for value shifting purposes), the head company of such a consolidated group.

### **715-615 Exception for interests in entity leaving consolidated group**

#### *Membership interests in leaving entity*

- (1) If:
  - (a) the realised interest is a \*membership interest; and
  - (b) during the ownership period the first entity ceased to be a \*subsidiary member of a \*consolidated group;the first condition in section 715-610 cannot be satisfied, because of that consolidated group, at a time when the first entity was a member of the group, unless the interest needed to be disregarded under section 703-35 (about employee shares), or section 703-37 (about ADI restructures), in order for the first entity to be a member of the group at that time.

#### *Liabilities owed by leaving entity*

- (2) If the realised interest:
  - (a) consists of a liability owed by the first entity to the owner; and
  - (b) became an asset of the owner because subsection 701-1(1) (the single entity rule) ceased to apply to the first entity when it ceased to be a \*subsidiary member of a \*consolidated group;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 715-620

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the first condition in section 715-610 cannot be satisfied, because of that consolidated group, at a time when the first entity was a member of the group.

**715-620 Exception if loss attributable to certain matters**

- (1) The loss is not reduced if all of it can be shown to be attributable to things other than these:
  - (a) something that would be reflected in what would, apart from this Part, be an overall loss under section 165-115R or 165-115S, of a \*member of a \*consolidated group (an *excluded group*) because of which the first condition in section 715-610 is satisfied, at an \*alteration time for that member;
  - (b) an \*indirect value shift for which, apart from this Part, a member of an excluded group would be the \*losing entity or the \*gaining entity.
- (2) If only part of the loss can be shown to be attributable to things other than the ones listed in subsection (1), the loss is reduced to the amount of that part.

**Subdivision 715-J—Entry history rule and choices**

**Table of sections**

**Head company's choice overriding entry history rule**

715-660 Head company's choice overriding entry history rule

**Choices head company can make ignoring entry history rule to override inconsistencies**

715-665 Head company's choice to override inconsistency

**Choices with ongoing effect**

715-670 Ongoing effect of choices made by entities before joining group

715-675 Head company adopting choice with ongoing effect

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Head company's choice overriding entry history rule****715-660 Head company's choice overriding entry history rule***Application*

- (1) This section has effect if an entity becomes a \*subsidiary member of a \*consolidated group at a time (the **joining time**) and either:
- (a) the question whether the entity had made a choice (however described) under a provision (the **choice provision**) listed in the table was relevant to working out the entity's liability (if any) for income tax, or the entity's loss (if any) of a particular \*sort, calculated by reference to an income year starting before the joining time; or
  - (b) before the joining time, the entity made a choice that:
    - (i) is described in paragraph (a); and
    - (ii) would, if the entity had not become a subsidiary member of a consolidated group, have started to have effect for working out the entity's liability (if any) for income tax, or the entity's loss (if any) of a particular \*sort, calculated by reference to the first income year starting after the joining time.

**List**

<b>Item</b>	<b>Provision</b>	<b>Subject of provision</b>
1	A provision of Part X or XI of the <i>Income Tax Assessment Act 1936</i> for an irrevocable declaration, election, choice or selection	Attribution of income in respect of controlled foreign companies (if the provision is in Part X), or foreign investment funds and foreign life assurance policies (if the provision is in Part XI)
2	Section 70-70	Valuing interests in *FIFs that are trading stock
3	Item 1 of the table in subsection 960-60(1)	Choosing to use an *applicable functional currency
3A	section 230-210, 230-255, 230-315 or 230-395	Choice about treatment of gains and losses from *Division 230 financial arrangement

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 715-660

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**List**

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<b>Item</b>	<b>Provision</b>	<b>Subject of provision</b>
4	A provision that: (a) provides for a choice (however described); and (b) is a provision of regulations made for the purposes of this Act, other than this item; and (c) is prescribed by regulations made for the purposes of this item	Choice about a matter described in the regulations

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Note: Declarations, elections and selections made under the choice provision by the entity are all examples of choices under that provision (even though the provision does not call them choices), because the entity has chosen to make them.

*Objects*

- (2) The main objects of this section are:
- (a) to override section 701-5 (Entry history rule) in relation to a choice (however described) by the entity under the choice provision or the absence of such a choice; and
  - (b) to extend, in some cases, the time for the \*head company of the \*consolidated group to make a choice (however described) under the choice provision after the joining time; and
  - (c) to modify, in some cases, the time at which such a choice by the head company starts to have effect.

*Overriding the entry history rule*

- (3) For the head company core purposes set out in section 701-1 (Single entity rule), ignore a choice (however described) made by the entity under the choice provision or the absence of such a choice.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Extension of time for head company to make choice*

- (4) If:
- (a) because of:
    - (i) the fact that the entity became a \*subsidiary member of the \*consolidated group; and
    - (ii) section 701-1 (Single entity rule);
 the question whether the \*head company of the group has made a choice (however described) under the choice provision becomes relevant for the head company core purposes set out in that section; and
  - (b) there is a limit (outside this section) on the period within which the head company may make such a choice;
 the head company has until the later of these times to make such a choice:
    - (c) the last time the head company may make the choice (apart from this subsection);
    - (d) the end of 90 days after the Commissioner is given notice under Division 703 that the entity has become a \*member of the group or, if the Commissioner allows a later time for the purposes of this paragraph, that later time.

*When head company's choice starts to have effect*

- (5) If the \*head company of the \*consolidated group makes a choice (however described) under the choice provision as a result of becoming able to make the choice because the entity became a \*subsidiary member of the group at the joining time, the choice starts to have effect:
- (a) at the joining time; or
  - (b) if the choice relates (explicitly or implicitly) to one or more whole income years—for the income year in which the joining time occurs.

Note: Subsection (5) has effect whether or not subsection (4) contributed to the head company becoming able to make the choice.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 715-665

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*Relationship with other provisions*

- (6) Section 701-5 (Entry history rule) and the choice provision have effect subject to this section.

**Choices head company can make ignoring entry history rule to override inconsistencies**

**715-665 Head company's choice to override inconsistency**

*Application*

- (1) This section has effect if:
- (a) an entity (the *joining entity*) becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*); and
  - (b) for each of the following entities, the question whether the entity had made a choice (however described) under a provision (the *choice provision*) listed in the table was relevant to working out the entity's liability (if any) for income tax, or the entity's loss (if any) of a particular \*sort, calculated by reference to an income year starting before the joining time:
    - (i) the joining entity;
    - (ii) another entity that was a \*member of the group at the joining time; and
  - (c) there was an inconsistency because, just before the joining time, such a choice had effect for one of the entities but not for the other.

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**List**

<b>Item</b>	<b>Provision</b>	<b>Subject of provision</b>
1	Section 148 of the <i>Income Tax Assessment Act 1936</i>	Reinsurance with non-residents
1A	section 230-210, 230-255, 230-315 or 230-395	Choice about treatment of gains and losses from *Division 230 financial arrangement
2	Section 775-80	Choosing not to have sections 775-70 and 775-75 apply to deal with *forex realisation gains and *forex realisation losses

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**List**

<b>Item</b>	<b>Provision</b>	<b>Subject of provision</b>
3	A provision that: (a) provides for a choice (however described); and (b) is a provision of regulations made for the purposes of this Act, other than this item; and (c) is prescribed by regulations made for the purposes of this item	Choice about a matter described in the regulations

Note 1: The other entity mentioned in subparagraph (1)(b)(ii) may have become a member of the group either before or at the joining time. That other entity may be either another subsidiary member of the group or the head company of the group.

Note 2: An election by an entity under section 148 of the *Income Tax Assessment Act 1936* is an example of a choice under that provision (even though that section does not call the election a choice) because the entity has chosen to make the election.

*Object*

- (2) The main objects of this section are:
- (a) to override the inconsistency; and
  - (b) to displace section 701-5 (Entry history rule), so far as it relates to the inconsistency; and
  - (c) to allow the \*head company of the \*consolidated group to make a choice (however described) under the choice provision.

*Overriding the inconsistency*

- (3) Neither of these things relating to an entity that becomes a \*member of the \*consolidated group at the joining time has effect for the head company core purposes set out in section 701-1 (Single entity rule):
- (a) a choice (however described) by the entity having effect under the choice provision before that time;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 715-665

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(b) the absence of such a choice.

Note: This affects all entities that become members of the consolidated group at the joining time, including the head company if the joining time is the time at which the group comes into existence.

(4) However, if the choice provision is section 148 of the *Income Tax Assessment Act 1936* (Reinsurance with non-residents):

(a) subsection (3) of this section does not apply in relation to reinsurance under contracts made before the joining time (but does apply in relation to reinsurance under contracts made at or after that time); and

(b) that section applies for the head company core purposes in relation to reinsurance under a contract made before the joining time by an entity (the *contracting party*) that became a \*member of the \*consolidated group at or before the joining time:

(i) as if the \*head company of the consolidated group had made an election under that section, if the contracting party had made such an election that was relevant to working out the party's liability (if any) for income tax, or the party's \*tax loss (if any), for an income year in connection with the contract; or

(ii) as if the head company had not made such an election, if the contracting party had not made such an election that was relevant to working out the party's liability (if any) for income tax, or the party's tax loss (if any), for an income year in connection with the contract.

*Choice replacing inconsistency*

(5) If:

(a) the question whether the \*head company of the \*consolidated group has made a choice (however described) under the choice provision is relevant for the head company core purposes set out in section 701-1 (Single entity rule); and

(b) there is a limit (outside this section) on the period within which the head company may make such a choice;

the head company has until the later of these times to make such a choice:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the last time the head company may make the choice (apart from this subsection);
- (d) the end of 90 days after the Commissioner is given notice under Division 703 that the joining entity has become a \*member of the group or, if the Commissioner allows a later time for the purposes of this paragraph, that later time.

Note: If the joining time is when the consolidated group is formed, the Commissioner should be given notice under Division 703 that the joining entity has become a member of the group when the approved form of the choice to form the group is given to the Commissioner.

*When head company's choice starts to have effect*

- (6) If the \*head company of the \*consolidated group makes a choice (however described) under the choice provision as a result of becoming able to make the choice because the joining entity became a \*member of the group, the choice starts to have effect:
  - (a) at the joining time; or
  - (b) if the choice relates (explicitly or implicitly) to one or more whole income years—for the income year in which the joining time occurs.
- (7) However, if:
  - (a) the \*head company of the \*consolidated group makes a choice as described in subsection (6); and
  - (b) the choice is an election under section 148 of the *Income Tax Assessment Act 1936* (Reinsurance with non-residents);

the election has effect only for the purposes of that section applying in relation to reinsurance under contracts made after the joining time and in an income year for which the election applies under that section.

Note: Subsection (4) explains how section 148 of the *Income Tax Assessment Act 1936* applies in relation to reinsurance under contracts made before the joining time.

*Relationship with other provisions*

- (8) Section 701-5 (Entry history rule) and the choice provision have effect subject to this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 715-670

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**Choices with ongoing effect**

**715-670 Ongoing effect of choices made by entities before joining group**

- (1) This section has effect if the question whether the \*head company of a \*consolidated group has made a choice (however described) under a provision listed in the table is relevant for the head company core purposes set out in section 701-1 (Single entity rule) because of something happening in relation to a thing:
  - (a) that is an asset, right, liability or obligation of the head company; and
  - (b) that the head company started to have, at the time (the *joining time*) an entity (the *joining entity*) became a \*subsidiary member of the group, because of that section and the fact that (ignoring that section) the entity had the thing at the joining time.

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**List**

Item	Provision	Subject of provision
1	Section 775-150	Choice to apply rules about disregarding certain *forex realisation gains and *forex realisation losses

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- (2) The \*head company is taken to have made such a choice if the joining entity had one in effect before the joining time.
- (3) The \*head company is taken not to have made the choice if the joining entity did not have one in effect before the joining time.

**715-675 Head company adopting choice with ongoing effect**

- (1) This section has effect, despite section 715-670, if:
  - (a) an entity that becomes a \*member of a \*consolidated group had a choice (however described) in effect under a provision (the *choice provision*) listed in that section before becoming a member of the group; and
  - (b) the time at which the entity becomes a member of the group is the first time at which an entity that had a choice (however described) in effect under the choice provision before

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

becoming a member of the group became a member of the group; and

- (c) the \*head company of the group chooses in writing, before:
- (i) the end of 90 days after the Commissioner is given notice under Division 703 that the entity has become a member of the group; or
  - (ii) a later time allowed by the Commissioner;
- to be treated as if the head company had made a choice under the choice provision.

- (2) The \*head company is taken to have made a choice under the choice provision for these purposes:
- (a) the head company core purposes set out in section 701-1 (Single entity rule);
  - (b) the purposes of the application of section 715-670 and paragraph (1)(a) in relation to another \*consolidated group of which the company later becomes a \*subsidiary member.

### **Subdivision 715-K—Exit history rule and choices**

#### **Table of sections**

##### **Choices leaving entity can make ignoring exit history rule**

715-700 Choices leaving entity can make ignoring exit history rule

##### **Choices leaving entity can make ignoring exit history rule to overcome inconsistencies**

715-705 Choices leaving entity can make ignoring exit history rule to overcome inconsistencies

### **Choices leaving entity can make ignoring exit history rule**

#### **715-700 Choices leaving entity can make ignoring exit history rule**

##### *Application*

- (1) This section has effect if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 715-700

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- (a) an entity ceases to be a \*subsidiary member of a \*consolidated group at a time (the *leaving time*); and
- (b) the question whether the \*head company of the group had made a choice (however described) under a provision (the *choice provision*) listed in the table in subsection 715-660(1) was relevant to working out that company's liability (if any) for income tax, or the entity's loss (if any) of a particular \*sort, calculated by reference to an income year starting before the leaving time.

Note: Declarations, elections and selections made under the choice provision at the option of a company are all examples of choices under that provision (even though it does not call them choices) because the company has chosen to make them.

*Objects*

- (2) The main objects of this section are:
  - (a) to override section 701-40 (Exit history rule) and let the entity make a choice (however described) under the choice provision with effect after the leaving time; and
  - (b) to extend, in some cases, the time for the entity to make such a choice after the leaving time; and
  - (c) to modify, in some cases, the rules about when such a choice by the entity starts to have effect.

*Overriding the exit history rule*

- (3) For the entity core purposes set out in section 701-1 (Single entity rule) relating to income years ending after the leaving time, ignore a choice (however described) made by the \*head company of the \*consolidated group under the choice provision or the absence of such a choice.

*Fresh choice by the entity*

- (4) The entity may make a choice (however described) under the provision if the question whether the entity has made such a choice is relevant to working out the entity's liability (if any) for income tax, or loss (if any) of a particular \*sort, calculated by reference to an income year ending after the leaving time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Extension of time for fresh choice by the entity*

- (5) If there is a time limit (apart from this subsection) on the entity making such a choice, the entity has until the later of these times to make the choice:
- (a) the last time it may make the choice under the provision (apart from this section);
  - (b) the end of 90 days after the leaving time or, if the Commissioner allows a later time for the purposes of this paragraph, that later time.

*Start of effect of choice*

- (6) If the entity makes a choice because of this section, the choice starts to have effect:
- (a) at the leaving time; or
  - (b) if the choice relates (explicitly or implicitly) to one or more whole income years—for the income year in which the leaving time occurs.

*Relationship with other provisions*

- (7) Section 701-40 (Exit history rule) and the choice provision have effect subject to this section.

**Choices leaving entity can make ignoring exit history rule to overcome inconsistencies****715-705 Choices leaving entity can make ignoring exit history rule to overcome inconsistencies***Application*

- (1) This section has effect if an entity ceases to be a \*subsidiary member of a \*consolidated group at a time (the *leaving time*) and there is an inconsistency because either:
- (a) both of these conditions are met:
    - (i) a choice (however described) under a provision (the *choice provision*) listed in the table in subsection

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 715-705

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715-665(1) by the entity had effect just before the entity became a \*member of the group;

- (ii) there was not such a choice by the \*head company of the group having effect just before the leaving time; or
- (b) both of these conditions are met:
  - (i) there was not a choice (however described) under the choice provision by the entity having effect just before the entity became a member of the group;
  - (ii) such a choice by the head company had effect just before the leaving time.

Note: An election by the entity or head company under the choice provision is an example of a choice under that provision (even though the provision does not call the election a choice) because the entity or company has chosen to make the election.

*Object*

- (2) The main objects of this section are:
  - (a) to displace section 701-40 (Exit history rule), so far as it relates to the inconsistency; and
  - (b) to allow the entity to make a choice (however described) under the choice provision with effect after the leaving time.

*Displacing the exit history rule*

- (3) For the entity core purposes set out in section 701-1 (Single entity rule) relating to income years ending after the leaving time, ignore a choice (however described) made by the \*head company of the \*consolidated group under the choice provision or the absence of such a choice.
- (4) However, if the choice provision is section 148 of the *Income Tax Assessment Act 1936* (Reinsurance with non-residents):
  - (a) subsection (3) of this section does not apply in relation to reinsurance under contracts made before the leaving time (but does apply in relation to reinsurance under contracts made at or after that time); and
  - (b) that section applies, for the entity core purposes relating to income years ending after the leaving time, in relation to reinsurance under a contract made before the leaving time:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 715-705

- (i) as if the entity had made an election under that section, if the \*head company of the \*consolidated group made, or was treated as having made, such an election that was relevant to working out that company's liability (if any) for income tax, or that company's \*tax loss (if any), for an income year in connection with the contract; or
- (ii) as if the entity had not made such an election, if the head company had not made, and was not treated as having made, such an election that was relevant to working out that company's liability (if any) for income tax, or that company's tax loss (if any), for an income year in connection with the contract.

Note: In some cases, subsection 715-665(4) treats the head company of a consolidated group as having made an election under section 148 of the *Income Tax Assessment Act 1936* in relation to reinsurance under contracts made before an entity becomes a member of the group.

*Fresh choice by the entity*

- (5) The entity may make a choice (however described) under the choice provision if the question whether the entity has made such a choice is relevant to working out the entity's liability (if any) for income tax, or loss (if any) of a particular \*sort, calculated by reference to an income year ending after the leaving time.

*Extension of time for fresh choice by the entity*

- (6) If there is a time limit (apart from this subsection) on the entity making such a choice, the entity has until the later of these times to make the choice:
  - (a) the last time it may make the choice under the choice provision (apart from this section);
  - (b) the end of 90 days after the leaving time or, if the Commissioner allows a later time for the purposes of this paragraph, that later time.

*Start of effect of choice*

- (7) If the entity makes a choice because of this section, the choice starts to have effect:
  - (a) at the leaving time; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 715-875

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- (b) if the choice relates (explicitly or implicitly) to one or more whole income years—for the income year in which the leaving time occurs.
- (8) However, if:
  - (a) the entity makes a choice because of this section; and
  - (b) the choice is an election under section 148 of the *Income Tax Assessment Act 1936* (Reinsurance with non-residents);the election has effect only for the purposes of that section applying in relation to reinsurance under contracts made at or after the leaving time and in an income year for which the election applies under that section.

Note: Subsection (4) explains how section 148 of the *Income Tax Assessment Act 1936* applies in relation to reinsurance under contracts made before the joining time.

*Relationship with other provisions*

- (9) Section 701-40 (Exit history rule) and the choice provision have effect subject to this section.

**Subdivision 715-U—Effect on conduit foreign income**

**Table of sections**

715-875	Extension of single entity rule and entry history rule
715-880	No CFI for leaving entity

**715-875 Extension of single entity rule and entry history rule**

- (1) Subsection 701-1(1) (Single entity rule) and section 701-5 (Entry history rule) also have effect for all the purposes of Subdivision 802-A (about conduit foreign income).
- (2) This section is not intended to limit the effect that subsection 701-1(1) and section 701-5 have apart from this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**715-880 No CFI for leaving entity**

Despite section 701-40 (the exit history rule), an entity that ceases to be a \*subsidiary member of a \*consolidated group at a time has no \*conduit foreign income at that time.

**Subdivision 715-V—Entity ceasing to be exempt from income tax on becoming subsidiary member of consolidated group****Table of sections**

715-900 Transition time taken to be just before joining time

**715-900 Transition time taken to be just before joining time**

- (1) This section has effect if:
- (a) an entity becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*); and
  - (b) the entity's \*ordinary income and \*statutory income were not (to any extent) assessable income just before the joining time.
- (2) Division 57 in Schedule 2D to the *Income Tax Assessment Act 1936* and Division 58 of this Act have effect as if the entity's \*ordinary income or \*statutory income had become to some extent assessable income just before the joining time.

Note 1: Those Divisions deal with entities whose ordinary income and statutory income were previously exempt from income tax.

Note 2: The operation of Division 58 just before the joining time can affect the basis on which the tax cost is set for a depreciating asset that becomes an asset of the head company of the consolidated group at the joining time because of section 701-1 (the single entity rule). That Division provides the basis for working out under Division 40 the asset's adjustable value, which:

- (a) can affect the tax cost setting amount for the asset under section 705-50; and
- (b) is the entity's terminating value for the asset, which in turn can affect the tax cost setting amount for the asset under sections 705-40, 705-45, 705-47 and 705-50.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 715-910

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**Subdivision 715-W—Effect on arrangements where CGT roll-overs are obtained**

**Table of sections**

715-910	Effect on restructures—original entity becomes a subsidiary member
715-915	Effect on restructures—original entity is a head company
715-920	Effect on restructures—original entity is a head company that becomes a subsidiary member of another group
715-925	Effect on restructures—original entity ceases being a subsidiary member

**715-910 Effect on restructures—original entity becomes a subsidiary member**

(1) This section applies if:

- (a) as a result of an \*arrangement to which section 124-784A applies, an original entity (within the meaning of that section) becomes a \*subsidiary member of a \*consolidated group; and
- (b) section 715-920 does not apply.

Note 1: Section 715-920 applies if the original entity was the head company of another consolidated group before the arrangement was completed.

Note 2: Sections 124-784A and 124-784B apply to arrangements for restructures.

(2) For the purposes of section 124-784B:

- (a) the completion time (within the meaning of that section) for the \*arrangement is taken to be the time the original entity becomes a member of the group; and
- (b) disregard Division 701 (Core rules) in relation to the original entity becoming a member of the group.

(3) The \*head company of the group may choose for:

- (a) section 701-10 (cost to head company of assets of joining entity); and
- (b) subsection 701-35(4) (setting value of trading stock at tax-neutral amount);

not to apply to the original entity's assets in respect of the original entity becoming a \*subsidiary member of the group.

Note: This subsection does not affect the application of subsection 701-1(1) (the single entity rule).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**715-915 Effect on restructures—original entity is a head company**

If:

- (a) section 124-784A applies in relation to an \*arrangement; and
- (b) the original entity (within the meaning of that section) for the arrangement is the \*head company of a \*consolidated group just before the arrangement was completed; and
- (c) section 715-920 does not apply;

then, for the purposes of section 124-784B, subsection 701-1(1) (the single entity rule) and section 701-5 (the entry history rule) apply in respect of the group.

Note 1: This section does not otherwise affect the application of subsection 701-1(1) or section 701-5.

Note 2: Sections 124-784A and 124-784B apply to arrangements for restructures.

**715-920 Effect on restructures—original entity is a head company that becomes a subsidiary member of another group**

(1) This section applies if:

- (a) section 124-784A applies in relation to an \*arrangement; and
- (b) the original entity (within the meaning of that section) for the arrangement is the \*head company of a \*consolidated group (the *acquired group*) just before the arrangement was completed; and

(c) as a result of the arrangement:

- (i) the original entity; and
- (ii) the \*subsidiary members of the acquired group just before the arrangement was completed;

become subsidiary members of another consolidated group.

Note: Sections 124-784A and 124-784B apply to arrangements for restructures.

(2) For the purposes of section 124-784B:

- (a) the original entity is taken to be the \*head company of the acquired group at the completion time (within the meaning of that section) for the \*arrangement; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 715-925

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- (b) the operation of this Part for the head company core purposes (mentioned in subsection 701-1(2)) in relation to:
  - (i) the original entity; and
  - (ii) the entities that were \*subsidiary members of the acquired group just before the arrangement was completed;  
continue to have effect at the completion time for the arrangement; and
- (c) the completion time for the arrangement is taken to be the time the original entity becomes a member of the other group; and
- (d) disregard Division 701 (Core rules) in relation to the original entity becoming a member of the other group.

Note: Paragraph (b) means that, for the purposes of section 124-784B, the subsidiary members of the acquired group are treated as part of the original entity.

- (3) The \*head company of the other group may choose for:
  - (a) section 701-10 (cost to head company of assets of joining entity); and
  - (b) subsection 701-35(4) (setting value of trading stock at tax-neutral amount);

not to apply to the original entity's assets in respect of the original entity becoming a \*subsidiary member of the other group.

Note: This subsection does not affect the application of subsection 701-1(1) (the single entity rule).

**715-925 Effect on restructures—original entity ceases being a subsidiary member**

If, as a result of an \*arrangement to which section 124-784A applies, an original entity (within the meaning of that section):

- (a) ceases to be a \*subsidiary member of a \*consolidated group after the completion time (within the meaning of that section) for the arrangement; and
- (b) does not become a member of another consolidated group; then, for the purposes of section 124-784B, the completion time for the arrangement is taken to happen at the time of the cessation.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: Sections 124-784A and 124-784B apply to arrangements for restructures.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 716—Miscellaneous special rules**

### **Table of Subdivisions**

716-A	Assessable income and deductions spread over several membership or non-membership periods
716-E	Tax cost setting for exploration and prospecting assets
716-G	Low-value and software development pools
716-Z	Other

### **Subdivision 716-A—Assessable income and deductions spread over several membership or non-membership periods**

#### **Guide to Subdivision 716-A**

##### **716-1 What this Division is about**

Some items of assessable income, and some deductions, are in effect spread over 2 or more income years. This Division apportions the assessable income or deduction for each of those income years among periods within the income year when an entity is, or is not, a subsidiary member of a consolidated group.

This Division also apportions in a similar way some items of assessable income, and some deductions, for a single income year.

#### **Table of sections**

##### **Operative provisions**

716-15	Assessable income spread over 2 or more income years
716-25	Deductions spread over 2 or more income years
716-70	Capital expenditure that is fully deductible in one income year

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Assessable income and deductions arising from share of net income of a partnership or trust, or from share of partnership loss**

716-75	Application
716-80	Head company's assessable income and deductions
716-85	Entity's assessable income and deductions for a non-membership period
716-90	Entity's share of assessable income or deductions of partnership or trust
716-95	Special rule if not all partnership or trust's assessable income or deductions taken into account in working out amount
716-100	Spreading period

**Operative provisions**

**716-15 Assessable income spread over 2 or more income years**

- (1) This section applies if, apart from this Part, a provision of this Act would spread an amount (the *original amount*) over 2 or more income years (whether or not because of a choice) by including part of the original amount in the same entity's assessable income for each of those income years.

*Head company's assessable income*

- (2) If:
- (a) for some but not all of an income year, an entity is a \*subsidiary member of a \*consolidated group; and
  - (b) a part of the original amount:
    - (i) would have been included in the assessable income of the \*head company of the group for that income year if the entity had been a subsidiary member of the group throughout that income year; but
    - (ii) would have been included in the entity's assessable income for that income year if throughout that income year the entity had not been a subsidiary member of any \*consolidated group;

the head company's assessable income for that income year includes a proportion of that part.

Note 1: Examples of when paragraph (2)(b) could be satisfied are:

- the head company is the entity referred to in subsection (1), but its connection with the original amount passes to the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 716-15

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entity when the entity ceases to be a subsidiary member of the group (see section 701-40 (Exit history rule));

- the entity is the entity referred to in subsection (1) but joins a consolidated group part way through the income year, so that its connection with the original amount passes to the head company of the group (see section 701-5 (Entry history rule)).

Note 2: If the entity is a subsidiary member of the group throughout the income year, the part of the original amount will be included in the head company's assessable income for the income year, either:

- because the head company is the entity referred to in subsection (1); or
- because of section 701-1 (Single entity rule); or
- because of section 701-5 (Entry history rule).

(3) The proportion is worked out by multiplying that part of the original amount by:

- the number of days that are in both the income year and the \*spreading period, and on which the entity was a \*subsidiary member of the group;

divided by:

- the number of days that are in both the income year and the spreading period.

*Entity's assessable income for a non-membership period*

(4) If:

- (a) for some but not all of an income year, an entity is a \*subsidiary member of a \*consolidated group; and
- (b) a part of the original amount would have been included in the entity's assessable income for that income year if throughout that income year the entity had *not* been a subsidiary member of any \*consolidated group;

the assessable income of the entity for a part of the income year that is a non-membership period for the purposes of section 701-30 includes a proportion of that part.

Note 1: Section 701-30 is about working out an entity's tax position for a period when it is not a subsidiary member of any consolidated group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 2: If throughout the income year the entity is not a subsidiary member of any consolidated group, this section does not affect the part of the original amount that is assessable income of the entity for the income year either:

- because the entity is the entity referred to in subsection (1); or
- because of section 701-40 (Exit history rule).

(5) The proportion is worked out by multiplying that part of the original amount by:

- the number of days that are in both the non-membership period and the \*spreading period;

divided by:

- the number of days that are in both the income year and the spreading period.

*Spreading period*

(6) The *spreading period* for the original amount is the period by reference to which the respective parts of the original amount that, apart from this Part, would be included in an entity's assessable income for the 2 or more income years are worked out.

### **716-25 Deductions spread over 2 or more income years**

(1) This section applies if, apart from this Part, a provision of this Act would spread an amount (the *original amount*) over 2 or more income years (whether or not because of a choice) by entitling the same entity to deduct part of the original amount for each of those income years.

(2) However, this section does not apply if the deductions would be for the decline in value of a \*depreciating asset.

Note: Such deductions arise under Division 40 (Capital allowances) and Division 328 (Small business entities).

*Head company's deduction*

(3) If for some but not all of an income year an entity is a \*subsidiary member of a \*consolidated group, and:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 716-25

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- (a) the \*head company of the group could have deducted for that income year a part of the original amount if the entity had been a subsidiary member of the group throughout that income year; but
- (b) the entity could have deducted that part for that income year if throughout that income year the entity had not been a subsidiary member of any \*consolidated group;

the head company can deduct for that income year a proportion of that part.

Note 1: Examples of when paragraphs (3)(a) and (b) could be satisfied are set out in note 1 to subsection 716-15(2).

Note 2: If the entity is a subsidiary member of the group throughout the income year, the head company can deduct that part for the income year, either:

- because the head company is the entity referred to in subsection (1) of this section; or
- because of section 701-1 (Single entity rule); or
- because of section 701-5 (Entry history rule).

- (4) The proportion is worked out by multiplying that part of the original amount by:

- the number of days that are in both the income year and the \*spreading period, and on which the entity was a \*subsidiary member of the group;

divided by:

- the number of days that are in both the income year and the spreading period.

*Entity's deduction for a non-membership period*

- (5) If:

- (a) for some but not all of an income year, an entity is a \*subsidiary member of a \*consolidated group; and
- (b) the entity could have deducted for that income year a part of the original amount if throughout that income year the entity had *not* been a subsidiary member of any \*consolidated group;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the entity can deduct a proportion of that part for a part of the income year that is a non-membership period for the purposes of section 701-30.

Note 1: Section 701-30 is about working out an entity's tax position for a period when it is not a subsidiary member of any consolidated group.

Note 2: If throughout the income year the entity is not a subsidiary member of any consolidated group or MEC group, this section does not affect the part of the original amount that the entity can deduct for the income year either:

- because the entity is the entity referred to in subsection (1); or
- because of section 701-40 (Exit history rule).

(6) The proportion is worked out by multiplying that part of the original amount by:

- the number of days that are in both the non-membership period and the \*spreading period;

divided by:

- the number of days that are in both the income year and the spreading period.

#### *Spreading period*

(7) The *spreading period* for the original amount is the period by reference to which the respective parts of the original amount that, apart from this Part, an entity could deduct for the 2 or more income years are worked out.

Note: For example, under section 82KZMD of the *Income Tax Assessment Act 1936* an item of expenditure on something is spread over the period over which that thing is to be provided, which is called the eligible service period. Deductions for the item for a sequence of income years are worked out by reference to how much of that period falls within each of those income years.

### **716-70 Capital expenditure that is fully deductible in one income year**

(1) This section applies if, apart from this Part, an entity could deduct for a single income year the whole of an amount (the *original amount*) of capital expenditure by the entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 716-70

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- (2) If for some but not all of an income year an entity is a \*subsidiary member of a \*consolidated group or \*MEC group, and:
- (a) the \*head company of the group could have deducted the original amount for that income year if the entity had been a subsidiary member of the group throughout that income year; but
  - (b) the entity could have deducted the original amount for that income year if throughout that income year the entity had *not* been a subsidiary member of any consolidated group or MEC group;

the head company can deduct for that income year a proportion of the original amount.

Note 1: Examples of when paragraphs (2)(a) and (b) could be satisfied are set out in note 1 to subsection 716-15(2).

Note 2: If the entity is a subsidiary member of the group throughout the income year, the head company can deduct the original amount for the income year, either:

- because the head company is the entity referred to in subsection (1) of this section; or
- because of section 701-1 (Single entity rule); or
- because of section 701-5 (Entry history rule).

- (3) The proportion is worked out by multiplying the original amount by:

- the number of days that are in the \*spreading period, and on which the entity was a \*subsidiary member of the group;

divided by:

- the number of days that are in the spreading period.

*Entity's deduction for a non-membership period*

- (4) If:
- (a) for some but not all of an income year, an entity is a \*subsidiary member of a \*consolidated group or \*MEC group; and
  - (b) the entity could have deducted the original amount for that income year if throughout that income year the entity had *not*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

been a subsidiary member of any consolidated group or MEC group;

the entity can deduct a proportion of the original amount for a part of the income year that is a non-membership period for the purposes of section 701-30.

Note 1: Section 701-30 is about working out an entity's tax position for a period when it is not a subsidiary member of any consolidated group.

Note 2: If throughout the income year the entity is not a subsidiary member of any consolidated group or MEC group, this section does not affect the entity's ability to deduct the original amount for the income year either:

- because the entity is the entity referred to in subsection (1); or
- because of section 701-40 (Exit history rule).

(5) The proportion is worked out by multiplying the original amount by:

- the number of days that are in both the non-membership period and the \*spreading period;

divided by:

- the number of days that are in the spreading period.

*Spreading period*

(6) The *spreading period* for the original amount:

- (a) starts when, apart from this Part, an entity would become entitled to deduct the amount for an income year; and
- (b) ends at the end of the income year.

### **Assessable income and deductions arising from share of net income of a partnership or trust, or from share of partnership loss**

#### **716-75 Application**

Sections 716-80 to 716-100 apply if, apart from this Part:

- (a) an amount would be included in an entity's assessable income for an income year under section 92 (about income

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 716-80

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- and deductions of partner) of the *Income Tax Assessment Act 1936* in respect of a partnership; or
- (b) an entity could deduct an amount for an income year under section 92 of that Act in respect of a partnership; or
  - (c) an amount would be included in an entity's assessable income for an income year under section 97 (Beneficiary of a trust estate who is not under a legal disability) of that Act in respect of a trust; or
  - (d) an amount would be included in an entity's assessable income for an income year under section 98A (Non-resident beneficiaries assessable in respect of certain income) of that Act in respect of a trust.

**716-80 Head company's assessable income and deductions**

- (1) If for some but not all of the income year the entity is a \*subsidiary member of a \*consolidated group or \*MEC group:
  - (a) the assessable income for that income year of the head company of the group includes the entity's share (worked out under section 716-90) of each of these:
    - (i) the total assessable income of the partnership or trust for the income year so far as it is reasonably attributable to a period, during the income year, throughout which the entity was a \*subsidiary member of the group but the partnership or trust was *not*;
    - (ii) a proportion (worked under subsection (2) of this section) of the total assessable income of the partnership or trust for the income year so far as it is *not* reasonably attributable to a particular period within the income year; and
  - (b) the head company of the group can deduct for that income year the entity's share (worked out under section 716-90) of each of these:
    - (i) the total deductions of the partnership or trust for the income year so far as they are reasonably attributable to a period covered by subparagraph (a)(i) of this subsection;
    - (ii) a proportion (worked under subsection (2) of this section) of the total deductions of the partnership or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

trust for the income year so far as they are *not* reasonably attributable to a particular period within the income year.

Note 1: If the entity is a subsidiary member of the group throughout the income year, the amount referred to in section 716-75 will be included in the head company's assessable income, or the head company can deduct that amount, for the income year because of section 701-1 (Single entity rule).

Note 2: While the entity, and the partnership or trust, are both subsidiary members of the group, section 701-1 (Single entity rule) attributes to the head company all assessable income and deductions giving rise to the amount referred to in section 716-75.

(2) The proportion is worked out by multiplying the amount concerned by:

- the number of days that are in the \*spreading period, and on which the entity was a \*subsidiary member of the group but the partnership or trust was *not*;

divided by:

- the number of days that are in the spreading period.

### **716-85 Entity's assessable income and deductions for a non-membership period**

(1) The assessable income of the entity for a part of the income year that is a non-membership period for the purposes of section 701-30 includes the entity's share (worked out under section 716-90) of each of these:

- (a) the total assessable income of the partnership or trust for the income year so far as it is reasonably attributable to the non-membership period;
- (b) a proportion (worked under subsection (3) of this section) of the total assessable income of the partnership or trust for the income year so far as it is *not* reasonably attributable to a particular period within the income year.

Note 1: Section 701-30 is about working out an entity's tax position for a period when it is not a subsidiary member of any consolidated group.

Note 2: If throughout the income year the entity is not a subsidiary member of any consolidated group or MEC group, this section does not affect the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 716-90**

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amount referred to in section 716-75 being assessable income of the entity for the income year.

- (2) For a part of the income year that is a non-membership period for the purposes of section 701-30, the entity can deduct the entity's share (worked out under section 716-90) of each of these:
- (a) the total deductions of the partnership or trust for the income year so far as they are reasonably attributable to the non-membership period;
  - (b) a proportion (worked under subsection (3) of this section) of the total deductions of the partnership or trust for the income year so far as they are *not* reasonably attributable to a particular period within the income year.

Note: If throughout the income year the entity is not a subsidiary member of any consolidated group or MEC group, this section does not affect the entity's ability to deduct for the income year the amount referred to in section 716-75.

- (3) The proportion is worked out by multiplying the amount concerned by:
- the number of days that are in both the non-membership period and the \*spreading period;
- divided by:
- the number of days that are in the spreading period.

**716-90 Entity's share of assessable income or deductions of partnership or trust**

- (1) If paragraph 716-75(a) or (b) applies, the entity's share is worked out by dividing:
- the entity's individual interest as a partner in the net income of the partnership or in the partnership loss;
- by:
- the amount of that net income or partnership loss; and expressing the result as a percentage.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) If paragraph 716-75(c) or (d) applies, the entity's share is worked out by dividing:
- the share of the income of the trust to which the entity is presently entitled;
- by:
- the amount of that income;
- and expressing the result as a percentage.

### **716-95 Special rule if not all partnership or trust's assessable income or deductions taken into account in working out amount**

- (1) To the extent that the assessable income of the partnership or trust for the income year was *not* taken into account in working out the amount referred to in section 716-75, it is disregarded in applying paragraph 716-80(1)(a) or subsection 716-85(1).

Note: For example, if a trust's net income for an income year must be worked out under section 268-45 in Schedule 2F to the *Income Tax Assessment Act 1936*, the trust's assessable income attributed to a period (in the income year) for which it has a notional loss under section 268-30 of that Act is not taken into account.

- (2) To the extent that the deductions of the partnership or trust for the income year were *not* taken into account in working out the amount referred to in section 716-75, they are disregarded in applying paragraph 716-80(1)(b) or subsection 716-85(2).

Note: For example, in the case described in the note to subsection (1) of this section, the trust's deductions attributed to that period are not taken into account in working out the trust's net income for the income year.

### **716-100 Spreading period**

The *spreading period* for the amount referred to in section 716-75 is made up of each period:

- (a) that is all or part of the income year; and
- (b) throughout which the entity is a partner in the partnership or a beneficiary of the trust, as appropriate.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 716-300

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**Subdivision 716-E—Tax cost setting for exploration and prospecting assets**

**Table of sections**

716-300 Prime cost method of working out decline in value

**716-300 Prime cost method of working out decline in value**

- (1) This section has effect if:
- (a) an entity (the *joining entity*) becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*); and
  - (b) because of subsection 40-80(1), the joining entity could (or did) deduct for a period before the joining time the \*cost of a \*depreciating asset that became an asset of the \*head company of the group at the joining time because section 701-1 (Single entity rule) applied to the joining entity; and
  - (c) the joining entity could not deduct an amount under Subdivision 40-B (except because of subsection 40-80(1)) for the income year that includes the joining time for that cost.

Note: Subdivision 40-B allows deductions for the decline in value of depreciating assets. Subsection 40-80(1), which is in that Subdivision, provides that the decline in value of certain assets used for exploration and prospecting equals their cost.

- (2) Subsection 701-55(2) has effect as if the \*prime cost method for working out the decline in value of the \*depreciating asset applied just before the joining time.

Note: This may affect both the method of working out the decline in value of the asset and the asset's effective life.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 716-G—Low-value and software development pools**

### **Table of sections**

#### **Assets in joining entity's low-value pool**

716-330 Head company's deductions for decline in value of assets in joining entity's low-value pool

#### **Entity leaving group with asset allocated to head company's low-value pool**

716-335 Entity leaving group with asset allocated to head company's low-value pool

#### **Depreciating assets arising from expenditure in joining entity's software development pool**

716-340 Depreciating assets arising from expenditure in joining entity's software development pool

#### **Software development pools if entity leaves consolidated group**

716-345 Head company taken not to have incurred expenditure

### **Assets in joining entity's low-value pool**

#### **716-330 Head company's deductions for decline in value of assets in joining entity's low-value pool**

- (1) This section modifies the operation of sections 40-430, 40-435, 40-440, 40-445, 701-10 and 701-60 and Division 705 for the head company core purposes mentioned in section 701-1 if:
- (a) an entity (the *joining entity*) becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*); and
  - (b) there are one or more \*depreciating assets (the *previous pool assets*) that:
    - (i) were allocated to the joining entity's low-value pool; and
    - (ii) become assets of the \*head company of the group at the joining time because section 701-1 applies to the joining entity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 716-330

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- (c) *none* of the previous pool assets was an asset to which Division 58 applied to affect the joining entity's deductions relating to the asset.

- Note 1: Sections 40-430, 40-435 and 40-440 are relevant to allocating depreciating assets to a low-value pool and to working out the decline in value of assets allocated to a low-value pool. Section 40-445 affects the closing pool balance, and may give rise to assessable income, if a balancing adjustment event happens to such an asset.
- Note 2: Section 701-10 provides that, for each asset the joining entity has at the joining time, the asset's tax cost is set at the joining time at the asset's tax cost setting amount, which is defined by section 701-60 as the amount worked out under Division 705.
- Note 3: Division 58 is about capital allowances for depreciating assets previously owned by an exempt entity.

*Objects*

- (2) The main objects of this section are:
- (a) to clarify how sections 40-430, 40-435 and 40-440 operate in relation to the previous pool assets; and
  - (b) to reduce compliance costs by providing that the \*tax cost is set for all the previous pool assets in one operation, rather than individually for each such asset.

*Time of allocation of assets to head company's low-value pool*

- (3) Sections 40-430, 40-435, 40-440 and 40-445 operate as if the \*head company of the \*consolidated group allocated the previous pool assets to a low-value pool for the income year that includes the joining time. Section 701-5 has effect subject to this subsection.

- Note 1: Under section 40-435, the head company must make a reasonable estimate of the taxable use percentage for each asset.
- Note 2: This subsection affects the percentages and amounts to be taken into account for working out under section 40-440 the decline in value of assets in the pool and the closing pool balance.

*Allocating other low-cost assets to head company's low-value pool*

- (4) Subsection 40-430(1) operates as if the previous pool assets were \*low-cost assets.

- Note: This has the effect that the head company must allocate to the low-value pool each low-cost asset it starts to hold in the income year

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

that includes the joining time or a later income year, whether or not the head company starts to hold the asset because of section 701-1.

*If joining time was in first day of joining entity's income year*

- (5) If the joining time was in the first day of the joining entity's income year, section 40-440 operates as if:
- (a) all the previous pool assets were \*low-value assets; and
  - (b) the sum of the previous pool assets' \*opening adjustable values for the income year that includes the joining time equalled the \*tax cost setting amount for the hypothetical asset worked out on the basis described in subsections (7), (8) and (9) of this section.

*If joining time was not in first day of joining entity's income year*

- (6) If the joining time was *not* in the first day of the joining entity's income year, section 40-440 operates as if:
- (a) all the previous pool assets were \*low-cost assets; and
  - (b) the sum of the previous pool assets' \*costs equalled the total of:
    - (i) the \*tax cost setting amount for the hypothetical asset worked out on the basis described in subsections (7), (8) and (9) of this section; and
    - (ii) the expenditure (if any) that was incurred after the joining time (but in the income year that includes that time) and included in the second element of the costs (ignoring this paragraph) of the previous pool assets.

*Tax cost is set for assets collectively not individually*

- (7) Sections 701-10 and 701-60 and Division 705 operate as if all the previous pool assets formed a single \*depreciating asset (the **hypothetical asset**), and were not separate assets.

*Modified operation of Division 705 for hypothetical asset*

- (8) Sections 705-40 and 705-57 operate as if the joining entity's \*terminating value for the hypothetical asset were the amount worked out using the table:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 716-335

**Modification of basis on which sections 705-40 and 705-57 operate**

If the joining time is:	Sections 705-40 and 705-57 operate as if the joining entity's terminating value for the hypothetical asset were:
1 In the first day of an income year of the joining entity	The *closing pool balance for the joining entity's low-value pool for the previous income year
2 In another day	The *closing pool balance for the joining entity's low-value pool for the non-membership period described in section 701-30 that ends just before the joining time

Note: Sections 705-40 and 705-57 are about reduction of an asset's tax cost setting amount to an amount that may be affected by the joining entity's terminating value for the asset.

- (9) Division 705 operates in relation to the hypothetical asset as if section 705-50 had not been enacted.

Note: Section 705-50 is about reduction of an asset's tax cost setting amount for over-depreciation of the asset.

**Entity leaving group with asset allocated to head company's low-value pool**

**716-335 Entity leaving group with asset allocated to head company's low-value pool**

- (1) This section sets out rules affecting the \*head company of a \*consolidated group and an entity (the *leaving entity*) that ceases to be a \*subsidiary member of the group at a time (the *leaving time*) in an income year (the *leaving year*), if:
- (a) a \*depreciating asset becomes an asset of the leaving entity at the leaving time because section 701-1 (Single entity rule) ceases to apply to the leaving entity; and
  - (b) the asset was in the head company's low-value pool.

Note: Section 701-40 (Exit history rule) treats the asset as having been allocated to the leaving entity's low-value pool, with the taxable use percentage estimated by the head company, for the income year for which the head company allocated the asset to the head company's low-value pool.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Objects*

- (2) The main objects of this section are:
- (a) to ensure that the decline in value of assets in the \*head company's low-value pool and the decline in value of assets in the leaving entity's low-value pool are worked out so that:
    - (i) for the leaving year, the \*depreciating asset is taken into account in working out the decline in value of assets in the *head company's* low-value pool only; and
    - (ii) for later income years, the depreciating asset is taken into account in working out the decline in value of assets in the *leaving entity's* low-value pool only; and
  - (b) to specify the \*adjustable value of the depreciating asset just before and at the leaving time.

*Reduced decline in value for leaving entity for leaving year*

- (3) The decline in value worked out for the leaving year under subsection 40-440(1) for assets in the leaving entity's low-value pool is reduced by such amount as is reasonable to prevent duplication of deductions for the leaving year in respect of the \*depreciating asset by the \*head company and the leaving entity.

*Reduced closing pool balance for head company's pool for leaving year*

- (4) The \*closing pool balance of the \*head company's low-value pool for the leaving year is reduced by so much of the balance as reasonably relates to the \*depreciating asset.

*Cost of head company's membership interests in leaving entity etc.*

- (5) Sections 701-15, 701-40 and 701-60 and Division 711 have effect as if the \*adjustable value of the \*depreciating asset for the \*head company just before and at the leaving time were such amount as is reasonable, having regard to:
- (a) the reduction described in subsection (4) of this section; and
  - (b) the taxable use percentage estimated for the depreciating asset by the head company under section 40-435.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 716-340

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- Note 1: Section 701-15 provides that, for each membership interest the head company holds in the leaving entity, the interest's tax cost is set just before the leaving time at the interest's tax cost setting amount, which is defined by section 701-60 as the amount worked out under certain sections of Division 711.
- Note 2: Division 711 sets the interest's tax cost setting amount by reference to the head company's terminating value of the asset, which is to be worked out under section 711-30 by reference to the adjustable value of the asset for the head company just before the leaving time.
- Note 3: Section 701-40 has the effect that the adjustable value of the asset for the leaving entity at the leaving time is the same as the adjustable value of the asset for the head company then.

**Depreciating assets arising from expenditure in joining entity's software development pool**

**716-340 Depreciating assets arising from expenditure in joining entity's software development pool**

- (1) This section modifies the basis on which Subdivision 40-B and sections 40-455, 701-10, 701-55 and 701-60 and Division 705 operate if:
- (a) an entity (the *joining entity*) becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*); and
  - (b) the joining entity had incurred before the joining time expenditure that it allocated to a software development pool; and
  - (c) some or all of the expenditure is reasonably related to \*in-house software that:
    - (i) is a \*depreciating asset; and
    - (ii) became an asset of the \*head company of the consolidated group at the joining time because section 701-1 (Single entity rule) applied to the joining entity.

- Note 1: Subdivision 40-B allows deductions for the decline in value of a depreciating asset, but only if expenditure on the asset has not been allocated to a software development pool. Section 40-455 provides for deduction of expenditure allocated to such a pool. Section 701-5 (Entry history rule) treats the head company as having incurred the expenditure that was allocated to the pool.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- Note 2: Section 701-10 provides that, for each asset the joining entity has at the joining time, the asset's tax cost is set at the joining time at the asset's tax cost setting amount, which is defined by section 701-60 as the amount worked out under Division 705, which in turn depends on the adjustable value of the asset worked out under section 40-85.
- Note 3: Section 701-55 affects matters relevant to working out the head company's deductions for the decline in value of depreciating assets that became assets of the head company at the joining time because section 701-1 (Single entity rule) applied to the joining entity.
- Note 4: This section operates whether or not the joining entity's deductions under section 40-455 for the period before the joining time for expenditure allocated to the pool total 100% of the expenditure allocated to the pool.

*Object*

- (2) The main object of this section is to ensure that:
- (a) the \*head company's deductions for the \*in-house software:
    - (i) are *not* worked out under section 40-455 on the basis of section 701-5 (Entry history rule) treating the expenditure relating to the software as being the head company's expenditure; and
    - (ii) are instead worked out under Subdivision 40-B, using the \*prime cost method with the \*effective life given by subsection 40-95(7) and taking account of the \*tax cost setting amount for the software; and
  - (b) the tax cost setting amount is worked out in a way that takes account of deductions for the period before the joining time for the expenditure reasonably related to the in-house software.

*Joining entity taken not to have incurred certain expenditure*

- (3) Subdivision 40-B and section 40-455 operate for the head company core purposes mentioned in section 701-1 (Single entity rule) as if the expenditure reasonably related to the \*in-house software had not been incurred by the joining entity.

Note 1: This has the effects that:

- (a) subsection 40-50(2) does not apply because of section 701-5 (Entry history rule) to deny the head company deductions under Subdivision 40-B for the decline in value of the software; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 716-340

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- (b) the head company cannot deduct the expenditure under section 40-455 as it operates because of section 701-5.

Note 2: This does not prevent the head company from deducting under section 40-455 expenditure that is *not* reasonably related to the in-house software and that the head company is treated by section 701-5 as having incurred and allocated to a software development pool because the joining entity did.

*Prime cost method of working out decline in value of software*

- (4) Subsection 701-55(2) operates as if the \*prime cost method of working out the decline in value of the \*in-house software applied just before the joining time.

Note: This affects the method of working out the decline in value of the software for the head company of the consolidated group.

*Effective life of software*

- (5) Subdivision 40-B operates as if the \*effective life of the \*in-house software were the period specified for in-house software in subsection 40-95(7). Subsection 701-55(2) is subject to this subsection.

*Cost of in-house software*

- (6) Sections 701-10 and 701-60 and Division 705 (and section 40-85, so far as it affects that Division) operate as if the \*cost of the \*in-house software were the total amount of the joining entity's expenditure that reasonably related to the software and was allocated to a software development pool.

*Earlier decline in value of the in-house software*

- (7) Sections 701-10 and 701-60 and Division 705 (and section 40-85, so far as it affects that Division) operate as if the decline in value, and deductions for the decline in value, of the \*in-house software for a period before the joining time were the amount worked out under subsection (8).

- (8) Work out the amount by:  
(a) working out, for each software development pool to which expenditure relating to the \*in-house software was allocated,

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- the amount of the joining entity's deductions under section 40-455 that reasonably relates to the software; and
- (b) adding up each of those amounts if there are 2 or more such pools.

Note: Subsections (6), (7) and (8) can affect the working out of the tax cost setting amount for the in-house software in these ways:

- (a) one way is by affecting the adjustable value of the software, which may be worked out under section 40-85 by reference to the decline in value of the software, and which is relevant to section 705-50 (which reduces the tax cost setting amount for over-depreciated assets);
- (b) another way is by affecting the joining entity's terminating value for the software, which section 705-30 defines as being the adjustable value of the software just before the joining time, and which is relevant to sections 705-40, 705-50 and 705-57 (which may reduce the tax cost setting amount for the software);
- (c) another way is by affecting section 705-50, whose operation depends on the decline in value, and deductions for the decline in value, of the software (among other things).

## **Software development pools if entity leaves consolidated group**

### **716-345 Head company taken not to have incurred expenditure**

- (1) This section has effect if:
- (a) an entity (the *leaving entity*) ceases to be a \*subsidiary member of a \*consolidated group at a time in an income year (the *leaving year*); and
- (b) under section 701-40 (Exit history rule), expenditure is taken to have been allocated by the leaving entity to a software development pool.

Note: Section 701-40 treats expenditure incurred by the head company of the consolidated group and allocated by that company to a software development pool as having been incurred by the leaving entity and allocated by it to a software development pool.

- (2) Work out deductions of the \*head company of the \*consolidated group for income years after the leaving year as if the head company had not incurred the expenditure.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 716-800

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- (3) The leaving entity cannot deduct an amount for the leaving year for the expenditure it is taken to have allocated to the software development pool.

**Subdivision 716-Z—Other**

**Table of sections**

716-800	Allocating amounts to periods if head company and subsidiary member have different income years
716-850	Grossing up threshold amounts for periods of less than 365 days
716-855	Working out the cost base or reduced cost base of a pre-CGT asset after certain roll-overs

**716-800 Allocating amounts to periods if head company and subsidiary member have different income years**

- (1) The principles in this section apply if:
- (a) an entity becomes, or stops being, a \*subsidiary member of a \*consolidated group; and
  - (b) the entity has an income year that starts and ends at a different time from when the income year of the \*head company of the group starts and ends.
- (2) Items are to be allocated to, or apportioned among, periods (whether consisting of all or part of an income year of the entity or \*head company):
- (a) in the most appropriate way having regard to the objects of this Part, and of particular provisions of this Part; and
  - (b) in particular, so as to ensure that what is in substance the same item is recognised only once for what is in substance the same purpose.

**716-850 Grossing up threshold amounts for periods of less than 365 days**

- (1) Under some provisions of this Act, something that is relevant to working out:
- (a) an entity's taxable income (if any); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) the income tax (if any) payable on an entity's taxable income; or

(c) an entity's loss (if any) of a particular \*sort;

is determined on the basis of a comparison between an amount worked out for an income year, or an amount \*derived from 2 or more such amounts, and another amount.

Note: The other amount assumes an income year of 365 days.

- (2) This section affects how such a provision (the **threshold provision**) operates for the purposes of subsection 701-30(3), which requires each thing covered by paragraph (1)(a), (b) or (c) of this section to be worked out for an entity for a non-membership period (under section 701-30) during an income year.

Note: A non-membership period is a period (of less than an income year) when the entity is not a subsidiary member of any consolidated group.

- (3) An amount that would otherwise be worked out for the non-membership period, for the purposes of the comparison under the threshold provision, is instead:

(a) to be worked out by reference to the period (the **reference period**) starting at the start of the income year and ending at the end of the non-membership period; and

(b) then to be grossed up by multiplying it by this fraction:

$$\frac{365}{\text{Number of days in reference period}}$$

### **716-855 Working out the cost base or reduced cost base of a pre-CGT asset after certain roll-overs**

If:

(a) it is necessary for the purposes of this Part to work out the \*cost base or \*reduced cost base of a \*pre-CGT asset owned at a particular time; and

(b) before that time:

(i) the owner was the recipient company involved in a roll-over under Subdivision 126-B in relation to a \*CGT event that happened in relation to the CGT asset; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 716-855

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- (ii) the owner was the transferee in relation to a disposal of the CGT asset to which former section 160ZZO of the *Income Tax Assessment Act 1936* applied;

the cost base or reduced cost base is worked out as if, in applying Subdivision 126-B or former section 160ZZO in relation to the CGT event or the disposal, the provisions of that Subdivision or section applying to CGT assets \*acquired on or after 20 September 1985 replaced those that applied to CGT assets acquired on or before that date.

Note: The effect is that the owner's cost base or reduced cost base will be the same as that of the originating company or transferor, as is the case with post-CGT assets.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 717—International tax rules**

### **Table of Subdivisions**

- 717-A Foreign income tax offsets
- 717-D Transfer of certain surpluses under CFC, FIF and FLP provisions: entry rules
- 717-E Transfer of certain surpluses under CFC, FIF and FLP provisions: exit rules
- 717-O Offshore banking units

### **Subdivision 717-A—Foreign income tax offsets**

#### **717-1 What this Subdivision is about**

If an entity becomes a subsidiary member of a consolidated group, the head company receives any tax offsets under section 770-10 that arise because the entity pays foreign income tax while it is a subsidiary member of the group.

### **Table of sections**

#### **Object**

- 717-5 Object of this Subdivision

#### **Foreign income tax on amounts in head company's assessable income**

- 717-10 Head company taken to be liable for subsidiary member's foreign income tax

### **Object**

#### **717-5 Object of this Subdivision**

The object of this Subdivision is to allow the \*head company of a \*consolidated group to get the benefit of \*foreign income tax paid

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 717-10

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in respect of amounts included in the head company's assessable income because another entity is or was a \*subsidiary member of the group.

**Foreign income tax on amounts in head company's assessable income**

**717-10 Head company taken to be liable for subsidiary member's foreign income tax**

- (1) This section operates if:
  - (a) an entity was a \*subsidiary member of a \*consolidated group for all or part of an income year; and
  - (b) an amount was included in the \*ordinary income or \*statutory income of the \*head company of the group for that income year; and
  - (c) the entity paid \*foreign income tax (except \*credit absorption tax or \*unitary tax) in respect of the amount.
- (2) Division 770 operates as if:
  - (a) the \*head company had paid the \*foreign income tax; and
  - (b) the entity had not paid the foreign income tax.

Note: Division 770 provides a tax offset for foreign income tax paid.

- (3) This section does not limit the operation of Division 770.

**Subdivision 717-D—Transfer of certain surpluses under CFC, FIF and FLP provisions: entry rules**

**Guide to Subdivision 717-D**

**717-200 What this Subdivision is about**

Each attribution surplus and FIF attribution surplus relating to a company that becomes a subsidiary member of a consolidated group is transferred to the head company of the group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Table of sections

### Object

717-205 Object of this Subdivision

### Transfers

717-210 Attribution surpluses

717-220 FIF attribution surpluses

717-227 Deferred attribution credits

717-230 Calculating FIF income where a company joins the group

## Object

### 717-205 Object of this Subdivision

The main object of this Subdivision is to avoid double taxation by transferring from a company (the *joining company*) that becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*) to the \*head company of the group the benefit of each of these:

- (a) the attribution surplus (if any) for an attribution account entity (within the meaning of Part X of the *Income Tax Assessment Act 1936*) in relation to the joining company just before the joining time;
- (c) the FIF attribution surplus (if any) for a FIF attribution account entity (within the meaning of Part XI of the *Income Tax Assessment Act 1936*) in relation to the joining company just before the joining time.

## Transfers

### 717-210 Attribution surpluses

- (1) This section operates for the purposes of Part X of the *Income Tax Assessment Act 1936* if:
  - (a) a company (the *joining company*) becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 717-220

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- (b) just before the joining time there was an attribution surplus for an attribution account entity in relation to the joining company for the purposes of that Part; and
- (c) just before the joining time the joining company's attribution account percentage in relation to the attribution account entity for the purposes of that Part was more than nil.

*Credit in relation to the head company*

- (2) An attribution credit arises at the joining time for the attribution account entity in relation to the \*head company of the group. The credit is equal to the attribution surplus.

*Debit in relation to the joining company*

- (3) An attribution debit arises at the joining time for the attribution account entity in relation to the joining company. The debit is equal to the attribution surplus.

**717-220 FIF attribution surpluses**

Section 717-210 also operates for the purposes of Part XI of the *Income Tax Assessment Act 1936* as described in the table:

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<b>Transfer of FIF attribution surpluses by section 717-210</b>		
<b>Item</b>	<b>Section 717-210 operates in relation to this thing (within the meaning of Part XI of the <i>Income Tax Assessment Act 1936</i>):</b>	<b>In the same way as it operates in relation to this thing:</b>
1	FIF attribution surplus	Attribution surplus
2	FIF attribution account entity	Attribution account entity
3	FIF attribution account percentage	Attribution account percentage
4	FIF attribution credit	Attribution credit
5	FIF attribution debit	Attribution debit

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Note: Section 717-230 may affect the calculation of the FIF attribution surplus for the FIF attribution account entity in relation to the joining company just before the joining time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **717-227 Deferred attribution credits**

- (1) This section operates for the purposes of Part X of the *Income Tax Assessment Act 1936* if:
  - (a) a company (the *joining company*) becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*); and
  - (b) assuming the joining company had not done so, an attribution credit would have arisen under subsection 371(8) of that Act at a later time for an attribution account entity in relation to the joining company for the purposes of that Part.

#### *Credit in relation to the head company*

- (2) The attribution credit arises instead at the later time for the attribution account entity in relation to the \*head company of the group.

### **717-230 Calculating FIF income where a company joins the group**

- (1) This section modifies the operation of Part XI of the *Income Tax Assessment Act 1936* if:
  - (a) a company (the *joining company*) becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*); and
  - (b) for the purposes of that Part, the FIF attribution account percentage of the joining company in relation to a FIF attribution account entity that is a \*FIF is more than nil at the time (the *surplus time*) just before the joining time.
- (2) That Part operates in relation to the joining company as if a notional accounting period of the \*FIF in relation to the joining company ended at the time (the *credit/debit time*) just before the surplus time.
- (3) That Part operates in relation to the joining company as if subsection 485(3) of that Act provided that the operative provision applied to the joining company in relation to the \*FIF in respect of the notional accounting period of that FIF that ended in the income year that included the credit/debit time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 717-235

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- (4) That Part operates in relation to the \*head company of the \*consolidated group, in relation to the \*FIF in respect of the notional accounting period of that FIF that included the joining time, as if any interest in the FIF of which the head company became the holder because subsection 701-1(1) (the single entity rule) applies at the joining time had been acquired by the head company at that time.
- (5) Paragraph 538(2)(d) of that Act operates in relation to the \*head company of the \*consolidated group, in relation to the \*FIF in respect of the notional accounting period of that FIF that included the joining time, as if the amount or value of the consideration paid or given by the head company in respect of any acquisition mentioned in subsection (4) of this section was equal to the amount worked out under paragraph 538(2)(a) of that Act in relation to the joining company in relation to the FIF in respect of the notional accounting period mentioned in subsection (2) of this section.

**Subdivision 717-E—Transfer of certain surpluses under CFC, FIF and FLP provisions: exit rules**

**Guide to Subdivision 717-E**

**717-235 What this Subdivision is about**

Each attribution surplus and FIF attribution surplus relating to a company that ceases to be a subsidiary member of a consolidated group is transferred to that company from the head company of the group.

**Table of sections**

**Object**

717-240 Object of this Subdivision

**Transfers**

717-245 Attribution surpluses

717-255 FIF attribution surpluses

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- 717-262 Deferred attribution credits  
717-265 Calculating FIF income where a company leaves the group

## Object

### 717-240 Object of this Subdivision

The main object of this Subdivision is to avoid double taxation by transferring from the \*head company of a \*consolidated group to a company (the *leaving company*) that ceases to be a \*subsidiary member of the group at a time (the *leaving time*) the benefit of each of these surpluses (to the extent that each surplus can be attributed to the leaving company):

- (a) the attribution surplus (if any) for an attribution account entity (within the meaning of Part X of the *Income Tax Assessment Act 1936*) in relation to the head company just before the leaving time;
- (c) the FIF attribution surplus (if any) for a FIF attribution account entity (within the meaning of Part XI of the *Income Tax Assessment Act 1936*) in relation to the head company just before the leaving time.

## Transfers

### 717-245 Attribution surpluses

- (1) This section operates for the purposes of Part X of the *Income Tax Assessment Act 1936* if:
  - (a) a company (the *leaving company*) ceases to be a \*subsidiary member of a \*consolidated group at a time (the *leaving time*); and
  - (b) just before the leaving time there was, for the purposes of that Part, an attribution surplus for an attribution account entity in relation to the \*head company of the group; and
  - (c) at the leaving time the leaving company's attribution account percentage in relation to the attribution account entity for the purposes of that Part is more than nil.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 717-255

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*Credit in relation to leaving company*

- (2) An attribution credit arises at the leaving time for the attribution account entity in relation to the leaving company. The credit is the amount worked out under subsection (4).

*Debit in relation to head company*

- (3) An attribution debit arises at the leaving time for the attribution account entity in relation to the company that was the \*head company of the group just before the leaving time. The debit is the amount worked out under subsection (4).

*Amount of credit and debit*

- (4) The amount of the credit and debit is worked out using the formula:

$$\frac{\text{Leaving company's attribution account percentage in relation to the attribution account entity at the leaving time}}{\text{*Head company's attribution account percentage in relation to the attribution account entity just before the leaving time}} \times \text{Attribution surplus for the attribution account entity in relation to the *head company just before the leaving time}$$

**717-255 FIF attribution surpluses**

Section 717-245 also operates for the purposes of Part XI of the *Income Tax Assessment Act 1936* as described in the table:

<b>Transfer of FIF attribution surpluses by section 717-245</b>		
<b>Item</b>	<b>Section 717-245 operates in relation to this thing (within the meaning of Part XI of the <i>Income Tax Assessment Act 1936</i>):</b>	<b>In the same way as it operates in relation to this thing:</b>
1	FIF attribution surplus	Attribution surplus
2	FIF attribution account entity	Attribution account entity
3	FIF attribution account percentage	Attribution account percentage
4	FIF attribution credit	Attribution credit
5	FIF attribution debit	Attribution debit

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: Section 717-265 may affect the calculation of the FIF attribution surplus for the FIF attribution account entity in relation to the head company just before the leaving time.

### 717-262 Deferred attribution credits

- (1) This section operates for the purposes of Part X of the *Income Tax Assessment Act 1936* if:
- (a) a company (the *leaving company*) ceases to be a \*subsidiary member of a \*consolidated group at a time (the *leaving time*); and
  - (b) disregarding this section, an attribution credit (the *original credit*) will arise under subsection 371(8) of that Act at a later time for an attribution account entity in relation to the \*head company of the group (including because of the operation of section 717-227) for the purposes of that Part; and
  - (c) at the leaving time the leaving company's attribution account percentage in relation to the attribution account entity for the purposes of that Part is more than nil.

#### *Credit in relation to the leaving company*

- (2) An attribution credit arises at the later time for the attribution account entity in relation to the leaving company. The credit is the amount worked out under subsection (3).

#### *Amount of credit*

- (3) The amount of the credit is worked out using the formula:

$$\frac{\text{Leaving company's attribution account percentage in relation to the attribution account entity at the leaving time}}{\text{*Head company's attribution account percentage in relation to the attribution account entity just before the leaving time}} \times \text{Original credit}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 717-265

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*Reduction in credit in relation to the head company*

- (4) The attribution credit that arises at the later time for the attribution account entity in relation to the \*head company is reduced by the amount of the attribution credit that arises under subsection (2) in relation to the leaving company.

**717-265 Calculating FIF income where a company leaves the group**

- (1) This section modifies the operation of Part XI of the *Income Tax Assessment Act 1936* in relation to a company (the **transferor company**) if:
- (a) the transferor company is the \*head company of a \*consolidated group at a time (the **surplus time**); and
  - (b) for the purposes of that Part, the FIF attribution account percentage of the transferor company in relation to a FIF attribution account entity that is a \*FIF is more than nil at the surplus time; and
  - (c) another company (the **leaving company**) ceases to be a \*subsidiary member of the group at the time (the **leaving time**) just after the surplus time; and
  - (d) for the purposes of that Part, the leaving company's FIF attribution account percentage in relation to that FIF attribution account entity is more than nil at the leaving time.
- (2) That Part operates in relation to the transferor company as if a notional accounting period of the \*FIF in relation to the transferor company ended at the time (the **credit/debit time**) just before the surplus time.
- (3) That Part operates in relation to the transferor company as if the next notional accounting period of the \*FIF in relation to the transferor company started at the surplus time and continued until whichever of these times occurs first:
- (a) the time when a notional accounting period of the FIF in relation to the transferor company would have ended apart from this section;
  - (b) the time when the period ends because of another application of this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) That Part operates in relation to the transferor company as if subsection 485(3) of that Act provided that the operative provision applied to the transferor company in relation to the \*FIF in respect of the notional accounting period of that FIF that ended in the income year that included the credit/debit time.
- (5) That Part operates in relation to the leaving company, in relation to the \*FIF in respect of the notional accounting period of that FIF that included the leaving time, as if any interest in the FIF of which the leaving company became the holder because subsection 701-1(1) (the single entity rule) ceased to apply at the leaving time had been acquired by the leaving company at that time.
- (6) Paragraph 538(2)(d) of that Act operates in relation to the leaving company, in relation to the \*FIF in respect of the notional accounting period of that FIF that included the leaving time, as if the amount or value of the consideration paid or given by the leaving company in respect of any acquisition mentioned in subsection (5) of this section was equal to the amount worked out under paragraph 538(2)(a) of that Act in relation to the transferor company in relation to the FIF in respect of the notional accounting period mentioned in subsection (2) of this section.

## **Subdivision 717-O—Offshore banking units**

### **Guide to Subdivision 717-O**

#### **717-700 What this Subdivision is about**

The head company of a consolidated group is treated for certain purposes as an offshore banking unit at a time when a subsidiary member of the group is an offshore banking unit.

#### **Table of sections**

717-705	Object of this Subdivision
717-710	Head company treated as OBU

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 717-705

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**717-705 Object of this Subdivision**

The object of this Subdivision is to ensure that certain rules in the *Income Tax Assessment Act 1936* relating to offshore banking units interact properly with the consolidation regime in this Part.

**717-710 Head company treated as OBU**

- (1) Division 9A of Part III of the *Income Tax Assessment Act 1936* applies to the \*head company of a \*consolidated group as if the head company were an OBU (within the meaning of that Division) at a time when a \*subsidiary member of the group is an OBU (within the meaning of that Division).
- (2) Subsection (1) operates for the head company core purposes mentioned in subsection 701-1(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 719—MEC groups**

### **Subdivision 719-A—Modified application of Part 3-90 to MEC groups**

#### **719-2 Modified application of Part 3-90 to MEC groups**

- (1) This Part (other than Division 703 and this Division) has effect in relation to a \*MEC group in the same way in which it has effect in relation to a \*consolidated group.

Note: A provision in this Part (other than in Division 703 or in this Division) mentioning 2 separate consolidated groups will, under subsection (1), have an additional operation when the groups are both MEC groups or when one is a MEC group and the other is a consolidated group.

- (2) However, that effect is subject to the modifications set out in this Division.
- (3) For the purposes of subsection (1), a reference in this Part (other than in Division 703 or this Division) to a provision in Division 703 applies as if it referred instead to that provision or the corresponding provision in Subdivision 719-B (as appropriate).

### **Subdivision 719-B—MEC groups and their members**

#### **719-4 What this Subdivision is about**

A MEC group and a potential MEC group each consist of certain Australian-resident entities that are wholly-owned subsidiaries of a foreign top company.

A company that is a first-tier subsidiary of the top company is a tier-1 company.

A MEC group cannot be formed unless there are at least 2 tier-1 companies of the top company that are eligible to be members of the group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 719-4

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A MEC group becomes consolidated at a time chosen by the eligible tier-1 companies.

One of the eligible tier-1 companies becomes the head company of the group.

The remaining members of the group are the subsidiary members.

**Table of sections**

**Basic concepts**

- 719-5 What is a *MEC group*?
- 719-10 What is a potential MEC group?
- 719-15 What is an *eligible tier-1 company*?
- 719-20 What is a *top company* and a *tier-1 company*?
- 719-25 Head company and subsidiary members of a MEC group
- 719-30 Treating entities as wholly-owned subsidiaries by disregarding employee shares
- 719-35 Treating entities held through non-fixed trusts as wholly-owned subsidiaries
- 719-40 Special conversion event—potential MEC group
- 719-45 Application of sections 703-20 and 703-25

**Choice to consolidate a potential MEC group**

- 719-50 Eligible tier-1 companies may choose to consolidate a potential MEC group
- 719-55 When choice starts to have effect

**Provisional head company**

- 719-60 Appointment of provisional head company
- 719-65 Qualifications for the provisional head company of a MEC group
- 719-70 Income year of new provisional head company to be the same as that of former provisional head company

**Head company**

- 719-75 Head company

**Notice of events affecting group**

- 719-80 Notice of events affecting MEC group

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Effects of change of head company**

- 719-85 Application  
719-90 New head company treated as substituted for old head company at all times before the transition time  
719-95 No consequences of old head company becoming, and new head company ceasing to be, subsidiary member of the group

**Basic concepts**

**719-5 What is a MEC group?**

*When MEC group comes into existence*

- (1) A **MEC (multiple entry consolidated) group** comes into existence when:
- (a) a choice, by 2 or more \*eligible tier-1 companies of a \*top company, that the \*potential MEC group derived from those companies be consolidated starts to have effect under section 719-55; or
  - (b) a \*special conversion event happens to a potential MEC group derived from an eligible tier-1 company of a top company.

*Original members of a MEC group that results from a choice*

- (2) A MEC group that results from a choice by 2 or more companies under section 719-50 consists of the potential MEC group derived from time to time from whichever one or more of those companies continue to be eligible tier-1 companies of the top company. This subsection has effect subject to subsection (4) (which deals with new eligible tier-1 members).

*Original members of a MEC group that results from a special conversion event*

- (3) A MEC group that results from a special conversion event consists of the potential MEC group derived from time to time from whichever one or more of the following companies continue to be eligible tier-1 companies of the top company:
- (a) the company mentioned in paragraph 719-40(1)(b);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 719-5

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- (b) the companies specified in the notice under paragraph 719-40(1)(e).

This subsection has effect subject to subsection (4) (which deals with new eligible tier-1 members).

*New eligible tier-1 members of a MEC group*

(4) If:

- (a) a MEC group consists of the members of a potential MEC group derived from one or more eligible tier-1 companies of a top company; and
- (b) at a particular time after the MEC group came into existence, one or more other companies become eligible tier-1 companies of the top company; and
- (c) within the applicable period worked out under subsection (6), the \*provisional head company of the MEC group gives the Commissioner a written notice, in the \*approved form:
  - (i) specifying one or more of the companies mentioned in paragraph (b); and
  - (ii) stating that the specified companies are to become members of the MEC group with effect from that time; and

(d) if:

- (i) a company specified in the notice under paragraph (c) was a member of another MEC group immediately before that time; and
- (ii) all of the eligible tier-1 companies in that other MEC group became eligible tier-1 companies of the top company at that time;

each eligible tier-1 company in that other MEC group is specified in the notice under paragraph (c);

then, with effect from that time, the MEC group mentioned in paragraph (a) is taken to consist of the potential MEC group derived from time to time from whichever one or more of the following companies continue to be eligible tier-1 companies of the top company:

- (e) the companies mentioned in paragraph (a);
- (f) the companies specified in the notice under paragraph (c).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (5) To avoid doubt, paragraph (4)(a) applies to a MEC group even if the composition of the group has been worked out because of one or more previous applications of subsection (4).
- (6) For the purposes of paragraph (4)(c), if:
- (a) subsection 719-75(1), (2) or (3) would apply to the \*MEC group concerned in relation to the \*income year of a company in which the time mentioned in paragraph (4)(b) occurred; and
  - (b) in a case where subsection 719-75(1) or (2) applies—the company will be the \*head company of the group as at the end of the income year; and
  - (c) in a case where subsection 719-75(3) applies—the company will be the \*head company of the group immediately before the group ceased to exist;

the ***applicable period*** is:

- (d) if the company is required to give the Commissioner an \*income tax return for the income year in which the time mentioned in paragraph (4)(b) occurred—the period:
  - (i) beginning at that time; and
  - (ii) ending on the day on which the company gives that return; or
- (e) if the company is not required to give the Commissioner an income tax return for the income year in which the time mentioned in paragraph (4)(b) occurred—the period:
  - (i) beginning at that time; and
  - (ii) ending at the end of the period within which the company would have been required to give an income tax return for that income year, if the company had been required to give an income tax return for that income year.

*Continued existence of MEC group*

- (7) If a MEC group (the ***first MEC group***) consists of the members of a potential MEC group derived from one or more eligible tier-1 companies of a top company, the first MEC group continues to exist until:
- (a) the potential MEC group ceases to exist; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 719-10

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- (b) there is a change in the identity of the top company, and the eligible tier-1 companies that were members of the first MEC group immediately before the change become members of another MEC group immediately after the change; or
- (c) there ceases to be a provisional head company of the first MEC group.

The first MEC group ceases to exist when one of those events happens.

Note: Subsection 719-10(7) sets out the circumstances in which the potential MEC group ceases to exist.

**719-10 What is a potential MEC group?**

- (1) A ***potential MEC group*** derived from one or more \*eligible tier-1 companies of a \*top company consists of the following members:
  - (a) those eligible tier-1 companies;
  - (b) all of the other entities (if any) which:
    - (i) meet the requirements of the table; or
    - (ii) are entities for which the requirements in section 701C-10 of the *Income Tax (Transitional Provisions) Act 1997* are met; or
    - (iii) are entities for which the requirements in section 701C-15 of the *Income Tax (Transitional Provisions) Act 1997* are met.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Requirements for other entities**

<b>Column 1 Income tax treatment requirements</b>	<b>Column 2 Australian residence requirements</b>	<b>Column 3 Ownership requirements</b>
<p>The entity must be a company, trust or partnership and, if it is a company, all or some of its taxable income (if any) must have been taxable at a rate that is or equals the *corporate tax rate apart from this Part</p> <p>The entity must not be covered by an item in the table in section 703-20</p> <p>The entity must not be a non-profit company (as defined in the <i>Income Tax Rates Act 1986</i>)</p>	<p>The entity must:</p> <p>(a) be an Australian resident (but not a *prescribed dual resident), if it is a company; or</p> <p>(b) meet the conditions in item 1, 2 or 3 of the table in section 703-25, if it is a trust; or</p> <p>(c) be a partnership</p>	<p>The entity must be:</p> <p>(a) a *wholly-owned subsidiary of any of those *eligible tier-1 companies; or</p> <p>(b) an entity that would be covered by paragraph (a), if it were assumed that all of the membership interests that are beneficially owned by any of those eligible tier-1 companies were owned by a single one of those eligible tier-1 companies</p>

- (2) For the purposes of column 3 of the table, if there are one or more entities interposed between an entity (the *test entity*) and an eligible tier-1 company, the test entity can be a wholly-owned subsidiary of the eligible tier-1 company only if each of the interposed entities:
- (a) meets the conditions in columns 1 and 2 of the table; or
  - (b) holds membership interests only as a nominee of one or more entities each of which is:
    - (i) an eligible tier-1 company of the top company; or
    - (ii) a wholly-owned subsidiary of an eligible tier-1 company of the top company, being a subsidiary that meets the conditions in columns 1 and 2 of the table.
- (3) For the purposes of subparagraph (2)(b)(ii), in determining whether an entity is a wholly-owned subsidiary of an eligible \*tier-1 company of the \*top company, assume that all of the \*membership

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 719-10

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interests that are beneficially owned by eligible tier-1 companies of the top company were owned by a single eligible tier-1 company of the top company.

*Only one eligible tier-1 company in a potential MEC group*

- (6) To avoid doubt, if:
- (a) there is only one \*eligible tier-1 company of a \*top company; and
  - (b) there are no entities which meet the requirements of the table in subsection (1); and
  - (c) there are no entities for which the requirements mentioned in subparagraph (1)(b)(ii) are met; and
  - (d) there are no entities for which the requirements mentioned in subparagraph (1)(b)(iii) are met;

the \*potential MEC group derived from the eligible tier-1 company consists of the eligible tier-1 company alone.

*When potential MEC group ceases to exist*

- (7) If a \*potential MEC group is derived from one or more \*eligible tier-1 companies of a \*top company, the potential MEC group ceases to exist when:
- (a) none of those companies are eligible tier-1 companies of the top company; or
  - (b) there is a change in the identity of the top company, and the eligible tier-1 companies that were members of the group immediately before the change are not the same as the eligible tier-1 companies that are members of the group immediately after the change.

*Continuity of potential MEC group*

- (8) If:
- (a) a \*potential MEC group is derived from one or more \*eligible tier-1 companies of a \*top company; and
  - (b) there is a change in the identity of the top company in relation to the potential MEC group; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) the eligible tier-1 companies that were members of the group immediately before the change are the same as the eligible tier-1 companies that are members of the group immediately after the change;

the change does not affect the continuity of:

- (d) the group; or
- (e) the status of any of those companies as eligible tier-1 companies of the top company.

### **719-15 What is an *eligible tier-1 company*?**

- (1) A \*tier-1 company of a \*top company is an *eligible tier-1 company* if subsection (2) does not apply to the tier-1 company.
- (2) This subsection applies to a \*tier-1 company if:
  - (a) there are one or more entities interposed between the tier-1 company and the \*top company; and
  - (b) the conditions in subsection (3) are satisfied in relation to at least one of those interposed entities.
- (3) For the purposes of paragraph (2)(b), the conditions are as follows:
  - (a) the interposed entity must be one of the following:
    - (i) a company that is a foreign resident;
    - (ii) a \*prescribed dual resident;
    - (iii) a trust that does not meet the conditions in item 1, 2 or 3 of the table in section 703-25;
    - (iv) a trust that meets the conditions in item 1, 2 or 3 of the table in section 703-25 and is not a \*wholly-owned subsidiary of another \*tier-1 company of the \*top company;
    - (v) an entity covered by an item in the table in section 703-20;
    - (vi) a company that is an Australian resident, where no part of its taxable income (if any) would be taxable at a rate that is or equals the \*general company rate;
    - (vii) a non-profit company (as defined in the *Income Tax Rates Act 1986*) that is a wholly-owned subsidiary of another tier-1 company of the top company;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 719-20

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- (b) the interposed entity must not hold \*membership interests only as nominee of one or more entities each of which is:
  - (i) another tier-1 company of the top company; or
  - (ii) an entity that is a wholly-owned subsidiary of another tier-1 company of the top company;
- (c) at least one of the following entities must hold a membership interest in the interposed entity:
  - (i) another tier-1 company of the top company;
  - (ii) a wholly-owned subsidiary of another tier-1 company of the top company;
  - (iii) an entity that holds membership interests only as a nominee of one or more entities each of which is mentioned in subparagraph (i) or (ii).
- (4) For the purposes of subparagraphs (3)(a)(iv) and (vii) and paragraphs (3)(b) and (c), in determining whether an entity is a wholly-owned subsidiary of another \*tier-1 company of the \*top company, assume that all of the \*membership interests that are beneficially owned by tier-1 companies of the top company were owned by a single tier-1 company of the top company.

**719-20 What is a *top company* and a *tier-1 company*?**

- (1) At a particular time, a company is:
  - (a) a ***top company*** if the requirements in item 1 of the table are met; or
  - (b) a ***tier-1 company*** of the top company if the requirements in item 2 of the table are met.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 719-20

<b>Top companies and tier-1 companies</b>			
<b>Column 1</b> <b>Kind of entity</b>	<b>Column 2</b> <b>Income tax treatment requirements</b>	<b>Column 3</b> <b>Residence requirements</b>	<b>Column 4</b> <b>Ownership requirements</b>
1 Top company	No specific requirements	The company must be a foreign resident	The company must not be a *wholly-owned subsidiary of another company (other than a company that is a *prescribed dual resident, or a company that is an Australian resident that fails to meet a condition in column 2 of item 2)
2 Tier-1 company	The company must have all or some of its taxable income (if any) taxed at a rate that is or equals the *corporate tax rate apart from this Part  The company must not be covered by an item in the table in section 703-20	The company must be an Australian resident (but not a *prescribed dual resident)	The company: (a) must be a *wholly-owned subsidiary of the *top company; and (b) must not be a wholly-owned subsidiary of a company that is an Australian resident (other than a company that fails to meet a condition in column 2 or 3)

- (2) For the purposes of paragraph (b) of column 4 of item 2 of the table, in determining whether a company (the test company) is a \*tier-1 company, if 2 or more other companies beneficially own all of the \*membership interests in the test company, and each of those other companies:
- (a) is a \*wholly-owned subsidiary of the \*top company; and
  - (b) meets the conditions in columns 2 and 3 of item 2 of the table;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 719-25

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the test company is taken to be a wholly-owned subsidiary of one of those other companies.

**719-25 Head company and subsidiary members of a MEC group**

- (1) The *head company* of a \*MEC group is worked out under section 719-75.
- (2) The remaining members of the group are the *subsidiary members* of the group.

**719-30 Treating entities as wholly-owned subsidiaries by disregarding employee shares**

- (1) The object of this section is to ensure that an entity is not prevented from being a \*wholly-owned subsidiary of another entity, just because there are minor holdings of \*membership interests in an entity issued under \*arrangements for employee shareholdings.
- (2) For the purposes of this Division, in determining whether an entity is a \*wholly-owned subsidiary of another entity, disregard:
  - (a) particular \*shares in a company if the shares are covered by subsection (3) and the total number of those shares is not more than 1% of the number of ordinary shares in the company; and
  - (b) particular \*membership interests in an entity if the membership interests are covered by subsection (5) and the total number of those membership interests is not more than 1% of the number of membership interests of that kind in the entity.
- (3) A \*share in a company is covered by this subsection if the share is beneficially owned by an entity and:
  - (a) the entity acquired (as defined in section 139G of the *Income Tax Assessment Act 1936*) the share either:
    - (i) in the circumstances described in subsection 139C(1) or (2) of that Act; or
    - (ii) by exercising a right the entity acquired (as so defined) in those circumstances; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) all the shares in the company available for acquisition in those circumstances are ordinary shares and all the rights available for acquisition in those circumstances are rights to acquire ordinary shares; and
- (c) if the entity acquired the share in those circumstances—at the time of the acquisition, at least 75% of the permanent employees (as defined in section 139GB of that Act) of the employer (as defined in section 139GA of that Act) were or had earlier been entitled to acquire in those circumstances:
  - (i) shares in the company or rights to acquire shares in the company; or
  - (ii) shares in a holding company (as defined in section 139GC of that Act) of the company or rights to acquire such shares; and
- (d) the conditions in subsections 139CD(6) and (7) of that Act are met in relation to the acquisition of the share by the entity; and
- (e) the company is not covered by section 139DF of that Act.

Note: Section 139CD of the *Income Tax Assessment Act 1936* sets out certain preconditions for shares and rights acquired under employee share schemes to be qualifying shares and qualifying rights. Section 139C of that Act explains when a share or right is acquired under an employee share scheme. Section 139DF prevents shares and rights relating to certain companies from being qualifying shares and rights.

- (4) A \*share may be disregarded under subsection (2) even though the condition in paragraph (3)(c) is not met, if the Commissioner has made a determination under subsection 139CD(8) of the *Income Tax Assessment Act 1936* in relation to the share.
- (5) A \*membership interest of a particular kind in an entity that is beneficially owned by another entity is covered by this subsection if:
  - (a) the membership interest forms part of a stapled security (within the meaning of Division 13A of Part III of the *Income Tax Assessment Act 1936*); and
  - (b) the stapled security is treated as a \*qualifying share because of Subdivision DB of that Division.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 719-35

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Note: The kinds of membership interest that form part of a stapled security are an ordinary share and one or more other interests that are either shares or units in a unit trust: see section 139GCD of the *Income Tax Assessment Act 1936*.

**719-35 Treating entities held through non-fixed trusts as wholly-owned subsidiaries**

- (1) This section operates to ensure that an entity (the *test entity*) is not prevented from being a \*wholly-owned subsidiary of a company, just because there is a trust that is not a \*fixed trust interposed between the test entity and the company.
- (2) For the purposes of this Division, in determining whether the test entity is a \*wholly-owned subsidiary of the company, assume that the interposed trust is a \*fixed trust and all its objects are beneficiaries.

**719-40 Special conversion event—potential MEC group**

- (1) A *special conversion event* happens at a particular time to a \*potential MEC group derived from an \*eligible tier-1 company of a \*top company if:
  - (a) at that time, the group is not a \*MEC group as a result of a choice under section 719-50; and
  - (b) immediately before that time, a company is:
    - (i) that eligible tier-1 company; and
    - (ii) the \*head company of a \*consolidated group; and
  - (c) at that time, one or more other companies become eligible tier-1 companies of the top company; and
  - (d) immediately after that time, no \*membership interests in the company mentioned in paragraph (b) are beneficially owned by another member of the potential MEC group derived from:
    - (i) the company mentioned in paragraph (b); and
    - (ii) the companies mentioned in paragraph (c); and
  - (e) within the applicable period worked out under subsection (2), the company mentioned in paragraph (b) gives the Commissioner a written notice, in the \*approved form:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (i) specifying one or more of the companies mentioned in paragraph (c); and
  - (ii) stating that a MEC group is to come into existence as a result of the specified companies becoming eligible tier-1 companies of the top company; and
- (f) if:
- (i) a company specified in the notice under paragraph (e) was a member of another MEC group immediately before that time; and
  - (ii) all of the eligible tier-1 companies in that other MEC group became eligible tier-1 companies of the top company at that time;
- each eligible tier-1 company in that other MEC group is specified in the notice under paragraph (e).
- (2) For the purposes of paragraph (1)(e), the *applicable period* is:
- (a) if the company mentioned in paragraph (1)(b) is required to give the Commissioner an \*income tax return for the income year in which the time mentioned in paragraph (1)(c) occurred—the period:
    - (i) beginning at that time; and
    - (ii) ending on the day on which the company gives that return; or
  - (b) if the company mentioned in paragraph (1)(b) is not required to give the Commissioner an income tax return for the income year in which the time mentioned in paragraph (1)(c) occurred—the period:
    - (i) beginning at that time; and
    - (ii) ending at the end of the period within which the company would have been required to give an income tax return for that income year, if the company had been required to give an income tax return for that income year.

### **719-45 Application of sections 703-20 and 703-25**

- (1) For the purposes of this Division, if an item in section 703-20 refers to an income year, an entity is covered by that item at a particular time if, and only if, that time is in that income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 719-50

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- (2) For the purposes of this Division, if a condition in item 1, 2 or 3 of the table in section 703-25 refers to an income year, an entity meets that condition at a particular time if, and only if, that time is in that income year.

**Choice to consolidate a potential MEC group**

**719-50 Eligible tier-1 companies may choose to consolidate a potential MEC group**

*Making a choice to consolidate*

- (1) If:
- (a) a \*potential MEC group (the *first group*) derived from 2 or more \*eligible tier-1 companies of a \*top company is in existence at the start of a particular day; and
  - (b) that day is after 30 June 2002; and
  - (c) none of those eligible tier-1 companies is already a member of a \*MEC group or a \*consolidated group;
- those eligible tier-1 companies may give the Commissioner a written notice in the \*approved form, jointly:
- (d) specifying that day; and
  - (e) making a choice that the first group be consolidated on and after that day.

Note: The notice must also include an appointment of an eligible tier-1 company to be the provisional head company of the \*MEC group—see subsection 719-60(1).

*Choice cannot be revoked or specified day amended*

- (2) A choice cannot be revoked and the specification of the day cannot be amended.

*Time at which choice must be given to Commissioner*

- (3) If, as a result of a choice:
- (a) subsection 719-75(1), (2) or (3) would apply to the \*MEC group concerned in relation to the \*income year of a company in which the specified day occurred; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) in a case where subsection 719-75(1) or (2) applies—the company will be the \*head company of the group as at the end of the income year; and
- (c) in a case where subsection 719-75(3) applies—the company will be the \*head company of the group immediately before the group ceased to exist;

notice of the choice must be given to the Commissioner:

- (d) if the company is required to give the Commissioner an \*income tax return for the income year in which the specified day occurred—during the period:
  - (i) beginning on the specified day; and
  - (ii) ending on the day on which the company gives that return; or
- (e) if the company is not required to give the Commissioner an income tax return for the income year in which the specified day occurred—during the period:
  - (i) beginning on the specified day; and
  - (ii) ending at the end of the period within which the company would have been required to give an income tax return for that income year, if the company had been required to give an income tax return for that income year.

*Company ceases to be an eligible tier-1 company before choice is given to the Commissioner*

(4) If:

- (a) as a result of a choice:
  - (i) subsection 719-75(1), (2) or (3) would apply to the \*MEC group concerned in relation to the \*income year of a company in which the specified day occurred; and
  - (ii) in a case where subsection 719-75(1) or (2) applies—the company will be the \*head company of the group as at the end of the income year; and
  - (iii) in a case where subsection 719-75(3) applies—the company will be the \*head company of the group immediately before the group ceased to exist; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 719-55

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- (b) another company (the *other company*) that was an eligible tier-1 company at the start of the specified day ceased to exist at a time before the day on which notice of the choice was given to the Commissioner; and
- (c) having regard to all relevant circumstances, it would be reasonable to conclude that the other company would have been a party to the choice if the other company had continued to exist;

the other company is taken to have authorised the company that will be the head company as mentioned in subparagraph (a)(ii) or (iii):

- (d) to make the choice on behalf of the other company; and
- (e) to do, on behalf of the other company, anything else under:
  - (i) subsection (1) of this section; or
  - (ii) subsection 719-60(1) or (3).

**719-55 When choice starts to have effect**

*When choice starts to have effect*

- (1) A choice under section 719-50 is taken to have started to have effect on the day specified in the choice.

*Choice does not have effect—notice is wrong*

- (2) A choice does not have effect (and is taken not to have had effect) if the Commissioner is satisfied that the choice contains information that is incorrect in a material particular.

Note: The choice does not have effect if the choice omitted material information, because the notice would not have been in the approved form.

*Commissioner may give effect to choice despite wrong notice*

- (3) Subsection (2) does not prevent the choice from having effect as described in subsection (1) if the Commissioner gives the company that, as a result of the choice, will become the \*provisional head company of the group, written notice that the choice has effect despite the incorrect information.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Provisional head company

### 719-60 Appointment of provisional head company

#### *Appointment on formation of group—choice*

- (1) If companies give notice of a choice under section 719-50, the notice must include an appointment, made jointly by the companies, of one of those companies to be the provisional head company of the \*MEC group concerned. The appointment comes, or is taken to have come, into force at the time when the choice starts or started to have effect.

#### *Appointment on formation of group—special conversion event*

- (2) If a \*special conversion event happens to a \*potential MEC group, the \*eligible tier-1 companies that were the members of the MEC group that resulted from the event are taken to have appointed the company mentioned in paragraph 719-40(1)(b) as the provisional head company of the \*MEC group. The appointment is taken to have come into force when the event happened.

#### *Appointment after formation of group*

- (3) If a \*cessation event happens to the \*provisional head company of a \*MEC group, then:
  - (a) if:
    - (i) the group came into existence because of a choice under section 719-50; and
    - (ii) the event happens more than 28 days before notice of the choice is given;  
on the day on which notice of the choice is given; or
  - (b) in any other case—within 28 days after the cessation event; the \*eligible tier-1 companies that are or were members of the MEC group immediately after the cessation event may give the Commissioner a written notice in the \*approved form, jointly appointing one of those companies to be the provisional head company of the group. The appointment is taken to have come into force immediately after the cessation event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 719-65

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*Qualifications for provisional head company*

- (4) An appointment of a company under subsection (1) or (3) as the \*provisional head company of a \*MEC group has no effect unless, at the time the appointment comes into force, the company is qualified to be the \*provisional head company of the MEC group under section 719-65.

*Appointment remains in force until cessation event*

- (5) The appointment of a company as the \*provisional head company of a \*MEC group remains in force until a \*cessation event happens to the company.

*What is a cessation event?*

- (6) A **cessation event** happens to a \*provisional head company of a \*MEC group if:
- (a) the company ceases to be qualified to be the \*provisional head company of the group under section 719-65; or
  - (b) the company ceases to exist.

**719-65 Qualifications for the provisional head company of a MEC group**

*Qualifications for the provisional head company*

- (1) A company is qualified to be the \*provisional head company of a \*MEC group if:
- (a) the company is an \*eligible tier-1 company of the \*top company; and
  - (b) no \*membership interests in the company are beneficially owned by another member of the group.
- (2) Subsection (1) has effect subject to subsection (3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Period during which new provisional head company must have been a member of the group*

(3) If:

- (a) a company (the *new company*) is to be appointed as the \*provisional head company of a \*MEC group under subsection 719-60(3); and
- (b) the appointment will come into force immediately after a \*cessation event happens to the former provisional head company of the group; and
- (c) a company (the *original company*) (which may be the former provisional head company) was appointed as the provisional head company of the group under subsection 719-60(1) or (2);

the new company is not qualified to be the provisional head company of the group unless the new company has been a member of the group at all times during the period:

- (d) beginning at whichever of the following times is applicable:
  - (i) if the group came into existence as a result of a choice under section 719-50, and the cessation event happened in the income year of the original company in which the group came into existence—the time when the group came into existence;
  - (ii) in any other case—the start of the income year of the former provisional head company in which the cessation event happened; and
- (e) ending when the cessation event happened.

**719-70 Income year of new provisional head company to be the same as that of former provisional head company**

If:

- (a) a company (the *new company*) is appointed as the \*provisional head company of a \*MEC group under subsection 719-60(3); and
- (b) the appointment comes into force immediately after a \*cessation event happens to the former provisional head company of the group;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 719-75

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then:

- (c) if, for the income year in which the cessation event happened, the former provisional head company had not adopted an accounting period in place of the financial year concerned—the new company is taken not to have adopted an accounting period in place of that financial year; or
- (d) if, for the income year in which the cessation event happened, the former provisional head company had adopted an accounting period in place of the financial year concerned—the new company is taken to have adopted an accounting period in place of that financial year that is the same as the accounting period adopted by the former provisional head company.

## **Head company**

### **719-75 Head company**

*Group in existence throughout income year*

- (1) If:
  - (a) a company is the \*provisional head company of a \*MEC group at the end of the income year of the company; and
  - (b) the group was in existence throughout the income year;the company is the head company of the group at all times during the income year.

*Group comes into existence in income year*

- (2) If:
  - (a) a company is the \*provisional head company of a \*MEC group at the end of the income year of the company; and
  - (b) the group is in existence at the end of the income year; and
  - (c) the group came into existence in the income year;that company is the head company of the group at all times during the period:
  - (d) beginning when the group came into existence; and
  - (e) ending at the end of the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Group ceases to exist in income year*

- (3) If:
- (a) a \*MEC group ceases to exist in an income year of a company; and
  - (b) the company was the \*provisional head company of the group immediately before the group ceased to exist;
- that company is the head company of the group at all times during the period:
- (c) beginning at whichever is the later of:
    - (i) the start of the income year; and
    - (ii) the time the group came into existence; and
  - (d) ending at the time when the group ceased to exist.

**Notice of events affecting group**

**719-80 Notice of events affecting MEC group**

- (1) If an event (the *notifiable event*) described in column 2 of an item of the table happens in relation to a \*MEC group, the entity described in column 3 of the item must give the Commissioner notice in the \*approved form of the notifiable event.

<b>Notice of events</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>If this event happens:</b>	<b>Notice must be given by:</b>
1.	An entity becomes a member of a *MEC group	The *provisional head company of the group
2.	An entity ceases to be a member of a MEC group	The provisional head company of the group
3.	A *cessation event happens to the *provisional head company of a MEC group	The company, or the person (if any) who was its public officer just before it ceased to exist if the company ceased to be the provisional head company because it ceases to exist

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 719-85

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- (2) The entity described in column 3 of the relevant item must give notice of the notifiable event:
- (a) if:
    - (i) the group came into existence because of a choice under section 719-50; and
    - (ii) the notifiable event happens more than 28 days before notice of the choice is given;on the day on which notice of the choice is given; or
  - (b) if:
    - (i) the group results from a \*special conversion event; and
    - (ii) a choice under section 703-50 is made in relation to the \*consolidated group mentioned in paragraph 719-40(1)(b); and
    - (iii) the notifiable event happens more than 28 days before notice of the choice is given;on the day on which notice of the choice is given; or
  - (c) in any other case—within 28 days after the notifiable event.

### Effects of change of head company

#### 719-85 Application

Sections 719-90 to 719-95 set out the effects if:

- (a) a company (the *old head company*) is the \*head company of a \*MEC group at the end of an income year; and
- (b) a different company (the *new head company*) is the head company of the group at the start of the next income year (the *transition time*).

Note: This case can arise from the operation of section 719-75, which treats an entity that is the provisional head company of the group at a certain time in the income year as being the group's head company at all times in the income year when the group is in existence.

The old head company is also taken to become a subsidiary member of the group at the transition time, and the new head company is taken to cease being a subsidiary member at that time. Section 719-95 ensures that these results do not change the tax position of the group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**719-90 New head company treated as substituted for old head company at all times before the transition time**

- (1) Everything that happened in relation to the old head company before the transition time is taken to have happened in relation to the new head company instead, just as if the new head company had been the old head company at all times before the transition time.

Note: This section treats the new head company as having in effect assumed the identity of the old head company throughout the period before the transition time, but without affecting any of the other attributes of the old head company.

- (2) To avoid doubt, subsection (1) also covers everything that, immediately before the transition time, was taken, because of:
- (a) section 701-1 (Single entity rule); or
  - (b) section 701-5 (Entry history rule); or
  - (c) section 703-75 (about the effects of choice to continue consolidated group after shelf company becomes new head company); or
  - (d) one or more previous applications of this section;
- to have happened in relation to the old head company.
- (3) Subsections (1) and (2) have effect:
- (a) for the head company core purposes in relation to an income year ending after the transition time; and
  - (b) for the entity core purposes in relation to an income year ending after the transition time.
- (4) Subsections (1) and (2) have effect subject to:
- (a) section 701-40 (Exit history rule); and
  - (b) a provision of this Act to which section 701-40 is subject because of section 701-85 (about exceptions to the core rules in Division 701).

Note: An example of provisions covered by paragraph (b) of this subsection is section 707-410, which ensures that section 701-40 (Exit history rule) does not result in a leaving entity inheriting a loss of any sort.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 719-95

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**719-95 No consequences of old head company becoming, and new head company ceasing to be, subsidiary member of the group**

- (1) A provision of this Part that applies on an entity becoming a \*subsidiary member of a \*MEC group does *not* apply to an entity being taken to have become such a member because the entity stopped being the \*head company of the group as mentioned in section 719-85, unless the provision is expressed to apply despite this subsection.

Note: An example of the effect of this subsection is that section 701-5 (Entry history rule) does not apply. See instead section 719-90.

- (2) To avoid doubt, subsection (1) does not affect the application of subsection 701-1(1) (the single entity rule).

- (3) A provision of this Part that applies on an entity ceasing to be a \*subsidiary member of a \*MEC group does *not* apply to an entity being taken to cease being such a member because the entity became the \*head company of the group as mentioned in section 719-85, unless the provision is expressed to apply despite this subsection.

Note: An example of the effect of this subsection is that section 701-40 (Exit history rule) does not apply. See instead section 719-90.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 719-C—MEC group cost setting rules: joining cases**

### **Guide to Subdivision 719-C**

#### **719-150 What this Subdivision is about**

When an entity (other than an eligible tier-1 company) becomes a subsidiary member of a MEC group, the tax cost of its assets is set at a tax cost setting amount that is worked out in accordance with Divisions 701 and 705 as modified by this Subdivision. Assets of eligible tier-1 companies becoming members of a MEC group do not have their tax cost set.

#### **Table of sections**

##### **Application and object**

719-155 Object of this Subdivision

##### **Modified application of tax cost setting rules for joining**

719-160 Tax cost setting rules for joining have effect with modifications

719-165 Trading stock value not set for assets of eligible tier-1 companies

719-170 Modified effect of subsections 705-175(1) and 705-185(1)

#### **Application and object**

##### **719-155 Object of this Subdivision**

The object of this Subdivision is to modify the tax cost setting rules in Divisions 701 and 705 so that they take account of the special characteristics of \*MEC groups.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



## Modified application of tax cost setting rules for joining

### 719-160 Tax cost setting rules for joining have effect with modifications

(1A) This section applies if an entity (the *MEC joining entity*) becomes a \*subsidiary member of a \*MEC group at a time (the *MEC joining time*).

(1) This section has effect for the head company core purposes set out in subsection 701-1(2).

#### *General modifying rule*

(2) The provisions mentioned in subsection (3) operate, for the purposes of setting the \*tax cost of an asset of the MEC joining entity, as if each \*subsidiary member of the group (including the MEC joining entity) that is an \*eligible tier-1 company at the MEC joining time were a part of the \*head company of the group, rather than a separate entity.

Note 1: This subsection means that references in those provisions to matters internal to the group operate as if eligible tier-1 companies in the group were parts of the head company of the group. For example:

- (a) provisions operating if the head company holds (whether directly or indirectly) membership interests in another entity operate even if an eligible tier-1 company actually holds those interests; and
- (b) provisions operating if the head company owns or controls another entity operate even if one or more eligible tier-1 companies actually own or control that other entity; and
- (c) provisions operating if an entity is interposed between the head company and another entity operate even if the first entity is actually interposed between an eligible tier-1 company and the other entity.

Note 2: If the MEC joining entity is an eligible tier-1 company, this subsection means the assets of the entity do not have their tax cost reset at the MEC joining time. This is because Subdivision 705-A (and related provisions) reset the tax cost of assets of *subsidiary* members of a group, but not assets of the head company.

(3) The provisions are:

- (a) section 701-10 (about setting the tax cost of assets of an entity joining a group); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) Subdivision 705-A; and
- (c) any other provision of this Act giving Subdivision 705-A a modified effect in circumstances other than those covered by that Subdivision.

Note: An example of provisions covered by paragraph (c) are the provisions of Subdivision 705-B giving Subdivision 705-A a modified effect when a consolidated group is formed.

### **719-165 Trading stock value not set for assets of eligible tier-1 companies**

- (1) This section applies if an entity (the *MEC joining entity*) becomes a \*subsidiary member of a \*MEC group at a time (the *MEC joining time*).
- (2) Subsection 701-35(4) (setting value of trading stock at tax-neutral amount) does not apply to the assets of the MEC joining entity if it is an \*eligible tier-1 company at the MEC joining time.

### **719-170 Modified effect of subsections 705-175(1) and 705-185(1)**

- (1) This section applies if all of the \*members of a \*MEC group (the *acquired group*) become members of another MEC group, or of a \*consolidated group, at a particular time (the *acquisition time*) as a result of the \*acquisition of \*membership interests in:
  - (a) the \*head company of the acquired group; and
  - (b) other entities that were \*eligible tier-1 companies of the acquired group just before the acquisition time.
- (2) Subsections 705-175(1) and 705-185(1) have effect as if a \*membership interest in an entity mentioned in paragraph (1)(b) of this section were a membership interest in the \*head company of the acquired group.

Note 1: If the *acquiring* group is a MEC group, and the head company of the acquired group becomes an eligible tier-1 company of the *acquiring* group, the assets of the members of the acquired group do *not* have their tax cost reset at the acquisition time. This is because:

- (a) section 719-160 treats an entity becoming an eligible tier-1 company of the *acquiring* group as if it were a part of the head company of that group; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-90** Consolidated groups

**Division 719** MEC groups

**Section 719-250**

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- (b) section 705-185 treats the subsidiary members of the acquired group as part of the head company of the acquired group.

Note 2: If:

- (a) the *acquiring* group is a MEC group, but the head company of the acquired group does *not* become an eligible tier-1 company of the *acquiring* group; or
- (b) the *acquiring* group is a consolidated group and the acquired group is a MEC group;

the assets of the members of the acquired group have their tax cost reset at the acquisition time (section 719-160 does not preclude tax cost resetting in these cases). For the purposes of resetting the tax cost of those assets, section 705-185 treats the subsidiary members of the acquired group as part of the head company of the acquired group.

**Subdivision 719-F—Losses**

**Guide to Subdivision 719-F**

**719-250 What this Subdivision is about**

This Subdivision modifies the rules about transferring and utilising losses so the rules operate appropriately in relation to MEC groups, taking account of the special characteristics of those groups. The modifications mainly affect:

- (a) rules about maintaining the same ownership to be able to utilise a loss; and
- (b) rules for working out how much of a loss can be utilised by reference to bundles of losses and their available fractions.

**Table of sections**

**Maintaining the same ownership to be able to utilise loss**

719-255 Special rules

719-260 Special test for utilising a loss because a company maintains the same owners

719-265 What is the test company?

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- 719-270 Assumptions about the test company having made the loss for an income year
- 719-275 Assumptions about nothing happening to affect direct and indirect ownership of the test company
- 719-280 Assumptions about the test company failing to meet the conditions in section 165-12

**Same business test and change of head company**

- 719-285 Same business test and change of head company

**Bundles of losses and their available fractions**

- 719-300 Application
- 719-305 Subdivision 707-C affects utilisation of losses made by ongoing head company while it was head company
- 719-310 Adjustment of available fractions for bundles of losses previously transferred to ongoing head company
- 719-315 Further adjustment of available fractions for all bundles
- 719-320 Limit on utilising losses other than the prior group losses
- 719-325 Cancellation of all losses in a bundle

**Maintaining the same ownership to be able to utilise loss**

**719-255 Special rules**

- (1) This section and section 719-260 have effect for the purposes of working out whether a loss can be \*utilised for an income year (the *claim year*) by a company (the *focal company*) that made the loss if:
  - (a) section 165-12 is relevant to the question whether the focal company can utilise the loss; and
  - (b) the focal company is the \*head company of a \*MEC group at any time in its \*ownership test period for the loss (as affected by section 707-205, if relevant).

Note: If the focal company made the loss because of a transfer under Subdivision 707-A, section 707-205 has the effect that the ownership test period starts for the focal company at the time of the transfer.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 719-260

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*Section 707-210 does not have effect*

- (2) Section 707-210 does not have effect for the purposes of working out whether the focal company can \*utilise the loss for the claim year.

Note: Section 707-210 is about whether a company can utilise a loss it made because the loss was transferred to it under Subdivision 707-A because the transferor met the conditions in section 165-12.

**719-260 Special test for utilising a loss because a company maintains the same owners**

*Meeting the conditions in section 165-12*

- (1) The focal company is taken to meet the conditions in section 165-12 for the claim year and the loss if and only if the company (the *test company*) identified in relation to the focal company in accordance with section 719-265 would have met those conditions for that year on the relevant assumptions in:
- (a) section 719-270 (which is about assuming the test company made the loss for a particular income year); and
  - (b) section 719-275 (which is about assuming that nothing happened in relation to certain things that would affect whether the test company would meet those conditions); and
  - (c) section 719-280 (which is about assuming that the test company would have failed to meet those conditions in certain circumstances).

*Focal company's failure to meet conditions in section 165-12*

- (2) The focal company is taken to fail to meet a condition in section 165-12 only at:
- (a) the first time the test company would have failed to meet the condition on the relevant assumptions mentioned in subsection (1); or
  - (b) the \*test time described in subsection 166-5(6) for the test company, if:
    - (i) Division 166 is relevant to working out whether the test company could have \*utilised the loss for the claim year

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

on the relevant assumptions mentioned in paragraphs (1)(a) and (b); and

- (ii) the test company is not assumed under section 719-280 to fail to meet the condition before the test time.

Note: If the focal company is taken to fail to meet a condition in section 165-12, the focal company will not be able to utilise the loss for the claim year unless the focal company meets the condition in section 165-13 by satisfying the same business test. That test applies to the focal company (and not the test company).

*Same business test for focal company under Division 166*

- (3) If subsection 166-5(5) affects whether the focal company can \*utilise the loss for the claim year because the focal company is a \*widely held company or an \*eligible Division 166 company, or both, during the year, subsection 166-5(6) operates as if it required the \*same business test to be applied to the \*business the focal company carried on just before the time described in subsection (2) of this section.

*Same business test for focal company to transfer loss*

- (4) If subsection 707-125(4) is relevant to working out whether the focal company can transfer the loss to a company under Subdivision 707-A, that subsection:
- (a) has effect as if subsection 707-125(5) described the focal company's income year containing the time at which the focal company is taken under subsection (2) of this section to fail to meet a condition in section 165-12; and
- (b) has effect despite subsection (3) of this section.

Note: For working out whether certain losses can be transferred under Subdivision 707-A, subsection 707-125(4) modifies the operation of subsection 166-5(6) by extending the same business test period to include the income year described in subsection 707-125(5).

### **719-265 What is the test company?**

- (1) To identify for the purposes of section 719-260 the company that is the test company for the focal company for the loss:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 719-265

- (a) first, identify the test company for the focal company by applying whichever one of subsections (2), (3), (4) and (6) is relevant; and
- (b) then, if the condition in column 1 of an item of the table is met, apply this section again to identify the test company as if the company described in column 2 of the item were the focal company, taking account only of things that happened before the event described in column 3 of the item.

**Repeated application of this section**

	<b>Column 1 If the test company for the focal company is identified:</b>	<b>Column 2 Apply this section again as if this company were the focal company:</b>	<b>Column 3 Take account only of things that happened before this event:</b>
1	Under subsection (2) as the company that is the test company for the transferor	The transferor mentioned in subsection (2)	The transfer mentioned in subsection (2)
2	Under subsection (6) as the company that is the test company for the first head company	The first head company mentioned in subsection (6)	The first head company ceasing to be the *head company of the *MEC group mentioned in subsection (6)

Note: More than 2 applications of this section may be needed to identify the test company for the focal company.

*COT transfer of loss to focal company*

- (2) The test company for the focal company is the company described in column 2 of the relevant item of the table if the focal company made the loss because of a \*COT transfer to the focal company.

**Test company for the focal company**

	<b>Column 1 If:</b>	<b>Column 2 The test company for the focal company is:</b>
1	The focal company and the transferor are the same company	The focal company

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Test company for the focal company**

<b>Column 1 If:</b>	<b>Column 2 The test company for the focal company is:</b>
2 The focal company and the transferor are different companies	The company that is the test company for the transferor

*Loss transferred because same business test satisfied*

- (3) The test company for the focal company is the company described in column 2 of the relevant item of the table if the focal company made the loss because the loss was transferred under Subdivision 707-A to the focal company from a company because it satisfied the \*same business test for:
- (a) the \*same business test period; and
  - (b) the \*test time specified in Division 165 or 166 or section 707-125.

**Test company for the focal company**

<b>Column 1 If:</b>	<b>Column 2 The test company for the focal company is:</b>
1 The focal company was the *head company of a *MEC group at the time of the transfer	The company that was the *top company for the MEC group at the time of the transfer
2 The focal company was <i>not</i> the *head company of a *MEC group at the time of the transfer	The focal company

*Loss not transferred from a company*

- (4) The test company for the focal company is the company described in column 2 of the relevant item of the table if the focal company made the loss *apart from* a transfer of the loss under Subdivision 707-A from a company.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 719-265

<b>Test company for the focal company</b>	
<b>Column 1 If:</b>	<b>Column 2 The test company for the focal company is:</b>
1 The focal company made the loss apart from Subdivision 707-A and was the *head company of a *MEC group at the start of the income year for which it made the loss	The company that was the *top company for the MEC group at the start of the income year
2 The focal company made the loss because it was transferred under Subdivision 707-A to the focal company as the *head company of a *MEC group from an entity other than a company	The company that was the *top company for the MEC group at the time of the transfer
3 Neither item 1 nor item 2 applies	The focal company

*Relationship between subsections (2), (3) and (4)*

- (5) Subsection (2) or (3), and *not* subsection (4), is relevant for identifying the test company for the focal company if the focal company made the loss apart from a transfer under Subdivision 707-A, and later transferred the loss to itself under that Subdivision.

*Change of head company*

- (6) If, under section 719-90, the focal company is taken to have made the loss because:
- (a) a company (the *first head company*) other than the focal company made the loss apart from that section and either:
    - (i) was the \*head company of a \*MEC group at any time during the income year for which it made the loss; or
    - (ii) became the head company of a MEC group after that income year (without having been a \*subsidiary member of the group before becoming the head company); and
  - (b) the focal company was later the head company of the MEC group;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the test company for the focal company is the company that is the test company for the first head company.

Note: Section 719-90 applies if there is a change in the head company of a MEC group, treating the later head company as if what had happened to the earlier head company had happened to the later head company.

- (7) Subsections (2), (3) and (4) and section 719-90 have effect subject to subsection (6) of this section.

**719-270 Assumptions about the test company having made the loss for an income year**

*If test company was top company for focal company's MEC group*

- (1) If the test company was the \*top company for a \*MEC group and the focal company is or was the \*head company of that MEC group, assume that the test company made the loss for an income year starting at the relevant time shown in the table.

**Start of income year for which test company is assumed to have made loss**

<b>If:</b>	<b>The relevant time is:</b>
1 The focal company made the loss apart from Subdivision 707-A	The start of the income year for which the focal company made the loss
2 The focal company made the loss because it was transferred to the focal company under Subdivision 707-A	The time of the transfer

Note: Subsection (1) applies even if the test company is still the top company for the MEC group at the end of the claim year.

*If test company is focal company or first head company*

- (2) If the test company is:
- (a) the focal company; or
  - (b) the first head company identified in subsection 719-265(6) by reference to the focal company;
- assume that the test company made the loss for an income year starting at the relevant time shown in the table.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 719-270

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**Start of income year for which test company is assumed to have made loss**

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<b>If:</b>	<b>The relevant time is:</b>
1 The test company made the loss apart from Subdivision 707-A (even if the test company later transferred the loss to itself in a *COT transfer)	The start of the income year for which the test company made the loss
2 The test company made the loss because it was transferred to the test company under Subdivision 707-A in a transfer other than a *COT transfer (even if the test company first made the loss apart from that Subdivision)	The time of the transfer

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- (3) If the test company is the first head company, disregard section 719-90 for the purposes of working out the relevant time using the table in subsection (2) of this section.

Note: This ensures that section 719-90 does not make the items in the table inapplicable by treating the test company as if another company had made the loss instead of the test company.

*If subsections (1) and (2) do not apply*

- (4) If neither subsection (1) nor subsection (2) applies, assume that the test company made the loss for an income year starting at the relevant time shown in the table.

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**Start of income year for which test company is assumed to have made loss**

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<b>If:</b>	<b>The relevant time is:</b>
1 The test company made the loss apart from Subdivision 707-A (even if the test company later transferred the loss to itself in a *COT transfer)	The start of the income year for which the test company made the loss
2 The test company made the loss because it was transferred to the test company under Subdivision 707-A in a transfer other than a *COT transfer (even if the test company first made the loss apart from that Subdivision)	The time of the transfer

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Start of income year for which test company is assumed to have made loss**

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<b>If:</b>	<b>The relevant time is:</b>
3 The test company is the test company for the focal company for the loss because the test company was the *top company for a *MEC group whose *head company made the loss before it was transferred to the focal company under Subdivision 707-A	The time that was the relevant time under subsection (1) for the test company as the test company for the <i>first</i> company for which the test company was the test company for the loss

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Note: Subsection (4) applies if the focal company made the loss because of a COT transfer of the loss to the focal company from another company.

- (5) Disregard section 719-90 for the purposes of items 1 and 2 of the table in subsection (4) of this section if the test company was identified using subsection 719-265(6).

Note: This ensures that section 719-90 does not make those items inapplicable by treating the test company as if another company had made the loss instead of the test company.

*Other events do not override assumption*

- (6) If the test company transferred the loss to itself or another company under Subdivision 707-A, assume that the transfer did not affect, for income years ending after the transfer:
- (a) the fact that the test company made the loss; or
  - (b) the income year for which the test company is assumed (under subsection (1), (2) or (4)) to have made the loss.

**719-275 Assumptions about nothing happening to affect direct and indirect ownership of the test company**

- (1) This section sets out an assumption that must be made whenever an event described in subsection (2) occurs:
- (a) after the time assumed under section 719-270 to be the start of the income year for which the test company made the loss; and
  - (b) before the end of the claim year;
- (whether or not the test company or the focal company is one of the companies mentioned in the description of the event).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 719-275

- (2) Assume that, after an event described in an item of the table, nothing happens in relation to \*membership interests or voting power in an entity described in the item that would affect whether the test company would meet the conditions in section 165-12 for the claim year and the loss.

**Assumption about nothing happening to membership interests or voting power**

<b>If this event occurs:</b>	<b>Assume that nothing happens in relation to membership interests or voting power in:</b>
1 There is a *COT transfer of the loss to the *head company of a *MEC group (but not from a company that was the head company of another MEC group just before the transfer)	The transferor or an entity that was at the time of the transfer interposed between the transferor and the *top company for the MEC group
2 There is a *COT transfer of the loss to the *head company of a *MEC group from a company that was the head company of another MEC group just before the transfer	The company that was just before the transfer the *top company for the other MEC group, or an entity that was at the time of the transfer interposed between that company and the top company of the MEC group to whose head company the loss was transferred
3 There is a change in the identity of the *top company for a *MEC group whose *head company has made the loss	The company that ceased to be the top company for the MEC group as part of the change or an entity that was at the time of the change interposed between that company and the company that became the top company for the MEC group as part of the change
4 A company that has made the loss becomes at a time the *head company of a *MEC group (as the first company to be the head company of the group) and has not before that time transferred the loss to another company under Subdivision 707-A	The company or an entity that was at the time interposed between the company and the *top company for the MEC group
5 There is a *COT transfer of the loss to the *head company of a *consolidated group from another company	The other company or an entity that was at the time of the transfer interposed between the other company and the head company

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) For the purposes of this section, a company is taken to make a loss:
  - (a) at the *start* of the income year for which the company makes the loss, if it makes the loss apart from a transfer under Subdivision 707-A (even if the company later transfers the loss to itself under that Subdivision); or
  - (b) at the time the loss is transferred to the company under that Subdivision, if the company makes the loss because of that transfer.
- (4) Disregard section 719-90 for the purposes of making an assumption on the basis of item 1 of the table in subsection (2) of this section if (apart from that section):
  - (a) the \*COT transfer mentioned in that item was from the \*head company of the \*MEC group to itself; and
  - (b) for an income year starting after the transfer, another company was the head company of the group.

**719-280 Assumptions about the test company failing to meet the conditions in section 165-12**

- (1) Assume that the test company fails to meet the conditions in section 165-12 at the time an event described in subsection (2), (3) or (4) happens after the start of the \*ownership test period for the focal company in relation to:
  - (a) the \*MEC group whose \*head company was the focal company; or
  - (b) the \*potential MEC group whose membership was the same as the membership of that MEC group.

Note: If the test company is assumed to fail to meet the conditions in section 165-12 for the claim year and the loss, the focal company is taken (under section 719-260) to have failed to meet those conditions.

- (2) One event is the \*potential MEC group ceasing to exist.
- (3) Another event is something happening that meets these conditions:
  - (a) the thing happens at a time in relation to \*membership interests in one or more of these entities:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 719-285

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- (i) a company that was just before that time a \*member of the \*MEC group and an \*eligible tier-1 company of the \*top company for the MEC group;
  - (ii) an entity interposed between a company described in subparagraph (i) and the company that was the top company for the group just before that time;
  - (b) the thing does not cause the \*potential MEC group to cease to exist but does cause a change in the identity of the top company for the potential MEC group.
- (4) Another event is the \*MEC group ceasing to exist because there ceases to be a \*provisional head company of the group.

*Other causes of failure to meet conditions in section 165-12*

- (5) To avoid doubt, this section does not limit the circumstances in which the test company would have failed to meet the conditions in section 165-12 on the relevant assumptions set out in sections 719-270 and 719-275.

### Same business test and change of head company

#### 719-285 Same business test and change of head company

In working out whether the \*same business test is satisfied by a company that, after the \*test time, became the \*head company of a \*MEC group that existed before that time, disregard what happened in relation to the company before it became a \*member of the group. Section 719-90 has effect subject to this section.

Note 1: The same business test is to be applied on the basis that the company's business at the test time was the business that section 719-90 treats the company as having carried on at that time, except to the extent that section 719-90 attributes to the company its actual history before it became a member of the MEC group.

Note 2: Section 719-90 applies if there is a change in the head company of a MEC group, treating the later head company as if what had happened to the earlier head company had happened to the later head company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Bundles of losses and their available fractions

### 719-300 Application

- (1) Sections 719-305, 719-310, 719-315, 719-320 and 719-325 operate only if:
  - (a) a company (the *ongoing head company*) is the \*head company of a \*MEC group for an income year or a period in an income year; and
  - (b) an event (the *application event*) described in subsection (2) or (3) happens at a time in the income year in relation to the group.
- (2) One application event is that another company (the *new tier-1 member*) becomes both a \*member of the \*MEC group and an \*eligible tier-1 company of the \*top company for the group.
- (3) The other application event is that the \*MEC group comes into existence as a result of a \*special conversion event happening to the \*potential MEC group derived from the ongoing head company.

Note: This application event happens only if the ongoing head company was the head company of a consolidated group just before the special conversion event.

#### *Exceptions for events involving subsidiary members of group*

- (4) Those sections do not operate because of the event described in subsection (2) if the new tier-1 member was a \*subsidiary member of the \*MEC group immediately before the event.
- (5) Those sections do not operate because of the event described in subsection (3) if all the other companies that are described in paragraph 719-40(1)(c) and are involved in the \*special conversion event were \*subsidiary members of the \*consolidated group just before the event.
- (6) Subsections (4) and (5) have effect despite subsection (1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**719-305 Subdivision 707-C affects utilisation of losses made by ongoing head company while it was head company**

- (1) For income years ending after the application event happened, Subdivision 707-C affects the \*utilisation of all losses (the *prior group losses*) of any \*sort that the ongoing head company made (apart from Subdivision 707-A) for an income year that:
  - (a) was an income year during which the \*MEC group was in existence (or, if the application event involved the MEC group coming into existence because of a \*special conversion event involving a \*consolidated group, the consolidated group was in existence); and
  - (b) was before the income year in which the event happened.

*Prior group losses taken to have been transferred at time of event*

- (2) The ongoing head company is taken to have transferred the prior group losses to itself under Subdivision 707-A at the time of the application event, for the purposes of:
  - (a) the application of Subdivision 707-C in relation to the \*utilisation of the prior group losses and other losses; and
  - (b) future applications of this section and section 719-310.

*Available fraction for bundle of losses*

- (3) For the purpose of working out the \*available fraction for the \*bundle of the prior group losses at the time of the transfer, work out the ongoing head company's \*modified market value at the time of the application event as if:
  - (a) the ongoing head company had become a \*member of a \*consolidated group at the time; and
  - (b) each \*subsidiary member of the MEC group or consolidated group of which the ongoing head company was the \*head company just before the event were a part of the ongoing head company (and not a separate entity) at the time of the event; and
  - (c) each subsidiary member of that group at an earlier time had been a part of the ongoing head company (and not a separate entity) at the earlier time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Deemed transfer does not affect year of loss*

- (4) Subdivision 707-C affects the \*utilisation as if each of the prior group losses had been made by the ongoing head company for the income year for which the company actually made the loss (and not the income year in which the application event happened). Subsection (2) has effect subject to this subsection.

**719-310 Adjustment of available fractions for bundles of losses previously transferred to ongoing head company**

- (1) This section affects the \*available fraction for each \*bundle of losses that were transferred to the ongoing head company under Subdivision 707-A before the application event.

- (2) The *available fraction* for the \*bundle is reduced or maintained just after the event by multiplying it by this fraction:

$$\frac{\text{*Market value of the ongoing head company just before the application event}}{\text{*Market value of the ongoing head company just after the application event}}$$

Note: The market value of the ongoing head company at the time just before or just after the application event will be worked out on the basis that subsidiary members of the MEC group or consolidated group headed by the ongoing head company at that time are part of the ongoing head company, because of section 701-1 (the single entity rule).

- (3) Item 3 of the table in subsection 707-320(2) does *not* apply to affect the \*available fraction for the \*bundle because of:
- (a) the transfer mentioned in section 719-305; or
  - (b) the transfer (if any) to the ongoing head company of a loss of any \*sort under Subdivision 707-A at the time of the application event from an entity that became a \*subsidiary member of the \*MEC group as a result of the event.

**719-315 Further adjustment of available fractions for all bundles**

- (1) If, because of the application event:
- (a) there is under section 719-305 an \*available fraction for the \*bundle of prior group losses; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 719-320

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- (b) section 719-310 affects the available fraction for one or more other bundles of losses;  
this section affects the available fraction for *every* one of those bundles.
- (2) The **available fraction** (as affected by section 719-305 or 719-310) is reduced by multiplying it by this fraction:
- $$\frac{\text{*Available fraction for the *bundle of prior group losses}}{\text{Sum of the *available fraction for every *bundle of losses whose available fraction is affected by this section}}$$
- (3) For the purposes of working out the fraction in subsection (2), use the value of an \*available fraction for a \*bundle of losses apart from:
- (a) this section; and
  - (b) if item 5 of the table in subsection 707-320(2) would apply as a result of the calculation of the available fraction in accordance with section 719-305 or 719-310—that item.

**719-320 Limit on utilising losses other than the prior group losses**

- (1) This section has effect for the purposes of working out how much of the losses, other than prior group losses, in a \*bundle the ongoing head company can \*utilise for the income year in which the application event happens.
- (2) For the purposes of subsection 707-310(3), the prior group losses are to be treated as if they had *not* been transferred under Subdivision 707-A, to the extent to which the ongoing head company can \*utilise them for the income year because they are treated as being included in a \*bundle whose available fraction was 1 from the start of the income year until the time of the application event.
- (3) This section is a matter that is relevant for the purposes of paragraph 707-335(3)(f), if section 707-335 applies to the ongoing head company's \*utilisation of the losses in the \*bundle for the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: That section applies to a company's utilisation for an income year of losses in a bundle if the losses are transferred under Subdivision 707-A after the start of the year or if the value of the available fraction for the bundle changes during the year while the company is treated as having made the losses because of that Subdivision.

(4) Section 719-305 has effect subject to this section.

### **719-325 Cancellation of all losses in a bundle**

- (1) The ongoing head company:
  - (a) may choose to cancel all the losses in the \*bundle of prior group losses; and
  - (b) may choose to cancel all the losses in a \*bundle of losses to which section 719-310 applies.
- (2) If the ongoing head company chooses to cancel all the losses in a \*bundle, subsections (3), (4), (5), (6) and (7) operate.
- (3) The ongoing head company cannot \*utilise for the income year in which the application event happened more of the losses than it would have been able to utilise under Subdivision 707-C assuming:
  - (a) if the losses are prior group losses:
    - (i) the losses were in a \*bundle for the income year; and
    - (ii) the \*available fraction for the bundle were 1 for the period from the start of the income year until the event happened; and
  - (b) in any case—the available fraction for the bundle including the losses were 0 from the time of the event until the end of the income year.

Note: Section 707-335 is relevant to working out how much of the losses could be utilised, because the value of the available fraction for the bundle changes during the period described in that section.

- (4) The ongoing head company cannot:
  - (a) transfer the losses to another company under Division 170 for an income year ending after the application event; or
  - (b) transfer the losses to another company under Subdivision 707-A after the application event.

This subsection has effect despite subsection (3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 719-425

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- (5) Disregard the existence of the \*bundle at and after the time of the application event for the purposes of working out the \*available fraction for another \*bundle of losses.
- (6) The losses cannot be \*utilised by any entity for an income year starting after the application event.
- (7) The choice cannot be revoked.

**Subdivision 719-H—Imputation issues**

**719-425 Guide to Subdivision 719-H**

This Subdivision deals with some imputation issues in relation to MEC groups.
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**Table of sections**

**Operative provisions**

- |         |  |
|---------|--|
| 719-430 | Transfer of franking account balance on cessation event                                    |
| 719-435 | Distributions by subsidiary members of MEC group taken to be distributions by head company |

**Operative provisions**

**719-430 Transfer of franking account balance on cessation event**

- (1) This section operates if:
  - (a) a \*cessation event happens to the \*provisional head company of a \*MEC group (the *former head company*); and
  - (b) another company (the *new head company*) is appointed as the provisional head company of the group under subsection 719-60(3).
- (2) When the new head company is appointed:
  - (a) the \*franking account of the former head company ceases to operate; and
  - (b) the new head company has a franking account; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) any \*franking surplus or \*franking deficit in the franking account of the former head company just before the \*cessation event happened becomes that of the new head company.

### **719-435 Distributions by subsidiary members of MEC group taken to be distributions by head company**

- (1) Part 3-6 operates as if a \*frankable distribution made by an \*eligible tier-1 company that:
- (a) is a member of a \*MEC group; and
  - (b) is not the \*provisional head company of the group;
- had been made by the provisional head company of the group to a \*member of the provisional head company.

Note: Part 3-6 deals with imputation.

- (2) Part 3-6 operates as if a \*frankable distribution made by a \*subsidiary member of a \*MEC group (the *foreign-held subsidiary*) that is not an \*eligible tier-1 company were a frankable distribution made by the \*head company of the group to a \*member of the head company if:
- (a) the foreign-held subsidiary meets the set of requirements in section 703-45, section 701C-10 of the *Income Tax (Transitional Provisions) Act 1997* or section 701C-15 of that Act; and
  - (b) the frankable distribution is made to a foreign resident.

### **Subdivision 719-I—Bad debts**

#### **Guide to Subdivision 719-I**

#### **719-450 What this Subdivision is about**

The head company of a MEC group is taken to meet the conditions in section 165-123 (about maintaining the same ownership in an ownership test period to be able to deduct a bad debt) if and only if the top company for the group at the start of the period meets those conditions for the period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Table of sections

### Maintaining the same ownership to be able to deduct bad debt

- 719-455 Special test for deducting a bad debt because a company maintains the same owners
- 719-460 Assumptions about nothing happening to affect direct and indirect ownership of the test company
- 719-465 Assumptions about the test company failing to meet the conditions in section 165-123

## Maintaining the same ownership to be able to deduct bad debt

### 719-455 Special test for deducting a bad debt because a company maintains the same owners

- (1) This section has effect for the purposes of working out whether the \*head company of a \*MEC group:
- (a) can deduct a debt it writes off as bad; or
  - (b) could have deducted a debt as described in subsection 709-215(2).

Note: Whether the head company of the MEC group could have deducted a debt as described in subsection 709-215(2) is relevant under Subdivision 709-D to:

- (a) the question whether the head company can deduct the debt it writes off as bad, or the swap loss it makes in extinguishing the debt as part of a debt/equity swap, after the debt was owed to an entity while the entity was not a member of the MEC group; and
  - (b) the question whether an entity that was owed the debt after it was owed to the head company can deduct the amount of the debt the entity writes off as bad or the swap loss the entity makes in extinguishing the debt as part of a debt/equity swap.
- (2) The \*head company is taken to meet the conditions in section 165-123 (about the company maintaining the same owners) for the \*ownership test period if and only if the company (the *test company*) that was the \*top company for the \*MEC group at the start of the same period would have met those conditions for that period on the assumptions in the following sections (if applicable):

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) section 719-460 (which is about assuming that nothing happened in relation to certain things that would affect whether the test company would meet those conditions);
- (b) section 719-465 (which is about assuming that the test company would have failed to meet those conditions in certain circumstances).

Note 1: Even though subsection (2) of this section raises the issue whether the test company meets the conditions in section 165-123, that is determined by reference to:

- (a) the ownership test period for the head company of the MEC group; and
- (b) the debt owed to the head company.

Note 2: If this section is applying for the purposes of working out whether the head company could have deducted a debt as described in subsection 709-215(2), section 709-215 affects what is the ownership test period for the purposes of section 165-123 as it applies for those purposes.

*Head company's failure to meet conditions in section 165-123*

- (3) The \*head company is taken to fail to meet a condition in section 165-123 only at:
  - (a) the first time the test company would have failed to meet the condition on the relevant assumptions mentioned in subsection (2); or
  - (b) the \*test time described in section 166-40 for the test company, if:
    - (i) Division 166 is relevant to working out whether the test company met the conditions in section 165-123 on the relevant assumption mentioned in paragraph (2)(a); and
    - (ii) the test company is not assumed under section 719-465 to fail to meet the condition before the test time.

Note 1: If the head company is taken to fail to meet a condition in section 165-123, the head company will not be able to deduct the debt unless that company meets the condition in section 165-126 by satisfying the same business test. That test applies to the head company (and not the test company).

Note 2: Section 719-285 may affect whether the head company satisfies the same business test if there has been a change in the identity of the head company of the group during the ownership test period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 719-460

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*Same business test for head company under Division 166*

- (4) If section 166-40 directly affects whether the \*head company can deduct the debt, the subsection of that section that requires the \*same business test be applied to a particular \*business operates as if it required that test to be applied to the business the head company carried on just before the time described in subsection (3) of this section.

Note: Section 166-40 has an *indirect* effect on whether the head company can deduct the debt so far as that section affects whether the *test* company meets the conditions in section 165-123 and therefore whether the head company is taken to meet those conditions.

**719-460 Assumptions about nothing happening to affect direct and indirect ownership of the test company**

- (1) This section sets out an assumption that must be made whenever there is a change in the identity of the \*top company for the \*MEC group during the \*ownership test period.
- (2) Assume that after the change nothing happens in relation to \*membership interests or voting power in the following entities that would affect whether the test company would meet the conditions in section 165-123:
- (a) the company that was the \*top company for the \*MEC group before the change;
  - (b) an entity (if any) that at the time of the change was interposed between:
    - (i) the company that was the top company for the MEC group before the change; and
    - (ii) the company that became the top company for the MEC group as part of the change.

**719-465 Assumptions about the test company failing to meet the conditions in section 165-123**

- (1) Assume that the test company fails to meet the conditions in section 165-123 at the time an event described in subsection (2), (3) or (4) happens after the start of the \*ownership test period in relation to:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the \*MEC group; or
- (b) the \*potential MEC group whose membership was the same as the membership of the MEC group.

Note: If the test company is assumed to fail to meet the conditions in section 165-123, the head company of the MEC group is taken (under section 719-455) to have failed to meet those conditions.

- (2) One event is the \*potential MEC group ceasing to exist.
- (3) Another event is something happening that meets these conditions:
  - (a) the thing happens at a time in relation to \*membership interests in one or more of these entities:
    - (i) a company that was just before that time a \*member of the \*MEC group and an \*eligible tier-1 company of the \*top company for the MEC group;
    - (ii) an entity interposed between a company described in subparagraph (i) and the company that was the top company for the group just before that time;
  - (b) the thing does not cause the \*potential MEC group to cease to exist but does cause a change in the identity of the top company for the potential MEC group.
- (4) Another event is the \*MEC group ceasing to exist because there ceases to be a \*provisional head company of the group.

*Other causes of failure to meet conditions in section 165-123*

- (5) To avoid doubt, this section does not limit the circumstances in which the test company would have failed to meet the conditions in section 165-123.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 719-J—MEC group cost setting rules: leaving cases**

### **Guide to Subdivision 719-J**

#### **719-500 What this Subdivision is about**

When an entity ceases to be a subsidiary member of a MEC group, the tax cost setting amount for the group's membership interests in the entity is worked out in accordance with Division 711 as modified by this Division.

#### **Table of sections**

- 719-505 Application and object of this Subdivision
- 719-510 Modified operation of paragraphs 711-15(1)(b) and (c)

#### **719-505 Application and object of this Subdivision**

##### *Application*

- (1) This Subdivision applies if the old group mentioned in subsection 711-5(1) is a \*MEC group.

##### *Object*

- (2) The object of this Subdivision is to modify the rules in Division 711 so that they take account of the special characteristics of \*MEC groups.

#### **719-510 Modified operation of paragraphs 711-15(1)(b) and (c)**

- (1) This section applies if the leaving entity mentioned in subsection 711-15(1) is a \*subsidiary member of the old group that is an \*eligible tier-1 company.
- (2) Paragraphs 711-15(1)(b) and (c) apply as if the membership interests mentioned in those paragraphs included \*pooled interests in the \*eligible tier-1 company.

Note: This subsection means that, in working out tax cost setting amounts for internal interests in the eligible tier-1 company, section 711-15

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

will allocate part of the old group's allocable cost amount for the eligible tier-1 company to the pooled interests in the company. However, the tax cost of the pooled interests is not set according to section 711-15. Subdivision 719-K contains rules that set the cost of the pooled interests.

### **Subdivision 719-K—MEC group cost setting rules: pooling cases**

#### **Guide to Subdivision 719-K**

##### **719-550 What this Subdivision is about**

This Subdivision contains cost setting rules for membership interests in eligible tier-1 companies that are members of a MEC group, where those interests are not held by members of the group.

##### **Table of sections**

719-555	Application and object of this Subdivision
719-560	Pooled interests
719-565	Setting cost of reset interests
719-570	Cost setting amount

##### **719-555 Application and object of this Subdivision**

###### *Application*

- (1) This Subdivision applies if:
  - (a) one or more entities hold \*pooled interests (the ***reset interests***) in \*eligible tier-1 companies that are members of a \*MEC group, just before a particular time (the ***trigger time***); and
  - (b) at the trigger time, either or both of these things happen to one or more of those eligible tier-1 companies (the ***trigger companies***):
    - (i) the company ceases to be a member of the group;
    - (ii) a \*CGT event happens in relation to one or more reset interests in the company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 719-560

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- (c) the \*market value of the reset interests as a whole (including the market value of synergies arising from the combination of those interests) just before the trigger time is more than nil.

*Object*

- (2) The object of this Subdivision is to set the cost of all reset interests:
  - (a) first, by allocating to each reset interest held in a trigger company so much of the total cost of all reset interests held in members of the group that the \*market value of the interest bears to the group's market value; and
  - (b) then, by allocating the remainder of that total cost to all reset interests held in other \*eligible tier-1 companies, by dividing that remainder by the number of those interests.

**719-560 Pooled interests**

- (1) A *pooled interest* in an \*eligible tier-1 company that is a member of a \*MEC group is a \*membership interest in the eligible tier-1 company that is held by an entity that is *not* a member of the group.

Note: A membership interest in the head company of a MEC group can be a pooled interest.

- (2) Despite subsection (1), a \*membership interest is *not* a pooled interest if it is:
  - (a) a \*share that is disregarded under subsection 719-30(2); or
  - (b) held by an entity only as a nominee of one or more other entities each of which is a member of the group.

**719-565 Setting cost of reset interests**

*CGT provisions—cost base*

- (1) If Part 3.1 or 3.3 is to apply in relation to a reset interest, the Part applies as if the interest's \*cost base were increased or reduced so that the cost base just before the trigger time equals the cost setting amount worked out under section 719-570.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*CGT provisions—reduced cost base*

(2) If Part 3.1 or 3.3 is to apply in relation to a reset interest, the Part applies as if the interest's \*reduced cost base were increased or reduced so that the reduced cost base just before the trigger time equals the cost setting amount worked out under section 719-570.

*Other provisions*

- (3) If a provision of this Act (other than Part 3.1 or 3.3) is to apply in relation to a reset interest, the provision applies as if the interest's cost just before the trigger time were equal to the cost setting amount worked out under section 719-570.

### **719-570 Cost setting amount**

*Reset interests held in trigger companies—cost setting amount for cost base etc.*

- (1) Work out the cost setting amount for the purposes of subsections 719-565(1) and (3) for a reset interest in a trigger company using the formula:

$$\frac{\text{*Market value of the reset interest}}{\text{*Market value of the group}} \times \text{Pooled cost amount}$$

where:

*market value of the group* is:

- (a) if every \*eligible tier-1 company that is a member of the group just before the trigger time is a trigger company—the sum of the \*market value (just before the trigger time) of all reset interests in each of those companies; or  
(b) otherwise—the amount mentioned in paragraph 719-555(1)(c).

*market value of the reset interest* is the \*market value (just before the trigger time) of all reset interests in that trigger company, in the same class as the interest, divided by the number of reset interests in that company in that class.

*pooled cost amount* is the sum of the \*cost bases (just before the trigger time) of all reset interests.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 719-570

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*Reset interests held in other eligible tier-1 companies—cost setting amount for cost base etc.*

- (2) Work out the cost setting amount for the purposes of subsections 719-565(1) and (3) for a reset interest that is *not* in a trigger company, using the formula:

$$\frac{\text{Pooled cost amount} - \text{Amount allocated to trigger company interests}}{\text{Number of non-trigger company interests}}$$

where:

*amount allocated to trigger company interests* is the sum of all cost setting amounts worked out under subsection (1) for the reset interests covered by that subsection.

*number of non-trigger company interests* is the number of reset interests, other than those covered by subsection (1).

*pooled cost amount* has the same meaning as in subsection (1).

*Cost setting amount for reduced cost base*

- (3) Work out the cost setting amount for the purposes of subsection 719-565(2) for a reset interest by applying subsections (1) and (2) of this section in relation to the interest, as if every reference in those subsections to \*cost base were a reference to \*reduced cost base.

**Subdivision 719-T—Interactions between this Part and other areas of the income tax law: special rules for MEC groups**

**Table of sections**

**How Subdivision 165-CC applies to MEC groups**

719-700 Changeover times under section 165-115C or 165-115D

719-705 Additional changeover times for head company of MEC group

**How Subdivision 165-CD applies to MEC groups**

719-720 Alteration times under section 165-115L or 165-115M

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- 719-725 Additional alteration times for head company of MEC group
- 719-730 Some alteration times only affect interests in top company
- 719-735 Some alteration times affect only pooled interests

**How indirect value shifting rules apply to a MEC group**

- 719-755 Effect on MEC group cost setting rules if head company is losing entity or gaining entity for indirect value shift

**Cancelling loss on realisation event for direct or indirect interest in a subsidiary member of a MEC group**

- 719-775 Cancellation of loss
- 719-780 Exception for pooled interests in eligible tier-1 companies
- 719-785 Exception for interests in top company
- 719-790 Exception for interests in entity leaving MEC group
- 719-795 Exception if loss attributable to certain matters

**How Subdivision 165-CC applies to MEC groups**

**719-700 Changeover times under section 165-115C or 165-115D**

- (1) This section has effect for the purposes of determining whether a time (the *test time*) is a \*changeover time under section 165-115C (about changes in ownership) or 165-115D (about changes in control) in respect of the \*head company of a \*MEC group.

*Modified meaning of reference time*

- (2) The *reference time* is:
  - (a) if no \*changeover time has occurred in respect of the head company since the group came into existence and before the test time—when the group came into existence; or
  - (b) otherwise—the time just after the last such changeover time.
- (3) Subsection (2) of this section has effect despite subsection 165-115A(2A).

*Assumptions to make*

- (4) Assume that, while the \*MEC group exists:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 719-705

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- (a) the \*top company for the group holds and beneficially owns all the \*membership interests in the \*head company (instead of whoever actually does); and
- (b) those membership interests remain the same; and
- (c) the top company directly controls the voting power in the head company.

**719-705 Additional changeover times for head company of MEC group**

- (1) The time when a \*potential MEC group ceases to exist is a ***changeover time*** in respect of the \*head company of a \*MEC group if, just before that time, the potential MEC group's membership was the same as the membership of the MEC group.

Note: The changeover times in subsections (1), (2) and (3) are based on the events described in subsections 719-280(2), (3) and (4), each of which causes the test company referred to in section 719-280 to be assumed to fail the continuity of ownership test in section 165-12.

- (2) If something:
- (a) happens at a time in relation to \*membership interests in one or more of these entities:
    - (i) a company that was just before that time a \*member of a \*MEC group and an \*eligible tier-1 company of the \*top company for the MEC group;
    - (ii) an entity interposed between a company described in subparagraph (i) and the company that was the top company for the group just before that time; and
  - (b) does not cause the \*potential MEC group whose membership is the same as the membership of the MEC group to cease to exist, but does cause a change in the identity of the top company for the potential MEC group;
- that time is a ***changeover time*** in respect of the \*head company of the \*MEC group.

- (3) The time when a \*MEC group ceases to exist because there ceases to be a \*provisional head company of the group is a ***changeover time*** in respect of the \*head company of the \*MEC group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## How Subdivision 165-CD applies to MEC groups

### 719-720 Alteration times under section 165-115L or 165-115M

- (1) This section has effect for the purposes of determining whether a time (the *test time*) is an \*alteration time under section 165-115L (about alterations in ownership) or 165-115M (about alterations in control) in respect of the \*head company of a \*MEC group.

#### *Modified meaning of reference time*

- (2) The *reference time* is:
  - (a) if no \*alteration time has occurred in respect of the head company since the group came into existence and before the test time—when the group came into existence; or
  - (b) otherwise—the time just after the last such alteration time.
- (3) In applying subsection (2), disregard an \*alteration time arising under subsection 719-725(4).
- (4) Subsection (2) of this section has effect despite subsections 165-115L(2) and 165-115M(2).

#### *Assumptions to make*

- (5) Assume that, while the \*MEC group exists:
  - (a) the \*top company for the group holds and beneficially owns all the \*membership interests in the \*head company (instead of whoever actually does); and
  - (b) those membership interests remain the same; and
  - (c) the top company directly controls the voting power in the head company.

### 719-725 Additional alteration times for head company of MEC group

#### *Additional alteration times based on section 719-280*

- (1) The time when a \*potential MEC group ceases to exist is an *alteration time* in respect of the \*head company of a \*MEC group

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 719-730

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if, just before that time, the potential MEC group's membership was the same as the membership of the MEC group.

Note: The alteration times in subsections (1), (2) and (3) are based on the events described in subsections 719-280(2), (3) and (4), each of which causes the test company referred to in section 719-280 to be assumed to fail the continuity of ownership test in section 165-12.

- (2) If something:
- (a) happens at a time in relation to \*membership interests in one or more of these entities:
    - (i) a company that was just before that time a \*member of a \*MEC group and an \*eligible tier-1 company of the \*top company for the MEC group;
    - (ii) an entity interposed between a company described in subparagraph (i) and the company that was the top company for the group just before that time; and
  - (b) does not cause the \*potential MEC group whose membership is the same as the membership of the MEC group to cease to exist, but does cause a change in the identity of the top company for the potential MEC group;
- that time is an **alteration time** in respect of the \*head company of the \*MEC group.
- (3) The time when a \*MEC group ceases to exist because there ceases to be a \*provisional head company of the group is an **alteration time** in respect of the \*head company of the \*MEC group.

*Additional alteration times based on Subdivision 719-K*

- (4) If Subdivision 719-K (MEC group cost setting rules: pooling cases) applies, the time just before the trigger time referred to in paragraph 719-555(1)(a) is an **alteration time** in respect of the \*head company of the \*MEC group.

**719-730 Some alteration times only affect interests in top company**

- (1) This section applies if an \*alteration time (except one arising under subsection 719-725(4)) happens for the \*head company of a \*MEC group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) Sections 165-115ZA and 165-115ZB apply, in relation to the alteration time, to an interest or debt that is, or is part of, a relevant equity interest or relevant debt interest that an entity has in the \*head company just before the \*alteration time, *only if* the interest or debt is:

- (a) an \*equity or loan interest in the \*top company for the MEC group; or
- (b) an \*indirect equity or loan interest in the top company.

Note: Sections 165-115ZA and 165-115ZB are about the consequences that an alteration time for a loss company has for relevant equity interests and relevant debt interests in the company.

- (3) In determining what is a relevant equity interest or relevant debt interest that an entity has in the \*head company just before the \*alteration time, make the assumptions in subsection 719-720(5).

### **719-735 Some alteration times affect only pooled interests**

- (1) Sections 165-115ZA and 165-115ZB do not apply in relation to an \*alteration time that happens for the \*head company of a \*MEC group because of subsection 719-725(4) (trigger time for MEC group cost setting rules: pooling cases).
- (2) Instead, Subdivision 719-K applies to the \*MEC group, in relation to the trigger time, on the basis that:
- (a) what would, apart from this section, be the pooled cost amount for the purposes of the formulas in subsections 719-570(1) and (2) is reduced by the amount of the \*head company's overall loss under section 165-115R or 165-115S at that alteration time; but
  - (b) paragraph (a) of this subsection *only* affects the application of those formulas because of subsection 719-570(3) (to work out the \*reduced cost base of a \*membership interest).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## How indirect value shifting rules apply to a MEC group

### 719-755 Effect on MEC group cost setting rules if head company is losing entity or gaining entity for indirect value shift

- (1) This section has effect for the purposes of working out the consequences (if any) of an \*indirect value shift if the \*losing entity or \*gaining entity is the \*head company of a \*MEC group. (Subsection (3) has effect in addition to section 727-455.)
- (2) An \*equity or loan interest can be an \*affected interest in the \*head company only if it is:
  - (a) an \*equity or loan interest in the \*top company for the MEC group; or
  - (b) an \*indirect equity or loan interest in the top company.
- (3) Subdivision 719-K (MEC group cost setting rules: pooling cases) applies to the \*MEC group, in relation to the first time referred to in that Subdivision as a trigger time that happens at or after the \*IVS time, on the basis that:
  - (a) what would, apart from this section, be the pooled cost amount for the purposes of the formulas in subsections 719-570(1) and (2) is:
    - (i) if the \*head company is the \*losing entity—reduced; or
    - (ii) if the head company is the gaining entity—increased; by the amount of the indirect value shift; and
  - (b) paragraph (a) of this subsection also affects the application of those formulas because of subsection 719-570(3) (to work out the \*reduced cost base of a \*membership interest).

## cancelling loss on realisation event for direct or indirect interest in a subsidiary member of a MEC group

### 719-775 Cancellation of loss

- (1) This section reduces to nil a loss that would otherwise be \*realised for income tax purposes by a \*realisation event that happens to an \*equity or loan interest (the *realised interest*) in an entity (the *first*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**entity**) when it is owned by another entity (the **owner**), if the conditions in subsections (2) and (4) are met.

- (2) The first condition is that, at some time during the period (the **ownership period**) when the owner owned the realised interest:
- (a) the first entity was a \*subsidiary member of a \*MEC group (except an \*eligible tier-1 company), and the owner was *not* a \*member of the group; or
  - (b) the realised interest was an \*external indirect equity or loan interest in a subsidiary member of a MEC group (except an eligible tier-1 company); or
  - (c) the realised interest was an \*equity or loan interest in an entity that, at that time:
    - (i) owned an equity or loan interest in a subsidiary member of a MEC group (except an eligible tier-1 company); and
    - (ii) was *not* a member of the group; or
  - (d) the realised interest was an equity or loan interest in an entity that owned at that time an external indirect equity or loan interest in a subsidiary member of a MEC group (except an eligible tier-1 company); or
  - (e) the realised interest was an equity or loan interest, or an \*indirect equity or loan interest, in an eligible tier-1 company that was a member of a MEC group at that time.
- (3) An \*equity or loan interest in an entity (the **test entity**) is an **external indirect equity or loan interest** in a \*subsidiary member of a \*MEC group if, and only if, neither the owner of the interest nor the test entity is a member of the group and:
- (a) the test entity owns an equity or loan interest in the subsidiary member; or
  - (b) the test entity owns an equity or loan interest that is an external indirect equity or loan interest in the subsidiary member because of one or more other applications of this subsection.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 719-780

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- (4) The second condition is that, at the same or a different time during the ownership period:
- (a) the owner was, or \*controlled (for value shifting purposes), the \*head company of a \*MEC group because of which the first condition is satisfied; or
  - (b) the owner was an \*associate of an entity that, at the same or a different time during the ownership period, was, or controlled (for value shifting purposes), the head company of such a MEC group.

**719-780 Exception for pooled interests in eligible tier-1 companies**

The first condition in section 719-775 cannot be satisfied, because of a \*MEC group, at a time when the realised interest was a \*pooled interest in an \*eligible tier-1 company that is a member of the group.

**719-785 Exception for interests in top company**

The first condition in section 719-775 cannot be satisfied, because of a \*MEC group, at a time when:

- (a) the first entity was the \*top company for the MEC group; or
- (b) the realised interest was an \*indirect equity or loan interest in the top company for the MEC group.

**719-790 Exception for interests in entity leaving MEC group**

*Membership interests in leaving entity*

- (1) If:
- (a) the realised interest is a \*membership interest; and
  - (b) during the ownership period the first entity ceased to be a \*subsidiary member of a \*MEC group;
- the first condition in section 719-775 cannot be satisfied, because of that MEC group, at a time when the first entity was a member of the group, unless the interest needed to be disregarded under section 719-30 (about employee shares) in order for the first entity to be a member of the group at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Liabilities owed by leaving entity*

- (2) If the realised interest:
- (a) consists of a liability owed by the first entity to the owner;  
and
  - (b) became an asset of the owner because subsection 701-1(1) (the single entity rule) ceased to apply to the first entity when it ceased to be a \*subsidiary member of a \*MEC group;  
the first condition in section 719-775 cannot be satisfied, because of that MEC group, at a time when the first entity was a member of the group.

**719-795 Exception if loss attributable to certain matters**

- (1) The loss is not reduced if all of it can be shown to be attributable to things other than these:
- (a) something that would be reflected in what would, apart from this Part, be an overall loss under section 165-115R or 165-115S, of a \*member of a \*MEC group (an ***excluded group***) because of which the first condition in section 719-775 is satisfied, at an \*alteration time for that member;
  - (b) an \*indirect value shift for which, apart from this Part, a member of an excluded group would be the \*losing entity or the \*gaining entity.
- (2) If only part of the loss can be shown to be attributable to things other than the ones listed in subsection (1), the loss is reduced to the amount of that part.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 721—Liability for payment of tax where head company fails to pay on time**

### **Guide to Division 721**

#### **721-1 What this Division is about**

If the head company of a consolidated group fails to meet an income tax related liability by the time it becomes due and payable, entities that were subsidiary members of the group during the period to which the liability relates can also be responsible for all or part of the liability.

#### **Table of sections**

##### **Object**

721-5 Object of this Division

##### **When this Division operates**

721-10 When this Division operates

##### **Joint and several liability of contributing member**

721-15 Head company and contributing members jointly and severally liable to pay group liability

721-17 Notice of joint and several liability for general interest charge

721-20 Limit on liability where group first comes into existence

##### **Tax sharing agreements**

721-25 When a group liability is covered by a tax sharing agreement

721-30 TSA contributing members liable for contribution amounts

721-32 Notice of general interest charge liability under TSA

721-35 When a TSA contributing member has left the group clear of the group liability

721-40 TSA liability and group liability are linked

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Object

### 721-5 Object of this Division

The object of this Division is to secure the payment of certain tax liabilities of the \*head company of a \*consolidated group where the head company fails to meet all of those liabilities by the time they become due and payable. Accordingly:

- (a) if a relevant liability is *not* covered by a tax sharing agreement—this Division provides for a process to make certain entities that were \*subsidiary members of the group for at least part of the period to which each tax liability relates jointly and severally liable with the head company for those liabilities; or
- (b) if a relevant liability is covered by a tax sharing agreement—this Division:
  - (i) provides for a process to make each of those entities liable for the amount determined under the agreement in relation to the liability; but
  - (ii) exempts an entity from a liability determined under the agreement if it leaves the group in certain circumstances.

## When this Division operates

### 721-10 When this Division operates

- (1) This Division operates if:
  - (a) a \*tax-related liability mentioned in subsection (2) (a **group liability**) of the \*head company of a \*consolidated group was not paid or otherwise discharged in full by the time the liability became due and payable (the **head company's due time**); and
  - (b) one or more entities (the **contributing members**) were \*subsidiary members of the group for at least part of the period to which the group liability relates.

Note: This Division operates even if some or all of the contributing members were no longer members of the group at the head company's due time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 721-10

(2) The following table lists the \*tax-related liabilities for the purposes of paragraph (1)(a) and the periods to which each of those liabilities relate:

<b>Tax-related liabilities of the head company and the periods to which they relate</b>		
<b>Item</b>	<b>The tax-related liability of the head company that becomes due and payable as specified in this provision ...</b>	<b>... relates to this period</b>
5	section 197-70 (untainting tax)	the *franking period of the *head company in which the *untainting tax became due and payable
10	subsection 214-150(1) of the <i>Income Tax Assessment Act 1997</i> (franking tax)	the income year to which the *franking tax relates
15	subsection 214-150(2) of the <i>Income Tax Assessment Act 1997</i> (franking tax—part year assessment)	the particular period mentioned in subsection 214-70(1) to which the *franking tax relates
20	subsection 214-150(3) of the <i>Income Tax Assessment Act 1997</i> (franking tax—amended assessments otherwise than because of deficit deferral)	the income year (or particular period mentioned in subsection 214-70(1)) to which the *franking tax relates
22	subsection 214-150(4) of the <i>Income Tax Assessment Act 1997</i> (franking tax—deficit deferral)	the income year (or particular period mentioned in subsection 214-70(1)) to which the *franking deficit tax relates
25	section 204 of the <i>Income Tax Assessment Act 1936</i> (income tax, including any liability taken to be income tax for the purposes of that section)	the income year to which the income tax relates
30	section 45-61 in Schedule 1 to the <i>Taxation Administration Act 1953</i> (quarterly *PAYG instalment)	the *instalment quarter to which the *instalment relates

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Tax-related liabilities of the head company and the periods to which they relate**


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<b>Item</b>	<b>The tax-related liability of the head company that becomes due and payable as specified in this provision ...</b>	<b>... relates to this period</b>
35	section 45-70 in Schedule 1 to the <i>Taxation Administration Act 1953</i> (annual *PAYG instalment)	the income year to which the *instalment relates
40	section 8AAE of the <i>Taxation Administration Act 1953</i> (general interest charge)	the period provided for in this table for the *tax-related liability to which the general interest charge relates
45	subsection 45-230(4) in Schedule 1 to the <i>Taxation Administration Act 1953</i> (general interest charge on shortfall in quarterly instalment worked out on basis of varied rate)	the *instalment quarter to which the general interest charge relates
50	subsection 45-232(5) in Schedule 1 to the <i>Taxation Administration Act 1953</i> (general interest charge on shortfall in quarterly instalment worked out on basis of estimated benchmark tax)	the *instalment quarter to which the general interest charge relates
55	subsection 45-235(5) in Schedule 1 to the <i>Taxation Administration Act 1953</i> (general interest charge on shortfall in annual instalment)	the income year to which the general interest charge relates
60	subsection 45-875(2) in Schedule 1 to the <i>Taxation Administration Act 1953</i> (head company's liability to GIC on shortfall in quarterly instalment)	the *instalment quarter to which the general interest charge relates
65	if an administrative penalty of a kind mentioned in section 284-75, 284-145, 286-75 or 288-25 in Schedule 1 to the <i>Taxation Administration Act 1953</i> relates only to another *tax-related liability mentioned in this table—section 298-15 in that Schedule	the period provided for in this table for the *tax-related liability to which the penalty relates

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 721-15

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**Tax-related liabilities of the head company and the periods to which they relate**

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<b>Item</b>	<b>The tax-related liability of the head company that becomes due and payable as specified in this provision ...</b>	<b>... relates to this period</b>
70	Division 280 in Schedule 1 to the <i>Taxation Administration Act 1953</i> (shortfall interest charge)	the income year to which the shortfall interest charge relates

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- (3) Item 30 of the table in subsection (2) is taken not to include a \*PAYG instalment of the \*head company if the Commissioner gave the head company its \*initial head company instalment rate after the end of the \*instalment quarter of the head company to which the PAYG instalment relates.

**Joint and several liability of contributing member**

**721-15 Head company and contributing members jointly and severally liable to pay group liability**

- (1) The following are jointly and severally liable to pay the group liability:
- (a) the \*head company; and
  - (b) each contributing member (other than a contributing member excluded by subsection (2)).

Note: A group liability is a tax-related liability in relation to the head company and each contributing member. For rights of contribution in respect of such a liability, see subsection 265-45(2) in Schedule 1 to the *Taxation Administration Act 1953*.

- (2) For the purposes of paragraph (1)(b), a contributing member is excluded by this subsection if it is, at the head company's due time, prohibited according to the effect of an \*Australian law from entering into any arrangement under which the entity becomes subject to a liability referred to in subsection (1).
- (3) Subsection (1) does not operate if the group liability is covered by a tax sharing agreement (see section 721-25).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 721-15

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- (3A) Subsection (1) is taken never to have made a particular contributing member jointly and severally liable to pay the group liability if:
- (a) the group liability was taken never to have been covered by the tax sharing agreement because of subsection 721-25(3); and
- Note: Subsection 721-25(3) provides for this to happen if the Commissioner did not receive a copy of the tax sharing agreement within 14 days after the Commissioner gave the head company the notice under that subsection.
- (b) the Commissioner gave the contributing member written notice of the group liability under subsection (5); and
  - (c) apart from the operation of subsection 721-25(3), the contributing member left the group clear of the group liability in accordance with section 721-35; and
  - (d) the contributing member gave the Commissioner a copy of the tax sharing agreement (that is, the relevant agreement mentioned in paragraph 721-25(1)(a)) in the \*approved form; and
  - (e) if the Commissioner gave the contributing member written notice of the group liability under subsection (5) (ignoring subsection 721-17(2))—the contributing member gave that copy of the agreement to the Commissioner within 14 days after that notice was given.
- (4) The joint and several liability of the contributing members under subsection (1) arises just after the \*head company's due time.
- (5) The joint and several liability of a particular contributing member under subsection (1) becomes due and payable by the member 14 days after the Commissioner gives the member written notice under this subsection of the liability.
- Note 1: If the Commissioner gives this notice to one contributing member, and gives this notice to another contributing member on another day, the 2 contributing members will have different due and payable dates for the same liability.
- Note 2: This section does not affect the time at which the group liability arose for, or became due and payable by, the head company.
- (5A) Despite subsection (5), if the group liability is \*general interest charge for a day, the joint and several liability of a particular

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 721-17

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contributing member under subsection (1) becomes due and payable by the member at the end of the day on which the Commissioner gives the member written notice of the liability under subsection (5).

- (6) To the extent that the contributing members' liability under subsection (1) is not a liability for income tax, that liability is to be treated as a liability for income tax for the purposes of section 254 of the *Income Tax Assessment Act 1936*.

**721-17 Notice of joint and several liability for general interest charge**

- (1) This section operates if:
- (a) the group liability is \*general interest charge for a day in relation to another liability (the *primary liability*); and
  - (b) the Commissioner gives a particular contributing member written notice under subsection 721-15(5) of the group liability; and
  - (c) general interest charge arises for a subsequent day in relation to the primary liability; and
  - (d) the general interest charge for the subsequent day has not been paid or otherwise discharged in full by the time it became due and payable.
- (2) The Commissioner is taken to have given the contributing member written notice under subsection 721-15(5) of the \*general interest charge for the subsequent day. The notice is taken to have been given on that day.

**721-20 Limit on liability where group first comes into existence**

- (1) This section operates if the group came into existence during the period to which a group liability relates.
- (2) The contributing members' liability under subsection 721-15(1) to pay the group liability is limited to the proportion of the group liability that is reasonably attributable to the period:
- (a) beginning at the time the group came into existence; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) ending at the time when the period to which the group liability relates ends.

## **Tax sharing agreements**

### **721-25 When a group liability is covered by a tax sharing agreement**

- (1) For the purposes of this Division, a group liability is covered by a tax sharing agreement if, just before the head company's due time:
  - (a) an agreement existed between the \*head company of the group and one or more of the contributing members (the *TSA contributing members*); and
  - (b) a particular amount (the *contribution amount*) could be determined under the agreement for each TSA contributing member in relation to the group liability; and
  - (c) the contribution amounts for each of the TSA contributing members in relation to the group liability, as determined under the agreement, represented a reasonable allocation of the total amount of the group liability among the head company and the TSA contributing members; and
  - (d) the agreement complied with the requirements (if any) set out in the regulations.
- (1A) The requirement in paragraph (1)(c) is taken to be satisfied if:
  - (a) the group liability is a \*tax-related liability mentioned in item 25 of the table in subsection 721-10(2) in relation to an income year; and
  - (b) before, at or after the head company's due time, the \*head company of the group became entitled to either or both of the following:
    - (i) a credit under section 45-30 in Schedule 1 to the *Taxation Administration Act 1953* for that income year;
    - (ii) a credit under section 45-865 in Schedule 1 to that Act for that income year; and
  - (c) just before the head company's due time, the contribution amounts for each of the TSA contributing members in relation to the group liability, as determined under the agreement, represented a reasonable allocation among the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 721-30

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head company and the TSA contributing members of the difference between:

- (i) the total amount of the group liability; and
- (ii) the amount of the credit, or the sum of the credits, mentioned in paragraph (b).

(1B) Despite subsections (1) and (1A), the group liability is *not* covered by a tax sharing agreement for the purposes of this Division if, apart from this subsection, the requirements in those subsections in relation to the group liability would be satisfied in relation to 2 or more agreements.

(2) Despite subsections (1) and (1A), the group liability is *not* covered by a tax sharing agreement for the purposes of this Division if:

- (a) the agreement mentioned in paragraph (1)(a) was entered into as part of an arrangement; and
- (b) a purpose of the arrangement was to prejudice the recovery by the Commissioner of some or all of the amount of the group liability or liabilities of that kind.

(3) Despite subsections (1) and (1A), the group liability is taken never to have been covered by a tax sharing agreement for the purposes of this Division if:

- (a) the Commissioner gives the \*head company of the group written notice under this subsection (whether before, at or after the head company's due time) in relation to the group liability; and
- (b) the notice requires the head company to give the Commissioner a copy of the agreement mentioned in paragraph (1)(a) in the \*approved form within 14 days after the notice is given; and
- (c) the Commissioner does not receive a copy of the agreement by the time required.

Note: If this subsection operates, joint and several liability can arise under section 721-15 in relation to the group liability.

**721-30 TSA contributing members liable for contribution amounts**

(1) This section operates if a group liability is covered by a tax sharing agreement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 721-32

- (2) Each TSA contributing member is liable to pay to the Commonwealth an amount equal to the contribution amount for that member in relation to the group liability.
- (3) Despite subsection (2), a TSA contributing member is not liable under that subsection if the member left the group clear of the group liability (see section 721-35).
- (4) The liability of a TSA contributing member under subsection (2) arises just after the \*head company's due time.
- (5) The liability of a TSA contributing member under subsection (2) becomes due and payable by the member 14 days after the Commissioner gives the member written notice under this subsection of the liability.

Note: This section does not affect the time at which the group liability arose for, or became due and payable by, the head company.

- (5A) Despite subsection (5), if the group liability is \*general interest charge for a day, the liability of a TSA contributing member under subsection (2) becomes due and payable by the member at the end of the day on which the Commissioner gives the member written notice of the liability under subsection (5).
- (6) The liability of a TSA contributing member under subsection (2) is to be treated as a liability for income tax for the purposes of section 254 of the *Income Tax Assessment Act 1936*.

**721-32 Notice of general interest charge liability under TSA**

- (1) This section operates if:
  - (a) the group liability is \*general interest charge for a day in relation to another liability (the *primary liability*); and
  - (b) the Commissioner gives a particular TSA contributing member written notice under subsection 721-30(5) of its liability under subsection 721-30(2) in relation to the general interest charge for that day; and
  - (c) general interest charge arises for a subsequent day in relation to the primary liability; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 721-35

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- (d) the TSA contributing member is liable under subsection 721-30(2) for an amount in relation to the general interest charge for the subsequent day.
- (2) The Commissioner is taken to have given the TSA contributing member written notice under subsection 721-30(5) of the amount in relation to the \*general interest charge for the subsequent day. The notice is taken to have been given on that day.

**721-35 When a TSA contributing member has left the group clear of the group liability**

For the purposes of subsection 721-30(3), a TSA contributing member left the group clear of the group liability if:

- (a) the TSA contributing member ceased to be a member of the group at a time (the *leaving time*) before the \*head company's due time; and
- (b) the cessation of membership was not part of an arrangement, a purpose of which was to prejudice the recovery by the Commissioner of some or all of the amount of the group liability or liabilities of that kind; and
- (c) before the leaving time, the TSA contributing member had paid to the head company:
  - (i) if the contribution amount for that member in relation to the group liability could be determined before the leaving time—an amount equal and attributable to that amount; or
  - (ii) otherwise—an amount that is a reasonable estimate of, and attributable to, that amount.

**721-40 TSA liability and group liability are linked**

- (1) The liability of a TSA contributing member under subsection 721-30(2) (the *TSA liability*) is separate and distinct for all purposes from the group liability to which it relates (the *linked group liability*). For example, the Commissioner may take proceedings to recover the unpaid amount of the TSA liability, proceedings to recover the unpaid amount of the linked group liability, or both.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: The TSA contributing member will not be jointly and severally liable for the linked group liability under section 721-15 (see subsection 721-15(3)). However, the head company of the group remains liable for the linked group liability.

*Payment or discharge of TSA liability*

- (2) If an amount is paid or applied at a particular time towards discharging the TSA liability, the linked group liability is discharged at that time to the extent of the same amount.

*Payment or discharge of linked group liability*

- (3) If:
- (a) an amount is paid or applied at a particular time towards discharging the linked group liability; and
  - (b) as a result, the amount unpaid on the TSA liability at that time (apart from this section) exceeds the amount unpaid on the linked group liability at that time;
- the TSA liability is discharged at that time to the extent of the excess.
- (4) Subsections (2) and (3) operate in relation to a liability under a judgment (the *judgment liability*):
- (a) if the judgment liability is for the entire amount unpaid on the TSA liability—as if the judgment liability were the TSA liability; and
  - (b) if the judgment liability is for the entire amount unpaid on the linked group liability—as if the judgment liability were the linked group liability.
- (5) This section does not discharge a liability to a greater extent than the amount of the liability.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Part 3-95—Value shifting

### Division 723—Direct value shifting by creating right over non-depreciating asset

#### Table of Subdivisions

- 723-A Reduction in loss from realising non-depreciating asset
- 723-B Reducing reduced cost base of interests in entity that acquires non-depreciating asset under roll-over

#### Subdivision 723-A—Reduction in loss from realising non-depreciating asset

##### Table of sections

- 723-1 Object
- 723-10 Reduction in loss from realising non-depreciating asset over which right has been created
- 723-15 Reduction in loss from realising non-depreciating asset at the same time as right is created over it
- 723-20 Exceptions
- 723-25 Realisation event that is only a partial realisation
- 723-35 Multiple rights created to take advantage of the \$50,000 threshold
- 723-40 Application to CGT asset that is also trading stock or revenue asset
- 723-50 Effects if right created over underlying asset is also trading stock or a revenue asset

#### 723-1 Object

The purpose of this Division is to reduce a loss that would otherwise be \*realised for income tax purposes by a \*realisation event happening to an asset (except a \*depreciating asset), to the extent that:

- (a) value has been shifted out of the asset by the owner creating in an associate a right over the asset; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the value shifted was not brought to tax when the right was created and has not since been brought to tax on a realisation of the right.

### **723-10 Reduction in loss from realising non-depreciating asset over which right has been created**

- (1) A loss that would, apart from this Division, be \*realised for income tax purposes by a \*realisation event is reduced by the amount worked out under subsections (3) and (4) if:
  - (a) the event happens to a \*CGT asset (the *underlying asset*) you own that, at the time of the event (the *realisation time*):
    - (i) is *not* a \*depreciating asset; or
    - (ii) is an item of your \*trading stock; or
    - (iii) is a \*revenue asset of yours; and
  - (b) before the realisation time:
    - (i) you created in an \*associate of yours; or
    - (ii) an entity covered by subsection (2) (about previous owners of the underlying asset) created in an associate of the entity;  
a right in respect of the underlying asset; and
  - (c) immediately before the realisation time, the right is still in existence and is owned by an associate of yours; and
  - (d) a decrease in the underlying asset's \*market value is reasonably attributable to the creating of the right; and
  - (e) creating the right involved a \*CGT event:
    - (i) whose \*capital proceeds are *less* than the market value of the right when created (the difference between those capital proceeds and that market value is called the *shortfall on creating the right*); and
    - (ii) that is *not* a CGT event that happens to some part of the underlying asset but not to the remainder of it; and
  - (f) the shortfall on creating the right is more than \$50,000; and
  - (g) the market value of the underlying asset at the realisation time is less than it would have been if the right no longer existed at that time (the difference is called the *deficit on realisation*).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 723-10

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Note: If subparagraph (1)(e)(ii) applies, the cost base and reduced cost base of the underlying asset is apportioned under section 112-30, so there is no need for this section to apply to the right.

- (2) This subsection covers an entity if:
- (a) the entity \*acquired the underlying asset before you did; and
  - (b) there has been a roll-over for each \*CGT event (if any) as a result of which an entity (including you) acquired the asset after the first entity acquired it, and before the realisation time; and
  - (c) for each such CGT event (if any), the entity (including you) that acquired the underlying asset as a result of the event was, immediately after the event, an \*associate of the entity that last acquired the asset before the event.
- (3) The amount by which this section reduces the loss is the lesser of:
- (a) the shortfall on creating the right; and
  - (b) the deficit on realisation.

However, that amount is reduced by each gain that:

- (c) is \*realised for income tax purposes by a \*realisation event that happens to the right:
  - (i) before or at the realisation time for the underlying asset; and
  - (ii) at a time when the right is owned by an entity that is your \*associate immediately before the realisation time for the underlying asset; and
- (d) is not disregarded.

Note: To work out a gain realised for income tax purposes by a realisation event that happens to the right, see sections 977-15, 977-35, 977-40 and 977-55. If more than one of those sections applies to the right, see section 723-50.

- (4) For each gain that:
- (a) is \*realised for income tax purposes by a \*realisation event that happens to the right:
    - (i) within 4 years after the realisation time for the underlying asset; and
    - (ii) at a time when the right is owned by an entity that is your \*associate immediately before the realisation time for the underlying asset; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) is not disregarded;

the amount worked out under subsection (3) is taken to have been reduced by the amount of that gain.

Note: This subsection may result in amendment of an assessment for the income year in which the realisation time happens.

### **723-15 Reduction in loss from realising non-depreciating asset at the same time as right is created over it**

(1) A loss that would, apart from this Division, be \*realised for income tax purposes by a \*realisation event is reduced by the amount worked out under subsections (2) and (3) if:

(a) the event happens to a \*CGT asset (the *underlying asset*) you own that, at the time of the event (the *realisation time*):

- (i) is *not* a \*depreciating asset; or
- (ii) is an item of your \*trading stock;
- (iii) is a \*revenue asset of yours; and

(b) at the realisation time, you create in an \*associate of yours a right in respect of the underlying asset; and

(c) creating the right involves a \*CGT event:

- (i) whose \*capital proceeds are *less* than the \*market value of the right when created (the difference between those capital proceeds and that market value is called the *shortfall on creating the right*); and
- (ii) that is *not* a CGT event that happens to some part of the underlying asset but not to the remainder of it; and

(d) the shortfall on creating the right is more than \$50,000; and

(e) the market value of the underlying asset at the realisation time is less than it would have been if the right had not been created (the difference is called the *deficit on realisation*).

Note: If subparagraph (1)(c)(ii) applies, the cost base and reduced cost base of the underlying asset is apportioned under section 112-30, so there is no need for this section to apply to the right.

(2) The amount by which this section reduces the loss is the lesser of:

- (a) the shortfall on creating the right; and
- (b) the deficit on realisation.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 723-20

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- (3) For each gain that:
- (a) is \*realised for income tax purposes by a \*realisation event that happens to the right:
    - (i) within 4 years after the realisation time for the underlying asset; and
    - (ii) at a time when the right is owned by an entity that is your \*associate immediately before the realisation time for the underlying asset; and
  - (b) is not disregarded;
- the amount worked out under subsection (2) is taken to have been reduced by the amount of that gain.

Note 1: To work out a gain realised for income tax purposes by a realisation event that happens to the right, see sections 977-15, 977-35, 977-40 and 977-55. If more than one of those sections applies to the right, see section 723-50.

Note 2: This subsection may require amendment of an assessment for the income year in which the realisation time happens.

**723-20 Exceptions**

*Conservation covenant over land*

- (1) Section 723-10 or 723-15 does not reduce a loss if:
- (a) the underlying asset is land; and
  - (b) the right referred to in paragraph 723-10(1)(b) or 723-15(1)(b) is a \*conservation covenant over the land.

*Right created on death of owner*

- (2) Section 723-10 or 723-15 does not reduce a loss if the right referred to in paragraph 723-10(1)(b) or 723-15(1)(b) is created by:
- (a) a will or codicil; or
  - (b) an order of a court varying or modifying a will or codicil; or
  - (c) a total or partial intestacy; or
  - (d) an order of a court varying or modifying the application of the law about distributing the estate of someone who dies intestate.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**723-25 Realisation event that is only a partial realisation**

- (1) Section 723-10 or 723-15 applies differently if:
- (a) a \*realisation event happens to some part of a \*CGT asset (the *underlying asset*) you own that, at the time of the event:
    - (i) is *not* a \*depreciating asset; or
    - (ii) is an item of your \*trading stock; or
    - (iii) is a \*revenue asset of yours; but not to the remainder of the underlying asset; or
  - (b) a realisation event consists of creating an interest in a CGT asset (also the *underlying asset*) you own that, at the time of the event, is covered by subparagraph (a)(i), (ii) or (iii).
- (2) The section applies on the basis that:
- (a) the \*realisation event happens to the underlying asset; and
  - (b) the shortfall on creating the right referred to in paragraph 723-10(1)(e) or 723-15(1)(c); and
  - (c) the deficit on realisation referred to in paragraph 723-10(1)(g) or 723-15(1)(e);
- are each reduced by multiplying its amount by this fraction:

$$\frac{\text{*Market value of part}}{\text{*Market value of underlying asset}}$$

- (3) For the purposes of the formula in subsection (2):

*market value of part* means the \*market value, at the time of the \*realisation event, of the part referred to in paragraph (1)(a) or the interest referred to in paragraph (1)(b), as appropriate.

*market value of underlying asset* means the \*market value, immediately before the \*realisation event, of the underlying asset.

**723-35 Multiple rights created to take advantage of the \$50,000 threshold**

- (1) Sections 723-10 and 723-15 apply differently if, having regard to all relevant circumstances, it is reasonable to conclude that the sole or main reason why a right was created as a different right from

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 723-40

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one or more other rights created in respect of the same thing was so that paragraph 723-10(1)(f) or 723-15(1)(d) would not be satisfied for one or more of the rights mentioned in this subsection.

- (2) Those sections:
  - (a) apply to that thing, in relation to each of the rights mentioned in subsection (1) of this section, as if paragraphs 723-10(1)(f) and 723-15(1)(d) were omitted; and
  - (b) are taken always to have so applied.

**723-40 Application to CGT asset that is also trading stock or revenue asset**

If a \*CGT asset you own is also an item of your \*trading stock or a \*revenue asset, this Division applies to the asset once in its character as a CGT asset and again in its character as trading stock or a revenue asset.

**723-50 Effects if right created over underlying asset is also trading stock or a revenue asset**

- (1) Subsection 723-10(3) or (4) or 723-15(3) applies differently if the right created in respect of the underlying asset is also \*trading stock or a \*revenue asset at the time of a \*realisation event that happens to the right.
- (2) The gain that is taken into account for the purposes of that subsection is:
  - (a) if the right is also trading stock—worked out under section 977-35 or 977-40 (about realisation events for trading stock); or
  - (b) if the right is also a revenue asset—the greater of:
    - (i) the gain worked out under section 977-15 (about realisation events for CGT assets); and
    - (ii) the gain worked out under section 977-55 (about realisation events for revenue assets).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 723-B—Reducing reduced cost base of interests in entity that acquires non-depreciating asset under roll-over**

### **Table of sections**

723-105	Reduced cost base of interest reduced when interest realised at a loss
723-110	Direct and indirect roll-over replacement for underlying asset

### **723-105 Reduced cost base of interest reduced when interest realised at a loss**

- (1) The \*reduced cost base of a \*primary equity interest, \*secondary equity interest, or \*indirect primary equity interest, in a company or trust is reduced just before a \*realisation event that is a \*CGT event happens to the interest if:
  - (a) apart from this Division, a loss would be \*realised for income tax purposes by the CGT event; and
  - (b) apart from this Division, a loss would have been \*realised for income tax purposes by a realisation event if the event had happened, just before the CGT event, to a \*CGT asset (the *underlying asset*) that the company or trust then owned and that:
    - (i) was *not* then a \*depreciating asset; or
    - (ii) was then an item of \*trading stock of the company or trust; or
    - (iii) was then a \*revenue asset of the company or trust; and
  - (c) the loss referred to in paragraph (b) would have been reduced under Subdivision 723-A by an amount (the *underlying asset loss reduction*); and
  - (d) for the entity (the *transferor*) that owned the interest just before the CGT event, the interest was a \*direct roll-over replacement or \*indirect roll-over replacement for the underlying asset.
- (2) If the interest was a \*direct roll-over replacement, its \*reduced cost base is reduced by the amount worked out using this formula, unless that amount does not appropriately reflect the matters referred to in subsection (4):

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 723-110

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$$\frac{\text{RCB of interest}}{\text{Total of RCBs of direct roll-over replacements}} \times \text{Underlying asset loss reduction}$$

- (3) For the purposes of the formula in subsection (2):

**RCB of interest** means the interest's \*reduced cost base when the transferor \*acquired it.

**total of RCBs of direct roll-over replacements** means the total of the \*reduced cost bases of all \*direct roll-over replacements for the underlying asset when the transferor \*acquired them.

- (4) If:

- (a) the interest was an \*indirect roll-over replacement; or
- (b) the amount worked out under subsection (2) does not appropriately reflect the matters referred to in this subsection; the interest's \*reduced cost base is reduced by an amount that is appropriate having regard to these matters:
- (c) the underlying asset loss reduction; and
- (d) the quantum of the interest relative to all \*direct roll-over replacements and indirect roll-over replacements that the transferor owns or has previously owned.

**723-110 Direct and indirect roll-over replacement for underlying asset**

- (1) For an entity (the **transferor**) that owns a \*CGT asset, the CGT asset is a **direct roll-over replacement** for something (the **underlying asset**) that another entity owns if, and only if:
- (a) a \*CGT event happened to the underlying asset while the transferor owned it; and
  - (b) the other entity \*acquired the underlying asset as a result of that CGT event; and
  - (c) there was a \*replacement-asset roll-over for the CGT event; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) the transferor received the CGT asset (or CGT assets including it) in respect of the CGT event as the replacement asset (or the replacement assets).
- (2) For an entity (the *transferor*) that owns a \*CGT asset, the CGT asset is an *indirect roll-over replacement* for something (the *underlying asset*) that another entity owns if, and only if:
- (a) a \*CGT event happened to another CGT asset at a time when the transferor owned it and the other entity already owned the underlying asset; and
  - (b) for the transferor, the other CGT asset was at that time:
    - (i) a \*direct roll-over replacement for the underlying asset; or
    - (ii) an indirect roll-over replacement for the underlying asset because of any other application or applications of this subsection; and
  - (c) there was a \*replacement-asset roll-over for the CGT event; and
  - (d) the transferor received the first CGT asset (or CGT assets including it) in respect of the CGT event as the replacement asset (or the replacement assets).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 725—Direct value shifting affecting interests in companies and trusts**

### **Table of Subdivisions**

#### Guide to Division 725

- 725-A Scope of the direct value shifting rules
- 725-B What is a direct value shift
- 725-C Consequences of a direct value shift
- 725-D Consequences for down interest or up interest as CGT asset
- 725-E Consequences for down interest or up interest as trading stock or a revenue asset
- 725-F Value adjustments and taxed gains

### **Guide to Division 725**

#### **725-1 What this Division is about**

If, under a scheme, value is shifted from equity or loan interests in a company or trust to other equity or loan interests in the same company or trust (including interests issued at a discount), this Division:

- (a) adjusts the value of those interests for income tax purposes to take account of material changes in market value that are attributable to the value shift; and
- (b) treats the value shift as a partial realisation to the extent that value is shifted between interests held by different owners, and in some other cases.

However, it does so only for interests that are owned by entities involved in the value shift.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 725-A—Scope of the direct value shifting rules**

### **Table of sections**

725-45	Main object
725-50	When a direct value shift has consequences under this Division
725-55	Controlling entity test
725-65	Cause of the value shift
725-70	Consequences for down interest only if there is a material decrease in its market value
725-80	Who is an affected owner of a down interest?
725-85	Who is an affected owner of an up interest?
725-90	Direct value shift that will be reversed
725-95	Direct value shift resulting from reversal

### **725-45 Main object**

- (1) The main object of this Division is:
  - (a) to prevent inappropriate losses from arising on the realisation of \*equity or loan interests from which value has been shifted to other equity or loan interests in the same entity; and
  - (b) to prevent inappropriate gains from arising on the realisation of equity or loan interests in the same entity to which the value has been shifted;so far as those interests are owned by entities involved in the value shift.
- (2) This is done by:
  - (a) adjusting the value of those interests for income tax purposes to take account of changes in \*market value that are attributable to the value shift; and
  - (b) treating the value shift as a partial realisation to the extent that value is shifted:
    - (i) between interests held by different owners; or
    - (ii) in the case of interests in their character as CGT assets—from post-CGT assets to pre-CGT assets; or
    - (iii) between interests of different characters.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 725-50

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**725-50 When a direct value shift has consequences under this Division**

A \*direct value shift under a \*scheme involving \*equity or loan interests in an entity (the *target entity*) has consequences for you under this Division if, and only if:

- (a) the target entity is a company or trust at some time during the \*scheme period; and
- (b) section 725-55 (Controlling entity test) is satisfied; and
- (c) section 725-65 (Cause of the value shift) is satisfied; and
- (d) you are an \*affected owner of a \*down interest, or an \*affected owner of an \*up interest, or both; and
- (e) neither of sections 725-90 and 725-95 (about direct value shifts that are reversed) applies.

Note: For a down interest of which you are an affected owner, the direct value shift has consequences under this Division only if section 725-70 (about material decrease in market value) is satisfied.

**725-55 Controlling entity test**

An entity (the *controller*) must \*control (for value shifting purposes) the target entity at some time during the period starting when the \*scheme is entered into and ending when it has been carried out. (That period is the *scheme period*.)

For the concept of *control (for value shifting purposes)*, see sections 727-355 to 727-375.

**725-65 Cause of the value shift**

- (1) It must be the case that one or more of the following:
  - (a) the target entity;
  - (b) the controller;
  - (c) an entity that was an \*associate of the controller at some time during or after the \*scheme period;
  - (d) an \*active participant in the \*scheme;(either alone or together with one or more other entities) did under the scheme the one or more things:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (e) to which the decrease in the \*market value of the \*down interests is reasonably attributable; and
- (f) to which the increase in the market value of the \*up interests, or the issue of up interests at a \*discount, is reasonably attributable, or that is or include the issue of up interests at a \*discount.

*Active participants (if target entity is closely held)*

- (2) An entity (the *first entity*) is an *active participant* in the \*scheme if, and only if:
  - (a) at some time during the \*scheme period, the target entity has fewer than 300 members (in the case of a company) or fewer than 300 beneficiaries (in the case of a trust); and
  - (b) the first entity has actively participated in, or directly facilitated, the entering into or carrying out of the \*scheme (whether or not it did so at the direction of some other entity); and
  - (c) the first entity:
    - (i) owns a \*down interest at the \*decrease time; or
    - (ii) owns an \*up interest at the \*increase time or has an up interest issued to it at a \*discount because of the \*direct value shift.

*When an entity has 300 or more members or beneficiaries*

- (3) Section 124-810 (under which certain companies and trusts are not regarded as having 300 or more members or beneficiaries) also applies for the purposes of this Division.
- (4) In addition, this Division applies to a \*non-fixed trust as if it did not have 300 or more beneficiaries.

### **725-70 Consequences for down interest only if there is a material decrease in its market value**

- (1) For a \*down interest of which you are an \*affected owner, the \*direct value shift has consequences under this Division only if the sum of the decreases in the \*market value of all down interests

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 725-80

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because of direct value shifts under the same \*scheme as the direct value shift is at least \$150,000.

Note: In working out the sum of the decreases in market value of all down interests, it will be necessary to include decreases not only in your down interests, but also in those of other affected owners and of entities that are not affected owners.

- (2) However, if, having regard to all relevant circumstances, it is reasonable to conclude that the sole or main reason why a \*direct value shift happened under a different scheme from one or more other direct value shifts was so that subsection (1) would not be satisfied for one or more of the direct value shifts mentioned in this subsection, subsection (1) does not apply (and is taken never to have applied) to any of the direct value shifts.

**725-80 Who is an affected owner of a down interest?**

An entity is an *affected owner* of a \*down interest if, and only if, the entity owns the down interest at the \*decrease time and at least one of these paragraphs is satisfied:

- (a) the entity is the controller;
- (b) the entity was an \*associate of the controller at some time during or after the \*scheme period;
- (c) the entity is an \*active participant in the \*scheme.

**725-85 Who is an affected owner of an up interest?**

An entity is an *affected owner* of an \*up interest if, and only if:

- (a) there is at least one \*affected owner of \*down interests; and
- (b) the entity owns the up interest at the \*increase time, or the interest is an up interest because it was issued to the entity at a \*discount;

and at least one of these paragraphs is satisfied:

- (c) the entity is the controller;
- (d) the entity was an \*associate of the controller at some time during or after the \*scheme period;
- (e) at some time during or after the scheme period, the entity was an associate of an entity that is an affected owner of down

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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interests because it was an associate of the controller at some time during or after that period;

(f) the entity is an \*active participant in the \*scheme.

### **725-90 Direct value shift that will be reversed**

- (1) The \*direct value shift does *not* have consequences for you under this Division if:
- (a) the one or more things referred to in paragraph 725-145(1)(b) brought about a state of affairs, but for which the direct value shift would not have happened; and
  - (b) as at the time referred to in that paragraph, it is more likely than not that, because of the \*scheme, that state of affairs will cease to exist within 4 years after that time.

**Example:** Under a scheme, the voting rights attached to a class of shares in a company are changed. As a result, the market value of shares in that class decreases, and the market value of other classes of shares in the company increases. The company's constitution provides that the change is to last for only 3 years.

- (2) However, this section stops applying if the state of affairs referred to in paragraph (1)(a) still exists:
- (a) at the end of those 4 years; or
  - (b) when a \*realisation event happens to \*down interests or \*up interests of which you are, or any other entity is, an \*affected owner;
- whichever happens sooner.
- (3) If this section stops applying, it is taken *never* to have applied to the \*direct value shift.

**Note:** This may result in an assessment for an earlier income year having to be amended to give effect to the consequences that the direct value shift would have had for you under this Division if this section hadn't applied.

### **725-95 Direct value shift resulting from reversal**

- (1) A \*direct value shift does not have consequences for any entity under this Division if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 725-145

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- (a) section 725-90 applies, and the state of affairs referred to in paragraph 725-90(1)(a) ceases to exist; and
  - (b) the direct value shift would not have happened but for that state of affairs ceasing to exist.
- (2) However, if section 725-90 stops applying, this section is taken *never* to have applied to the later direct value shift.

**Subdivision 725-B—What is a direct value shift**

**Table of sections**

725-145	When there is a <i>direct value shift</i>
725-150	Issue of equity or loan interests at a <i>discount</i>
725-155	Meaning of <i>down interests</i> , <i>decrease time</i> , <i>up interests</i> and <i>increase time</i>
725-160	What is the nature of a direct value shift?
725-165	If market value decrease or increase is only partly attributable to the scheme

**725-145 When there is a *direct value shift***

- (1) There is a *direct value shift* under a \*scheme involving \*equity or loan interests in an entity (the *target entity*) if:
- (a) there is a decrease in the \*market value of one or more equity or loan interests in the target entity; and
  - (b) the decrease is reasonably attributable to one or more things done under the scheme, and occurs at or after the time when that thing, or the first of those things, is done; and
  - (c) either or both of subsections (2) and (3) are satisfied.

Examples of something done under a scheme are issuing new shares at a \*discount, buying back shares or changing the voting rights attached to shares.

- (2) One or more \*equity or loan interests in the target entity must be issued at a \*discount. The issue must be, or must be reasonably attributable to, the thing, or one or more of the things, referred to in paragraph (1)(b). It must also occur at or after the time referred to in that paragraph.

Example: A company runs a family business. There are 2 shares originally issued for \$2 each. They are owned by husband and wife. The market value of the shares is much greater (represented by the value of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

assets of the company less its liabilities). The company issues one more share for \$2 to their son.

Caution is needed in such a situation. The example would result in a large CGT liability for the husband and wife under this Division, because they have shifted 1/3 of the value of their own shares to their son. No such liability would arise if the share had been issued for its market value.

- (3) Or, there must be an increase in the \*market value of one or more \*equity or loan interests in the target entity. The increase must be reasonably attributable to the thing, or to one or more of the things, referred to in paragraph (1)(b). It must also occur at or after the time referred to in that paragraph.

### **725-150 Issue of equity or loan interests at a *discount***

- (1) An \*equity or loan interest is issued at a *discount* if, and only if, the \*market value of the interest when issued exceeds the amount of the payment that the issuing entity receives. The excess is the amount of the *discount*.
- (2) The payment that the issuing entity receives can include property. If it does, use the \*market value of the property in working out the amount of the payment.

#### *Amounts for which bonus equities are treated as being issued*

- (3) If:
- (a) a \*primary equity interest is issued as mentioned in subsection 130-20(1) (about bonus equities issued in relation to original equities); and
  - (b) subsection 130-20(3) does *not* apply (about bonus equities that are a dividend or otherwise assessable income);
- subsection (1) of this section applies to the interest as if the amount of the payment that the issuing entity receives were equal to the \*cost base of the interest when issued (as worked out under section 130-20).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 725-155

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(4) If:

- (a) a \*primary equity interest is issued as mentioned in subsection 6BA(1) of the *Income Tax Assessment Act 1936* (about bonus shares issued in relation to original shares); and
- (b) subsection 6BA(2) of that Act applies (about bonus shares that are a dividend);

subsection (1) of this section applies to the interest as if the amount of the payment that the issuing entity receives were equal to the consideration worked out under subsection 6BA(2) of that Act.

(5) If both of subsections (3) and (4) apply to the issue of the same \*primary equity interest, subsection (1) of this section applies to the interest as if the amount of the payment that the issuing entity receives were equal to the greater of the amounts worked out under subsections (3) and (4).

*Application of subsections (3), (4) and (5)*

(6) Subsection (3) does not apply if, for the income year in which the interest is issued, the issuing entity is:

- (a) a corporate unit trust within the meaning of section 102J of the *Income Tax Assessment Act 1936*; or
- (b) a public trading trust within the meaning of section 102R of that Act.

(7) Subsections (3), (4) and (5) have effect only for the purposes of working out whether a \*direct value shift has happened and, if so, its consequences (if any) under this Division.

**725-155 Meaning of *down interests, decrease time, up interests and increase time***

- (1) An \*equity or loan interest in the target entity is a ***down interest*** if a decrease in its \*market value is reasonably attributable to the one or more things referred to in paragraph 725-145(1)(b), and occurs at or after the time referred to in that paragraph. The time when the decrease happens is called the ***decrease time*** for that interest.
- (2) An \*equity or loan interest in the target entity is an ***up interest*** if subsection 725-145(2) or (3) is satisfied for the interest. The time

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

when the interest is issued at a \*discount, or the increase in \*market value happens, is called the *increase time* for that interest.

### **725-160 What is the nature of a direct value shift?**

- (1) The \*direct value shift has 2 aspects.
- (2) Overall, it consists of:
  - (a) the decreases in \*market value of the down interests; and
  - (b) the issue at a \*discount of the up interests covered by subsection 725-145(2); and
  - (c) the increases in market value of the up interests covered by subsection 725-145(3).
- (3) This Division also proceeds on the basis that the \*direct value shift is from *each* of the \*down interests to *each* of the \*up interests.

### **725-165 If market value decrease or increase is only partly attributable to the scheme**

If it is reasonable to conclude that an increase or decrease in \*market value, or the issuing of an \*equity or loan interest at a \*discount, is only partly caused by the doing of the one or more things under the \*scheme, this Division applies to the increase, decrease, or issue at a discount, to that extent only.

## **Subdivision 725-C—Consequences of a direct value shift**

### **Table of sections**

#### **General**

- 725-205 Consequences depend on character of down interests and up interests  
725-210 Consequences for down interests depend on pre-shift gains and losses

#### **Special cases**

- 725-220 Neutral direct value shifts  
725-225 Issue of bonus shares or units  
725-230 Off-market buy-backs

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



## General

### 725-205 Consequences depend on character of down interests and up interests

- (1) The consequences for you of the \*direct value shift depend on the character of the \*down interests and \*up interests of which you are an \*affected owner.
- (2) There are consequences for all your \*down interests and \*up interests in their character as \*CGT assets. However, some of them may also be \*trading stock or \*revenue assets. There are additional consequences for those interests in their character as trading stock or revenue assets.

Note: For example, you may own a down interest that is a CGT asset and a revenue asset.

Sections 725-240 to 725-255 set out the consequences for you of a shift in value from that interest in its character as a CGT asset. The cost base of the asset will be decreased, which will affect the calculation of a capital gain when a CGT event happens to the interest.

Section 725-320 sets out the consequences for you of a shift in value from that interest in its character as a revenue asset. The adjustment made under that section will affect the calculation of any profit on the sale of the interest.

Any overlap between the capital gain and the profit realised on the sale of the interest is then dealt with under section 118-20.

In some instances, the direct value shift may result in a taxing event generating a gain for you in the income year in which the shift happens. That gain will be both a capital gain (because the down interest can be characterised as a CGT asset) and an increase in your assessable income (because the down interest can be characterised as a revenue asset). Again, any overlap is dealt with under section 118-20.

### 725-210 Consequences for down interests depend on pre-shift gains and losses

- (1) The consequences for a \*down interest also depend on whether it has a \*pre-shift gain or a \*pre-shift loss.
- (2) It has a *pre-shift gain* if, immediately before the \*decrease time, its \*market value was *greater than* its \*adjustable value.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) It has a ***pre-shift loss*** if, immediately before the \*decrease time, its \*market value was *equal to or less than* its \*adjustable value.

## Special cases

### 725-220 Neutral direct value shifts

- (1) The consequences are different if the total decrease in \*market value of your \*down interests is equal to the sum of:
- (a) the total increase in market value of your \*up interests; and
  - (b) the total \*discounts given to you on the issue of your up interests.
- (2) In that case, this Subdivision and Subdivisions 725-D to 725-F apply to you as if the \*direct value shift:
- (a) consisted only of:
    - (i) the decreases in \*market value of your \*down interests; and
    - (ii) the issue at a \*discount of your \*up interests covered by subsection 725-145(2); and
    - (iii) the increases in market value of your up interests covered by subsection 725-145(3); and
  - (b) were from each of your down interests to each of your up interests.
- (3) This section has effect despite section 725-160.

### 725-225 Issue of bonus shares or units

- (1) The consequences are different if you are an \*affected owner of \*up interests (the ***bonus interests***) that the target entity issues to you, at a \*discount, under the \*scheme, in relation to \*down interests (the ***original interests***) of which you are an affected owner.

*Effect of treatment under subsection 130-20(3)*

- (2) To the extent that the \*direct value shift is *to* the bonus interests *from* original interests in relation to which the target entity issued bonus interests to which:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 725-225

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- (a) subsection 130-20(3) applies (because none of them is a dividend or otherwise assessable income); and
  - (b) item 1 of the table in that subsection applies (because the original interests are post-CGT assets);
- these paragraphs apply:
- (c) the respective \*cost bases and \*reduced cost bases of those original interests are not reduced;
  - (d) the bonus interests referred to in subsection (1) do not give rise to a \*taxing event generating a gain for you under the table in section 725-245 on any of those original interests.
- (3) To the extent that the \*direct value shift is *from* the original interests *to* bonus interests to which subsection 130-20(3) applies (because none of them is a dividend or otherwise assessable income) and:
- (a) item 1 of the table in that subsection applies (because the original interests are post-CGT assets); or
  - (b) item 2 of that table applies (because the original interests are pre-CGT assets and an amount has been paid for the bonus interests that you were required to pay);
- the respective \*cost bases and \*reduced cost bases of those bonus interests are not uplifted.

*Effect of treatment under subsection 6BA(3) of the Income Tax Assessment Act 1936*

- (4) To the extent that the \*direct value shift is *to* the bonus interests *from* original interests in relation to which the target entity issued bonus interests to which subsection 6BA(3) of the *Income Tax Assessment Act 1936* applies (either because they are shares issued for no consideration and none of them is a dividend or because they qualify for the intercorporate dividend rebate):
- (a) the respective \*adjustable values of those original interests, in their character as \*trading stock or \*revenue assets, are not reduced; and
  - (b) the bonus interests referred to in subsection (1) do not give rise to a \*taxing event generating a gain for you under the table in section 725-335 on any of those original interests.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (5) To the extent that the \*direct value shift is *from* the original interests to bonus interests to which subsection 6BA(3) of the *Income Tax Assessment Act 1936* applies, the respective \*adjustable values of those bonus interests of which you are an affected owner, in their character as trading stock or revenue assets, are not uplifted.

### **725-230 Off-market buy-backs**

- (1) The consequences are different if:
- (a) a decrease in the \*market value of a \*down interest of which you are an \*affected owner is reasonably attributable to the target entity proposing to buy back that interest for less than its market value; and
  - (b) the target entity does buy back that down interest; and
  - (c) subsection 159GZZZQ(2) of the *Income Tax Assessment Act 1936* treats you as having received the down interest's market value worked out as if the buy-back had not occurred and was never proposed to occur.

- (2) The \*adjustable value of the \*down interest is not reduced, and there is no \*taxing event generating a gain.

Note: The down interest is not dealt with here because it is already dealt with in Division 16K of Part III of the *Income Tax Assessment Act 1936*.

- (3) Also, to the extent that the \*direct value shift is from the \*down interest to \*up interests of which you are an \*affected owner, uplifts in the \*adjustable value of the up interests are worked out under either or both of:
- (a) item 8 of the table in subsection 725-250(2); and
  - (b) item 9 of the table in subsection 725-335(3);
- as if the down interest were one owned by another affected owner.

### **Subdivision 725-D—Consequences for down interest or up interest as CGT asset**

#### **Table of sections**

725-240 CGT consequences; meaning of *adjustable value*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 725-240

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- 725-245 Table of *taxing events generating a gain* for interests as CGT assets
- 725-250 Table of consequences for adjustable values of interests as CGT assets
- 725-255 Multiple CGT consequences for the same down interest or up interest

**725-240 CGT consequences; meaning of *adjustable value***

- (1) The CGT consequences for you of a \*direct value shift are of one or more of these 3 kinds:
  - (a) there are one or more \*taxing events generating a gain for \*down interests of which you are an affected owner (see subsection (2));
  - (b) the \*cost base and \*reduced cost base of down interests of which you are an \*affected owner are reduced (see subsection (3));
  - (c) the cost base and reduced cost base of \*up interests of which you are an affected owner are uplifted (see subsection (4)).

Note: If there is a taxing event generating a gain, CGT event K8 happens. See section 104-250.

*Taxing event generating a gain*

- (2) To work out:
  - (a) whether under the table in section 725-245 there is a \*taxing event generating a gain for you on a \*down interest; and
  - (b) if so, the amount of the gain;assume that the ***adjustable value*** from time to time of that or any other \*equity or loan interest in the \*target entity is its \*cost base.

Note: For example, for that purpose the question whether the interest has a pre-shift gain or a pre-shift loss is determined on the basis that the interest's adjustable value is its cost base.

*Reduction or uplift of cost base and reduced cost base*

- (3) The \*cost base and the \*reduced cost base of a \*down interest are reduced at the \*decrease time to the extent that section 725-250 provides for the \*adjustable value of the interest to be reduced.
- (4) The \*cost base and the \*reduced cost base of an \*up interest are uplifted at the \*increase time to the extent that section 725-250 provides for the \*adjustable value of the interest to be uplifted.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (5) However, the \*cost base or \*reduced cost base is *uplifted* only to the extent that the amount of the uplift is still reflected in the \*market value of the interest when a later \*CGT event happens to the interest.
- (6) To work out:
- (a) whether the \*cost base or \*reduced cost base of the interest is reduced or uplifted; and
  - (b) if so, by how much;
- assume that:
- (c) the *adjustable value* from time to time of that or any other \*equity or loan interest in the \*target entity is its cost base or reduced cost base, as appropriate; and
  - (d) if the interest is an \*up interest because it was issued at a \*discount—the *adjustable value* of the interest immediately before it was issued was its cost base or reduced cost base, as appropriate, when it was issued.

Note: For example, for that purpose the question whether the interest has a pre-shift gain or a pre-shift loss is determined on the basis that the interest's adjustable value is its cost base or reduced cost base, as appropriate.

*Reductions and uplifts also apply to pre-CGT assets*

- (7) A reduction or uplift occurs regardless of whether the entity that owns the interest \*acquired it before, on or after 20 September 1985.

### **725-245 Table of taxing events generating a gain for interests as CGT assets**

To the extent that the \*direct value shift is from \*down interests of which you are an \*affected owner, and that are specified in an item in the table, to \*up interests specified in that item, those up interests give rise to a *taxing event generating a gain* for you on each of those down interests. The gain is worked out under section 725-365.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 725-250

***Taxing events generating a gain for down interests as CGT assets***

<b>Item</b>	<b>Down interests:</b>	<b>Up interests:</b>
1	*down interests that: (a) are owned by <i>you</i> ; and (b) are <i>neither your *revenue assets nor your *trading stock</i> ; and (c) have <i>*pre-shift gains</i> ; and (d) are <i>*post-CGT assets</i>	*up interests owned by <i>you</i> that: (a) are <i>neither your *revenue assets nor your *trading stock</i> ; and (b) are <i>*pre-CGT assets</i>
2	*down interests that: (a) are owned by <i>you</i> ; and (b) are <i>neither your *revenue assets nor your *trading stock</i> ; and (c) have <i>*pre-shift gains</i>	*up interests owned by <i>you</i> that are <i>your *trading stock or *revenue assets</i>
3	*down interests owned by <i>you</i> that: (a) are of the one kind (either <i>your *trading stock or your *revenue assets</i> ); and (b) have <i>*pre-shift gains</i>	*up interests owned by <i>you</i> that: (a) are <i>of the other kind</i> (either <i>your *revenue assets or your *trading stock</i> ); or (b) are <i>neither your *revenue assets nor your *trading stock</i>
4	*down interests owned by <i>you</i> that have <i>*pre-shift gains</i>	up interests owned by <i>other *affected owners</i>

Note: If there is a taxing event generating a gain on a down interest, CGT event K8 happens: see section 104-250. However, a capital gain you make under CGT event K8 is disregarded if the down interest:

- is your trading stock (see section 118-25); or
- is a pre-CGT asset (see subsection 104-250(5)).

**725-250 Table of consequences for adjustable values of interests as CGT assets**

- (1) The table in subsection (2) sets out consequences of the \*direct value shift for the \*adjustable values of \*down interests and \*up interests of which you are an \*affected owner, in their character as \*CGT assets.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 725-250

- (2) To the extent that the \*direct value shift is from \*down interests specified in an item in the table to \*up interests specified in that item:
- (a) the \*adjustable value of each of those down interests is decreased by the amount worked out under the section (if any) specified for the down interests in the last column of that item; and
- (b) the adjustable value of each of those \*up interests is uplifted by the amount worked out under the section (if any) specified for the up interests in that column.

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**Consequences of the direct value shift for adjustable values of CGT assets**


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<b>Item</b>	<b>To the extent that the direct value shift is from:</b>	<b>To:</b>	<b>The decrease or uplift is worked out under:</b>
1	*down interests that: (a) are owned by <i>you</i> ; and (b) have * <i>pre-shift gains</i> ; and (c) are * <i>post-CGT assets</i>	*up interests owned by <i>you</i> that do <i>not</i> give rise to a *taxing event generating a gain for <i>you</i> on those down interests under section 725-245	for the down interests: section 725-365; and for the up interests: section 725-370
2	*down interests that: (a) are owned by <i>you</i> ; and (b) have * <i>pre-shift gains</i> ; and (c) are * <i>pre-CGT assets</i>	*up interests owned by <i>you</i> that are * <i>pre-CGT assets</i>	for the down interests: section 725-365; and for the up interests: section 725-370
3	*down interests that: (a) are owned by <i>you</i> ; and (b) have * <i>pre-shift gains</i> ; and (c) are * <i>pre-CGT assets</i>	*up interests owned by <i>you</i> that are * <i>post-CGT assets</i>	for the down interests: section 725-365; and for the up interests: section 725-375

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 725-255

<b>Consequences of the direct value shift for adjustable values of CGT assets</b>			
<b>Item</b>	<b>To the extent that the direct value shift is from:</b>	<b>To:</b>	<b>The decrease or uplift is worked out under:</b>
4	*down interests owned by <i>you</i> that have * <i>pre-shift gains</i>	*up interests owned by <i>you</i> that give rise to a *taxing event generating a gain on those down interests under section 725-245	for the down interests: section 725-365; and for the up interests: section 725-375
5	*down interests owned by <i>you</i> that have * <i>pre-shift losses</i>	*up interests owned by <i>you</i>	for the down interests: section 725-380; and for the up interests: section 725-375
6	*down interests owned by <i>you</i> that have * <i>pre-shift gains</i>	*up interests owned by <i>other</i> * <i>affected owners</i>	for the down interests: section 725-365
7	*down interests owned by <i>you</i> that have * <i>pre-shift losses</i>	*up interests owned by <i>other</i> * <i>affected owners</i>	for the down interests: section 725-380
8	*down interests owned by <i>other</i> * <i>affected owners</i>	*up interests owned by <i>you</i>	for the up interests: section 725-375
9	*down interests owned by <i>you</i>	*up interests owned by <i>entities that are not</i> * <i>affected owners</i>	(there are no decreases or uplifts)
10	*down interests owned by <i>entities that are not</i> * <i>affected owners</i>	*up interests owned by <i>you</i>	(there are no decreases or uplifts)

**725-255 Multiple CGT consequences for the same down interest or up interest**

- (1) A \*down interest or \*up interest of which you are an \*affected owner may be covered by 2 or more items in the table in subsection 725-250(2).

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) If the \*cost base or \*reduced cost base of the same \*down interest or \*up interest is decreased or uplifted under 2 or more items, it is decreased or uplifted by the total of the amounts worked out under those items.
- (3) If for a particular \*down interest there is a \*taxing event generating a gain under an item in the table in section 725-245, that taxing event is in addition to:
  - (a) each taxing event generating a gain for that interest under any other item in that table; and
  - (b) each decrease in the \*cost base or \*reduced cost base of the interest under an item in the table in subsection 725-250(2).

### **Subdivision 725-E—Consequences for down interest or up interest as trading stock or a revenue asset**

#### **Table of sections**

725-310	Consequences for down interest or up interest as trading stock
725-315	<i>Adjustable value</i> of trading stock
725-320	Consequences for down interest or up interest as a revenue asset
725-325	<i>Adjustable value</i> of revenue asset
725-335	How to work out those consequences
725-340	Multiple trading stock or revenue asset consequences for the same down interest or up interest

#### **725-310 Consequences for down interest or up interest as trading stock**

- (1) The consequences of the \*direct value shift for your \*trading stock are of one or more of these 3 kinds:
  - (a) the \*adjustable values of \*down interests of which you are an \*affected owner are reduced (see subsection (2));
  - (b) the adjustable values of \*up interests of which you are an affected owner are uplifted (see subsection (3));
  - (c) there are one or more \*taxing events generating a gain for down interests of which you are an affected owner (see subsection (5)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 725-310

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*Effect of reduction or uplift of adjustable value*

- (2) If the \*adjustable value of a \*down interest that is your trading stock is reduced under section 725-335, you are treated as if:
- (a) \*immediately before the \*decrease time, you had sold the interest to someone else (at \*arm's length and in the ordinary course of business) for its \*adjustable value immediately before the decrease time; and
  - (b) immediately after the decrease time, you had bought the interest back for the reduced adjustable value.
- (3) If the \*adjustable value of an \*up interest that is your \*trading stock is uplifted under section 725-335, you are treated as if:
- (a) \*immediately before the \*increase time, you had sold the interest to someone else (at \*arm's length and in the ordinary course of business) for its \*adjustable value immediately before the increase time; and
  - (b) immediately after the increase time, you had bought the interest back for the uplifted adjustable value.
- (4) However, the increase in the cost of an \*up interest because of paragraph (3)(b) is taken into account from time to time only to the extent that the amount of the increase is still reflected in the \*market value of the interest.

Note: The situations where the increase in cost would be taken into account include:

- in working out your deductions for the cost of trading stock acquired during the income year in which the increase time happens; and
- the end of an income year if the interest's closing value as trading stock is worked out on the basis of its cost; and
- the start of the income year in which the interest is disposed of, if that happens in a later income year and the interest's closing value as trading stock at the end of the previous income year was worked out on the basis of its cost.

If the interest stops being trading stock, section 70-110 treats you as having disposed of it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Taxing event generating a gain*

- (5) For each \*taxing event generating a gain under an item in the table in subsection 725-335(3), the gain is included in your assessable income for the income year in which the \*decrease time happens.

**725-315 Adjustable value of trading stock**

If a \*down interest or \*up interest is your trading stock, its *adjustable value* at a particular time is:

- (a) if the interest has been \*trading stock of yours ever since the start of the income year in which that time occurs—its \*value as trading stock at the start of the income year; or
- (b) otherwise—its cost.

Note 1: If an interest has been affected by an earlier direct value shift during the same income year, it will be treated as having already been sold and repurchased (because of an earlier application of section 725-310). As a result, the cost on repurchase becomes its adjustable value immediately before the decrease time or increase time for the later direct value shift.

Note 2: The adjustable value of an interest that is an up interest because it was issued at a discount is worked out under paragraph (b).

**725-320 Consequences for down interest or up interest as a revenue asset**

- (1) The consequences of the \*direct value shift for your \*revenue assets are of one or more of these 3 kinds:
  - (a) the \*adjustable values of \*down interests of which you are an \*affected owner are reduced (see subsection (2));
  - (b) the adjustable values of \*up interests of which you are an affected owner are uplifted (see subsection (3));
  - (c) one or more \*taxing events generating a gain for down interests of which you are an affected owner (see subsection (5)).

*Effect of reduction or uplift of adjustable value*

- (2) If the \*adjustable value of a \*down interest that is your \*revenue asset is decreased under section 725-335, you are treated as if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 725-325

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- (a) \*immediately before the \*decrease time, you had sold the interest to someone else for its \*adjustable value immediately before the decrease time; and
  - (b) immediately afterwards, you had bought the interest back for the reduced adjustable value; and
  - (c) from the time when you bought it back, the interest continued to be a revenue asset, for the same reasons as it was a revenue asset before you sold it.
- (3) If the \*adjustable value of an \*up interest that is your \*revenue asset is uplifted under section 725-335, you are treated as if:
- (a) \*immediately before the \*increase time, you had sold the interest to someone else for its \*adjustable value immediately before the increase time; and
  - (b) immediately afterwards, you had bought the interest back for the uplifted adjustable value; and
  - (c) from the time when you bought it back, the interest continued to be a revenue asset, for the same reasons as it was a revenue asset before you sold it.
- (4) However, the uplift in \*adjustable value is taken into account only to the extent that the amount of the uplift is still reflected in the \*market value of the interest when it is disposed of or otherwise realised.

*Taxing event generating a gain*

- (5) For each \*taxing event generating a gain under an item in the table in subsection 725-335(3), the gain is included in your assessable income for the income year in which the \*decrease time happens.

**725-325 Adjustable value of revenue asset**

- (1) If a \*down interest is your \*revenue asset, its *adjustable value* immediately before the \*decrease time is the total of the amounts that would be subtracted from the gross disposal proceeds in calculating any profit or loss on disposal of the interest if you disposed of it immediately before the decrease time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) If an \*up interest is your \*revenue asset and it increases in \*market value because of the \*direct value shift, its *adjustable value* immediately before the \*increase time is the total of the amounts that would be subtracted from the gross disposal proceeds in calculating any profit or loss on disposal of the interest if you disposed of it immediately before the increase time.
- (3) If an \*up interest is your \*revenue asset and it is issued at a \*discount, it is taken to have an *adjustable value* immediately before it is issued equal to the consideration paid or given by you for the interest.

Note: If an interest has been affected by an earlier direct value shift during the same income year, it will be treated as having already been sold and repurchased (because of an earlier application of section 725-320). As a result, the cost on repurchase becomes its adjustable value immediately before the decrease time or increase time for the later direct value shift.

### **725-335 How to work out those consequences**

- (1) This section sets out the consequences of the \*direct value shift for a \*down interest or \*up interest as \*trading stock or a \*revenue asset.
- (2) If you have both trading stock and revenue assets, items 1 and 2 of the table in subsection (3) can apply once to the trading stock and again to the revenue assets. The other items apply (if at all) to the trading stock and revenue assets together.

#### *Decreases and uplifts in adjustable value*

- (3) To the extent that the \*direct value shift is from \*down interests specified in an item in the table to \*up interests specified in that item:
- the \*adjustable value of each of those down interests is decreased by the amount worked out under the section (if any) specified for the down interests in the last column of that item; and
  - the adjustable value of each of those \*up interests is uplifted by the amount worked out under the section (if any) specified for the up interests in that column.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 725-335

<b>Consequences for down interest or up interest as trading stock or revenue asset</b>			
<b>Item</b>	<b>To the extent that the direct value shift is from:</b>	<b>To:</b>	<b>The decrease or uplift is worked out under:</b>
1	*down interests owned by you that: (a) are of the one kind (either your *trading stock or your *revenue assets); and (b) have *pre-shift gains	*up interests owned by you that are of that same kind	for the down interests: section 725-365; and for the up interests: section 725-370
2	*down interests owned by you that: (a) are of the one kind (either your *trading stock or your *revenue assets); and (b) have *pre-shift gains	*up interests owned by you that are of the other kind (either your *revenue assets or your *trading stock)	for the down interests: section 725-365; and for the up interests: section 725-375
3	*down interests owned by you that: (a) are your *trading stock or *revenue assets; and (b) have *pre-shift losses	*up interests owned by you that are of that same kind or of the other kind	for the down interests: section 725-380; and for the up interests: section 725-375
4	*down interests owned by you that: (a) are your *trading stock or *revenue assets; and (b) have *pre-shift gains	*up interests owned by you that are neither your *revenue assets nor your *trading stock	for the down interests: section 725-365
5	*down interests owned by you that: (a) are your *trading stock or *revenue assets; and (b) have *pre-shift losses	*up interests owned by you that are neither your *revenue assets nor your *trading stock	for the down interests: section 725-380

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Consequences for down interest or up interest as trading stock or revenue asset</b>			
<b>Item</b>	<b>To the extent that the direct value shift is from:</b>	<b>To:</b>	<b>The decrease or uplift is worked out under:</b>
6	*down interests owned by you that are <i>neither your *revenue assets nor your *trading stock</i>	*up interests owned by you that are <i>your *trading stock or *revenue assets</i>	for the up interests: section 725-375
7	*down interests owned by you that: (a) are <i>your *trading stock or *revenue assets</i> ; and (b) have <i>*pre-shift gains</i>	up interests owned by <i>other *affected owners</i>	for the down interests: section 725-365
8	*down interests owned by you that: (a) are <i>your *trading stock or *revenue assets</i> ; and (b) have <i>*pre-shift losses</i>	*up interests owned by <i>other *affected owners</i>	for the down interests: section 725-380
9	*down interests owned by <i>other *affected owners</i>	*up interests owned by you that are <i>your *trading stock or *revenue assets</i>	for the up interests: section 725-375
10	*down interests owned by you that are <i>your *trading stock or *revenue assets</i>	*up interests owned by <i>entities that are not *affected owners</i>	(there are no decreases or uplifts)
11	*down interests owned by <i>entities that are not *affected owners</i>	*up interests owned by you that are <i>your *trading stock or *revenue assets</i>	(there are no decreases or uplifts)

*Taxing events generating a gain*

- (4) To the extent that the \*direct value shift is from \*down interests:
- (a) of which you are an \*affected owner; and
  - (b) that are specified in item 2, 4 or 7 in the table in subsection (3);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 725-340

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to \*up interests specified in that item, those up interests give rise to a **taxing event generating a gain** for you under that item on each of those down interests. The gain is worked out under section 725-365.

**725-340 Multiple trading stock or revenue asset consequences for the same down interest or up interest**

- (1) A \*down interest or \*up interest of which you are an \*affected owner may be covered by 2 or more items in the table in subsection 725-335(3).
- (2) If the \*adjustable value of the same \*down interest or \*up interest is decreased or uplifted under 2 or more items, it is decreased or uplifted by the total of the amounts worked out under those items.
- (3) If for a particular \*down interest there is a \*taxing event generating a gain under an item, that taxing event is in addition to:
  - (a) each taxing event generating a gain for that interest under any other item in the table; and
  - (b) each decrease in the \*adjustable value of the interest under that or any other item in the table.

**Subdivision 725-F—Value adjustments and taxed gains**

**Table of sections**

725-365	Decreases in adjustable values of down interests (with pre-shift gains), and taxing events generating a gain
725-370	Uplifts in adjustable values of up interests under certain table items
725-375	Uplifts in adjustable values of up interests under other table items
725-380	Decreases in adjustable value of down interests (with pre-shift losses)

**725-365 Decreases in adjustable values of down interests (with pre-shift gains), and taxing events generating a gain**

Use the following method statement:

- (a) to work out the amount of the gain for a \*taxing event generating a gain under:
  - (i) section 725-245; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) item 2, 4 or 7 of the table in subsection 725-335(3); and
- (b) to work out the decrease in \*adjustable value of a \*down interest under:
  - (i) item 1, 2, 3, 4 or 6 of the table in subsection 725-250(2); or
  - (ii) item 1, 2, 4 or 7 of the table in subsection 725-335(3).

*Method statement*

Step 1. Group together all \*down interests that:

- (a) are of the kind referred to in the relevant item; and
- (b) immediately before the \*decrease time, had the same \*adjustable value as the down interest; and
- (c) immediately before that time had the same \*market value as the down interest; and
- (d) sustained the same decrease in market value as the down interest because of the \*direct value shift.

Step 2. Work out the value shifted from that group of \*down interests to the \*up interests referred to in the relevant item using the following formula:

$$\frac{\text{Sum of the decreases in *market value of all *down interests in the group because of the *direct value shift}}{\text{Sum of the increases in *market value of, and *discounts on the issue of, those *up interests because of the *direct value shift}} \times \frac{\text{Sum of the increases in *market value of, and *discounts given on the issue of, all *up interests because of the *direct value shift}}{\text{Sum of the increases in *market value of, and *discounts on the issue of, those *up interests because of the *direct value shift}}$$

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 725-370

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Step 3. Work out the notional adjustable value of the value shifted from that group of \*down interests to those \*up interests using the formula:

$$\frac{\text{Sum of the *adjustable values, immediately before the *decrease time, of all *down interests in the group}}{\text{Sum of the *market values, immediately before the *decrease time, of all *down interests in the group}} \times \text{Value shifted}$$

Step 4. The decrease in the \*adjustable value of the \*down interest under the relevant item is equal to:

$$\frac{\text{Notional adjustable value}}{\text{Number of *down interests in the group}}$$

Step 5. For a \*taxing event generating a gain under the relevant item, the amount of the gain is equal to:

$$\frac{\text{Value shifted} - \text{Notional adjustable value}}{\text{Number of *down interests in the group}}$$

**725-370 Uplifts in adjustable values of up interests under certain table items**

Use the following method statement to work out the uplift in \*adjustable value of an \*up interest under:

- (a) item 1 or 2 of the table in subsection 725-250(2); or
- (b) item 1 of the table in subsection 725-335(3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Method statement*

Step 1. If the \*market value of the \*up interest increases because of the \*direct value shift, group together all up interests of the kind referred to in the relevant item that:

- (a) immediately before the \*increase time, had the same \*adjustable value as the up interest; and
- (b) sustained the same increase in market value as the up interest because of the \*direct value shift.

If the \*up interest is issued at a \*discount, group together all \*up interests of the kind referred to in the relevant item that:

- (c) immediately before the \*increase time, had the same \*adjustable value as the up interest; and
- (d) because of the direct value shift, are issued at the same discount as the up interest.

Step 2. The notional adjustable value of the value shifted from the \*down interests referred to in the relevant item to all the \*up interests referred to in that item has already been worked out under one or more applications of step 3 of the method statement in section 725-365.

Step 3. Use the following formula to work out how much of that notional adjustable value is attributable to the value shifted to the group of \*up interests referred to in step 1 of this method statement:

$$\text{Notional adjustable value} \times \frac{\text{Sum of the *market values, immediately after the *increase time, of all *up interests in the group}}{\text{Sum of the *market values, immediately after the *increase time, of all *up interests referred to in the relevant item}}$$

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 725-375

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Step 4. The uplift in the \*adjustable value of the \*up interest under the relevant item is equal to:

$$\frac{\text{The amount worked out under step 3}}{\text{Number of interests in that group of *up interests}}$$

**725-375 Uplifts in adjustable values of up interests under other table items**

Use the following method statement to work out the uplift in \*adjustable value of an \*up interest under:

- (a) item 3, 4, 5 or 8 of the table in subsection 725-250(2); or
- (b) item 2, 3, 6 or 9 of the table in subsection 725-335(3).

*Method statement*

Step 1. If the \*market value of the \*up interest increases because of the direct value shift, group together all \*up interests of the kind referred to in the relevant item that sustained the same increase in market value as the up interest because of the direct value shift.

If the up interest is issued at a discount, group together all up interests of the kind referred to in the relevant item that are issued at a discount of the same amount as the up interest because of the direct value shift.

Step 2. The value shifted to that group of \*up interests from the \*down interests referred to in the relevant item is the amount worked out using the formula:

$$\frac{\text{Sum of the group increases or discounts} \times \text{Sum of the decreases in *market value of those *down interests}}{\text{Total value of the *direct value shift}}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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where:

***sum of the group increases or discounts*** means (as appropriate):

- (a) the sum of the increases in \*market value of all \*up interests in the group because of the \*direct value shift; or
- (b) the sum of the \*discounts at which all \*up interests in the group were issued because of the \*direct value shift.

***total value of the direct value shift*** means:

- (a) if the sum of the decreases in \*market value of all \*down interests because of the \*direct value shift is equal to or greater than the sum of the increases in market value of all \*up interests and all \*discounts given because of the shift—the sum of the decreases; or
- (b) if the sum of the decreases in market value of all down interests because of the direct value shift is less than the sum of the increases in market value of all up interests and all discounts given because of the shift—the sum of the increases and discounts.

Step 3. The uplift in the \*adjustable value of the \*up interest under the relevant item is equal to:

$$\frac{\text{Value shifted}}{\text{Number of *up interests in the group}}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 725-380

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**725-380 Decreases in adjustable value of down interests (with pre-shift losses)**

Use the following method statement to work out the decrease in \*adjustable value of a \*down interest under:

- (a) item 5 or 7 of the table in subsection 725-250(2); or
- (b) item 3, 5 or 8 of the table in subsection 725-335(3).

*Method statement*

Step 1. Group together all \*down interests of the kind referred to in the relevant item that:

- (a) immediately before the \*decrease time, had the same \*adjustable value as the down interest; and
- (b) immediately before that time had the same \*market value as the down interest; and
- (c) sustained the same decrease in market value as the down interest because of the \*direct value shift.

Step 2. Work out the value shifted from that group of \*down interests to the \*up interests referred to in the relevant item using the formula:

$$\frac{\text{Sum of the decreases in *market value of all *down interests in the group because of the *direct value shift}}{\text{Sum of the increases in *market value of, and *discounts on the issue of, those *up interests because of the *direct value shift}} \times \frac{\text{Sum of the increases in *market value of, and *discounts given on the issue of, all *up interests because of the *direct value shift}}{\text{Sum of the increases in *market value of, and *discounts on the issue of, those *up interests because of the *direct value shift}}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Step 3. The decrease in \*adjustable value of the \*down interest under the relevant item is equal to:

$$\frac{\text{Value shifted}}{\text{Number of *down interests in the group}}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Division 727—Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings**

**Table of Subdivisions**

Guide to Division 727

727-A	Scope of the indirect value shifting rules
727-B	What is an indirect value shift
727-C	Exclusions
727-D	Working out the market value of economic benefits
727-E	Key concepts
727-F	Consequences of an indirect value shift
727-G	The realisation time method
727-H	The adjustable value method
727-K	Reduction of loss on equity or loan interests realised before the IVS time
727-L	Indirect value shift resulting from a direct value shift

**Guide to Division 727**

**727-1 What this Division is about**

If there is a net shift of value between 2 related entities because of a non-arm's length dealing, this Division:

- (a) prevents losses from arising, because of the value shift, on realisation of direct or indirect equity or loan interests in the losing entity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) within limits, prevents gains from arising, because of the value shift, on realisation of direct or indirect equity or loan interests in the gaining entity.

However, it does so only for interests that are owned by entities involved in the value shift.

### Table of sections

727-5	What is an indirect value shift?
727-10	How does this Division deal with indirect value shifts?
727-15	When does an indirect value shift have consequences under this Division?
727-25	Effect of this Division on realisations at a loss that occur before the nature or extent of an indirect value shift can be fully determined

### 727-5 What is an indirect value shift?

- (1) An indirect value shift arises when there is a net shift of value from one entity to another.

Example: Company A transfers property to company B in return for a cash payment. If the market value of the property is \$180 million but the cash payment is only \$50 million, there is a net shift of value from company A to company B of \$130 million.

- (2) It is called *indirect* because the transaction will have the indirect effect of shifting value from equity or loan interests in the losing entity to equity or loan interests in the gaining entity.

This is because the net shift in value between the entities will usually *decrease* the market value of interests in the losing entity and *increase* the market value of interests in the gaining entity.

Example: Assume that company C owns all the shares in company A and company D owns all the shares in company B. The net shift of value from company A to company B will reduce the value of company C's shares in company A and increase the value of company D's shares in company B.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

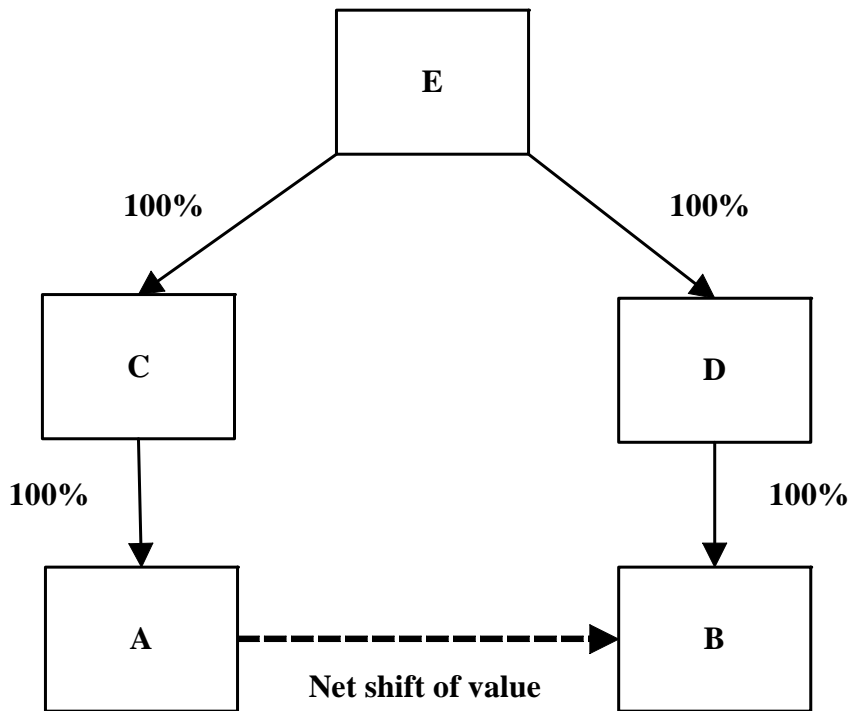
**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-5**

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- (3) It will also produce corresponding effects further up a chain of entities.

Example: Assume that company E owns all the shares in company C and company D. The net shift of value from company A to company B will also reduce the value of company E's shares in company C and increase the value of its shares in company D.



- (4) This Division is *not* concerned with the tax treatment of the net shift in value between the entities at the bottom of the chains. Instead, it deals with the effects on the market value of interests (both direct and indirect) in those entities.
- (5) An indirect value shift distorts the relationship between the market value of an equity or loan interest and its value for income tax purposes. When the interest is realised, this can produce an inappropriate loss for income tax purposes, or an inappropriate gain.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Example: If company E sold its shares in company C, the indirect value shift could (apart from this Division) result in a loss for income tax purposes. Company E could defer the corresponding gain on its shares in company D by not selling these.

### **727-10 How does this Division deal with indirect value shifts?**

- (1) To prevent an inappropriate loss or gain from arising on realisation of an interest, this Division reduces the amount of the loss or gain (realisation time method). However, a choice can be made to adjust the interest's value for income tax purposes in a way that takes account of the indirect value shift (adjustable value method).
- (2) This Division does *not* create taxing events giving rise to gains or losses.

### **727-15 When does an indirect value shift have consequences under this Division?**

- (1) Indirect value shift is defined very broadly, but the application of this Division is limited in various ways.
- (2) The losing entity must be a company or trust (except a superannuation entity). However, the gaining entity can be any kind of entity, including an individual.
- (3) This Division does *not* apply if entities deal with each other at arm's length, or provide economic benefits in return for full market value.
- (4) The losing entity and the gaining entity must be connected by having had the same *ultimate controller*. In the case of closely held entities, they may instead be connected by having had a high level of *common ownership*.
- (5) The only interests affected are those owned by entities involved in the indirect value shift or by their associates.
- (6) There are a range of exclusions, such as:
  - (a) exclusions for minor indirect value shifts; and
  - (b) a series of rules designed to provide safe harbour treatment for common transactions relating to services; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-25**

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- (c) anti-overlap provisions to prevent double-counting.
- (7) Rules of thumb are included to make it easier to determine the market value of some kinds of economic benefits.
- (8) To reduce compliance costs for:
  - (a) \*small business entities; and
  - (b) entities that meet the CGT small business net asset threshold (\$6 million);interests owned by those entities are not affected by this Division.

**727-25 Effect of this Division on realisations at a loss that occur before the nature or extent of an indirect value shift can be fully determined**

- (1) To determine whether a scheme gives rise to an indirect value shift, it must be possible to identify all the economic benefits under the scheme, and the providers and recipients of those benefits.
- (2) Before then, interests that might be affected by the scheme may be realised at a loss. Subdivision 727-K contains special rules that apply if that happens.

**Subdivision 727-A—Scope of the indirect value shifting rules**

**Table of sections**

727-95	Main object
727-100	When an indirect value shift has consequences under this Division
727-105	Ultimate controller test
727-110	Common-ownership nexus test (if both losing and gaining entities are closely held)
727-125	No consequences if losing entity is a superannuation entity

**727-95 Main object**

The main object of this Division is:

- (a) to prevent inappropriate losses from arising on the realisation of direct or indirect equity or loan interests in an entity from

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

which there has been a net shift of value because of a non-arm's length dealing; and

- (b) to prevent inappropriate gains from arising on the realisation of \*direct equity interests or \*indirect equity interests in the entity to which that value has been shifted;

in cases where the 2 entities are related as set out in this Division.

### **727-100 When an indirect value shift has consequences under this Division**

An \*indirect value shift (see Subdivision 727-B) has consequences under this Division if, and only if:

- (a) the \*losing entity is at the time of the indirect value shift a company or trust (except one listed in section 727-125 (about superannuation entities)); and
- (b) in relation to either or both of the following:
- (i) the losing entity \*providing one or more economic benefits to the gaining entity \*in connection with the \*scheme from which the indirect value shift results;
  - (ii) the gaining entity providing one or more economic benefits to the losing entity in connection with the scheme;

the 2 entities are not dealing with each other at \*arm's length; and

- (c) either or both of sections 727-105 and 727-110 are satisfied; and
- (d) no exclusion in Subdivision 727-C applies.

Note 1: The consequences for direct and indirect interests in the losing entity or in the gaining entity are set out in Subdivision 727-F. If those consequences are to be worked out using the realisation time method (under Subdivision 727-G), there are further exclusions for certain 95% services indirect value shifts: see section 727-700.

Note 2: An indirect value shift does not have consequences for interests in the losing entity or gaining entity owned immediately before the IVS time by an entity that:

- is a small business entity for each income year that includes any of the IVS period; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-105**

---

- would satisfy the maximum net asset value test in section 152-15 throughout the IVS period.

See subsection 727-470(2).

**727-105 Ultimate controller test**

It must be the case that, at some time during the \*IVS period:

- (a) the \*losing entity and the \*gaining entity have the same \*ultimate controller; or
- (b) the ultimate controller of the losing entity is the same entity that was the ultimate controller of the gaining entity at a different time during that period; or
- (c) the gaining entity is the ultimate controller of the losing entity; or
- (d) the losing entity is the ultimate controller of the gaining entity.

For the concept of *IVS period*, see section 727-150.

For the concept of *ultimate controller*, see section 727-350.

**727-110 Common-ownership nexus test (if both losing and gaining entities are closely held)**

- (1) Or, it must be the case that:
  - (a) at some time during the \*IVS period, neither the \*losing entity nor the \*gaining entity has 300 or more members (in the case of a company) or 300 or more beneficiaries (in the case of a trust); and
  - (b) the losing entity and the gaining entity have a \*common-ownership nexus within the IVS period.

For the concept of *IVS period*, see section 727-150.

For the concept of *common-ownership nexus*, see section 727-400.

- (2) Section 124-810 (under which certain companies and trusts are not regarded as having 300 or more members or beneficiaries) also applies for the purposes of this Division.
- (3) In addition, this Division applies to a \*non-fixed trust as if it did not have 300 or more beneficiaries.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**727-125 No consequences if losing entity is a superannuation entity**

An \*indirect value shift has no consequences under this Division if the \*losing entity is one of these in relation to the income year in which the indirect value shift happens:

- (a) a \*complying superannuation fund; or
- (b) a \*non-complying superannuation fund; or
- (c) a \*complying approved deposit fund; or
- (d) a \*non-complying approved deposit fund; or
- (e) a \*pooled superannuation trust.

**Subdivision 727-B—What is an indirect value shift****Table of sections**

727-150	How to determine whether a scheme results in an indirect value shift
727-155	Providing economic benefits
727-160	When an economic benefit is provided <i>in connection with</i> a scheme
727-165	Preventing double-counting of economic benefits

**727-150 How to determine whether a scheme results in an indirect value shift**

- (1) A \*scheme can result in one or more \*indirect value shifts only if one or more economic benefits have been, are being, or are to be, \*provided \*in connection with the scheme.
- (2) The question whether the \*scheme has that result must be determined by reference to the facts and circumstances that exist at the earliest time (either when the scheme is entered into or later) when it is reasonable to conclude that:
  - (a) all the economic benefits that have been, are being, or are to be, \*provided \*in connection with the scheme can be identified; and
  - (b) for each of those economic benefits:
    - (i) the entity that has provided, is providing, or is to provide, the economic benefit can be identified; and
    - (ii) the entity to which the economic benefit has been, is being, or is to be, provided can be identified; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

Section 727-150

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(iii) if the economic benefit is to be provided—those entities are in existence, and the providing of the economic benefit is not contingent; and

(c) there are no other economic benefits that are to be provided in connection with the scheme if some contingency is met.

That time is called the *IVS time* for the scheme.

Note: In most cases, the IVS time will be at or soon after the scheme is entered into. However, if:

- direct or indirect interests in a company or trust are realised at a loss when the IVS time for the scheme has not yet happened (even if it never happens); and
- the company or trust has provided, is providing, is to provide, or might provide, economic benefits in connection with the scheme;

there may be consequences for those interests similar to those of an indirect value shift resulting from the scheme. See Subdivision 727-K.

(3) The \*scheme results in an *indirect value shift* from one entity (the *losing entity*) to another entity (the *gaining entity*) if the total \*market value of the one or more economic benefits (the *greater benefits*) that the losing entity has \*provided, is providing, or is to provide, to the gaining entity \*in connection with the scheme exceeds:

(a) the total market value of the one or more economic benefits (*lesser benefits*) that the gaining entity has provided, is providing, or is to provide, to the losing entity in connection with the scheme; or

(b) if there are no economic benefits covered by paragraph (a)—nil.

That excess is the amount of the indirect value shift.

(4) The \*market value of an economic benefit is to be determined as at the earliest time when it is reasonable to conclude that:

- (a) the economic benefit can be identified; and
- (b) paragraph (2)(b) is satisfied for that benefit.

For more rules affecting how the market value of an economic benefit is determined, see Subdivision 727-D.

(5) Neither the \*losing entity nor the \*gaining entity needs to be a party to the \*scheme. A benefit can be provided by act or omission.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (6) The indirect value shift happens at the \*IVS time.
- (7) The *IVS period* for a \*scheme starts immediately before the scheme is entered into and ends at the \*IVS time.
- (8) A contingency that is artificial, or is virtually certain to be met, is treated under this Division as if it had been met.

### **727-155 Providing economic benefits**

#### *Examples*

- (1) These are some examples of an entity providing an economic benefit to another entity:
  - (a) the first entity pays an amount to the other entity (in this case the \*market value of the benefit is the amount of the payment);
  - (b) the first entity provides an asset or services to the other entity;
  - (c) the first entity does something that creates an asset in the hands of the other entity (for example, a company issues shares to its members);
  - (d) the first entity incurs a liability to the other entity, or increases a liability it already owes to the other entity;
  - (e) the first entity terminates all or part of a liability owed by the other entity;
  - (f) the first entity does something that increases the market value of an asset that the other entity holds.
- (2) These examples are not intended to limit the meaning of providing an economic benefit.

#### *Things treated as economic benefits*

- (3) This Division applies as if the ending of:
  - (a) a \*primary equity interest or \*secondary equity interest in an entity; or
  - (b) a right that the owner of a \*primary equity interest or \*secondary equity interest in an entity has because of owning the interest;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

Section 727-160

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were an economic benefit that the owner of the interest provides to that entity.

**727-160 When an economic benefit is provided *in connection with a scheme***

- (1) An economic benefit has been, is being, is to be, or might be,  
\*provided by an entity to another entity *in connection with a*  
\*scheme if, and only if:
  - (a) the benefit has been, is being, is to be, or might be, provided under the scheme; or
  - (b) the providing of the benefit is reasonably attributable to:
    - (i) something that has been, is being, is to be, or might be, done or omitted under the scheme (whether before, at the time of, or after, the providing of the benefit) by an entity that is either of those entities or a third entity; or
    - (ii) 2 or more such things.
- (2) An entity referred to in paragraph (1)(b) need not be a party to the \*scheme. A benefit can be provided by act or omission.

**727-165 Preventing double-counting of economic benefits**

*Rights to have economic benefits provided*

- (1) If an economic benefit that has been, is being, is to be, or might be,  
\*provided as mentioned in subsection 727-150(3) or 727-855(1) consists of a right to have economic benefits provided, that subsection applies to the right but does not also apply to those economic benefits.

Example: Acme Ltd enters into an agreement with Paragon Pty Ltd under which Acme is to provide services to Paragon over a 5 year period in return for payments.

Paragon's rights under the agreement are economic benefits that Acme provides to Paragon when the agreement is made. The services are economic benefits that Acme is to provide to Paragon.

Because of this subsection, the market value of the rights is taken into account in working out whether there has been an indirect value shift, but the market value of the services is not.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 727-200**

*Effect of an economic benefit on interests in the entity to which it is provided*

- (2) If an economic benefit has been, is being, or is to be, \*provided to an entity, then, for the purposes of subsection 727-150(3) or 727-855(1), disregard an economic benefit to the extent that:
- (a) it consists of an increase in the \*market value of:
    - (i) an \*equity or loan interest in the entity; or
    - (ii) an \*indirect equity or loan interest in the entity; and
  - (b) the increase is reasonably attributable to the first-mentioned benefit.

**Subdivision 727-C—Exclusions****Guide to Subdivision 727-C****727-200 What this Subdivision is about**

Some indirect value shifts do not have consequences under this Division.

Note 1: If the consequences of an indirect value shift are to be worked out using the realisation time method (under Subdivision 727-G), there are further exclusions for certain 95% services indirect value shifts: see section 727-700.

Note 2: For cases where there may be both a direct value shift and an indirect value shift, see Subdivision 727-L.

**Table of sections****General**

727-215 Amount does not exceed \$50,000

727-220 Disposal of asset at cost, or at undervalue if full value is not reflected in adjustable values of equity or loan interests in the losing entity

**Indirect value shifts involving services**

727-230 Services provided by losing entity to gaining entity for at least their direct cost

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-215**

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- 727-235 Services provided by gaining entity to losing entity for no more than a commercially realistic price
- 727-240 What services certain provisions apply to
- 727-245 How to work out certain amounts for the purposes of sections 727-230 and 727-235

**Anti-overlap provisions**

- 727-250 Distribution by an entity to a member or beneficiary

**Miscellaneous**

- 727-260 Shift down a wholly-owned chain of entities

**General**

**727-215 Amount does not exceed \$50,000**

- (1) An \*indirect value shift does not have consequences under this Division if the amount of it does not exceed \$50,000.
- (2) However, subsection (1) does not apply to an \*indirect value shift (and is taken never to have applied to it) if:
  - (a) before, at the same time as, or after it, another indirect value shift happens for which the same entity is the losing entity as for the first indirect value shift; and
  - (b) having regard to all relevant circumstances, it is reasonable to conclude that the sole or main reason why one of the indirect value shifts happened under a different \*scheme from the other was so that its amount would not exceed \$50,000.

**727-220 Disposal of asset at cost, or at undervalue if full value is not reflected in adjustable values of equity or loan interests in the losing entity**

- (1) An \*indirect value shift does not have consequences under this Division if the conditions in this section are met.
- (2) The \*greater benefits must consist entirely of:
  - (a) the \*losing entity transferring a \*CGT asset to the \*gaining entity; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) a right to have the losing entity transfer an asset to the gaining entity.
- (3) There must be \*lesser benefits and, as at the \*IVS time, the total \*market value of the lesser benefits must not be less than the greatest of these amounts:
- (a) the asset's \*cost base at that time;
  - (b) the asset's cost;
  - (c) the asset's market value immediately before the most recent time (if any), since the \*losing entity \*acquired the asset, when an \*affected owner has acquired:
    - (i) a \*primary equity interest in the losing entity; or
    - (ii) an \*indirect primary equity interest in the losing entity.
- (4) A \*primary equity interest in an entity is an ***indirect primary equity interest*** in another entity if, and only if:
- (a) the first entity owns a primary equity interest in the other entity; or
  - (b) the first entity owns a primary equity interest that is an indirect primary equity interest in the other entity because of one or more other applications of this subsection.

### Indirect value shifts involving services

#### 727-230 Services provided by losing entity to gaining entity for at least their direct cost

An \*indirect value shift does not have consequences under this Division if:

- (a) to the extent of at least 95% of their total \*market value, the \*greater benefits consist entirely of:
  - (i) a right to have services that are covered by section 727-240 provided directly by the losing entity to the gaining entity; or
  - (ii) services that are covered by section 727-240 and have been, are being, or are to be, so provided;
 or both; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-235**

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- (b) there are \*lesser benefits and, as at the \*IVS time, the total market value of the lesser benefits is not less than the total of:
  - (i) the present value of the direct cost to the losing entity of providing the services; and
  - (ii) the present value of a reasonable allocation of the total direct cost to the losing entity of providing services that include the first-mentioned services (so far as it is not already covered by subparagraph (i)).

To work out the costs and present values referred to in paragraph (b), see section 727-245.

**727-235 Services provided by gaining entity to losing entity for no more than a commercially realistic price**

- (1) An \*indirect value shift does not have consequences under this Division if:
  - (a) there are \*lesser benefits and, to the extent of at least 95% of their total \*market value, the lesser benefits consist entirely of:
    - (i) a right to have services that are covered by section 727-240 provided directly by the gaining entity to the losing entity; or
    - (ii) services that are covered by section 727-240 and have been, are being, or are to be, so provided;or both; and
  - (b) as at the \*IVS time, the total market value of the greater benefits is not more than the total of:
    - (i) the present value of the direct cost to the gaining entity of providing the services; and
    - (ii) the present value of a reasonable allocation of the total direct cost to the gaining entity of providing services that include the first-mentioned services (so far as it is not already covered by subparagraph (i)); and
    - (iii) the present value of a reasonable allocation of the indirect cost to the gaining entity of providing the first-mentioned services; and
    - (iv) the mark-up worked out under subsection (2) or (3) of this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 727-240**

To work out the costs and present values referred to in paragraph (1)(b), see section 727-245.

- (2) If it is reasonable to estimate that an entity providing the same quantity of services of the same kind in the same market would charge for them on the basis of a particular percentage mark-up, or on the basis of a percentage mark-up within a particular range, the mark-up for the purposes of subparagraph (1)(b)(iv) is:
- the total of the respective present values of the costs mentioned in subparagraphs (1)(b)(i), (ii) and (iii);
- multiplied by:
- that percentage mark-up, or the highest percentage in that range.
- (3) Otherwise, the mark-up for the purposes of subparagraph (1)(b)(iv) is 10% of the total of the respective present values of the costs mentioned in subparagraphs (1)(b)(i), (ii) and (iii).

**727-240 What services certain provisions apply to**

- (1) Sections 727-230, 727-235, 727-700 and 727-725 apply only to services consisting of:
- (a) doing work (including professional work and giving professional advice or any other kind of advice); or
- Note: Examples include accounting or legal services; advertising services and financial management services.
- (b) providing (including allowing use of) facilities for entertainment, recreation or instruction; or
  - (c) leasing, renting, hiring, or allowing the use of, any asset; or
  - (d) packaging, transporting or storing any property; or
  - (e) providing insurance; or
  - (f) services provided, by a banker to a customer, in the course of the banker carrying on the business of banking; or
  - (g) lending money or providing any other form of financial accommodation.
- (2) It does not matter whether services covered by paragraph (1)(a) also involve supplying property.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 727-245

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**727-245 How to work out certain amounts for the purposes of sections 727-230 and 727-235**

- (1) The costs mentioned in paragraph 727-230(b) or 727-235(1)(b) are to be worked out:
  - (a) in accordance with generally accepted accounting practices; and
  - (b) to the extent that the services are to be provided in the future, on the basis of a reasonable estimate of those costs.
- (2) To avoid doubt, the direct cost or indirect cost mentioned in paragraph 727-230(b) or 727-235(1)(b) does *not* include:
  - (a) to the extent that the services consist of or include lending money or providing any other form of financial accommodation—the amount of the loan or other accommodation; or
  - (b) to the extent that the services consist of or include leasing, renting, hiring, or allowing the use of, any asset:
    - (i) the cost of acquiring the asset; or
    - (ii) the cost of acquiring an interest in, or right in respect of, the asset in order to provide the services.

**Example:** Acme Ltd is the holding company of Group Financier Pty Ltd. Group Financier Pty Ltd borrows \$20 million at 7% per annum, and on lends it to other subsidiaries of Acme Ltd at 8% per annum.

The \$20 million does not form part of Group Financier Pty Ltd's direct cost of the services it provides to the other subsidiaries in the form of the on lending. However, the 7% interest that Group Financier Pty Ltd pays on the \$20 million does form part of that direct cost.

- (3) The present values mentioned in paragraph 727-230(b) or 727-235(1)(b) are to be worked out using a discount rate equal to the rate that, for the purposes of section 109N of *Income Tax Assessment Act 1936*, is the benchmark interest rate for the income year in which the \*IVS time occurs.

**Note:** That section is about distributions to entities connected with a private company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Anti-overlap provisions****727-250 Distribution by an entity to a member or beneficiary**

- (1) An \*indirect value shift does not have consequences under this Division if:
- (a) the \*greater benefits consist entirely of:
    - (i) a distribution of income or capital that the \*losing entity makes to the \*gaining entity; or
    - (ii) a right to a distribution of income or capital that the losing entity is to make to the gaining entity; because the gaining entity holds \*primary equity interests in the losing entity; and
  - (b) either:
    - (i) an amount covered by one or more of subsections (2), (3) and (4); or
    - (ii) the total of 2 or more such amounts; equals or exceeds the amount of the distribution.

*Conditions*

- (2) This subsection covers an amount that the assessable income or exempt income of the gaining entity for any income year includes because of the distribution or right.
- (3) This subsection covers an amount by which the \*cost base or \*reduced cost base (or both) of some or all of the \*primary equity interests referred to in subsection (1) changes because of the distribution or right.
- (4) This subsection covers an amount that, because of the distribution or right, is taken into account:
  - (a) under section 116-20 in working out the \*capital proceeds of a \*CGT event that happens during any income year to some or all of the \*primary equity interests referred to in subsection (1); or
  - (b) in working out a \*capital gain that an entity makes from CGT event E4 or G1 happening during any income year to some or all of those primary equity interests; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-260**

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- (c) in working out whether a loss or gain is \*realised for income tax purposes by a \*realisation event that happens to some or all of those primary equity interests (in their character as \*trading stock or \*revenue assets).

*Application of section to deemed dividend*

- (5) If a \*corporate tax entity makes a \*distribution that is not otherwise a distribution of income or capital, this section applies as if the distribution were a distribution of income or capital the entity made.

Note: Subsection (5) extends this section to cover something that is taken to be a dividend paid by a company. Compare item 1 of the table in subsection 960-120(1).

**Miscellaneous**

**727-260 Shift down a wholly-owned chain of entities**

- (1) An \*indirect value shift does not have consequences under this Division if the \*gaining entity is a \*wholly-owned subsidiary of the \*losing entity throughout the \*IVS period.

*Exception: impact on market value of primary loan interest*

- (2) However, subsection (1) does not apply if the \*indirect value shift has produced a \*disaggregated attributable decrease, in the \*market value of an \*affected interest in the \*losing entity that is also a \*primary loan interest in an entity covered by subsection (3), for the owner of the interest.
- (3) This subsection covers:
- (a) the \*losing entity; and
  - (b) an entity that owns \*primary equity interests in an entity that this subsection covers because of one or more previous applications of it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 727-D—Working out the market value of economic benefits

### Table of sections

727-300	What the rules in this Subdivision are for
727-315	Transfer, for its adjustable value, of depreciating asset acquired for less than \$1,500,000

### 727-300 What the rules in this Subdivision are for

This Subdivision is used in determining whether there has been an \*indirect value shift and, if so:

- (a) whether it has consequences under this Division; and
- (b) if it does, the amount of it.

### 727-315 Transfer, for its adjustable value, of depreciating asset acquired for less than \$1,500,000

(1) This Division applies to an economic benefit consisting of:

- (a) an entity transferring to another entity a \*depreciating asset (except a building or structure) for which the transferring entity has deducted or can deduct an amount under Division 40; or
- (b) a right to have an entity transfer such a depreciating asset to another entity;

as if the economic benefit's \*market value were equal to the greater (the *residual value*) of:

- (c) the asset's \*adjustable value at the time when the economic benefit was or is \*provided; and
- (d) the value assigned to the asset at that time in the transferring entity's books;

but only if:

- (e) as at that time, the \*cost of the unit to the transferring entity is less than \$1,500,000; and
- (f) it is reasonable for the transferring entity to conclude that the unit's actual market value at that time was, is, or will be, not

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-315**

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less than 80%, and not more than 120%, of the residual value; and

- (g) both the transferring entity and the other entity choose to have the market value of that economic benefit treated as being equal to the residual value.

(2) If:

- (a) each of 2 or more economic benefits of the kind mentioned in subsection (1) has been, is being, is to be, or might be, provided by the same transferring entity, to the same other entity, \*in connection with the same \*scheme; and
- (b) it is reasonable for the transferring entity to conclude that the total of the \*depreciating assets' actual \*market values at the respective times when the economic benefits were or are \*provided was, is, or will be, not less than 80%, and not more than 120%, of the total of their respective residual values under subsection (1);

paragraph (1)(f) is taken to be satisfied for each of the economic benefits.

**Subdivision 727-E—Key concepts**

**Table of sections**

**Ultimate controller**

- 727-350 *Ultimate controller*  
727-355 *Control (for value shifting purposes)* of a company  
727-360 *Control (for value shifting purposes)* of a fixed trust  
727-365 *Control (for value shifting purposes)* of a non-fixed trust  
727-370 Preventing double counting for percentage stake tests  
727-375 Tests in this Subdivision are exhaustive

**Common-ownership nexus and ultimate stake of a particular percentage**

- 727-400 When 2 entities have a common-ownership nexus within a period  
727-405 *Ultimate stake* of a particular percentage in a company  
727-410 *Ultimate stake* of a particular percentage in a fixed trust  
727-415 Rules for tracing

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Ultimate controller****727-350 *Ultimate controller***

An entity is an ***ultimate controller*** of another entity if, and only if:

- (a) the first entity \*controls (for value shifting purposes) the other entity; and
- (b) there is no entity that controls (for value shifting purposes) both the first entity and the other entity.

**727-355 *Control (for value shifting purposes) of a company******50% stake test***

- (1) An entity ***controls (for value shifting purposes)*** a company if the entity, or the entity and its \*associates between them:
  - (a) can exercise, or can control the exercise of, at least 50% of the voting power in the company (either directly, or indirectly through one or more interposed entities); or
  - (b) have the right to receive (either directly, or indirectly through one or more interposed entities) at least 50% of any dividends that the company may pay; or
  - (c) have the right to receive (either directly, or indirectly through one or more interposed entities) at least 50% of any distribution of capital of the company.

***40% stake test***

- (2) An entity also ***controls (for value shifting purposes)*** a company if the entity, or the entity and its \*associates between them:
  - (a) can exercise, or can control the exercise of, at least 40% of the voting power in the company (either directly, or indirectly through one or more interposed entities); or
  - (b) have the right to receive (either directly, or indirectly through one or more interposed entities) at least 40% of any dividends that the company may pay; or
  - (c) have the right to receive (either directly, or indirectly through one or more interposed entities) at least 40% of any distribution of capital of the company;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-360**

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unless an entity (other than the first entity and its associates) either alone or together with its associates in fact controls the company.

*Actual control test*

- (3) An entity also **controls (for value shifting purposes)** a company if the entity, either alone or together with its \*associates, in fact controls the company.

**727-360 Control (for value shifting purposes) of a fixed trust**

*40% stake test*

- (1) An entity **controls (for value shifting purposes)** a \*fixed trust if the entity, or the entity and its \*associates between them, have the right to receive (either directly, or indirectly through one or more interposed entities) at least 40% of any distribution of trust income, or trust capital, to beneficiaries of the trust.

*Other tests*

- (2) An entity also **controls (for value shifting purposes)** a \*fixed trust if:
- (a) the entity, or an \*associate of the entity, whether alone or with other associates (the **relevant entity**), has the power to obtain the beneficial enjoyment of the trust's capital or income (whether or not by exercising its power of appointment or revocation, and whether with or without another entity's consent); or
  - (b) the relevant entity is able to control the application of the trust's capital or income in any manner (whether directly or indirectly); or
  - (c) the relevant entity is able to do a thing mentioned in paragraph (a) or (b) under a \*scheme; or
  - (d) a trustee of the trust is accustomed or is under an obligation (whether formally or informally), or might reasonably be expected, to act in accordance with the relevant entity's directions, instructions or wishes; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (e) the relevant entity is able to remove or appoint a trustee of the trust.

### **727-365 Control (for value shifting purposes) of a non-fixed trust**

#### *Trustee tests*

- (1) An entity **controls (for value shifting purposes)** a \*non-fixed trust if:
- (a) the entity or an \*associate of the entity is a trustee of the trust; or
  - (b) the entity, or the entity and its \*associates between them, can remove or appoint the trustee, or one or more of the trustees, of the trust; or
  - (c) a trustee of the trust is accustomed to act, is under an obligation (whether formally or informally) to act, or might reasonably be expected to act, in accordance with the directions, instructions or wishes of:
    - (i) the entity or an \*associate of the entity; or
    - (ii) 2 or more entities, at least one of which is the entity or an associate of the entity.

#### *Tests based on control of the trust income or capital*

- (2) An entity also **controls (for value shifting purposes)** a \*non-fixed trust if the entity, or the entity and its \*associates between them:
- (a) have the power to obtain the beneficial enjoyment of trust income or capital; or
  - (b) can control in any way at all, whether directly or indirectly, the application of trust income or capital; or
  - (c) can, under a \*scheme, gain the enjoyment or control referred to in paragraph (a) or (b).
- (3) An entity also **controls (for value shifting purposes)** a \*non-fixed trust if:
- (a) the entity, or any of its \*associates, can benefit under the trust otherwise than because of a \*fixed entitlement to a share of the income or capital of the trust; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-370**

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- (b) if the entity, or the entity and its \*associates between them, have the right to receive (either directly, or indirectly through one or more interposed entities) at least 40% of any distribution of trust income, or trust capital.

**727-370 Preventing double counting for percentage stake tests**

If an interest giving an entity, or an entity and its \*associates:

- (a) the ability to exercise, or control the exercise of, any of the voting power in a company; or
- (b) the right to receive dividends that a company may pay; or
- (c) the right to receive a distribution of capital of a company; or
- (d) the right to receive a distribution of trust income or trust capital;

is both direct and indirect, and (apart from this section) would be counted more than once in applying subsection 727-355(1) or (2) or section 727-360, only the direct interest is to be counted.

**727-375 Tests in this Subdivision are exhaustive**

An entity does not *control (for value shifting purposes)* a company or trust except as provided in this Subdivision.

**Common-ownership nexus and ultimate stake of a particular percentage**

**727-400 When 2 entities have a common-ownership nexus within a period**

- (1) 2 entities have a *common-ownership nexus* within a period if, and only if, they satisfy the test in any of the one or more items in the table applicable to them.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Common-ownership nexus within a period**

<b>Item</b>	<b>If the entities are:</b>	<b>This is the test:</b>
1	both companies	<p>There must be 2 or more *ultimate owners who:</p> <p>(a) at some time during that period, because of the same test in section 727-405, have *ultimate stakes, of percentages totalling at least 80%, in one of the companies; and</p> <p>(b) at that or a different time during that period, because of that same test, have *ultimate stakes, of percentages totalling at least 80%, in the other company</p> <p>Also, subsection (2) of this section must be satisfied</p>
2	both *fixed trusts	<p>There must be 2 or more *ultimate owners who:</p> <p>(a) at some time during that period, because of the same test in section 727-410, have *ultimate stakes, of percentages totalling at least 80%, in one of the trusts; and</p> <p>(b) at that or a different time during that period, because of that same test, have *ultimate stakes, of percentages totalling at least 80%, in the other trust</p> <p>Also, subsection (2) of this section must be satisfied</p>
3	a company and a *fixed trust	<p>There must be 2 or more *ultimate owners who:</p> <p>(a) at some time during that period, because of the same test in section 727-405, have *ultimate stakes, of percentages totalling at least 80%, in the company; and</p> <p>(b) at that or a different time during that period, because of the same test in section 727-410, have *ultimate stakes, of percentages totalling at least 80%, in the trust</p> <p>Also, subsection (2) of this section must be satisfied</p>
4	a company and a *non-fixed trust	<p>There must be 2 or more *ultimate owners:</p> <p>(a) each of whom *controls (for value shifting purposes) the non-fixed trust because of section 727-365 at the same time during that period; and</p> <p>(b) who, at that or a different time during that period, have *ultimate stakes, of percentages totalling at least 80%, in the company because of the same test in section 727-405</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

Section 727-405

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**Common-ownership nexus within a period**

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<b>Item</b>	<b>If the entities are:</b>	<b>This is the test:</b>
5	a *fixed trust and a *non-fixed trust	There must be 2 or more *ultimate owners: (a) each of whom *controls (for value shifting purposes) the non-fixed trust because of section 727-365 at the same time during that period; and (b) who, at that or a different time during that period, have *ultimate stakes, of percentages totalling at least 80%, in the fixed trust because of the same test in section 727-410

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*Additional condition about profile of percentage ultimate stakes held by 2 or more ultimate owners*

- (2) In order to satisfy the test in item 1, 2 or 3 in the table in subsection (1), at least one of subsections (3), (4) and (5) must be satisfied.
- (3) For at least one of the \*ultimate owners referred to in that item, the percentage of the \*ultimate stake that owner has as mentioned in paragraph (a) in the last column of that item must be at least 40%, and so must the percentage of the ultimate stake that owner has as mentioned in paragraph (b) in the last column of that item.
- (4) Alternatively, for *each* of those \*ultimate owners, the percentage of the \*ultimate stake that owner has as mentioned in that paragraph (a) must be the same as the percentage of the ultimate stake that owner has as mentioned in that paragraph (b).
- (5) Alternatively, the number of those \*ultimate owners must not exceed 16.

**727-405 Ultimate stake of a particular percentage in a company**

- (1) This section sets out 3 tests of whether an entity has an *ultimate stake* of a particular percentage (the *test percentage*) in a company.

Note: In applying the tests, follow the rules in section 727-415.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Voting power*

- (2) The first test is that, after tracing, to the \*ultimate owners who ultimately hold it, the direct and indirect ownership of all \*shares in the company that carry the right to exercise voting power in the company, that ownership is held by the entity to the extent of the test percentage of that voting power.

*Dividends*

- (3) The second test is that, after tracing, to the \*ultimate owners who ultimately hold it, the direct and indirect ownership of all \*shares in the company that carry the right to receive any dividends that the company may pay, that ownership is held by the entity to the extent of the test percentage of those dividends.

*Capital distributions*

- (4) The third test is that, after tracing, to the \*ultimate owners who ultimately hold it, the direct and indirect ownership of all \*shares in the company that carry the right to receive any distribution of capital of the company, that ownership is held by the entity to the extent of the test percentage of the distribution.

*Certain shares ignored*

- (5) In tracing the ownership of \*shares in a company, ignore \*shares whose \*dividends can reasonably be regarded as being equivalent to the payment of interest on a loan having regard to:
- (a) how the dividends are calculated; and
  - (b) the conditions applying to the payment of the dividends; and
  - (c) any other relevant matters.

**727-410 Ultimate stake of a particular percentage in a fixed trust**

- (1) This section sets out 2 tests of whether an entity has an *ultimate stake* of a particular percentage (the *test percentage*) in a \*fixed trust.

Note: In applying the tests, follow the rules in section 727-415.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-415**

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*Income distributions*

- (2) The first test is that, after tracing, to the \*ultimate owners who ultimately hold them, the direct and indirect rights to receive distributions of trust income, those rights are held by the entity to the extent of the test percentage of each such distribution.

*Capital distributions*

- (3) The second test is that, after tracing, to the \*ultimate owners who ultimately hold them, the direct and indirect rights to receive distributions of trust capital, those rights are held by the entity to the extent of the test percentage of each such distribution.

**727-415 Rules for tracing**

- (1) In applying sections 727-400, 727-405 and 727-410, follow the rules in this section.

*Interposed entities*

- (2) Tracing is to be done through any interposed entities.

*Ownership or rights held jointly*

- (3) If some of the ownership or rights of a particular kind in relation to a company or trust are held by 2 or more entities jointly or in common, each of the entities is treated as holding a proportion of the ownership or rights so held. The proportion is to be worked out on a reasonable basis, so that the total of the proportions equals the total of the ownership or rights so held.

*Ownership or rights held by associate*

- (4) If, at a particular time:
  - (a) an \*ultimate owner is an \*associate of another ultimate owner; and
  - (b) the associate ultimately holds some of the ownership or rights of a particular kind in relation to a company or trust;then, in determining whether the other ultimate owner is one of 2 or more ultimate owners because of whom the conditions in an

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

item in the table in section 727-400 are satisfied, the ownership or rights of that kind in relation to the company or trust held by the associate at that time:

- (c) to the extent of a particular percentage, may be treated as being instead held by the other ultimate owner; and
  - (d) to the extent so treated, cannot be treated as being instead held by any other ultimate owner of whom the first ultimate owner is an associate.
- (5) If one or more applications of subsection (4) are necessary to establish that an \*ultimate owner is one of 2 or more ultimate owners because of whom the conditions in an item in the table in section 727-400 are satisfied, that subsection must be applied accordingly.

### **Subdivision 727-F—Consequences of an indirect value shift**

#### **Guide to Subdivision 727-F**

#### **727-450 What this Subdivision is about**

This Subdivision tells you:

- which method to use to work out the consequences of an indirect value shift for equity or loan interests, and indirect equity or loan interests, in the losing entity and in the gaining entity; and
- which interests, and which owners, are affected.

#### **Table of sections**

##### **Operative provisions**

727-455 Consequences of the indirect value shift

##### **Affected interests**

727-460 *Affected interests* in the losing entity

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-455**

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- 727-465 *Affected interests* in the gaining entity
- 727-470 Exceptions
- 727-520 *Equity or loan interest* and related terms
- 727-525 *Indirect equity or loan interest*

**Affected owners**

- 727-530 Who are the *affected owners*

**Choices about method to be used**

- 727-550 Choosing the adjustable value method
- 727-555 Giving other affected owners information about the choice

**Operative provisions**

**727-455 Consequences of the indirect value shift**

The consequences (if any) of an \*indirect value shift must be worked out using the \*realisation time method unless the \*adjustable value method is chosen in accordance with section 727-550.

Note: Later provisions of this Subdivision set out the interests to which those consequences apply (see sections 727-460 to 727-525), which are in turn determined by who are the affected owners (see section 727-530).

**Affected interests**

**727-460 *Affected interests in the losing entity***

These are the *affected interests* in the \*losing entity:

- (a) each \*equity or loan interest that an \*affected owner owns in the losing entity immediately before the \*IVS time; and
- (b) each equity or loan interest that:
  - (i) an affected owner owns in another affected owner immediately before the IVS time; and
  - (ii) is an \*indirect equity or loan interest in the losing entity; (except one covered by an exception in section 727-470).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**727-465 Affected interests in the gaining entity**

If immediately before the \*IVS time the \*gaining entity is a company or trust (except one listed in section 727-125 (about superannuation entities)), these are the *affected interests* in the gaining entity:

- (a) each \*equity or loan interest that an \*affected owner owns in the gaining entity immediately before the \*IVS time; and
- (b) each equity or loan interest that:
  - (i) an affected owner owns in another affected owner immediately before the IVS time; and
  - (ii) is an \*indirect equity or loan interest in the gaining entity;

(except one covered by an exception in section 727-470).

**727-470 Exceptions***Mere active participants*

- (1) An \*equity or loan interest that an \*active participant in the \*scheme owns in another active participant immediately before the \*IVS time is not an \*affected interest in the \*losing entity or in the \*gaining entity unless one of the active participants is also covered by 1, 2, 3 or 4 in the table in subsection 727-530(1) (about who is an affected owner).

*Entity that is a small business entity, or satisfies the maximum net asset value test for small business relief*

- (2) An \*equity or loan interest that an entity (the *owner*) owns immediately before the \*IVS time is not an \*affected interest in the \*losing entity or in the \*gaining entity if the owner:
  - (a) is a \*small business entity for each income year that includes any of the \*IVS period; or
  - (b) would satisfy the maximum net asset value test in section 152-15 throughout the \*IVS period.
- (3) If the owner is not in existence for part of the \*IVS period, disregard that part in applying subsection (2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

Section 727-520

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*Interests in superannuation entities not covered*

- (4) An \*equity or loan interest in an \*affected owner is not an \*affected interest in the \*losing entity or in the \*gaining entity if the affected owner is an entity listed in section 727-125 (about superannuation entities) in relation to the income year in which the \*IVS time happens.

**727-520 Equity or loan interest and related terms**

- (1) An **equity or loan interest** in an entity is a \*primary interest, or a \*secondary interest, in the entity.
- (2) A **primary interest** in an entity is a \*primary equity interest, or a \*primary loan interest, in the entity.
- (3) The meaning of **primary equity interest** in an entity is set out in the table.

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<b>Primary equity interests</b>		
<b>Item</b>	<b>In the case of this kind of entity:</b>	<b>Primary equity interest means:</b>
1	a company	a *share in the company; or an interest as joint owner (including as tenant in common) of a *share in the company
2	a trust	any of these: (a) an interest in the trust income or trust capital; or (b) any other interest in the trust; or (c) an interest as joint owner (including as tenant in common) of an interest covered by paragraph (a) or (b)

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- (4) A **primary loan interest** in an entity is:
- (a) a loan to the entity; or
- (b) an interest as joint owner (including as tenant in common) of a loan to the entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (5) A *secondary interest* in an entity is a \*secondary equity interest, or a \*secondary loan interest, in the entity.
- (6) A *secondary equity interest* in an entity is a right or option:
- (a) to \*acquire an existing \*primary equity interest in the entity;
  - or
  - (b) to have the entity issue a new primary equity interest.
- (7) A *secondary loan interest* in an entity is a right or option:
- (a) to \*acquire an existing \*primary loan interest in the entity; or
  - (b) to have the entity issue a new primary loan interest.

**727-525 Indirect equity or loan interest**

An \*equity or loan interest in an entity is an *indirect equity or loan interest* in another entity if, and only if:

- (a) the first entity owns an equity or loan interest in the other entity; or
- (b) the first entity owns an equity or loan interest that is an indirect equity or loan interest in the other entity because of one or more other applications of this section.

**Affected owners****727-530 Who are the affected owners**

- (1) The table sets out the *affected owners* for the \*indirect value shift.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

Section 727-530

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**Affected owners**

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<b>Item</b>	<b>In this case:</b>	<b>The affected owners include:</b>
1	At least one condition in section 727-105 (ultimate controller test) is satisfied	each *ultimate controller because of which a condition in that section is satisfied; and each entity that, at a time during the *IVS period when such an ultimate controller *controlled (for value shifting purposes) the <i>losing</i> entity, was an *intermediate controller of the <i>losing</i> entity; and each entity that, at a time during the IVS period when such an ultimate controller controlled (for value shifting purposes) the <i>gaining</i> entity, was an intermediate controller of the <i>gaining</i> entity
2	The conditions in section 727-110 (common-ownership nexus test) are satisfied in respect of: (a) one or more times; or (b) one or more sets of 2 times	each *ultimate owner who is one of 2 or more ultimate owners because of whom the condition in the applicable item of that table is satisfied in respect of any of those times; and each entity through which ownership or rights are traced to such an ultimate owner in applying the applicable item of that table in respect of any of those times
3	Any case	the *losing entity and the *gaining entity
4	Any case	each entity that, at any time after the *scheme was entered into, is an *associate of an entity that is an affected owner because of item 1, 2 or 3 of this table
5	Any case	each *active participant in the *scheme

- (2) An entity is an *intermediate controller* of another entity if, and only if:
- (a) the first entity \*controls (for value shifting purposes) the other entity; and
  - (b) the first entity is \*controlled (for value shifting purposes) by an \*ultimate controller of the other entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Active participants (if both losing and gaining entities are closely held)*

- (3) An entity (the **first entity**) is an **active participant** in the \*scheme if:
- (a) at some time during the \*IVS period, neither the losing entity nor the gaining entity has 300 or more members (in the case of a company) or 300 or more beneficiaries (in the case of a trust); and
  - (b) the first entity:
    - (i) actively participated in, or directly facilitated, the entering into of the \*scheme; or
    - (ii) at some time during the \*IVS period actively participated in, or directly facilitated, the carrying out of the scheme;
 

(whether or not it did so at the direction of some other entity); and
  - (c) at some time during the \*IVS period, the first entity owned:
    - (i) an \*equity or loan interest in the losing entity or in the gaining entity; or
    - (ii) an \*indirect equity or loan interest in the losing entity or in the gaining entity; and
  - (d) the first entity is neither the losing entity nor the gaining entity.

Note: Subsections 727-110(2) and (3) contain rules about when an entity is treated as having or not having 300 or more members or beneficiaries.

## Choices about method to be used

### 727-550 Choosing the adjustable value method

- (1) This section sets out rules for:
- (a) choosing to use the \*adjustable value method to work out the consequences of an \*indirect value shift; or
  - (b) choosing (when using the adjustable value method) *not* to work out on a \*loss-focussed basis the reductions in the \*adjustable values of \*affected interests.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

Section 727-550

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*Who makes the choice*

- (2) The choice must be made in accordance with the table.

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<b>Who makes the choice</b>		
<b>Item</b>	<b>In this case:</b>	<b>The choice must be made by:</b>
1	If the conditions in section 727-110 (common-ownership nexus test) are satisfied	jointly by the *ultimate owners because of whom the condition in the applicable item of the table in section 727-400 is satisfied
2	Item 1 does not apply, and there is an entity: (a) who is the sole *ultimate controller because of whom the conditions in section 727-105 (ultimate controller test) are satisfied; or (b) who would be that sole ultimate controller if sections 727-355 to 727-375 were applied ignoring that entity's *associates	that entity
3	Neither of items 1 and 2 applies	jointly by the 2 or more *ultimate controllers because of whom the conditions in section 727-105 (ultimate controller test) are satisfied

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*When choice must be made*

- (3) The choice must be made within 2 years after the *first* \*realisation event that happens to an \*affected interest at or after the IVS time.

*Choice binds all affected owners*

- (4) The choice binds all \*affected owners for the \*indirect value shift.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**727-555 Giving other affected owners information about the choice**

- (1) An entity that makes a choice under section 727-550 (including a choice made jointly with one or more other entities) must inform all entities that it knows to be \*affected owners for the \*indirect value shift about the content of the choice. The entity must do so in writing within one month after making the choice.

Penalty: 30 penalty units.

- (2) If:
- (a) a choice under section 727-550 is made jointly by 2 or more entities; and
  - (b) one of the entities complies with subsection (1);
- no other entity need comply with that subsection in relation to that choice.
- (3) If an \*affected owner for an \*indirect value shift has reason to believe that an entity may have made a choice under section 727-550 (including a choice made jointly with one or more other entities), the affected owner may give the entity a written notice asking whether the entity has made such a choice.
- (4) Within one month after receiving a notice under subsection (3), an entity must inform the \*affected owner in writing whether the entity has made a choice under section 727-550 and, if so, about the content of the choice.

Penalty: 30 penalty units.

- (5) The Commissioner may extend the period for complying with a provision of this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

Section 727-600

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**Subdivision 727-G—The realisation time method**

**727-600 What this Subdivision is about**

Under the realisation time method:

- losses on realisation of affected interests in the losing entity are reduced; and
- gains on realisation of affected interests in the gaining entity are reduced, within limits worked out by reference to the reductions in losses on affected interests in the losing entity; and
- certain 95% services indirect value shifts are disregarded.

This Subdivision also explains how its reduction of a loss or gain affects CGT assets, trading stock and revenue assets.

**Table of sections**

**Operative provisions**

727-610	Consequences of indirect value shift
727-615	Reduction of loss on realisation event for affected interest in losing entity
727-620	Reduction of gain on realisation event for affected interest in gaining entity
727-625	Total gain reductions not to exceed total loss reductions
727-630	How cap in section 727-625 applies if affected interest is also trading stock or a revenue asset
727-635	Splitting an equity or loan interest
727-640	Merging equity or loan interests
727-645	Effect of CGT roll-over

**Further exclusion for certain 95% services indirect value shifts if realisation time method must be used**

727-700	When 95% services indirect value shift is excluded
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**95% services indirect value shifts that are *not* excluded**

- 727-705 Another provision of the income tax law affects amount related to services by at least \$100,000
- 727-710 Ongoing or recent service arrangement reduces value of losing entity by at least \$100,000
- 727-715 Service arrangements reduce value of losing entity that *is* a group service provider by at least \$500,000
- 727-720 Abnormal service arrangement reduces value of losing entity that is *not* a group service provider by at least \$500,000
- 727-725 Meaning of *predominantly-services indirect value shift*

**Operative provisions****727-610 Consequences of indirect value shift**

- (1) This Subdivision sets out the *realisation time method* of working out the consequences (if any) of an \*indirect value shift.
- (2) If those consequences are to be worked out using that method, this Subdivision applies to each \*realisation event:
  - (a) by which a loss would, apart from this Division, be \*realised for income tax purposes; and
  - (b) that happens to an \*affected interest in the \*losing entity; and
  - (c) that is the first realisation event that happens to that interest at or after the \*IVS time; and
  - (d) that happens:
    - (i) if the amount of the indirect value shift is \$500,000 or more—at any time after the IVS time; or
    - (ii) otherwise—within 4 years after the IVS time.
- (3) If:
  - (a) those consequences are to be worked out using that method; and
  - (b) the \*gaining entity is a company or trust (except one listed in section 727-125 (about superannuation entities)) immediately before the \*IVS time;
 this Subdivision applies to each \*realisation event:
  - (c) by which a gain would, apart from this Division, be \*realised for income tax purposes; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-615**

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- (d) that happens to an \*affected interest in the \*gaining entity;  
and
  - (e) that is the first realisation event that happens to that interest at or after the IVS time.
- (4) The consequences for the \*affected interest depend on its character. There are consequences for the interest in its character as a \*CGT asset. However, if the interest is also \*trading stock or a \*revenue asset, there are additional consequences for it in that character.
- (5) In working out the consequences for an \*affected interest in the \*losing entity or \*gaining entity, in the interest's character as \*trading stock, a \*realisation event is disregarded for the purposes of identifying under paragraph (2)(c) or (3)(e) the first realisation event that happens to that interest at or after the \*IVS time, if:
- (a) the realisation event consists of the ending of an income year;  
and
  - (b) the \*value of the interest as trading stock on hand of an entity at the end of the income year is the interest's \*cost; and
  - (c) the interest became part of the entity's trading stock on hand during that income year, or the value of the interest as trading stock of the entity on hand at the start of the income year was also the interest's cost.

**727-615 Reduction of loss on realisation event for affected interest in losing entity**

If this Subdivision applies to a \*realisation event that happens to an \*affected interest in the \*losing entity, a loss that would, apart from this Division, be \*realised for income tax purposes by the event is reduced by an amount that is reasonable having regard to:

- (a) a reasonable estimate of the amount (if any) by which the \*indirect value shift has reduced the interest's \*market value;  
and
- (b) if the interest is also an affected interest in the \*gaining entity—a reasonable estimate of the extent (if any) to which the interest's market value at the time of the realisation event still reflects the effect of the indirect value shift on the market value of \*equity or loan interests in the gaining entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**727-620 Reduction of gain on realisation event for affected interest in gaining entity**

If this Subdivision applies to a \*realisation event that happens to an \*affected interest in the \*gaining entity, a gain that would, apart from this Division, be \*realised for income tax purposes by the event is reduced by an amount that is reasonable having regard to:

- (a) a reasonable estimate of the amount (if any) by which the \*indirect value shift has increased the interest's \*market value; and
- (b) a reasonable estimate of the extent (if any) to which the interest's market value at the time of the realisation event still reflects the effect of the indirect value shift on the market value of \*equity or loan interests in the gaining entity.

**727-625 Total gain reductions not to exceed total loss reductions**

- (1) This section ensures that the total (*total gain reductions*) of the amounts by which section 727-620 reduces gains \*realised for income tax purposes by \*realisation events happening at the same time does not exceed the total (*total loss reductions*) of:
  - (a) the amounts by which section 727-615 reduces losses that:
    - (i) would, apart from this Division, be \*realised for income tax purposes by \*realisation events happening before or at that time; and
    - (ii) have not already been taken into account in a previous application of this section; and
  - (b) the amounts by which section 727-850 (as applying to the \*scheme from which the \*indirect value shift results) reduces losses that:
    - (i) would, apart from this Division, be realised for income tax purposes by realisation events happening before the \*IVS time to \*equity or loan interests, or \*indirect equity or loan interests, in the \*losing entity; and
    - (ii) have not already been taken into account in a previous application of this section.
- (2) If, apart from this section, the total gain reductions would exceed the total loss reductions, the amount by which section 727-620

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-630**

---

reduces each of the gains is itself reduced by the amount worked out using this formula:

$$\frac{(\text{Total gain reductions} - \text{Total loss reductions})}{\text{Number of interests}}$$

(3) For the purposes of the formula:

*number of interests* means the number of \*affected interests in the \*gaining entity to which \*realisation events happened at that time.

**727-630 How cap in section 727-625 applies if affected interest is also trading stock or a revenue asset**

- (1) This section affects how to work out the total gain reductions and the total loss reductions for the purposes of section 727-625 if:
- (a) a \*realisation event covered by that section happens to an \*equity or loan interest, or to an \*indirect equity or loan interest, in the \*losing entity or in the \*gaining entity; and
  - (b) the interest is also \*trading stock or a \*revenue asset at the time of the event.

*Trading stock*

- (2) In the case of an \*equity or loan interest, or an \*indirect equity or loan interest, in the \*losing entity that is \*trading stock at that time:
- (a) the amount (if any) by which section 727-615 or 727-850 reduces a loss worked out under section 977-25 or 977-30 (about realisation events for trading stock) that would, apart from this Division, be \*realised for income tax purposes by the event is taken into account; and
  - (b) the amount (if any) by which section 727-615 or 727-850 reduces a loss worked out under section 977-10 (about realisation events for CGT assets) that would, apart from this Division, be \*realised for income tax purposes by the event is *not* taken into account;
- in working out the total loss reductions.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) In the case of an \*affected interest in the \*gaining entity that is \*trading stock at that time:
- (a) the amount (if any) by which section 727-620 reduces a gain worked out under section 977-35 or 977-40 (about realisation events for trading stock) that would, apart from this Division, be \*realised for income tax purposes by the event is taken into account; and
  - (b) the amount (if any) by which section 727-620 reduces a gain worked out under section 977-15 (about realisation events for CGT assets) that would, apart from this Division, be \*realised for income tax purposes by the event is *not* taken into account;
- in working out the total gain reductions.

*Revenue asset*

- (4) In the case of an \*equity or loan interest, or an \*indirect equity or loan interest, in the \*losing entity that is a \*revenue asset at that time, the greater of the following is taken into account in working out the total loss reductions:
- (a) the amount (if any) by which section 727-615 or 727-850 reduces a loss worked out under section 977-55 (about realisation events for revenue assets) that would, apart from this Division, be \*realised for income tax purposes by the event;
  - (b) the amount (if any) by which section 727-615 or 727-850 reduces a loss worked out under section 977-10 (about realisation events for CGT assets) that would, apart from this Division, be \*realised for income tax purposes by the event.
- (5) In the case of an \*affected interest in the \*gaining entity that is a \*revenue asset at that time, the greater of the following amounts is taken into account in working out the total gain reductions:
- (a) the amount (if any) by which section 727-620 reduces a gain worked out under section 977-55 (about realisation events for revenue assets) that would, apart from this Division, be \*realised for income tax purposes by the event;
  - (b) the amount (if any) by which section 727-620 reduces a gain worked out under section 977-15 (about realisation events for

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

Section 727-635

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CGT assets) that would, apart from this Division, be \*realised for income tax purposes by the event.

**727-635 Splitting an equity or loan interest**

If an \*equity or loan interest in the \*losing entity or in the \*gaining entity is split into 2 or more equity or loan interests at or after the \*IVS time:

- (a) each of the 2 or more interests inherits whatever characteristics would have been relevant to applying this Subdivision to the first interest if the split had not happened; and
- (b) those characteristics include characteristics the first interest has inherited because of any other application or applications of this section or section 727-640; and
- (c) if a characteristic of the first interest involves an amount or quantity, the amount or quantity for that characteristic as inherited by each of the 2 or more interests is a reasonable proportion of the amount or quantity for that characteristic of the first interest.

**727-640 Merging equity or loan interests**

If 2 or more \*equity or loan interests (the *original interests*) in the \*losing entity or in the \*gaining entity are merged into 1 or more \*equity or loan interests (the *new interests*) at or after the \*IVS time:

- (a) each of the new interests inherits whatever characteristics would have been relevant to applying this Subdivision to the original interests if the merging had not happened; and
- (b) those characteristics include characteristics inherited by any of the original interests because of any other application or applications of this section or section 727-635; and
- (c) if a characteristic of any of the original interests involves an amount or quantity, the amount or quantity for that characteristic as inherited by any of the new interests is a reasonable proportion of the amount or quantity for that characteristic of the original interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**727-645 Effect of CGT roll-over**

(1) If:

- (a) this Subdivision applies to a \*realisation event that is a \*CGT event that happens to an \*affected interest in the \*losing entity; and
- (b) section 727-615 reduces a loss that would, apart from this Division, be \*realised for income tax purposes by the CGT event; and
- (c) there is a roll-over for the CGT event;

the interest's \*reduced cost base at the time of the CGT event is taken to have been reduced by the amount by which section 727-615 reduces that loss, but is so taken only for the purposes of working out:

- (d) the interest's reduced cost base, from time to time after the roll-over, for the entity that \*acquired the interest because of the CGT event; and
- (e) in the case of a \*replacement-asset roll-over—the reduced cost base of the replacement CGT asset, from time to time after the roll-over, for the entity that \*disposed of the interest.

Note: Because of the roll-over, the loss reduction under section 727-615 will have no tax effect. This subsection ensures that the loss reduction is passed on, through the reduction in reduced cost base, to prevent or reduce a loss arising on a later CGT event.

(2) If:

- (a) this Subdivision applies to a \*realisation event that is a \*CGT event that happens to an \*affected interest in the \*gaining entity; and
- (b) section 727-620 reduces a gain that would, apart from this Division, be \*realised for income tax purposes by the CGT event; and
- (c) there is a roll-over for the CGT event;

the interest's \*cost base at the time of the CGT event is taken to have been uplifted by the amount by which section 727-620 reduces that gain, but is so taken only for the purposes of working out:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-700**

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- (d) the interest's cost base, from time to time after the roll-over, for the entity that \*acquired the interest because of the CGT event; and
- (e) in the case of a \*replacement-asset roll-over—the cost base of the replacement CGT asset, from time to time after the roll-over, for the entity that \*disposed of the interest.

Note: Because of the roll-over, the gain reduction under section 727-620 will have no tax effect. This subsection ensures that the gain reduction is passed on, through the uplift in cost base, to prevent or reduce a gain arising on a later CGT event.

**Further exclusion for certain 95% services indirect value shifts if realisation time method must be used**

**727-700 When 95% services indirect value shift is excluded**

- (1) If the \*indirect value shift is a \*95% services indirect value shift, this Subdivision does not apply to a \*realisation event that:
  - (a) happens to an \*affected interest in the \*losing entity that is owned by an entity (the *owner*); and
  - (b) is covered by subsection 727-610(2);unless:
  - (c) the conditions in section 727-705 are met for the indirect value shift; or
  - (d) the conditions in section 727-710, 727-715 or 727-720 are met for the indirect value shift and for that realisation event.
- (2) An \*indirect value shift is a **95% services indirect value shift** if, and only if, to the extent of at least 95% of their total \*market value, the \*greater benefits consist entirely of:
  - (a) a right to have services that are covered by section 727-240 provided directly by the \*losing entity to the \*gaining entity; or
  - (b) services that are covered by section 727-240 and have been, are being, or are to be, so provided;or both.
- (3) This section does not limit any other exclusion in this Subdivision or in Subdivision 727-C.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**95% services indirect value shifts that are *not* excluded****727-705 Another provision of the income tax law affects amount related to services by at least \$100,000**

The conditions in this section are met if:

- (a) the \*losing entity or the \*gaining entity lodges an \*income tax return for an income year during some or all of which the owner owned the interest; and
- (b) a provision of this Act:
  - (i) reduces or excludes an amount that is included in the return; or
  - (ii) increases an amount that is so included; or
  - (iii) includes an amount not included in the return;for the purposes of working out the taxable income, a \*tax loss, or a \*net capital loss, of that entity for that income year; and
- (c) the amount is related to the right mentioned in paragraph 727-700(2)(a), or to some or all of the services mentioned in paragraph 727-700(2)(a) or (b), from the point of view of the losing entity providing the services or of the gaining entity receiving them; and
- (d) if the amount is so reduced or increased—the reduction or increase is at least \$100,000; and
- (e) if the amount is so excluded or included—the amount is at least \$100,000; and
- (f) at some time after the return is lodged, the entity that lodged it is aware, or ought reasonably to be aware, of the reduction, exclusion, increase or inclusion.

Example: If the Commissioner has notified an entity affected by a determination under Part IVA of the *Income Tax Assessment Act 1936*, the entity ought reasonably to be aware of the effect of the determination.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 727-710

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**727-710 Ongoing or recent service arrangement reduces value of losing entity by at least \$100,000**

- (1) Either or both of these must be true:
  - (a) when the \*realisation event mentioned in subsection 727-700(1) happens, some or all of the services mentioned in paragraph 727-700(2)(a) or (b) have not yet been provided; or
  - (b) some or all of those services have been provided in the income year (of the \*losing entity) in which the realisation event happens, or in the previous income year.
- (2) It must be reasonable to conclude that the total (the *total market value*) of the \*market values, immediately before the \*realisation event, of \*primary interests in the \*losing entity then owned by \*affected owners is less than it would have been if none of the following had happened:
  - (a) the \*95% services indirect value shift; and
  - (b) all other \*predominantly-services indirect value shifts that satisfy subsection (1) (or that would satisfy it if they were \*95% services indirect value shifts).
- (3) It must also be reasonable to conclude that the total \*market value is less than it would have been by at least:
  - (a) \$100,000, if the total of the \*adjustable values, immediately before the \*realisation event, of the \*primary interests referred to in subsection (2) is less than or equal to \$2,000,000; or
  - (b) 5% of the total of those \*adjustable values, if that total is greater than \$2,000,000 and less than or equal to \$10,000,000; or
  - (c) \$500,000, if that total is greater than \$10,000,000.
- (4) For the purposes of subsections (2) and (3), disregard an \*indirect value shift referred to in paragraph (2)(a) or (b) if services are provided directly by the \*losing entity to the \*gaining entity under the \*scheme before the income year (of the losing entity) before the one in which the \*realisation event happened.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**727-715 Service arrangements reduce value of losing entity that is a group service provider by at least \$500,000**

- (1) At some time during the period (the *ownership period*) when the owner owned the interest, the sole or dominant activity of the \*losing entity must consist of providing services directly to one or more entities (the *group entities*) each of which is covered by one or more of the following paragraphs:
- (a) the \*gaining entity;
  - (b) an \*affected owner;
  - (c) an entity that has at that time the same \*ultimate controller as the losing entity or the gaining entity;
  - (d) if the conditions in section 727-110 (common-ownership nexus test) are satisfied for the \*indirect value shift—an entity that has with the losing entity or with the gaining entity a \*common-ownership nexus within that period.
- (2) It must be reasonable to conclude that the total (the *total market value*) of the \*market values, immediately before the \*realisation event, of \*primary interests in the \*losing entity then owned by \*affected owners is less than it would have been if none of the following had happened:
- (a) the \*95% services indirect value shift; and
  - (b) each \*predominantly-services indirect value shift for which the same entity is the losing entity as for the 95% services indirect value shift, and that happened:
    - (i) if the amount of the \*indirect value shift is \$500,000 or more—at any time during the ownership period; or
    - (ii) otherwise—during the ownership period but within 4 years before the realisation event, or at the same time as the realisation event.

*Thresholds for reduction of the total market value*

- (3) It must also be reasonable to conclude that the total \*market value is less than it would have been by at least \$500,000, and by at least the lesser of:
- (a) 5% of the total of the \*adjustable values of \*primary interests in the \*losing entity owned by \*affected owners at:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-715**

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- (i) if subsection (4) applies—the time determined under that subsection; or
  - (ii) otherwise—the start of the income year in which the \*realisation event happens; and
- (b) the amount worked out under the table.

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**Alternative threshold for reduction of the total market value**

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<b>Item</b>	<b>In this case:</b>	<b>The amount is:</b>
1	The ownership period is 4 years or less	worked out using this formula: $\$5,000,000 \times \frac{\text{Number of days in that period}}{365}$
2	The ownership period is more than 4 years	\$25,000,000

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- (3A) If at the time referred to in subsection (3) a \*primary interest covered by that subsection was \*trading stock or a \*revenue asset, its \*adjustable value taken into account under that subsection is the greater of its adjustable value as a \*CGT asset and its adjustable value as trading stock or a revenue asset.
- (4) If the owner of the interest is an \*affected owner because of item 1, 2, 3 or 4 in the table in subsection 727-530(1) (about who is an affected owner), the time for the purposes of subparagraph (3)(a)(i) of this section is the latest of:
- (a) the start of the income year in which the \*realisation event happens; and
  - (b) the start of the most recent period (if any):
    - (i) that ended before or at the time of the \*realisation event; and
    - (ii) throughout which at least one of the group entities had the same \*ultimate controller as the losing entity or the gaining entity; and
  - (c) the start of the most recent period (if any):
    - (i) that ended before or at the time of the realisation event; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) within which at least one of the group entities has with the losing entity or with the gaining entity a \*common-ownership nexus.

**727-720 Abnormal service arrangement reduces value of losing entity that is *not* a group service provider by at least \$500,000**

- (1) It must be the case that at *no* time during the period when the owner owned the interest did the sole or dominant activity of the \*losing entity consist of providing services as mentioned in subsection 727-715(1).
- (2) It must be reasonable to conclude that the total (the *total market value*) of the \*market values, immediately before the \*realisation event, of \*primary interests in the \*losing entity then owned by \*affected owners is less than it would have been if none of the following had happened:
  - (a) the \*95% services indirect value shift;
  - (b) each \*predominantly-services indirect value shift that meets either of these conditions:
    - (i) its amount was less than \$500,000 and it happened within 4 years before the realisation event, or at the same time as the realisation event;
    - (ii) its amount was \$500,000 or more and it happened at any time before the realisation event, or at the same time as the realisation event;
 and that meets all of these conditions:
  - (iii) the same entity is the losing entity for it as for the 95% services indirect value shift;
  - (iv) it happened under a different \*scheme from the 95% services indirect value shift; and
  - (v) having regard to all relevant circumstances, it is reasonable to conclude that the sole or main reason why it happened under a different scheme was to prevent the conditions in section 727-705, 727-710, 727-715 or this section from being met.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-725**

---

- (3) It must also be reasonable to conclude that the total \*market value is less than it would have been by at least:
- (a) \$500,000, if the total of the \*adjustable values, immediately before the \*realisation event, of the \*primary interests referred to in subsection (2) is less than or equal to \$10,000,000; or
  - (b) 5% of the total of those \*adjustable values, if that total is greater than \$10,000,000 and less than or equal to \$100,000,000; or
  - (c) \$5,000,000, if that total is greater than \$100,000,000.
- (4) The providing of the services mentioned in paragraph 727-700(2)(a) or (b) by the losing entity must *not* be in the ordinary course of its business.

**727-725 Meaning of *predominantly-services indirect value shift***

An \*indirect value shift is a *predominantly-services indirect value shift* if, and only if, the \*greater benefits consist entirely or predominantly of:

- (a) a right to have services that are covered by section 727-240 provided directly by the \*losing entity to the \*gaining entity; or
  - (b) services that are covered by section 727-240 and have been, are being, or are to be, so provided;
- or both.

**Subdivision 727-H—The adjustable value method**

**Guide to Subdivision 727-H**

**727-750 What this Subdivision is about**

Under the adjustable value method:

- the adjustable values of affected interests in the losing entity are reduced; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- the adjustable values of affected interests in the gaining entity are uplifted, within limits worked out by references to the reductions in the adjustable values of affected interests in the losing entity.

The consequences of that are:

- the cost base and reduced cost base of the interests are reduced or uplifted (or both); and
- if the interests are also trading stock or revenue assets, there are further consequences for them in their character as such.

### Table of sections

727-755 Consequences of indirect value shift

#### Reductions of adjustable value

727-770 Reduction under the adjustable value method

727-775 Has there been a disaggregated attributable decrease?

727-780 Working out the reduction on a *loss-focussed basis*

#### Uplifts of adjustable value

727-800 Uplift under the attributable increase method

727-805 Has there been a disaggregated attributable increase?

727-810 Scaling-down formula

#### Consequences of the method for various kinds of assets

727-830 CGT assets

727-835 Trading stock

727-840 Revenue assets

### 727-755 Consequences of indirect value shift

- (1) This Subdivision sets out the *adjustable value method* of working out the consequences (if any) of an \*indirect value shift.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

Section 727-770

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- (2) If those consequences are to be worked out using that method:
  - (a) the \*adjustable value of each \*affected interest in the \*losing entity is reduced as provided in this Subdivision; and
  - (b) if the \*gaining entity is a company or trust (except one listed in section 727-125 (about superannuation entities)) immediately before the \*IVS time, the \*adjustable value of each \*affected interest in the \*gaining entity is uplifted as provided in this Subdivision.
- (3) The consequences for the \*affected interest depend on its character. There are consequences for the interest in its character as a \*CGT asset. However, if the interest is also \*trading stock or a \*revenue asset, there are additional consequences for it in that character.

## Reductions of adjustable value

### 727-770 Reduction under the adjustable value method

- (1) This section sets out how to work out the amount (if any) by which the \*adjustable value of an \*affected interest in the \*losing entity is reduced.
- (2) First, work out under section 727-775 whether the \*indirect value shift has produced for the owner of the interest a \*disaggregated attributable decrease in the \*market value of the interest.
- (3) If it has not, the interest's \*adjustable value is *not* reduced because of the \*indirect value shift.
- (4) If it has, the amount (if any) by which the interest's \*adjustable value is reduced is worked out on a \*loss-focussed basis under section 727-780.
- (5) However, if a choice is made in accordance with section 727-550 for the reduction *not* to be worked out on a \*loss-focussed basis, the reduction is equal to the \*disaggregated attributable decrease.

*Reduction not to exceed reasonable amount*

- (6) If the reduction worked out as provided in subsection (4) or (5) is not reasonable in the circumstances, having regard to the objects of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 727-775

this Division, the interest's \*adjustable value is instead reduced by so much of that reduction as is reasonable in the circumstances, having regard to those objects.

Note: The main object of this Division is set out in section 727-95.

**727-775 Has there been a disaggregated attributable decrease?**

- (1) This section sets out how to determine whether an \*indirect value shift has produced, for the owner of an \*equity or loan interest, a ***disaggregated attributable decrease*** in the \*market value of the interest and, if so, the amount of it.
- (2) Work out the \*market value of the interest at the \*IVS time, but disregarding:
  - (a) all effects on the market value of the interest during the \*IVS period, except effects that are reasonably attributable to the \*indirect value shift; and
  - (b) the effects (if any) of the indirect value shift on the market value of \*equity or loan interests, or \*indirect equity or loan interests, in the gaining entity.

(This result is called the ***notional resulting market value***.)

Note: Paragraph (2)(b) is necessary because the market value of the interest may also have been affected by the increase in the market value of interests in the gaining entity, because the entity in which the interest is held had direct or indirect interests in both the losing entity and the gaining entity.

In such a case, the reduction in adjustable value under this Division will usually be offset by an uplift under this Division.

- (3) If the notional resulting \*market value is *less than* the market value (the ***old market value***) of the interest:
  - (a) at the start of the \*IVS period; or
  - (b) if the owner last began to own the interest during that period—when the owner last began to own the interest;
 the difference is the ***disaggregated attributable decrease***.
- (4) The \*indirect value shift has *not* produced a disaggregated attributable decrease for the owner of the interest if the notional resulting \*market value is *greater than or equal to* the old market value.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

Section 727-780

---

- (5) The \*market value of the interest at a particular time may be worked out under subsection (2) or (3) by making a reasonable estimate of that market value.

**727-780 Working out the reduction on a *loss-focussed basis***

- (1) Use the table in subsection (2) of this section to work out on a *loss-focussed basis* the amount (if any) by which the interest's \*adjustable value is reduced.
- (2) This involves comparing the old \*market value, and the notional resulting market value, with the interest's \*adjustable value (the *old adjustable value*) immediately before the \*IVS time.

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<b>Reduction under the attributable decrease method</b>			
<b>Item</b>	<b>If the old market value:</b>	<b>And the notional resulting market value:</b>	<b>This is the result:</b>
1	is <i>greater than or equal to</i> the old adjustable value	is <i>less than</i> the old adjustable value	the *adjustable value is reduced to the notional resulting market value
2	is <i>greater than or equal to</i> the old adjustable value	is <i>greater than or equal to</i> the old adjustable value	the *adjustable value is <i>not</i> reduced because of the *indirect value shift
3	is <i>less than</i> the old adjustable value	is <i>less than</i> the old adjustable value	the *adjustable value is reduced by the amount of the *disaggregated attributable decrease

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Note 1: Because of item 1, the indirect value shift cannot cause a loss to arise on disposal of the interest.

Note 2: Because of item 3 the loss already embedded in the interest is preserved, but the indirect value shift does not increase it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Uplifts of adjustable value****727-800 Uplift under the attributable increase method**

- (1) This section sets out how to work out the amount (if any) by which the \*adjustable value of an \*affected interest in the \*gaining entity is uplifted.
- (2) First, work out under section 727-805 whether the \*indirect value shift has produced for the owner of the interest a \*disaggregated attributable increase in the \*market value of the interest.
- (3) If it has not, the interest's \*adjustable value is *not* uplifted because of the \*indirect value shift.
- (4) If it has, the \*adjustable value is uplifted by the amount worked out using the scaling-down formula in section 727-810, subject to the rest of this section.

Note: The uplift will be less than or equal to the disaggregated attributable increase.

*Cap if interest has both a disaggregated attributable increase and a disaggregated attributable decrease*

- (5) If the \*indirect value shift has also produced for the owner of the interest a \*disaggregated attributable decrease in the \*market value of the interest, the interest's \*adjustable value:
  - (a) is *not* uplifted if it is not also reduced under this Division because of the indirect value shift; and
  - (b) if it is also reduced under this Division because of the indirect value shift—is not uplifted by more than the reduction.

*Cap based on notional distribution by gaining entity of dividends or capital equal to total reductions in adjustable value of affected interests in losing entity*

- (6) However, the interest's \*adjustable value is not uplifted by more than the greater of these amounts:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

Section 727-800

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- (a) the amount (if any) that the \*affected owner of the interest would receive (directly, or indirectly through one or more interposed entities) in respect of the interest if:
    - (i) the \*gaining entity were to pay as \*dividends, at the time (the *payment time*) immediately before the \*IVS time, an amount (the *total reduction amount*) equal to the total of the amounts by which the \*adjustable values of \*equity or loan interests in the \*losing entity are reduced under this Subdivision because of the \*indirect value shift; and
    - (ii) those dividends were successively paid or distributed at the payment time by each entity interposed between the gaining entity and that affected owner; and
  - (b) the amount (if any) that the \*affected owner of the interest would receive (directly, or indirectly through one or more interposed entities) in respect of the interest if:
    - (i) the gaining entity were to pay the total reduction amount at the payment time as a distribution of capital; and
    - (ii) that capital was successively paid or distributed at the payment time by each entity interposed between the gaining entity and that affected owner.
- (6A) The reduction of \*adjustable value that is to be taken into account under subparagraph (6)(a)(i) for an \*equity or loan interest in the \*losing entity is:
- (a) if the interest is \*trading stock immediately before the \*IVS time—the one worked out on the basis of the interest's adjustable value under subsection 727-835(2); or
  - (b) otherwise—the greater or greatest of these:
    - (i) the reduction of the interest's \*cost base;
    - (ii) the reduction of the interest's \*reduced cost base;
    - (iii) the reduction (if any) worked out on the basis of the interest's adjustable value under subsection 727-840(2) (about revenue assets).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Uplift not to exceed reasonable amount*

- (7) If the uplift worked out as provided in subsections (4), (5) and (6) is not reasonable in the circumstances, having regard to the objects of this Division, the interest's \*adjustable value is instead uplifted by an amount that is reasonable in the circumstances, having regard to those objects.

Note: The main object of this Division is set out in section 727-95.

**727-805 Has there been a disaggregated attributable increase?**

- (1) This section sets out how to determine whether an \*indirect value shift has produced, for the owner of an \*equity or loan interest, a **disaggregated attributable increase** in the \*market value of the interest and, if so, the amount of it.
- (2) Make a reasonable estimate of the \*market value of the interest at the \*IVS time, but disregarding:
- (a) all effects on the market value of the interest during the \*IVS period, except effects that are reasonably attributable to the \*indirect value shift; and
  - (b) the effects (if any) of the indirect value shift on the market value of \*equity or loan interests, or \*indirect equity or loan interests, in the losing entity.
- (This result is called the **notional resulting market value**.)

Note: Paragraph (2)(b) is necessary because the market value of the interest may also have been affected by the decrease in the market value of interests in the losing entity, because the entity in which the interest is held had direct or indirect interests in both the losing entity and the gaining entity.

In such a case, the increase in adjustable value under this Division will usually be offset by a reduction under this Division.

- (3) If the notional resulting market value is *greater than* a reasonable estimate of the \*market value (the **old market value**) of the interest:
- (a) at the start of the \*IVS period; or
  - (b) if the owner last began to own the interest during that period—when the owner last began to own the interest;
- the difference is the **disaggregated attributable increase**.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-810**

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- (4) The \*indirect value shift has *not* produced a disaggregated attributable increase for the owner of the interest if the notional resulting market value is *less than or equal to* the old market value.

**727-810 Scaling-down formula**

- (1) The scaling-down formula for the purposes of section 727-800 is:

$$\text{The * disaggregated attributable increase} \times \frac{\text{Total reductions for affected interests}}{\text{Total disaggregated attributable decreases}}$$

Note: The numerator in the fraction can never exceed the denominator. This means that the fraction can never exceed 1, so the uplift will never exceed the disaggregated attributable increase.

- (2) For the purposes of the formula:

***total disaggregated attributable decreases*** means the total of:

- (a) all \*disaggregated attributable decreases that the \*indirect value shift has produced, in the \*market values of \*affected interests in the \*losing entity, for the entities that owned those interests immediately before the \*IVS time; and
- (b) if:
- (i) section 727-850 (as applying to the \*scheme from which the indirect value shift results) reduces losses that are \*realised for income tax purposes by \*realisation events happening before the \*IVS time to \*equity or loan interests, or to \*indirect equity or loan interests, in the losing entity; and
- (ii) the indirect value shift is the only indirect value shift, or is the greater or greatest of 2 or more indirect value shifts, that results from the scheme and for which the losing entity is the losing entity;
- for each of those realisation events, the amounts that would, if:
- (iii) the \*presumed indirect value shift were an indirect value shift; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(iv) the IVS time for the presumed indirect value shift were the time of that realisation event;

be the disaggregated attributable decreases that the presumed indirect value shift has produced, in the market value of the equity or loan interests to which that realisation event happened, for the entities that owned those interests immediately before the time of that realisation event.

*total reductions for affected interests* means the total of:

- (a) all reductions under this Division, because of the indirect value shift, of \*adjustable values of affected interests in the losing entity; and
- (b) if paragraph (b) of the definition of *total disaggregated attributable decreases* applies—the amounts by which section 727-850 reduces the losses (if any) referred to in that paragraph.

## Consequences of the method for various kinds of assets

### 727-830 CGT assets

- (1) The \*cost base of an \*equity or loan interest is reduced or uplifted immediately before the \*IVS time to the extent that this Division provides for the \*adjustable value of the interest to be reduced or uplifted.
- (2) The \*reduced cost base of an \*equity or loan interest is reduced or uplifted immediately before the \*IVS time to the extent that this Division provides for the \*adjustable value of the interest to be reduced or uplifted.
- (3) However, the \*cost base or \*reduced cost base is *uplifted* only to the extent that the amount of the uplift is still reflected in the \*market value of the interest when a later \*CGT event happens to the interest.
- (4) To work out:
  - (a) whether the \*cost base or \*reduced cost base of the interest is reduced or uplifted; and
  - (b) if so, by how much;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-835**

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assume that the *adjustable value* from time to time of that or any other \*equity or loan interest is its cost base or reduced cost base, as appropriate.

- (5) If this Division provides for the \*adjustable value of an \*equity or loan interest to be *both* reduced and uplifted:
- (a) the reduction and uplift for which subsection (1) or (2) of this section provides offset each other to the extent of whichever of them is the lesser; but
  - (b) if subsection (3) of this section cancels or reduces the uplift, this subsection is taken always to have applied on that basis.

*Reductions and uplifts also apply to pre-CGT assets*

- (6) A reduction or uplift occurs regardless of whether the entity that owns the interest \*acquired it before, on or after 20 September 1985.

**727-835 Trading stock**

- (1) This section deals with:
- (a) how this Division applies to an \*equity or loan interest that is \*trading stock of an entity at the time (the *adjustment time*) immediately before the \*IVS time; and
  - (b) the income tax consequences of this Division reducing or uplifting the \*adjustable value of the interest.
- (2) The interest's *adjustable value* at a particular time is:
- (a) if the interest has been \*trading stock of the entity ever since the start of the income year of the entity in which that time occurs—its \*value as trading stock at the start of the income year; or
  - (b) otherwise—its cost.
- (3) If this Division reduces or uplifts the interest's \*adjustable value, the entity is treated as if:
- (a) immediately before the adjustment time, the entity had sold the interest to someone else (at \*arm's length and in the ordinary course of business) for its \*adjustable value immediately before that time; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 727-840

- (b) immediately after the adjustment time, the entity had bought the interest back for the reduced or uplifted adjustable value.

Note: The notional sale and repurchase are separated in time. As a result, if this section is applied to another indirect value shift that happens later in the same income year, the interest's adjustable value will be the cost on the notional repurchase: see paragraph (2)(b).

- (4) However, the increase in the cost of an interest because of paragraph (3)(b) is taken into account from time to time only to the extent that the amount of the increase is still reflected in the \*market value of the interest.

Note: The situations where the increase in cost would be taken into account include:

- in working out your deductions for the cost of trading stock acquired during the income year in which the increase happens; and
- the end of an income year if the interest's closing value as trading stock is worked out on the basis of its cost; and
- the start of the income year in which the interest is disposed of, if that happens in a later income year and the interest's closing value as trading stock at the end of the previous income year was worked out on the basis of its cost.

- (5) If this Division provides for the \*adjustable value of the interest to be *both* reduced and uplifted:

- (a) the reduction and uplift offset each other to the extent of whichever of them is the lesser, and subsection (3) of this section applies accordingly; but
- (b) to the extent that the amount of the uplift is no longer reflected in the \*market value of the interest, this section is taken always to have applied on the basis that the amount of the uplift was reduced to the same extent.

**727-840 Revenue assets**

- (1) This section deals with:
- (a) how this Division applies to an \*equity or loan interest that is a \*revenue asset of an entity at the time (the *adjustment time*) immediately before the \*IVS time; and
- (b) the income tax consequences of this Division reducing or uplifting the \*adjustable value of the interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-840**

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- (2) The interest's *adjustable value* at a particular time is the total of the amounts that would be subtracted from the gross disposal proceeds in calculating any profit or loss on disposal of the interest if the entity disposed of it at that time.
- (3) If this Division reduces or uplifts the interest's \*adjustable value, the entity is treated as if:
- (a) immediately before the adjustment time, the entity had sold the interest to someone else (at \*arm's length and in the ordinary course of business) for its adjustable value immediately before that time; and
  - (b) immediately after the adjustment time, the entity had bought the interest back for the reduced or uplifted adjustable value.
- Note: The notional sale and repurchase are separated in time. As a result, if this section is applied to another indirect value shift that happens later in the same income year, the interest's adjustable value will be based on the cost on the notional repurchase: see subsection (2).
- (4) However, an uplift in the \*adjustable value of the interest is taken into account only to the extent that the amount of the uplift is still reflected in the \*market value of the interest when it is disposed of or otherwise realised.
- (5) If this Division provides for the \*adjustable value of the interest to be *both* reduced and uplifted:
- (a) the reduction and uplift offset each other to the extent of whichever of them is the lesser, and subsection (3) of this section applies accordingly; but
  - (b) to the extent that the amount of the uplift is no longer reflected in the \*market value of the interest, this section is taken always to have applied on the basis that the amount of the uplift was reduced to the same extent.

**Subdivision 727-K—Reduction of loss on equity or loan interests realised before the IVS time**

**Table of sections**

727-850	Consequences of scheme under this Subdivision
727-855	Presumed indirect value shift

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 727-850

- 727-860 Conditions about the prospective gaining entity  
 727-865 How other provisions of this Division apply to support this Subdivision  
 727-870 Effect of CGT roll-over  
 727-875 Application to CGT asset that is also trading stock or revenue asset

**727-850 Consequences of scheme under this Subdivision**

(1) If:

- (a) as at the time when a \*scheme is entered into, or a later time, an entity (the *prospective losing entity*) has \*provided, is providing, is to provide, or might provide, one or more economic benefits \*in connection with the scheme; and
- (b) the prospective losing entity is a company or trust (except one listed in section 727-125 (about superannuation entities)); and
- (c) a \*realisation event happens to an \*equity or loan interest, or to an \*indirect equity or loan interest, in the prospective losing entity at a time when no \*IVS time for the scheme has yet happened (whether or not one happens later); and
- (d) apart from this Division, a loss would be \*realised for income tax purposes by the realisation event; and
- (e) because of section 727-855, the scheme results in a \*presumed indirect value shift affecting the realisation event; and
- (f) section 727-860 (about prospective gaining entities) is satisfied; and
- (g) no exclusion in Subdivision 727-C applies to the presumed indirect value shift because of section 727-865; and
- (h) on the assumptions set out in subsection 727-865(3), the interest would be an \*affected interest in the prospective losing entity;

the loss is reduced by an amount that is reasonable having regard to a reasonable estimate of the amount (if any) by which the scheme has reduced the interest's \*market value during the period that ends at the time of the realisation event and started at the later of:

- (i) when the scheme was entered into; and
- (j) the time of the last realisation event that happened to the interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-855**

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Note 1: This Subdivision does not reduce gains from realisation events, but loss reductions under this Subdivision are taken into account in working out:

- gain reductions under Subdivision 727-G for interests in a gaining entity that are realised after the IVS time for the scheme (see section 727-625); or
- uplifts under Subdivision 727-H in the adjustable values of interests in a gaining entity (see section 727-810).

Note 2: Section 727-865 provides for how other provisions of this Division apply for the purposes of this Subdivision.

*Further exclusion for certain 95% services indirect value shifts*

- (2) The loss is not reduced if the \*presumed indirect value shift is a \*95% services indirect value shift because of subsection 727-865(2), unless:
- (a) the conditions in section 727-705 (as applying because of that subsection) are met for the presumed indirect value shift; or
  - (b) the conditions in section 727-710, 727-715 or 727-720 (as applying because of that subsection) are met for the presumed indirect value shift and for the realisation event.

**727-855 Presumed indirect value shift**

- (1) The \*scheme results in a *presumed indirect value shift* affecting the \*realisation event if, and only if, as at the time of the realisation event, it is reasonable to conclude that the total \*market value of the economic benefits (the *greater benefits*) that:
- (a) the \*prospective losing entity has \*provided, is providing, is to provide, or might provide, \*in connection with the \*scheme, to another entity, or to each of 2 or more other entities; and
  - (b) can be identified (even if the other entity or entities cannot be identified or are not all in existence, or the provision of some or all of the economic benefits is contingent);
- exceeds:
- (c) the total market value of the economic benefits (the *lesser benefits*) that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 727-860**

- (i) have been, are being, are to be, or might be, provided to the prospective losing entity in connection with the scheme; and
- (ii) can be identified (even if the entity or entities providing the benefits cannot be identified or are not all in existence, or the provision of some or all of the economic benefits is contingent); or
- (d) if there are no economic benefits covered by paragraph (c)—nil.

That excess is the amount of the presumed indirect value shift, which happens at the time of the realisation event.

- (2) The \*market value of an economic benefit is to be determined as at the earliest time when it is reasonable to conclude that:
  - (a) the economic benefit can be identified; and
  - (b) paragraph 727-150(2)(b) is satisfied for that benefit; if that time is before the \*realisation event.
- (3) Otherwise, the \*market value of the economic benefit is to be determined as at the time immediately before the \*realisation event, taking account of any contingency to which provision of the benefit is subject at that time.

For more rules affecting how the market value of an economic benefit is determined, see Subdivision 727-D (as applying because of subsection 727-865(1)).

- (4) An entity referred to in paragraph (1)(a) need not be a party to the \*scheme. A benefit can be provided by act or omission.

**727-860 Conditions about the prospective gaining entity**

- (1) By the deadline set out in subsection (5), the conditions in subsections (2) and (3) must be satisfied for at least one of these entities:
  - (a) the entity or entities referred to in paragraph 727-855(1)(a);
  - (b) if at the time of the \*realisation event it is reasonable to conclude that the entity, or at least one of the entities, referred to in paragraph 727-855(1)(a) will be one of 2 or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-860**

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more entities, but it cannot be determined which—those 2 or more entities.

- (2) Enough must be known about the identity of an entity covered by subsection (1) for it to be reasonable to conclude that, if:
- (a) the \*presumed indirect value shift were an \*indirect value shift resulting from the \*scheme; and
  - (b) the \*IVS period for the scheme ended at the time of the \*realisation event; and
  - (c) that entity were the \*gaining entity for the indirect value shift;
  - (d) the \*prospective losing entity were the \*losing entity for the indirect value shift; and
- either or both of these would be satisfied for the indirect value shift:
- (e) section 727-105 (Ultimate controller test); and
  - (f) section 727-110 (Common-ownership nexus test).
- (3) Enough must be known about the identity of the entity referred to in subsection (2) for it also to be reasonable to conclude that, in relation to either or both of the following:
- (a) the \*prospective losing entity \*providing one or more economic benefits to that entity \*in connection with the \*scheme; or
  - (b) that entity providing one or more economic benefits to the prospective losing entity in connection with the scheme;
- that entity and the prospective losing entity were not, are not, will not be, or would not be, dealing with each other at \*arm's length.
- (4) Each entity that is covered by subsection (1), and for which subsections (2) and (3) are satisfied, is called a **prospective gaining entity** for the \*scheme.
- (5) The deadline is:
- (a) if the entity that owned the \*equity or loan interest immediately before the \*realisation event must lodge an \*income tax return for the income year in which the event happens—the time by which the return must be lodged; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) otherwise—the end of the 6 months immediately after that income year.

### **727-865 How other provisions of this Division apply to support this Subdivision**

- (1) To avoid doubt, these provisions apply for the purposes of working out whether there has been a \*presumed indirect value shift and, if so, the amount of it:
- (a) sections 727-155, 727-160 and 727-165 (about economic benefits);
  - (b) section 727-315 (Transfer, for its adjustable value, of depreciating asset acquired for less than \$1,500,000).
- (2) For the purposes of section 727-850, these provisions:
- (a) Subdivision 727-C (Exclusions), except section 727-260 (about a shift down a wholly-owned chain of entities);
  - (b) sections 727-700 to 727-725 (about 95% services indirect value shifts), except subsection 727-700(1);
- apply to the \*presumed indirect value shift on the assumptions set out in subsection (3).
- (3) The assumptions are:
- (a) the \*presumed indirect value shift is an \*indirect value shift resulting from the \*scheme; and
  - (b) the \*prospective losing entity for the scheme is the \*losing entity for that indirect value shift; and
  - (c) each \*prospective gaining entity for the scheme is the \*gaining entity for that indirect value shift; and
  - (d) the \*greater benefits under the presumed indirect value shift are the greater benefits under that indirect value shift; and
  - (e) the \*lesser benefits (if any) under the presumed indirect value shift are the lesser benefits under that indirect value shift; and
  - (f) the time of the realisation event mentioned in paragraph 727-850(1)(c) is the \*IVS time for the scheme; and
  - (g) the \*IVS period for the scheme ends at the time of the realisation event; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-865**

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- (h) section 727-105 (Ultimate controller test) is satisfied for that indirect value shift according to what it is reasonable to conclude under subsection 727-860(2) as applying to the presumed indirect value shift; and
  - (i) section 727-110 (Common-ownership nexus test) is satisfied for that indirect value shift according to what it is reasonable to conclude under subsection 727-860(2) as applying to the presumed indirect value shift; and
  - (j) a reference to the realisation event mentioned in subsection 727-700(1) were a reference to the realisation event mentioned in paragraph 727-850(1)(c); and
  - (k) the interest to which the realisation event mentioned in paragraph 727-850(1)(c) happens were the interest referred to in paragraph 727-700(1)(a); and
  - (l) a reference in any of sections 727-700 to 727-725 (about 95% services indirect value shifts), except subsection 727-700(1), to the owner were a reference to the entity that, at the time of the realisation event mentioned in paragraph 727-850(1)(c), owns the interest to which the event happens.
- (4) Sections 727-635 and 727-640 affect how this Subdivision applies to \*equity or loan interests, and \*indirect equity or loan interests, in the \*prospective losing entity that are split or merged during the period:
- (a) starting when the \*scheme is entered into; and
  - (b) ending at the time of the \*realisation event mentioned in paragraph 727-850(1)(c);
- in the same way as those sections affect how Subdivision 727-G would apply to those interests on the assumptions set out in subsection (3) of this section.
- (5) The application of a provision because of this section is additional to, and is not intended to limit, any other application of the provision.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**727-870 Effect of CGT roll-over**

- (1) If:
- (a) the \*realisation event mentioned in paragraph 727-850(1)(c) is a \*CGT event; and
  - (b) section 727-850 reduces a loss that would, apart from this Division, be \*realised for income tax purposes by the CGT event; and
  - (c) there is a roll-over for the CGT event;
- the interest's \*reduced cost base at the time of the CGT event is taken to have been reduced by the amount by which section 727-850 reduces that loss, but is so taken only for the purposes of working out:
- (d) the interest's reduced cost base, from time to time after the roll-over, for the entity that \*acquired the interest because of the CGT event; and
  - (e) in the case of a \*replacement-asset roll-over—the reduced cost base of the replacement CGT asset, from time to time after the roll-over, for the entity that \*disposed of the interest.

Note: Because of the roll-over, the loss reduction under section 727-850 will have no tax effect. This subsection ensures that the loss reduction is passed on, through the reduction in reduced cost base, to prevent or reduce a loss arising on a later CGT event.

**727-875 Application to CGT asset that is also trading stock or revenue asset**

If an \*equity or loan interest is also an item of \*trading stock or a \*revenue asset, this Subdivision applies to the interest once in its character as a CGT asset and again in its character as trading stock or a revenue asset.

**Subdivision 727-L—Indirect value shift resulting from a direct value shift****Table of sections**

727-905	How this Subdivision affects the rest of this Division
727-910	Treatment of value shifted under the direct value shift

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 727-905

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**727-905 How this Subdivision affects the rest of this Division**

(1) This Subdivision affects how the rest of this Division applies to a \*scheme (the *IVS scheme*) that is or includes a scheme (the *DVS scheme*) under which there is a \*direct value shift.

(2) If the \*direct value shift:

(a) has consequences under Division 725 for an entity as an \*affected owner of \*down interests (or would do so apart from section 725-90 (about direct value shifts that will be reversed)); and

(b) also has consequences under that Division for another entity as an affected owner of \*up interests (or would do so apart from section 725-90);

the rest of this Subdivision has effect, for the purposes of Subdivisions 727-A to 727-K, in order to determine:

(c) whether the IVS scheme results in an \*indirect value shift, from the first entity to the other entity, that has consequences under this Division; and

(d) whether the IVS scheme has consequences under Subdivision 727-K because it results in a \*presumed indirect value shift affecting a \*realisation event happening to \*equity or loan interests, or to \*indirect equity or loan interests, in the first entity; and

(e) those consequences.

Note: Section 725-50 sets out when a direct value shift has consequences under Division 725.

(3) If:

(a) the IVS scheme is the DVS scheme; and

(b) subsection 725-145(2) is satisfied for the \*direct value shift (because one or more equity or loan interests in the target entity are issued at a discount); but

(c) subsection 725-145(3) (about an increase in the market value of one or more equity or loan interests in the target entity) is not satisfied for the direct value shift;

Subdivisions 727-A to 727-K apply to the IVS scheme only as provided in this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) Otherwise, those Subdivisions apply to the IVS scheme as provided in this section in addition to any other application they have to the scheme.

### **727-910 Treatment of value shifted under the direct value shift**

- (1) The first entity is treated as \*providing economic benefits to the other entity, \*in connection with the IVS scheme, at the time of a decrease (or future decrease) in the \*market value of any of the \*down interests, to the extent that the decrease is (or will be) covered by subsection 725-155(1).
- (2) Despite subsections 727-150(4) and 727-855(2) and (3), the \*market value of all economic benefits that subsection (1) of this section treats the first entity as providing to the other entity:
- (a) is to be determined as at the time immediately before the \*IVS time, or immediately before the \*realisation event, as appropriate; and
  - (b) is equal to the total value shifted from the \*down interests to the \*up interests, as worked out under one or more applications of step 2 of the method statement in section 725-365 or 725-380.
- (3) The 2 entities are treated as not dealing with each other at \*arm's length in relation to the providing of those benefits.
- (4) None of those benefits is treated as consisting of, or including, services provided or a right to have services provided.
- Note: This means that the exclusions in Subdivisions 727-C and 727-G for indirect value shifts involving services will not apply.
- (5) Except as provided in this section, none of the following is treated as the \*providing of economic benefits \*in connection with the IVS scheme:
- (a) a decrease (or future decrease) in the \*market value of \*down interests owned by the first entity or the other entity, to the extent that the decrease is (or will be) covered by subsection 725-155(1);
  - (b) an increase (or future increase) in the market value of \*up interests owned by the first entity or the other entity, to the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-95** Value shifting

**Division 727** Indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings

**Section 727-910**

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extent that the increase is (or will be) covered by subsection 725-145(3);

- (c) an issue of \*up interests at a \*discount to the first entity or the other entity, to the extent that the issue is (or will be) covered by subsection 725-145(2).

Note: Value shifted from down interests owned by the other entity to up interests owned by the first entity are dealt with by a separate application of this Subdivision to those interests (because of paragraphs 727-905(2)(a) and (b).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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# **Income Tax Assessment Act 1997**

## **Act No. 38 of 1997 as amended**

This compilation was prepared on 2 July 2009  
taking into account amendments up to Act No. 62 of 2009

**Volume 8** includes: Table of Contents  
Sections 768-100 to 995-1

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section



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# Contents

<b>Chapter 4—International aspects of income tax</b>	1
<b>Part 4-5—General</b>	1
<b>Division 768—Exempt foreign income and gains</b>	1
<b>Subdivision 768-B—Some items of income that are exempt from income tax</b>	1
768-100 Foreign government officials in Australia .....	1
768-105 Compensation arising out of Second World War .....	3
<b>Subdivision 768-G—Reduction in capital gains and losses arising from CGT events in relation to certain voting interests in active foreign companies</b>	5
<b>Guide to Subdivision 768-G</b>	5
768-500 What this Subdivision is about .....	5
<b>Operative provisions</b>	6
768-505 Reducing a capital gain or loss from certain CGT events in relation to certain voting interests.....	6
<b>Active foreign business asset percentage</b>	7
768-510 Active foreign business asset percentage.....	7
768-515 Choices to apply market value method or book value method .....	8
768-520 Market value method—choice made under subsection 768-515(1).....	8
768-525 Book value method—choice made under subsection 768-515(2).....	10
768-530 Active foreign business asset percentage—modifications for foreign life insurance companies and foreign general insurance companies.....	14
768-533 Foreign company that is a FIF using CFC calculation method—treatment as AFI subsidiary under this Subdivision.....	16
768-535 Modified rules for foreign wholly-owned groups .....	17
<b>Types of assets of a foreign company</b>	19
768-540 Active foreign business assets of a foreign company .....	19
768-545 Assets included in the total assets of a foreign company .....	21
<b>Voting percentages in a company</b>	22
768-550 Direct voting percentage in a company .....	22
768-555 Indirect voting percentage in a company .....	23
768-560 Total voting percentage in a company .....	23
<b>Subdivision 768-R—Temporary residents</b>	23
<b>Guide to Subdivision 768-R</b>	23
768-900 What this Subdivision is about .....	23

---

<b>Operative provisions</b>	25
768-905 Objects.....	25
768-910 Income derived by temporary resident .....	25
768-915 Certain capital gains and capital losses of temporary resident to be disregarded .....	27
768-920 Capital gains and losses on employee shares and rights where taxation of discount not deferred.....	27
768-925 Notional gain or loss.....	30
768-930 Adjustment to notional gain or loss .....	31
768-935 Adjustment for share or right acquired under employee share scheme.....	32
768-940 Adjustment for derived share.....	34
768-945 Amending assessment to take account of effect on capital gain or loss of recalculating discount .....	36
768-950 Individual becoming an Australian resident .....	37
768-955 Temporary resident who ceases to be temporary resident but remains an Australian resident.....	37
768-960 Temporary resident not attributable taxpayer for purposes of controlled foreign companies rules.....	38
768-965 Exemption of temporary resident from taxation in respect of foreign investment fund income .....	38
768-970 Modification of rules for accruals system of taxation of certain non-resident trust estates.....	38
768-975 Calculation of beneficiary's share of net income of non-resident trust estate .....	38
768-980 Interest paid by temporary resident .....	38
<b>Division 770—Foreign income tax offsets</b>	40
<b>Guide to Division 770</b>	40
770-1 What this Division is about .....	40
770-5 Object .....	40
<b>Subdivision 770-A—Entitlement rules for foreign income tax offsets</b>	41
<b>Basic entitlement rule for foreign income tax offset</b>	41
770-10 Entitlement to foreign income tax offset .....	41
770-15 Meaning of <i>foreign income tax</i> , <i>credit absorption tax</i> and <i>unitary tax</i> .....	42
<b>Subdivision 770-B—Amount of foreign income tax offset</b>	44
<b>Guide to Subdivision 770-B</b>	44
770-65 What this Subdivision is about .....	44
<b>Operative provisions</b>	44
770-70 Amount of foreign income tax offset.....	44
770-75 Foreign income tax offset limit.....	45

---

---

770-80	Increase in offset limit for tax paid on amounts to which section 23AI or 23AK of the <i>Income Tax Assessment Act 1936</i> apply .....	46
<b>Subdivision 770-C—Rules about payment of foreign income tax</b>		46
<b>Rules about when foreign tax is paid</b>		46
770-130	When foreign income tax is considered paid—taxes paid by someone else.....	46
770-135	Foreign income tax paid by CFCs and FIFs on attributed amounts .....	47
<b>Rules about when foreign tax is considered not paid</b>		50
770-140	When foreign income tax is considered not paid—anti-avoidance rule .....	50
<b>Subdivision 770-D—Administration</b>		51
770-190	Amendment of assessments.....	51
<b>Division 775—Foreign currency gains and losses</b>		52
<b>Guide to Division 775</b>		52
775-5	What this Division is about .....	52
<b>Subdivision 775-A—Objects of this Division</b>		53
775-10	Objects of this Division .....	53
<b>Subdivision 775-B—Realisation of forex gains or losses</b>		54
775-15	Forex realisation gains are assessable.....	55
775-20	Certain forex realisation gains are exempt income .....	57
775-25	Certain forex realisation gains are non-assessable non-exempt income .....	57
775-30	Forex realisation losses are deductible .....	57
775-35	Certain forex realisation losses are disregarded.....	59
775-40	Disposal of foreign currency or right to receive foreign currency—forex realisation event 1 .....	59
775-45	Ceasing to have a right to receive foreign currency—forex realisation event 2.....	61
775-50	Ceasing to have an obligation to receive foreign currency—forex realisation event 3 .....	64
775-55	Ceasing to have an obligation to pay foreign currency—forex realisation event 4 .....	66
775-60	Ceasing to have a right to pay foreign currency—forex realisation event 5.....	72
775-65	Only one forex realisation event to be counted.....	74
775-70	Tax consequences of certain short-term forex realisation gains .....	76
775-75	Tax consequences of certain short-term forex realisation losses .....	81
775-80	You may choose not to have sections 775-70 and 775-75 apply to you .....	84

---



---

775-85	Forex cost base of a right to receive foreign currency .....	85
775-90	Forex entitlement base of a right to pay foreign currency .....	85
775-95	Proceeds of assuming an obligation to pay foreign currency.....	86
775-100	Net costs of assuming an obligation to receive foreign currency .....	87
775-105	Currency exchange rate effect .....	88
775-110	Constructive receipts and payments .....	88
775-115	Economic set-off to be treated as legal set-off.....	89
775-120	Non-arm's length transactions.....	89
775-125	CGT consequences of the acquisition of foreign currency as a result of forex realisation event 2 or 3 .....	89
775-130	Certain deductions not allowable.....	90
775-135	Right to receive or pay foreign currency .....	90
775-140	Obligation to pay or receive foreign currency .....	91
775-145	Application of forex realisation events to currency and fungible rights and obligations .....	91
775-150	Transitional election .....	92
775-155	Applicable commencement date.....	92
775-160	Exception—event happens before the applicable commencement date .....	93
775-165	Exception—currency or right acquired, or obligation incurred, before the applicable commencement date .....	93
775-175	Application to things happening before commencement.....	95
<b>Subdivision 775-C—Roll-over relief for facility agreements</b>		96
<b>Guide to Subdivision 775-C</b>		96
775-180	What this Subdivision is about .....	96
<b>Operative provisions</b>		97
775-185	What is a <i>facility agreement</i> ? .....	97
775-190	What is an <i>eligible security</i> ?.....	97
775-195	You may choose roll-over relief for a facility agreement .....	98
775-200	Forex realisation event 4 does not apply.....	99
775-205	What is a <i>roll-over</i> ?.....	99
775-210	Notional loan .....	100
775-215	Discharge of obligation to pay the principal amount of a notional loan under a facility agreement—forex realisation event 6 .....	104
775-220	Material variation of a facility agreement—forex realisation event 7 .....	106
<b>Subdivision 775-D—Qualifying forex accounts that pass the limited balance test</b>		108
<b>Guide to Subdivision 775-D</b>		108
775-225	What this Subdivision is about .....	108

---

---

<b>Operative provisions</b>	109
775-230 Election to have this Subdivision apply to one or more qualifying forex accounts .....	109
775-235 Variation of election .....	110
775-240 Withdrawal of election .....	110
775-245 When does a qualifying forex account <i>pass the limited balance test?</i> .....	111
775-250 Tax consequences of passing the limited balance test .....	114
775-255 Notional realisation when qualifying forex account starts to pass the limited balance test .....	115
775-260 Modification of tax recognition time .....	116
<b>Subdivision 775-E—Retranslation for qualifying forex accounts</b>	117
<b>Guide to Subdivision 775-E</b>	117
775-265 What this Subdivision is about .....	117
<b>Operative provisions</b>	117
775-270 You may choose retranslation for a qualifying forex account .....	117
775-275 Withdrawal of choice .....	118
775-280 Tax consequences of choosing retranslation for an account .....	118
775-285 Retranslation of gains and losses relating to a qualifying forex account—forex realisation event 8 .....	119
<b>Subdivision 775-F—Retranslation under foreign exchange retranslation election under Subdivision 230-D</b>	122
<b>Guide to Subdivision 775-F</b>	122
775-290 What this Subdivision is about .....	122
775-295 When this Subdivision applies .....	122
775-300 Tax consequences of choosing retranslation for arrangement .....	123
775-305 Retranslation of gains and losses relating to arrangement to which foreign exchange retranslation election applies—forex realisation event 9 .....	124
775-310 When election ceases to apply to arrangement .....	125
775-315 Balancing adjustment when election ceases to apply to arrangement .....	125
<b>Division 802—Foreign residents’ income with an underlying foreign source</b>	127
<b>Subdivision 802-A—Conduit foreign income</b>	127
<b>Guide to Subdivision 802-A</b>	127
802-5 What this Subdivision is about .....	127
<b>Operative provisions</b>	128
802-10 Objects .....	128
802-15 Foreign residents—exempting CFI from Australian tax .....	128
802-17 Trust estates and foreign resident beneficiaries—exempting CFI from Australian tax .....	129

---

---

802-20	Distributions between Australian corporate tax entities— non-assessable non-exempt income.....	130
802-25	Conduit foreign income of an Australian corporate tax entity.....	131
802-30	Foreign source income amounts .....	132
802-35	Capital gains and losses.....	133
802-40	Effect of foreign income tax offset on conduit foreign income .....	134
802-45	Previous declarations of conduit foreign income.....	134
802-50	Receipt of an unfranked distribution from another Australian corporate tax entity .....	135
802-55	No double benefits.....	135
802-60	No streaming of distributions .....	135
<b>Division 820—Thin capitalisation rules</b>		<b>137</b>
<b>Guide to Division 820</b>		<b>138</b>
820-1	What this Division is about .....	138
820-5	Does this Division apply to an entity?.....	139
820-10	Map of Division.....	140
<b>Subdivision 820-A—Preliminary</b>		<b>141</b>
820-30	Object of Division .....	142
820-32	Exemption for private or domestic assets and non-debt liabilities .....	142
820-35	Application—\$250,000 threshold.....	142
820-37	Application—assets threshold .....	142
820-39	Exemption of certain special purpose entities.....	144
820-40	Meaning of <i>debt deduction</i> .....	145
<b>Subdivision 820-B—Thin capitalisation rules for outward investing entities (non-ADI)</b>		<b>147</b>
<b>Guide to Subdivision 820-B</b>		<b>147</b>
820-65	What this Subdivision is about .....	147
<b>Operative provisions</b>		<b>148</b>
820-85	Thin capitalisation rule for outward investing entities (non-ADI).....	148
820-90	Maximum allowable debt .....	151
820-95	Safe harbour debt amount—outward investor (general).....	152
820-100	Safe harbour debt amount—outward investor (financial).....	153
820-105	Arm’s length debt amount .....	157
820-110	Worldwide gearing debt amount .....	160
820-115	Amount of debt deduction disallowed .....	162
820-120	Application to part year periods .....	162

---

---

<b>Subdivision 820-C—Thin capitalisation rules for inward investing entities (non-ADI)</b>	164
<b>Guide to Subdivision 820-C</b>	164
820-180 What this Subdivision is about .....	164
<b>Operative provisions</b>	165
820-185 Thin capitalisation rule for inward investing entities (non-ADI) .....	165
820-190 Maximum allowable debt .....	168
820-195 Safe harbour debt amount—inward investment vehicle (general) .....	168
820-200 Safe harbour debt amount—inward investment vehicle (financial) .....	169
820-205 Safe harbour debt amount—inward investor (general) .....	172
820-210 Safe harbour debt amount—inward investor (financial) .....	173
820-215 Arm’s length debt amount .....	176
820-220 Amount of debt deduction disallowed .....	180
820-225 Application to part year periods .....	180
<b>Subdivision 820-D—Thin capitalisation rules for outward investing entities (ADI)</b>	182
<b>Guide to Subdivision 820-D</b>	182
820-295 What this Subdivision is about .....	182
<b>Operative provisions</b>	183
820-300 Thin capitalisation rule for outward investing entities (ADI) .....	183
820-305 Minimum capital amount .....	185
820-310 Safe harbour capital amount .....	185
820-315 Arm’s length capital amount .....	186
820-320 Worldwide capital amount .....	188
820-325 Amount of debt deduction disallowed .....	190
820-330 Application to part year periods .....	191
<b>Subdivision 820-E—Thin capitalisation rules for inward investing entities (ADI)</b>	192
<b>Guide to Subdivision 820-E</b>	192
820-390 What this Subdivision is about .....	192
<b>Operative provisions</b>	193
820-395 Thin capitalisation rule for inward investing entities (ADI) .....	193
820-400 Minimum capital amount .....	194
820-405 Safe harbour capital amount .....	195
820-410 Arm’s length capital amount .....	195
820-415 Amount of debt deduction disallowed .....	197
820-420 Application to part year periods .....	198

---

---

<b>Subdivision 820-EA—Some financial entities may choose to be treated as ADIs</b>	200
820-430 When choice can be made, and what effect it has.....	200
820-435 Conditions .....	201
820-440 Revocation of choice .....	203
820-445 How this Subdivision interacts with Subdivision 820-FA .....	203
<b>Subdivision 820-FA—How the thin capitalisation rules apply to consolidated groups and MEC groups</b>	204
<b>Guide to Subdivision 820-FA</b>	204
820-579 What this Subdivision is about .....	204
<b>Operative provisions</b>	205
820-581 How this Division applies to head company for income year in which group comes into existence or ceases to exist .....	205
820-583 Classification of head company.....	206
820-584 Exempt special purpose entities treated as not being member of group .....	208
820-585 Exemption for consolidated group headed by foreign-controlled Australian ADI or its holding company .....	208
820-587 Additional application of Subdivision 820-D to MEC group that includes foreign-controlled Australian ADI .....	209
820-588 Choice to treat specialist credit card institutions as being financial entities and not ADIs .....	210
820-589 How Subdivision 820-D applies to a MEC group .....	211
<b>Subdivision 820-FB—Grouping branches of foreign banks and foreign financial entities with a consolidated group, MEC group or single Australian resident company</b>	212
<b>Guide to Subdivision 820-FB</b>	212
820-595 What this Subdivision is about .....	212
<b>Choice to group with branches of foreign banks and foreign financial entities</b>	213
820-597 Choice by head company of consolidated group or MEC group .....	213
820-599 Choice by Australian resident company outside consolidatable group and MEC group .....	214
<b>Effect of choice</b>	215
820-601 Application .....	215
820-603 General .....	215
820-605 Effect on establishment entity if certain debt deductions disallowed.....	217
820-607 Effect on test periods under this Division.....	218
820-609 Effect on classification of head company or single company .....	218

---

---

820-610 Choice not to be outward investing entity (ADI) or inward investing entity (ADI).....	220
820-611 Values to be based on what would be in consolidated accounts for group .....	221
820-613 How Subdivision 820-D applies .....	222
820-615 How Subdivision 820-E applies .....	223
<b>Subdivision 820-G—Calculating the average values</b>	224
<b>Guide to Subdivision 820-G</b>	224
820-625 What this Subdivision is about .....	224
<b>How to calculate the average values</b>	225
820-630 Methods of calculating average values .....	225
820-635 The opening and closing balances method .....	226
820-640 The 3 measurement days method .....	227
820-645 The frequent measurement method.....	228
<b>Special rules about values and valuation</b>	231
820-675 Amount to be expressed in Australian currency .....	231
820-680 Valuation of assets, liabilities and equity capital .....	231
820-682 Recognition of assets and liabilities—modifying application of accounting standards .....	234
820-683 Recognition of internally generated intangible items—modifying application of accounting standards .....	235
820-684 Valuation of intangible assets if no active market—modifying application of accounting standards .....	236
820-685 Valuation of debt capital.....	238
820-690 Commissioner’s power .....	238
<b>Subdivision 820-H—Control of entities</b>	238
<b>Guide to Subdivision 820-H</b>	238
820-740 What this Subdivision is about .....	238
<b>Australian controller of a foreign entity</b>	240
820-745 What is an Australian controlled foreign entity? .....	240
820-750 What is an Australian controller of a controlled foreign company? .....	240
820-755 What is an Australian controller of a controlled foreign trust? .....	240
820-760 What is an Australian controller of a controlled foreign corporate limited partnership? .....	241
<b>Foreign controlled Australian entity</b>	241
820-780 What is a foreign controlled Australian entity? .....	241
820-785 What is a foreign controlled Australian company?.....	242
820-790 What is a foreign controlled Australian trust? .....	243
820-795 What is a foreign controlled Australian partnership? .....	245

---

---

<b>Thin capitalisation control interest</b>	247
820-815 General rule about thin capitalisation control interest in a company, trust or partnership .....	247
820-820 Special rules about calculating TC control interest held by an entity .....	247
820-825 Special rules about calculating TC control interests held by a group of entities .....	248
820-830 Special rules about determining percentage of TC control interest .....	249
820-835 Commissioner's power .....	250
<b>TC direct control interest, TC indirect control interest and TC control tracing interest</b>	250
820-855 TC direct control interest in a company .....	250
820-860 TC direct control interest in a trust .....	251
820-865 TC direct control interest in a partnership .....	252
820-870 TC indirect control interest in a company, trust or partnership .....	253
820-875 TC control tracing interest in a company, trust or partnership .....	256
<b>Subdivision 820-HA—Controlled foreign entity debt and controlled foreign entity equity</b>	257
<b>Guide to Subdivision 820-HA</b>	257
820-880 What this Subdivision is about .....	257
820-881 Application .....	257
820-885 What is <i>controlled foreign entity debt</i> ? .....	257
820-890 What is <i>controlled foreign entity equity</i> ? .....	258
<b>Subdivision 820-I—Associate entities</b>	259
<b>Guide to Subdivision 820-I</b>	259
820-900 What this Subdivision is about .....	259
820-905 Associate entity .....	259
820-910 Associate entity debt .....	263
820-915 Associate entity equity .....	265
820-920 Associate entity excess amount .....	266
<b>Subdivision 820-J—Equity interest in a trust or partnership</b>	271
<b>Guide to Subdivision 820-J</b>	271
820-925 What this Subdivision is about .....	271
820-930 <i>Equity interest</i> in a trust or partnership .....	271
<b>Subdivision 820-K—Zero-capital amount</b>	275
<b>Guide to Subdivision 820-K</b>	275
820-940 What this Subdivision is about .....	275
820-942 How to work out the zero-capital amount .....	275

---

---

<b>Subdivision 820-KA—Cost-free debt capital and excluded equity interests</b>	279
<b>Guide to Subdivision 820-KA</b>	279
820-945 What this Subdivision is about .....	279
820-946 <i>Cost-free debt capital and excluded equity interest</i> .....	280
<b>Subdivision 820-L—Record keeping requirements</b>	282
<b>Guide to Subdivision 820-L</b>	282
820-950 What this Subdivision is about .....	282
<b>Records about Australian permanent establishments</b>	283
820-960 Records about Australian permanent establishments .....	283
820-965 Review of Commissioner’s decision .....	286
<b>Records about arm’s length amounts</b>	286
820-980 Records about arm’s length debt amount and arm’s length capital amount .....	286
<b>Records about asset revaluations</b>	287
820-985 Methodology of revaluation and independence of valuer .....	287
<b>Offences committed by certain entities</b>	288
820-990 Offences—treatment of partnerships .....	288
820-995 Offences—treatment of unincorporated companies .....	289
<b>Division 830—Foreign hybrids</b>	291
<b>Guide to Division 830</b>	291
830-1 What this Division is about .....	291
<b>Subdivision 830-A—Meaning of “foreign hybrid”</b>	291
830-5 Foreign hybrid .....	292
830-10 Foreign hybrid limited partnership .....	292
830-15 Foreign hybrid company .....	293
<b>Subdivision 830-B—Extension of normal partnership provisions to foreign hybrid companies</b>	294
830-20 Treatment of company as a partnership .....	295
830-25 Partners are the shareholders in the company .....	295
830-30 Individual interest of a partner in net income etc. equals percentage of notional distribution of company’s profits .....	295
830-35 Partner’s interest in assets .....	295
830-40 Control and disposal of share in partnership income .....	296
<b>Subdivision 830-C—Special rules applicable while an entity is a foreign hybrid</b>	296
830-45 Partner’s revenue and net capital losses from foreign hybrid not to exceed partner’s loss exposure amount .....	296
830-50 Deduction etc. where partner’s foreign hybrid revenue loss amount and foreign hybrid net capital loss amount are less than partner’s loss exposure amount .....	297

---



---

830-55	Meaning of <i>foreign hybrid net capital loss amount</i> .....	299
830-60	Meaning of <i>loss exposure amount</i> .....	299
830-65	Meaning of <i>outstanding foreign hybrid revenue loss amount</i> .....	301
830-70	Meaning of <i>outstanding foreign hybrid net capital loss amount</i> .....	301
830-75	Extended meaning of <i>subject to tax</i> .....	302
<b>Subdivision 830-D—Special rules applicable when an entity becomes or ceases to be a foreign hybrid</b>		
830-80	Setting the tax cost of partners' interests in the assets of an entity that becomes a foreign hybrid.....	305
830-85	Setting the tax cost of assets of an entity when it ceases to be a foreign hybrid .....	305
830-90	What the expression <i>tax cost is set</i> means .....	305
830-95	What the expression <i>tax cost setting amount</i> means .....	307
830-100	What the expression <i>tax cost</i> means .....	310
830-105	What the expression <i>asset-based income tax regime</i> means.....	311
830-110	No disposal of assets etc. on entity becoming or ceasing to be a foreign hybrid.....	311
830-115	Tax losses cannot be transferred to a foreign hybrid .....	311
830-120	End of CFC's last statutory accounting period .....	312
830-125	How long interest in asset, or asset, held .....	312
<b>Division 840—Withholding taxes</b>		
<b>Guide to Division 840</b>		
840-1	What this Division is about .....	314
<b>Subdivision 840-M—Managed investment trust withholding tax</b>		
<b>Guide to Subdivision 840-M</b>		
840-800	What this Subdivision is about .....	314
<b>Operative provisions</b>		
840-805	Liability for managed investment trust withholding tax .....	315
840-810	When managed investment trust withholding tax is payable .....	317
840-815	Certain income is non-assessable non-exempt income .....	318
840-820	Agency rules.....	318
<b>Division 842—Exempt Australian source income and gains of foreign residents</b>		
<b>Subdivision 842-B—Some items of Australian source income of foreign residents that are exempt from income tax</b>		
<b>Guide to Subdivision 842-B</b>		
842-100	What this Subdivision is about .....	319
842-105	Amounts of Australian source ordinary income and statutory income that are exempt.....	319

---

---

<b>Division 855—Capital gains and foreign residents</b>	323
<b>Guide to Division 855</b>	323
855-1 What this Division is about .....	323
<b>Subdivision 855-A—Disregarding a capital gain or loss by foreign residents</b>	323
855-5 Objects of this Subdivision.....	324
855-10 Disregarding a capital gain or loss from CGT events.....	324
855-15 When an asset is taxable Australian property .....	325
855-20 Taxable Australian real property .....	325
855-25 Indirect Australian real property interests.....	326
855-30 Principal asset test .....	327
855-35 Reducing a capital gain or loss from a business asset— Australian permanent establishments .....	329
855-40 Capital gains and losses of foreign residents through fixed trusts .....	329
<b>Subdivision 855-B—Becoming an Australian resident</b>	331
855-45 Individual or company becomes an Australian resident .....	331
855-50 Trust becomes a resident trust .....	331
855-55 CFC becomes an Australian resident.....	332
<b>Chapter 5—Administration</b>	334
<b>Part 5-30—Record-keeping and other obligations</b>	334
<b>Division 900—Substantiation rules</b>	334
<b>Guide to Division 900</b>	334
900-1 What this Division is about .....	334
<b>Subdivision 900-A—Application of Division</b>	334
900-5 Application of the requirements of Division 900.....	335
900-10 Substantiation requirement .....	335
900-12 Application to recipients and payers of certain withholding payments.....	335
<b>Subdivision 900-B—Substantiating work expenses</b>	336
900-15 Getting written evidence.....	337
900-20 Keeping travel records.....	337
900-25 Retaining the written evidence and travel records .....	338
900-30 Meaning of <i>work expense</i> .....	338
900-35 Exception for small total of expenses .....	340
900-40 Exception for laundry expenses below a certain limit .....	340
900-45 Exception for work expense related to award transport payment .....	341
900-50 Exception for domestic travel allowance expenses.....	341
900-55 Exception for overseas travel allowance expenses .....	342
900-60 Exception for reasonable overtime meal allowance.....	342

---

---

900-65 Crew members on international flights need not keep travel records .....	342
<b>Subdivision 900-C—Substantiating car expenses</b>	343
900-70 Getting written evidence.....	343
900-75 Retaining the written evidence and odometer records .....	343
<b>Subdivision 900-D—Substantiating business travel expenses</b>	344
900-80 Getting written evidence.....	344
900-85 Keeping travel records.....	345
900-90 Retaining the written evidence and travel records .....	345
900-95 Meaning of <i>business travel expense</i> .....	346
<b>Subdivision 900-E—Written evidence</b>	347
<b>Guide to Subdivision 900-E</b>	347
900-100 What this Subdivision is about .....	347
<b>Operative provisions</b>	347
900-105 Ways of getting written evidence .....	347
900-110 Time limits .....	347
900-115 Written evidence from supplier .....	348
900-120 Written evidence of depreciating asset expense .....	348
900-125 Evidence of small expenses .....	349
900-130 Evidence of expenses considered otherwise too hard to substantiate .....	350
900-135 Evidence on a payment summary .....	350
<b>Subdivision 900-F—Travel records</b>	351
<b>Guide to Subdivision 900-F</b>	351
900-140 What this Subdivision is about .....	351
900-145 Purpose of a travel record.....	351
<b>Operative provisions</b>	351
900-150 Recording activities in travel records .....	351
900-155 Showing which of your activities were income-producing activities .....	352
<b>Subdivision 900-G—Retaining and producing records</b>	352
<b>Guide to Subdivision 900-G</b>	352
900-160 What this Subdivision is about .....	352
900-165 The retention period .....	352
<b>Operative provisions</b>	353
900-170 Extending the retention period if an expense is disputed.....	353
900-175 Commissioner may tell you to produce your records .....	353
900-180 How to comply with a notice.....	353
900-185 What happens if you don't comply.....	354
<b>Subdivision 900-H—Relief from effects of failing to substantiate</b>	354
900-195 Commissioner's discretion to review failure to substantiate .....	354

---

---

900-200 Reasonable expectation that substantiation would not be required.....	354
900-205 What if your documents are lost or destroyed?.....	355
<b>Subdivision 900-I—Award transport payments</b>	355
<b>Guide to Subdivision 900-I</b>	355
900-210 What this Subdivision is about .....	355
<b>Operative provisions</b>	356
900-215 Deducting an expense related to an award transport payment .....	356
900-220 Definition of <i>award transport payment</i> .....	357
900-225 Substituted industrial instruments.....	358
900-230 Changes to industrial instruments applied for before 29 October 1986 .....	358
900-235 Changes to industrial instruments solely referable to matters in the instrument.....	358
900-240 Deducting in anticipation of receiving award transport payment .....	358
900-245 Effect of exception in this Subdivision on exception for small total of expenses.....	359
900-250 Effect of exception in this Subdivision on methods of calculating car expense deductions.....	359
<b>Part 5-35—Miscellaneous</b>	361
<b>Division 905—Offences</b>	361
905-5 Application of the <i>Criminal Code</i> .....	361
<b>Division 909—Regulations</b>	362
909-1 Regulations.....	362
<b>Chapter 6—The Dictionary</b>	363
<b>Part 6-1—Concepts and topics</b>	363
<b>Division 950—Rules for interpreting this Act</b>	363
950-100 What forms part of this Act .....	363
950-105 What does <i>not</i> form part of this Act .....	363
950-150 Guides, and their role in interpreting this Act.....	364
<b>Division 960—General</b>	365
<b>Subdivision 960-C—Foreign currency</b>	365
960-49 Objects of this Subdivision.....	365
960-50 Translation of amounts into Australian currency.....	365
960-55 Application of translation rules .....	371
<b>Subdivision 960-D—Functional currency</b>	372
<b>Guide to Subdivision 960-D</b>	372
960-56 What this Subdivision is about .....	372

---

---

<b>Operative provisions</b>	373
960-59 Object of this Subdivision .....	373
960-60 You may choose a functional currency.....	374
960-61 Functional currency for calculating capital gains and losses on indirect Australian real property interests.....	376
960-65 Backdated startup choice .....	377
960-70 What is the <i>applicable functional currency</i> ? .....	381
960-75 What is a <i>transferor trust</i> ?.....	382
960-80 Translation rules .....	383
960-85 Special rule about translation—events that happened before the current choice took effect .....	389
960-90 Withdrawal of choice .....	391
<b>Subdivision 960-E—Entities</b>	394
960-100 Entities.....	394
960-105 Certain entities treated as agents.....	395
<b>Subdivision 960-F—Distribution by corporate tax entities</b>	395
960-115 Meaning of <i>corporate tax entity</i> .....	395
960-120 Meaning of <i>distribution</i> .....	396
<b>Subdivision 960-G—Membership of entities</b>	397
960-130 Members of entities .....	397
960-135 Membership interest in an entity .....	398
960-140 Ordinary membership interest .....	398
<b>Subdivision 960-GP—Participation interests in entities</b>	398
960-180 Total participation interest.....	398
960-185 Indirect participation interest.....	399
960-190 Direct participation interest .....	399
960-195 Non-portfolio interest test.....	401
<b>Subdivision 960-H—Abnormal trading in shares or units</b>	401
960-220 Meaning of <i>trading</i> .....	401
960-225 Abnormal trading .....	402
960-230 Abnormal trading—5% of shares or units in one transaction .....	403
960-235 Abnormal trading—suspected 5% of shares or units in a series of transactions.....	403
960-240 Abnormal trading—suspected acquisition or merger .....	403
960-245 Abnormal trading—20% of shares or units traded over 60 day period.....	403
<b>Subdivision 960-J—Family relationships</b>	404
<b>Guide to Subdivision 960-J</b>	404
960-250 What this Subdivision is about .....	404
<b>Operative provisions</b>	404
960-252 Object of this Subdivision .....	404
960-255 Family relationships .....	405

---

---

<b>Subdivision 960-M—Indexation</b>	406
<b>Guide to Subdivision 960-M</b>	406
960-260 What this Subdivision is about .....	406
960-265 The provisions for which indexation is relevant.....	406
<b>Operative provisions</b>	407
960-270 Indexing amounts .....	407
960-275 <i>Indexation factor</i> .....	408
960-280 <i>Index number</i> .....	409
960-285 Indexation—superannuation and employment termination .....	410
<b>Subdivision 960-S—Market value</b>	412
<b>Guide to Subdivision 960-S</b>	412
960-400 What this Subdivision is about .....	412
<b>Operative provisions</b>	412
960-405 Effect of GST on market value of an asset .....	412
960-410 Market value of non-cash benefits.....	413
<b>Division 974—Debt and equity interests</b>	414
<b>Subdivision 974-A—General</b>	414
<b>Guide to Division 974</b>	414
974-1 What this Division is about .....	414
974-5 Overview of Division .....	415
<b>Operative provisions</b>	416
974-10 Object .....	416
<b>Subdivision 974-B—Debt interests</b>	418
974-15 Meaning of <i>debt interest</i> .....	419
974-20 The test for a debt interest .....	421
974-25 Exceptions to the debt test .....	422
974-30 Providing a financial benefit.....	423
974-35 Valuation of financial benefits—general rules .....	424
974-40 Valuation of financial benefits—rights and options to terminate early.....	426
974-45 Valuation of financial benefits—convertible interests.....	427
974-50 Valuation of financial benefits—value in present value terms .....	427
974-55 The debt interest and its issue .....	428
974-60 Debt interest arising out of obligations owed by a number of entities .....	429
974-65 Commissioner’s power .....	430
<b>Subdivision 974-C—Equity interests in companies</b>	431
974-70 Meaning of <i>equity interest</i> in a company.....	432
974-75 The test for an equity interest .....	434
974-80 Equity interest arising from arrangement funding return through connected entities .....	437

---

---

974-85	Right or return contingent on economic performance .....	439
974-90	Right or return at discretion of company or connected entity .....	439
974-95	The equity interest .....	439
<b>Subdivision 974-D—Common provisions</b>		<b>440</b>
974-100	Treatment of convertible and converting interests.....	440
974-105	Effect of action taken in relation to interest arising from related schemes.....	441
974-110	Effect of material change.....	441
974-112	Determinations by Commissioner .....	444
<b>Subdivision 974-E—Non-share distributions by a company</b>		<b>446</b>
974-115	Meaning of <i>non-share distribution</i> .....	446
974-120	Meaning of <i>non-share dividend</i> .....	446
974-125	Meaning of <i>non-share capital return</i> .....	446
<b>Subdivision 974-F—Related concepts</b>		<b>446</b>
974-130	Financing arrangement .....	447
974-135	Effectively non-contingent obligation .....	449
974-140	Ordinary debt interest .....	450
974-145	Benchmark rate of return .....	450
974-150	Schemes.....	451
974-155	Related schemes .....	452
974-160	Financial benefit.....	453
974-165	Convertible and converting interests .....	453
<b>Division 975—Concepts about companies</b>		<b>455</b>
<b>Subdivision 975-A—General</b>		<b>455</b>
975-150	<i>Position to affect rights</i> in relation to a company .....	455
975-155	When is an entity a <i>controller (for CGT purposes)</i> of a company? .....	456
975-160	When an entity has an <i>associate-inclusive control interest</i> .....	456
<b>Subdivision 975-G—What is a company’s share capital account?</b>		<b>457</b>
975-300	Meaning of <i>share capital account</i> .....	457
<b>Subdivision 975-W—Wholly-owned groups of companies</b>		<b>458</b>
975-500	Wholly-owned groups .....	458
975-505	What is a 100% subsidiary?.....	458
<b>Division 977—Realisation events, and the gains and losses they realise for income tax purposes</b>		<b>460</b>
<b>CGT assets</b>		<b>460</b>
977-5	Realisation event .....	460
977-10	Loss realised for income tax purposes .....	460
977-15	Gain realised for income tax purposes.....	461

---

---

<b>Trading stock</b>	461
977-20 Realisation event .....	461
977-25 Disposal of trading stock: loss realised for income tax purposes.....	461
977-30 Ending of an income year: loss realised for income tax purposes.....	462
977-35 Disposal of trading stock: gain realised for income tax purposes.....	463
977-40 Ending of an income year: gain realised for income tax purposes.....	463
<b>Revenue assets</b>	464
977-50 Meaning of <i>revenue asset</i> .....	464
977-55 Loss or gain realised for income tax purposes.....	464
<b>Division 976—Imputation</b>	466
976-1 Franked part of a distribution .....	466
976-5 Unfranked part of a distribution .....	466
976-10 The part of a distribution that is franked with an exempting credit.....	466
976-15 The part of a distribution that is franked with a venture capital credit .....	467
<b>Part 6-5—Dictionary definitions</b>	468
<b>Division 995—Definitions</b>	468
995-1 Definitions [ <i>see</i> Notes 2 and 3] .....	468





## **Chapter 4—International aspects of income tax**

### **Part 4-5—General**

#### **Division 768—Exempt foreign income and gains**

##### **Table of Subdivisions**

768-B	Some items of income that are exempt from income tax
768-G	Reduction in capital gains and losses arising from CGT events in relation to certain voting interests in active foreign companies
768-R	Temporary residents

##### **Subdivision 768-B—Some items of income that are exempt from income tax**

##### **Table of sections**

768-100	Foreign government officials in Australia
768-105	Compensation arising out of Second World War

##### **768-100 Foreign government officials in Australia**

- (1) The amounts of \*ordinary income and \*statutory income covered by the table are exempt from income tax. In some cases, the exemption is subject to exceptions or special conditions, or both.

Note 1: Ordinary and statutory income that is exempt from income tax is called exempt income: see section 6-20. The note to subsection 6-15(2) describes some of the other consequences of it being exempt income.

Note 2: Even if an exempt payment is made to you, the Commissioner can still require you to lodge an income tax return or information under section 161 of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 768-100

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**Exempt amounts**

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<b>Item</b>	<b>If you are:</b>	<b>the following amounts are exempt from income tax:</b>	<b>subject to these exceptions and special conditions:</b>
1	(a) a representative in Australia of the government of a foreign country; or (b) a member of the official staff of such a representative;  and you are neither an Australian citizen nor ordinarily resident in Australia	(a) your official salary; and (b) your *ordinary income, and your *statutory income, from a source outside Australia	(a) no Convention listed in subsection (2) applies to the representative; and (b) the country concerned grants in relation to Australia exemptions from taxes on income that correspond with the exemption in this item
2	(a) an officer of the government of a *Commonwealth of Nations country; and (b) temporarily in Australia to render service on behalf of that country, or an *Australian government agency, in accordance with an *arrangement between the governments of that country and of the Commonwealth or of a State or Territory	(a) your official salary; and (b) your *ordinary income, and your *statutory income, from a source outside Australia	that country exempts from income tax the salaries of officers of the government of the Commonwealth temporarily in that country for similar purposes in accordance with a similar arrangement

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(2) The Conventions are:

- (a) the Vienna Convention on Diplomatic Relations, as having the force of law because of the *Diplomatic Privileges and Immunities Act 1967*;
- (b) the Vienna Convention on Consular Relations, as having the force of law because of the *Consular Privileges and Immunities Act 1972*.

Note: Those Conventions have the force of law in Australia because of those Acts and achieve substantially the same effect as item 1 of the table: see Article 34 of the Vienna Convention on Diplomatic Relations and Article 49 of the Vienna Convention on Consular Relations.

### **768-105 Compensation arising out of Second World War**

(1) A payment to you is exempt from income tax if:

- (a) you are an Australian resident at the time when it would otherwise be included in your assessable income; and
- (b) the payment is from a source in a foreign country; and
- (c) the payment is in connection with:
  - (i) any wrong or injury; or
  - (ii) any loss of, or damage to, property; or
  - (iii) any other detriment;  
suffered by you or another individual as a result of:
    - (iv) persecution by the National Socialist regime of Germany during the National Socialist period; or
    - (v) persecution during the Second World War by any other enemy of the Commonwealth or by a regime covered by subsection (3); or
    - (vi) flight from persecution mentioned in subparagraph (iv) or (v); or
    - (vii) participation in a resistance movement during the Second World War against forces of the National Socialist regime of Germany or against forces of any other enemy of the Commonwealth; and
- (d) the payment is not directly or indirectly from any of your \*associates.

Note: An example of a detriment covered by subparagraph (c)(iii) is if you lost the opportunity to qualify for a pension because your period of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

contribution was cut short because you had to flee persecution by the National Socialist regime.

*Duration of Second World War*

- (2) Subsection (1) applies to:
- (a) the period immediately before the Second World War; and
  - (b) the period immediately after the Second World War;
- in the same way as it applies to the period of the Second World War.

*Regimes associated with an enemy of the Commonwealth*

- (3) This subsection covers a regime that was:
- (a) in alliance with; or
  - (b) occupied by; or
  - (c) effectively controlled by; or
  - (d) under duress from; or
  - (e) surrounded by;
- either or both of the following:
- (f) the National Socialist regime of Germany;
  - (g) any other enemy of the Commonwealth.

*Legal personal representative*

- (4) Subsection (1) applies to a payment to:
- (a) your \*legal personal representative; or
  - (b) a trust established by your will;
- in a corresponding way to the way in which it would have applied if:
- (c) the payment had been to you; and
  - (d) if the payment is made after your death—you were still alive.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Subdivision 768-G—Reduction in capital gains and losses  
arising from CGT events in relation to certain voting  
interests in active foreign companies**

**Guide to Subdivision 768-G**

**768-500 What this Subdivision is about**

If:

- (a) a company has a capital gain or capital loss arising from a CGT event that happens in relation to a share in a foreign company; and
- (b) the company holds a direct voting percentage of 10% or more in the foreign company for a certain period before the CGT event happens;

the gain or loss is reduced by a percentage that reflects the degree to which the assets of the foreign company are used in an active business.

**Table of sections**

**Operative provisions**

768-505 Reducing a capital gain or loss from certain CGT events in relation to certain voting interests

**Active foreign business asset percentage**

768-510 Active foreign business asset percentage

768-515 Choices to apply market value method or book value method

768-520 Market value method—choice made under subsection 768-515(1)

768-525 Book value method—choice made under subsection 768-515(2)

768-530 Active foreign business asset percentage—modifications for foreign life insurance companies and foreign general insurance companies

768-533 Foreign company that is a FIF using CFC calculation method—treatment as AFI subsidiary under this Subdivision

768-535 Modified rules for foreign wholly-owned groups

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Types of assets of a foreign company**

- 768-540 Active foreign business assets of a foreign company  
768-545 Assets included in the total assets of a foreign company

**Voting percentages in a company**

- 768-550 Direct voting percentage in a company  
768-555 Indirect voting percentage in a company  
768-560 Total voting percentage in a company

**Operative provisions**

**768-505 Reducing a capital gain or loss from certain CGT events in relation to certain voting interests**

- (1) The \*capital gain or \*capital loss a company (the *holding company*) that is an Australian resident makes from a \*CGT event that happened at a particular time (the *time of the CGT event*) to a \*share in a company (the *foreign disposal company*) that is a foreign resident is reduced if:
- (a) the holding company held a \*direct voting percentage of 10% or more in the foreign disposal company throughout a 12 month period that:
    - (i) began no earlier than 24 months before the time of the CGT event; and
    - (ii) ended no later than that time; and
  - (b) the share is *not*:
    - (i) an eligible finance share (within the meaning of Part X of the *Income Tax Assessment Act 1936*); or
    - (ii) a widely distributed finance share (within the meaning of that Part); and
  - (c) the CGT event is CGT event A1, B1, C2, E1, E2, G3, J1, K4, K6, K10 or K11.
- (2) The gain or loss is reduced by the \*active foreign business asset percentage (see sections 768-510, 768-530 and 768-535) of the foreign disposal company in relation to the holding company at the time of the CGT event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Active foreign business asset percentage

### 768-510 Active foreign business asset percentage

- (1) The *active foreign business asset percentage* of a company (the *foreign company*) that is a foreign resident, in relation to the holding company mentioned in section 768-505, at the time of the CGT event mentioned in that section, is worked out in accordance with this section.

#### *Market value method*

- (2) Work out that percentage under section 768-520 if:
- (a) the holding company has made a choice under subsection 768-515(1) in relation to the foreign company for that time; and
  - (b) there is sufficient evidence of the \*market value at that time of:
    - (i) all \*assets included in the total assets of the foreign company at that time; and
    - (ii) all \*active foreign business assets of the foreign company at that time.

#### *Book value method*

- (3) Work out that percentage under section 768-525 if:
- (a) the holding company has made a choice under subsection 768-515(2) in relation to the foreign company for that time; and
  - (b) there are \*recognised company accounts of the foreign company for a period that ends no later than that time, but no more than 12 months before that time; and
  - (c) if the foreign company was in existence before the start of the period mentioned in paragraph (b)—there are recognised company accounts of the foreign company for a period that ends at least 6 months, but no more than 18 months, before the end of the period mentioned in paragraph (b).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Default method*

- (4) Otherwise, that percentage is:
- (a) 100% (if this section is being applied for the purposes of section 768-505 to reduce a \*capital loss of the holding company); or
  - (b) zero (in any other case).

**768-515 Choices to apply market value method or book value method**

*Choice for market value method*

- (1) The holding company may choose to work out the \*active foreign business asset percentage of the foreign company for the time of the CGT event under section 768-520.

*Choice for book value method*

- (2) The holding company may choose to work out the \*active foreign business asset percentage of the foreign company for the time of the CGT event under section 768-525.

*Method of making choice*

- (3) The way an entity making a choice under subsection (1) or (2) prepares its \*income tax return is sufficient evidence of the making of the choice.

Note: If an entity does not make a choice under subsection (1) or (2), it will work out the active foreign business asset percentage of the foreign company in accordance with the default method in subsection 768-510(4).

**768-520 Market value method—choice made under subsection 768-515(1)**

- (1) The *active foreign business asset percentage* of the foreign company in relation to the holding company, at the time of the CGT event, is worked out under this section in this way.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Method statement*

- Step 1. Work out the \*market value at that time of all \*assets included in the total assets of the foreign company at that time.
- Step 2. Work out the \*market value (see subsection (2)) at that time of all \*active foreign business assets of the foreign company at that time.
- Step 3. Divide the result of step 2 by the result of step 1.
- Step 4. Express the result of step 3 as a percentage, and round that percentage to the nearest whole percentage point (rounding a number ending in .5 upwards).
- Step 5. The **active foreign business asset percentage** is:
- (a) if the result of step 4 is less than 10%—zero; or
  - (b) if the result of step 4 is 10% or more, but less than 90%—that result; or
  - (c) if the result of step 4 is 90% or more—100%.

Note 1: If the foreign company is a foreign life insurance company or a foreign general insurance company, the result of step 2 is modified under section 768-530.

Note 2: If the foreign company is a member of a wholly-owned group, section 768-535 may modify the way in which this section operates.

(2) If, at the time of the CGT event:

- (a) an \*active foreign business asset of the foreign company is a \*share in another company (the **subsidiary company**); and
- (b) the subsidiary company is a foreign resident;

then, in working out the \*market value of all \*active foreign business assets of the foreign company at that time for the purposes of step 2 of the method statement in subsection (1), treat the \*market value of the share at that time according to the following table.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Market value of a share in subsidiary company**

Item	If:	treat the market value of the share as:
1	(a) the foreign company has a *direct voting percentage of 10% or more in the subsidiary company at that time; and  (b) the holding company has a *total voting percentage of 10% or more in the subsidiary company at that time	the *share's *market value at that time, multiplied by the *active foreign business asset percentage of the subsidiary company in relation to the holding company at that time
2	item 1 does not apply	zero

Note: For the purposes of item 1 of the table, it is necessary to work out the active foreign business asset percentage of the subsidiary company before working out the active foreign business asset percentage of the foreign company.

**768-525 Book value method—choice made under subsection 768-515(2)**

- (1) The *active foreign business asset percentage* of the foreign company in relation to the holding company, at the time of the CGT event, is worked out under this section in this way.

*Method statement*

- Step 1. Work out the foreign company's average value of total assets at that time under subsection (2).
- Step 2. Work out the foreign company's average value of active foreign business assets at that time under subsection (3).
- Step 3. Divide the result of step 2 by the result of step 1.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Step 4. Express the result of step 3 as a percentage, and round that percentage to the nearest whole percentage point (rounding a number ending in .5 upwards).
- Step 5. The *active foreign business asset percentage* is:
- (a) if the result of step 4 is less than 10%—zero; or
  - (b) if the result of step 4 is 10% or more, but less than 90%—that result; or
  - (c) if the result of step 4 is 90% or more—100%.

Note: If the foreign company is a member of a wholly-owned group, section 768-535 may modify the way in which this section operates.

- (2) The foreign company's *average value of total assets* at the time of the CGT event is worked out in this way.

*Method statement*

- Step 1. Work out the sum of the values (see subsection (5)) of every \*asset included in the total assets of the foreign company at the end of the most recent period:
- (a) that ends no later than that time, but no more than 12 months before that time; and
  - (b) for which the foreign company has \*recognised company accounts.
- Step 2. Work out the sum of the values (see subsection (5)) of every \*asset included in the total assets of the foreign company at the end of the most recent period:
- (a) that ends at least 6 months, but no more than 18 months, before the end of the period mentioned in step 1; and
  - (b) for which the foreign company has \*recognised company accounts.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: See subsection (6) if the foreign company does not have recognised company accounts for a period mentioned in this step.

Step 3. Work out the sum of the results of steps 1 and 2, and divide that sum by 2.

(3) The foreign company's *average value of active foreign business assets* at that time is worked out in this way.

*Method statement*

Step 1. Work out the sum of the values (see subsections (4) and (5)) of every \*active foreign business asset of the foreign company at the end of the most recent period:

- (a) that ends no later than that time, but no more than 12 months before that time; and
- (b) for which the foreign company has \*recognised company accounts.

Step 2. Work out the sum of the values (see subsections (4) and (5)) of every \*active foreign business asset of the foreign company at the end of the most recent period:

- (a) that ends at least 6 months, but no more than 18 months, before the end of the period mentioned in step 1; and
- (b) for which the foreign company has \*recognised company accounts.

Note: See subsection (6) if the foreign company does not have recognised company accounts for a period mentioned in this step.

Step 3. Work out the sum of the results of steps 1 and 2, and divide that sum by 2.

Note: If the foreign company is a foreign life insurance company or a foreign general insurance company, the results of steps 1 and 2 are modified under section 768-530.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4) If an \*active foreign business asset of the foreign company is a \*share in another company (the *subsidiary company*) that is a foreign resident, then, for the purposes of steps 1 and 2 of the method statement in subsection (3), treat the value of the share at a particular time according to the following table.

<b>Value of a share in subsidiary company</b>		
<b>Item</b>	<b>If:</b>	<b>treat the value of the share as:</b>
1	(a) the foreign company has a *direct voting percentage of 10% or more in the subsidiary company at that time; and  (b) the holding company has a *total voting percentage of 10% or more in the subsidiary company at that time	the *share's value (see subsection (5)) at that time, multiplied by the *active foreign business asset percentage of the subsidiary company in relation to the holding company at that time
2	item 1 does not apply	zero

Note: For the purposes of item 1 of the table, it is necessary to work out the active foreign business asset percentage of the subsidiary company before working out the active foreign business asset percentage of the foreign company.

- (5) For the purposes of this section, the value of an asset of a foreign company at the end of a period is taken to be:
- (a) the value of the asset as shown in the \*recognised company accounts of the foreign company for that period; or
  - (b) if the value of the asset is *not* shown in the recognised company accounts of the foreign company for that period—zero.
- (6) The result of:
- (a) step 2 of the method statement in subsection (2); and
  - (b) step 2 of the method statement in subsection (3);
- is taken to be zero if the foreign company does not have \*recognised company accounts for a period mentioned in those steps.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 768-530

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Note: This will only be the case if the foreign company was not in existence before the start of the period mentioned in step 1 of those method statements (see paragraph 768-510(3)(c)).

**768-530 Active foreign business asset percentage—modifications for foreign life insurance companies and foreign general insurance companies**

- (1) If the foreign company is a \*foreign life insurance company or a \*foreign general insurance company, work out its \*active foreign business asset percentage according to section 768-510, but with the modifications set out in subsections (2) and (3).
- (2) Treat a reference in the following provisions to a period as a reference to a \*statutory accounting period of the foreign company:
  - (a) paragraphs 768-510(3)(b) and (c);
  - (b) section 768-525.
- (3) Apply the modifications set out in the following table.

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**Modifications for foreign life insurance companies and foreign general insurance companies**

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<b>Item</b>	<b>The result of this step:</b>	<b>is increased by the amount applicable under subsection (4) for this statutory accounting period:</b>
1	step 2 of the method statement in subsection 768-520(1)	the most recent *statutory accounting period of the foreign company ending at or before the time mentioned in that step
2	step 1 of the method statement in subsection 768-525(3)	the *statutory accounting period mentioned in that step (as modified by subsection (2) of this section)
3	step 2 of the method statement in subsection 768-525(3)	the *statutory accounting period mentioned in that step (as modified by subsection (2) of this section)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) The amount applicable under this subsection for a \*statutory accounting period of the foreign company is worked out using the following formula:

$$\text{Value of non-active foreign business assets} \times \frac{\text{Active insurance amount}}{\text{Total insurance assets}}$$

where:

**active insurance amount means:**

- (a) if the foreign company is a \*foreign life insurance company—the untainted policy liabilities (within the meaning of subsection 446(2) of the *Income Tax Assessment Act 1936*) of the foreign company for the statutory accounting period; or
- (b) if the foreign company is a \*foreign general insurance company—the active general insurance amount worked out under subsection (5) for the statutory accounting period.

**total insurance assets means:**

- (a) if the foreign company is a \*foreign life insurance company—the total assets (within the meaning of subsection 446(2) of the *Income Tax Assessment Act 1936*) of the foreign company for the statutory accounting period; or
- (b) if the foreign company is a \*foreign general insurance company—the total assets (within the meaning of subsection 446(4) of that Act) of the foreign company for the statutory accounting period.

**value of non-active foreign business assets means:**

- (a) for the purposes of item 1 of the table in subsection (3)—the difference between:
  - (i) the result of step 1 of the method statement in subsection 768-520(1); and
  - (ii) the result of step 2 of that method statement (apart from this section); or
- (b) for the purposes of item 2 of the table in subsection (3)—the difference between:
  - (i) the result of step 1 of the method statement in subsection 768-525(2); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (ii) the result of step 1 of the method statement in subsection 768-525(3) (apart from this section); or
- (c) for the purposes of item 3 of the table in subsection (3)—the difference between:
  - (i) the result of step 2 of the method statement in subsection 768-525(2); and
  - (ii) the result of step 2 of the method statement in subsection 768-525(3) (apart from this section).

*Active insurance amount for foreign general insurance company*

- (5) The active general insurance amount under this subsection for a \*statutory accounting period of the foreign company is worked out using the following formula:

$$\text{Total general insurance assets} - \text{Net assets} - \text{Tainted outstanding claims} + \text{Solvency amount}$$

where:

**net assets** means the net assets (within the meaning of subsection 446(4) of the *Income Tax Assessment Act 1936*) of the foreign company for the statutory accounting period.

**solvency amount** means the solvency amount (within the meaning of subsection 446(4) of the *Income Tax Assessment Act 1936*) of the foreign company for the statutory accounting period.

**tainted outstanding claims** means the tainted outstanding claims (within the meaning of subsection 446(4) of the *Income Tax Assessment Act 1936*) of the foreign company for the statutory accounting period.

**total general insurance assets** means the total assets (within the meaning of subsection 446(4) of the *Income Tax Assessment Act 1936*) of the foreign company for the statutory accounting period.

**768-533 Foreign company that is a FIF using CFC calculation method—treatment as AFI subsidiary under this Subdivision**

- (1) This section applies if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the foreign company is a \*FIF; and
- (b) the holding company has made a choice under subsection 559A(1) of the *Income Tax Assessment Act 1936* in relation to the foreign company in respect of a \*notional accounting period of the foreign company; and
- (c) because of the choice, the foreign company is treated under paragraph 559A(3)(c) of that Act as an AFI subsidiary (within the meaning of that Act) in relation to that holding company at a particular time.

Note: If the holding company makes a choice under subsection 559A(1) of the *Income Tax Assessment Act 1936*, the notional income and notional deductions of the foreign company (in its capacity as a FIF) is worked out under the FIF calculation method by reference to its notional assessable income and notional allowable deductions under Part X of that Act.

- (2) For the purposes of this Subdivision, treat the foreign company as an AFI subsidiary in relation to that holding company at that time.

### **768-535 Modified rules for foreign wholly-owned groups**

- (1) This section applies if:
  - (a) for the purposes of section 768-505, it is necessary to work out the \*active foreign business asset percentage of a company (the ***top foreign company***) in relation to the holding company mentioned in that section, at the time of the CGT event mentioned in that section; and
  - (b) the top foreign company is *not*:
    - (i) an AFI subsidiary (within the meaning of Part X of the *Income Tax Assessment Act 1936*); or
    - (ii) a \*foreign life insurance company; or
    - (iii) a \*foreign general insurance company; and
  - (c) for the purposes of section 768-505, it is also necessary (apart from this section) to work out the active foreign business asset percentage at that time of 1 or more other companies in relation to the holding company, at that time, where:
    - (i) the top foreign company and 1 or more of those other companies (the ***subsidiary foreign companies***) are members of a \*wholly-owned group; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) each of the subsidiary foreign companies is a \*100% subsidiary of the top foreign company.
- (2) The holding company may choose to work out the \*active foreign business asset percentage of the top foreign company in accordance with subsections (4) and (6).
- (3) The way an entity making a choice under subsection (2) prepares its \*income tax return is sufficient evidence of the making of the choice.
- (4) If the holding company has made a choice under subsection (2), the provisions mentioned in subsection (5) operate, for the purposes of section 768-505, as if each subsidiary foreign company were a part of the top foreign company, rather than a separate entity.
- Note 1: This subsection means that certain assets are not treated as active foreign business assets, or as assets included in the total assets, of any of the subsidiary foreign companies or of the top foreign company. For example:
- (a) a share owned by one of those companies in another of those companies; and
- (b) a debt owed by one of those companies to another of those companies.
- Note 2: If an asset (other than an asset mentioned in Note 1) is actually an active foreign business asset, or an asset included in the total assets, of a subsidiary foreign company, it is treated under this subsection as an active foreign business asset, or as an asset included in the total assets, of the top foreign company.
- (5) For the purposes of subsection (4), the provisions are:
- (a) section 768-540 (active foreign business assets of a foreign company); and
- (b) section 768-545 (assets included in the total assets of a foreign company).
- (6) If the holding company has made a choice under subsection (2), then for the purposes of sections 768-510 and 768-525, treat the \*recognised consolidated accounts of the top foreign company and all of the subsidiary foreign companies as the \*recognised company accounts of the top foreign company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Types of assets of a foreign company

### 768-540 Active foreign business assets of a foreign company

- (1) An asset is, at a particular time, an *active foreign business asset* of a company (the *foreign company*) that is a foreign resident if, at that time:
  - (a) the asset is an \*asset included in the total assets of the company; and
  - (b) the asset satisfies any of these conditions:
    - (i) the asset is used, or held ready for use, by the company in the course of carrying on a \*business;
    - (ii) the asset is goodwill;
    - (iii) the asset is a \*share; and
  - (c) the asset is *not* any of the following:
    - (i) \*taxable Australian property;
    - (ii) a \*membership interest in a company that is an Australian resident;
    - (iii) a membership interest in a \*resident trust for CGT purposes;
    - (iv) an option or right to acquire a membership interest mentioned in subparagraph (ii) or (iii); and
  - (d) the asset is *not* covered by subsection (2); and
  - (e) if the foreign company is an AFI subsidiary (within the meaning of Part X of the *Income Tax Assessment Act 1936*) whose sole or principal business is financial intermediary business—the asset is *not* covered under subsection (4).
- (2) An asset is covered by this subsection if it is:
  - (a) a financial instrument (other than a \*share or a trade debt); or
  - (b) either:
    - (i) an eligible finance share (within the meaning of Part X of the *Income Tax Assessment Act 1936*); or
    - (ii) a widely distributed finance share (within the meaning of that Part); or
  - (c) an interest in a trust or \*partnership; or
  - (d) a \*life insurance policy; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (e) a right or option in respect of:
    - (i) a financial instrument; or
    - (ii) an interest in a company, trust or partnership; or
    - (iii) a life insurance policy; or
  - (f) cash or cash equivalent; or
  - (g) an asset whose main use in the course of carrying on the \*business mentioned in subparagraph (1)(b)(i) is to \*derive interest, an \*annuity, rent, \*royalties or foreign exchange gains unless:
    - (i) the asset is an intangible asset and has been substantially developed, altered or improved by the foreign company so that its \*market value has been substantially enhanced; or
    - (ii) its main use for deriving rent was only temporary.
- (3) If, at the time mentioned in subsection (1), the foreign company is an AFI subsidiary (within the meaning of Part X of the *Income Tax Assessment Act 1936*) whose sole or principal business is financial intermediary business (within the meaning of that Part), subsection (2) operates as if:
- (a) paragraphs (2)(a) and (f) were omitted; and
  - (b) paragraph (2)(g) did not contain a reference to interest, an \*annuity or foreign exchange gains; and
  - (c) subparagraph (2)(e)(i) were omitted and the following subparagraph were substituted:
    - (i) a financial instrument, other than an asset mentioned in paragraph 450(1)(b) of the *Income Tax Assessment Act 1936*; or
- (4) The asset is covered under this subsection if:
- (a) all of these conditions are satisfied:
    - (i) the asset is an asset mentioned in subparagraph 450(4)(b)(i) or (ii) of the *Income Tax Assessment Act 1936*;
    - (ii) the asset was acquired from another entity;
    - (iii) either of the conditions mentioned in subparagraph 450(6)(c)(i) and (ii) of the *Income Tax Assessment Act*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

1936 were satisfied in relation to the other entity at the time of the acquisition; or

- (b) both of these conditions are satisfied:
  - (i) the asset relates to a debt to which factoring income (within the meaning of Part X of the *Income Tax Assessment Act 1936*) of the foreign company relates;
  - (ii) the condition in paragraph 450(8)(b) of the *Income Tax Assessment Act 1936* is satisfied in relation to the debt.

### **768-545 Assets included in the total assets of a foreign company**

- (1) At a particular time, an asset is an ***asset included in the total assets*** of a company (the ***foreign company***) that is a foreign resident if:
  - (a) the asset is a \*CGT asset at that time; and
  - (b) the foreign company owns the asset at that time; and
  - (c) if at that time the foreign company is *not* an AFI subsidiary (within the meaning of Part X of the *Income Tax Assessment Act 1936*) whose sole or principal business is financial intermediary business (within the meaning of that Part)—the asset is *not* a foreign company derivative asset covered by subsection (2).
- (2) An asset is a foreign company derivative asset covered by this subsection if:
  - (a) the asset is an \*arrangement covered by subsection (3), unless the regulations declare the asset *not* to be a foreign company derivative asset covered by this subsection; or
  - (b) the regulations declare the asset to be a foreign company derivative asset covered by this subsection.
- (3) An \*arrangement is covered by this subsection if:
  - (a) under the arrangement, a party to the arrangement must, or may be required to, provide at some future time consideration of a particular kind or kinds to someone; and
  - (b) that future time is not less than the number of days, prescribed by regulations made for the purposes of paragraph 761D(1)(b) of the *Corporations Act 2001*, after the day on which the arrangement is entered into; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the amount of the consideration, or the value of the arrangement, is ultimately determined, \*derived from or varies by reference to (wholly or in part) the value or amount of something else (of any nature whatsoever and whether or not deliverable), including, for example, one or more of the following:
    - (i) an asset;
    - (ii) a rate (including an interest rate or exchange rate);
    - (iii) an index;
    - (iv) a commodity; and
  - (d) subsection (4) does not apply in relation to the arrangement.
- (4) An \*arrangement under which one person has an obligation to buy, and another person has an obligation to sell, property is not an arrangement covered by subsection (3) merely because the arrangement provides for the consideration to be varied by reference to a general inflation index such as the Consumer Price Index.

## Voting percentages in a company

### 768-550 Direct voting percentage in a company

- (1) An entity's *direct voting percentage* at a particular time in a company is:
- (a) if the entity has a voting interest (within the meaning of section 334A of the *Income Tax Assessment Act 1936*) in the foreign company at that time amounting to a percentage of the voting power of the company—that percentage; or
  - (b) otherwise—zero.
- (2) In applying section 334A of the *Income Tax Assessment Act 1936* for the purposes of subsection (1) of this section, assume that:
- (a) the entity is a company; and
  - (b) the entity is not the beneficial owner of a \*share in the company if a trust or partnership is interposed between the entity and the company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **768-555 Indirect voting percentage in a company**

- (1) An entity's *indirect voting percentage* at a particular time in a company (the *subsidiary company*) is worked out by multiplying:
  - (a) the entity's \*direct voting percentage (if any) in another company (the *intermediate company*) at that time;by:
  - (b) the sum of:
    - (i) the intermediate company's direct voting percentage (if any) in the subsidiary company at that time; and
    - (ii) the intermediate company's indirect voting percentage (if any) in the subsidiary company at that time (as worked out under one or more other applications of this section).
- (2) If there is more than one intermediate company to which subsection (1) applies at that time, the entity's *indirect voting percentage* is the sum of the percentages worked out under subsection (1) in relation to each of those intermediate companies.

### **768-560 Total voting percentage in a company**

An entity's *total voting percentage* at a particular time in a company is the sum of:

- (a) the entity's \*direct voting percentage in the company at that time; and
- (b) the entity's \*indirect voting percentage in the company at that time.

## **Subdivision 768-R—Temporary residents**

### **Guide to Subdivision 768-R**

#### **768-900 What this Subdivision is about**

This Subdivision modifies the general tax rules for people in Australia who are temporary residents, whether Australian residents or foreign residents.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Generally foreign income derived by temporary residents is non-assessable non-exempt income and capital gains and losses they make are also disregarded for CGT purposes. There are some exceptions for employment-related income and capital gains on shares and rights acquired under employee share schemes.

Temporary residents are also partly relieved of record-keeping obligations in relation to the controlled foreign company and foreign investment fund rules.

Interest paid by temporary residents is not subject to withholding tax and may be non-assessable non-exempt income for a foreign resident.

### **Table of sections**

#### **Operative provisions**

768-905	Objects
768-910	Income derived by temporary resident
768-915	Certain capital gains and capital losses of temporary resident to be disregarded
768-920	Capital gains and losses on employee shares and rights where taxation of discount not deferred
768-925	Notional gain or loss
768-930	Adjustment to notional gain or loss
768-935	Adjustment for share or right acquired under employee share scheme
768-940	Adjustment for derived share
768-945	Amending assessment to take account of effect on capital gain or loss of recalculating discount
768-950	Individual becoming an Australian resident
768-955	Temporary resident who ceases to be temporary resident but remains an Australian resident
768-960	Temporary resident not attributable taxpayer for purposes of controlled foreign companies rules
768-965	Exemption of temporary resident from taxation in respect of foreign investment fund income
768-970	Modification of rules for accruals system of taxation of certain non-resident trust estates
768-975	Calculation of beneficiary's share of net income of non-resident trust estate
768-980	Interest paid by temporary resident

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Operative provisions

### 768-905 Objects

The objects of this Subdivision are to:

- (a) provide \*temporary residents with tax relief on most foreign source income and capital gains; and
- (b) relieve the burdens associated with complying with certain record-keeping obligations and interest withholding tax obligations.

### 768-910 Income derived by temporary resident

- (1) The following are \*non-assessable non-exempt income:
  - (a) the \*ordinary income you \*derive directly or indirectly from a source other than an \*Australian source if you are a \*temporary resident when you derive it;
  - (b) your \*statutory income (other than a \*net capital gain) from a source other than an Australian source if you are a temporary resident when you derive it.

This subsection has effect subject to subsections (3) and (5).

Note: A capital gain or loss you make may be disregarded under section 768-915.

- (2) For the purposes of paragraph (1)(b):
  - (a) if you have statutory income because a particular circumstance occurs, you derive the statutory income at the time when the circumstance occurs; and
  - (b) if you have statutory income because a number of circumstances occur, you derive the statutory income at the time when the last of those circumstances occurs.

#### *Exception to subsection (1)*

- (3) However, the following are not \*non-assessable non-exempt income under subsection (1):
  - (a) the \*ordinary income you \*derive directly or indirectly from a source other than an \*Australian source to the extent that it is

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 768-910

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remuneration, for employment undertaken, or services provided, while you are a \*temporary resident;

- (b) your \*statutory income (other than a \*net capital gain) from a source other than an Australian source to the extent that it relates to employment undertaken, or services provided, while you are a temporary resident;
- (c) an amount included in your assessable income under Division 86;
- (d) an amount that, but for subsection (1), would be included in your assessable income under Division 13A of Part III of the *Income Tax Assessment Act 1936*.

Note: This subsection only makes an amount not non-assessable non-exempt income under subsection (1). It does not prevent that amount from being non-assessable non-exempt income under some other provision of this Act or the *Income Tax Assessment Act 1936*.

*Section 26AAC employee share schemes*

- (4) This subsection applies if:
  - (a) an amount would otherwise be included in your assessable income under section 26AAC of the *Income Tax Assessment Act 1936* (about shares and rights acquired by employees); and
  - (b) the applicable time mentioned in subsection 26AAC(15) of that Act for the relevant \*share occurs while you are a \*temporary resident.
- (5) If subsection (4) applies, the amount is \*non-assessable non-exempt income to the extent to which you acquired the relevant \*share under a scheme for the acquisition of shares by employees in respect of, or for or in relation (directly or indirectly) to:
  - (a) any employment you undertook outside Australia; or
  - (b) any services you provided outside Australia; prior to becoming a \*temporary resident.
- (6) Subsection (5) does not limit paragraph (1)(b).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**768-915 Certain capital gains and capital losses of temporary resident to be disregarded**

A \*capital gain or \*capital loss you make from a \*CGT event is disregarded if:

- (a) you are a \*temporary resident when, or immediately before, the CGT event happens; and
- (b) you would not make a capital gain or loss from the CGT event, or the capital gain or loss from the CGT event would have been disregarded under Division 855, if you were a foreign resident when, or immediately before, the CGT event happens.

**768-920 Capital gains and losses on employee shares and rights where taxation of discount not deferred**

*When this section applies*

- (1) This section applies to a \*share or right if:
  - (a) you \*acquire the share or right under an \*employee share scheme; and
  - (b) you engage in employment, or render services, that affect the holding or acquisition of the shares or rights while you are a \*temporary resident; and
  - (c) the share or right is not \*taxable Australian property; and
  - (d) either:
    - (i) the share or right is not a \*qualifying share or \*qualifying right; or
    - (ii) the share or right is a qualifying share or qualifying right and you have made an election under section 139E of the *Income Tax Assessment Act 1936* covering the share or right; and
  - (e) a \*CGT event happens in relation to the share or right; and
  - (f) if the CGT event is CGT event I1—you are not a temporary resident immediately before the event happens; and
  - (g) you would make a \*capital gain or \*capital loss from the CGT event, and the capital gain or capital loss would not be

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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disregarded, if you were an Australian resident (but not a temporary resident) when the CGT event happens; and

- (h) this section has not previously applied to you in relation to a CGT event in relation to the share or right.

Note 1: Paragraph (a)—section 139DQ of the *Income Tax Assessment Act 1936* applies for the purposes of this Subdivision to treat a matching share or right issued as part of a 100% takeover or restructure as a continuation of the share or right it matches.

Note 2: For a stapled security acquired under an employee share scheme, the operation of this Subdivision is affected by section 130-97.

- (2) This section also applies to a \*share (the *derived share*) if:

- (a) you \*acquire a right (the *original right*) under an \*employee share scheme; and
- (b) you engage in employment, or render services, that affect the holding or acquisition of the original right, or the derived share, while you are a \*temporary resident; and
- (c) you acquire the derived share by exercising the original right; and
- (d) the derived share is not \*taxable Australian property; and
- (e) either:
- (i) the original right is not a \*qualifying right; or
  - (ii) the original right is a qualifying right and you have made an election under section 139E of the *Income Tax Assessment Act 1936* covering the original right; and
- (f) a \*CGT event happens in relation to the derived share; and
- (g) if the CGT event is CGT event I1—you are not a temporary resident immediately before the event happens; and
- (h) you would make a \*capital gain or \*capital loss from the CGT event, and the capital gain or capital loss would not be disregarded, if you were an Australian resident (but not a temporary resident) when the CGT event happens; and
- (i) this section has not previously applied to you in relation to the original right or the derived share.

Note 1: Paragraph (a)—section 139DQ of the *Income Tax Assessment Act 1936* applies for the purposes of this Subdivision to treat a matching share or right issued as part of a 100% takeover or restructure as a continuation of the share or right it matches.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 2: For a stapled security acquired under an employee share scheme, the operation of this Subdivision is affected by section 130-97.

- (3) To avoid doubt, paragraph (1)(e) or (2)(f) applies:
- (a) even if you are not a \*temporary resident when the \*CGT event happens; and
  - (b) whether you are an Australian resident or a foreign resident when the CGT event happens.

*Capital gain or loss*

- (4) If you are a \*temporary resident or a foreign resident when the \*CGT event happens, you make a \*capital gain or \*capital loss from the CGT event.

Note: If you are an Australian resident (but not a temporary resident) when the CGT event occurs, neither section 768-915 nor Division 855 prevents you having a capital gain or capital loss.

- (5) Subsection (4) has effect despite section 768-915 and Division 855.

*Amount of capital gain or capital loss for temporary residents and foreign residents*

- (6) If you are a \*temporary resident or a foreign resident when the \*CGT event happens, the amount of the \*capital gain or \*capital loss is the amount of your adjusted notional gain or loss worked out under subsection (9).

*Amount of capital gain or capital loss for Australian residents*

- (7) If you are an Australian resident (but not a \*temporary resident) when the \*CGT event happens, the amount of the \*capital gain or \*capital loss is the sum of:
- (a) the amount that would be the amount of your capital gain or capital loss if this section did not apply to you; and
  - (b) the amount of your adjusted notional gain or loss worked out under subsection (9).

Example: George, a New Zealander, is granted shares (with a total market value at the time of \$100,000) under an employee share scheme on 20 January 2006. He comes to Australia as a temporary resident on 1 January 2007 and completes the rest of the employment to which the shares relate in Australia. George elects to have the discount assessed

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 768-925

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in that income year. He then ceases to be a temporary resident but remains an Australian resident on 8 May 2008. At that time the shares have a market value of \$80,000. George disposes of the shares on 30 June 2009 for \$115,000. George's capital gain for the purpose of paragraph (a) would be \$35,000. Assume that the amount of the loss that accrued up to 8 May 2008 that is to be counted for the purpose of paragraph (b) is \$9,000. For the year ending 30 June 2009, George would, as a result of subsection (7), make a capital gain of \$26,000 (being \$35,000 less \$9,000).

- (8) If subsection (7) applies to the \*CGT event, subsections 768-955(3) and 855-45(3) do not apply for the purposes of applying Division 115 in relation to the CGT event.

*Adjusted notional gain or loss*

- (9) To work out your adjusted notional gain or loss:
- (a) work out your notional gain or loss using section 768-925; and
  - (b) adjust your notional gain or loss using sections 768-930, 768-935 and 768-940.

**768-925 Notional gain or loss**

- (1) Your notional gain or loss is the \*capital gain or \*capital loss you would have had in relation to the \*CGT event if, for the whole of the period set by subsections (2) and (3), you:
- (a) had been an Australian resident; and
  - (b) had not been a \*temporary resident.
- (2) The period starts:
- (a) in the case of section 768-920 applying to the \*share or right in relation to which the \*CGT event happens because of subsection 768-920(1):
    - (i) if the share or right was acquired from an \*employee share trust—when you first acquired a beneficial interest in the share or right; or
    - (ii) if subparagraph (i) does not apply—when you \*acquired that share or right; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) in the case of section 768-920 applying to the \*share in relation to which the \*CGT event happens because of subsection 768-920(2):
  - (i) if the share was acquired from an \*employee share trust—when you first acquired a beneficial interest in the original right; or
  - (ii) if subparagraph (i) does not apply—when you \*acquired the original right.
- (3) The period ends when the \*CGT event happens.
- (4) If you are an Australian resident (but not a \*temporary resident) when the \*CGT event happens, your notional gain or loss is reduced by the amount of the \*capital gain or \*capital loss that you would have made in relation to the \*CGT event if section 768-920 did not apply to you.

### **768-930 Adjustment to notional gain or loss**

- (1) If section 768-920 applies to the \*share or right in relation to which the \*CGT event happens because of subsection 768-920(1), adjust your notional gain or loss by:
  - (a) firstly, applying the factor worked out under subsection 768-935(1), (2) or (3) to the amount of your notional gain or loss; and
  - (b) secondly, applying the factor worked out under subsection 768-935(4) to the amount worked out under paragraph (a).
- (2) If section 768-920 applies to the \*share in relation to which the \*CGT event happens because of subsection 768-920(2), adjust your notional gain or loss by:
  - (a) firstly, applying the factor worked out under subsection 768-940(1), (2) or (3) to the amount of your notional gain or loss; and
  - (b) secondly, applying the factor worked out under subsection 768-940(4) to the amount worked out under paragraph (a).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**768-935 Adjustment for share or right acquired under employee share scheme**

(1) If:

- (a) the \*CGT event happens on or after the \*cessation time for the share or right; and
- (b) when, or immediately before, the CGT event happens you are either:
  - (i) a foreign resident; or
  - (ii) an Australian resident who is a temporary resident;

the factor to be applied for the purposes of paragraph 768-930(1)(a) is:

$$\frac{\text{Days before cessation time}}{\text{Days before CGT event}}$$

where:

*days before cessation time* is the number of days in the period that:

- (a) starts on the day on which you \*acquired the \*share or right or, if you acquired the share or right from an \*employee share trust, on the day on which you first acquired a beneficial interest in the share or right; and
- (b) ends on the \*cessation time for the share or right.

*days before CGT event* is the number of days in the period that:

- (a) starts on the day on which you \*acquired the \*share or right or, if you acquired the share or right from an \*employee share trust, on the day on which you first acquired a beneficial interest in the share or right; and
- (b) ends on the day on which the \*CGT event happens.

(2) If:

- (a) the \*CGT event happens on or after the \*cessation time for the share or right; and
- (b) when, or immediately before, the CGT event happens you are an Australian resident (but not a \*temporary resident);

the factor to be applied for the purposes of paragraph 768-930(1)(a) is:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Days before cessation time

Days before ceasing to be a temporary resident

where:

***days before cessation time*** is the number of days in the period that:

- (a) starts on the day on which you \*acquired the \*share or right or, if you acquired the share or right from an \*employee share trust, on the day on which you first acquired a beneficial interest in the share or right; and
- (b) ends on the \*cessation time for the share or right.

***days before ceasing to be a temporary resident*** is the number of days in the period that:

- (a) starts on the day on which you \*acquired the \*share or right or, if you acquired the share or right from an \*employee share trust, on the day on which you first acquired a beneficial interest in the share or right; and
  - (b) ends on the day on which you cease to be a \*temporary resident.
- (3) The factor to be applied for the purposes of paragraph 768-930(1)(a) is 1 if:
- (a) the CGT event happens before the \*cessation time for the \*share or right; or
  - (b) you became an Australian resident who was not a \*temporary resident before the cessation time for the share or right.

- (4) The factor to be applied for the purposes of paragraph 768-930(1)(b) is:

Assessable part of discount  
Discount

where:

***assessable part of discount*** is the amount of the discount that:

- (a) was included in your assessable income under Division 13A of Part III of the *Income Tax Assessment Act 1936* in relation to the \*share or right; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) would have been included in your assessable income under that Division in relation to the share or right if subsection 139BA(2) of that Act were disregarded.

*discount* is the amount of the discount.

### **768-940 Adjustment for derived share**

(1) If:

- (a) the \*CGT event happens on or after the \*cessation time for the original right; and
- (b) when, or immediately before, the CGT event happens you are either:
  - (i) a foreign resident; or
  - (ii) an Australian resident who is a \*temporary resident;

the factor to be applied for the purposes of paragraph 768-930(2)(a) is:

$$\frac{\text{Days before cessation time}}{\text{Days before CGT event}}$$

where:

*days before cessation time* is the number of days in the period that:

- (a) starts on the day on which you \*acquired the original right or, if you acquired the \*share from an \*employee share trust, on the day on which you first acquired a beneficial interest in the original right; and
- (b) ends on the \*cessation time for the original right.

*days before CGT event* is the number of days in the period that:

- (a) starts on the day on which you \*acquired the original right or, if you acquired the \*share from an \*employee share trust, on the day on which you first acquired a beneficial interest in the original right; and
- (b) ends on the day on which the \*CGT event happens.

(2) If:

- (a) the \*CGT event happens on or after the \*cessation time for the original right; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) when, or immediately before, the CGT event happens you are an Australian resident (but not a \*temporary resident);  
the factor to be applied for the purposes of paragraph 768-930(2)(a) is:

$$\frac{\text{Days before cessation time}}{\text{Days before ceasing to be a temporary resident}}$$

where:

***days before cessation time*** is the number of days in the period that:

- (a) starts on the day on which you \*acquired the original right or, if you acquired the \*share from an \*employee share trust, on the day on which you first acquired a beneficial interest in the original right; and
- (b) ends on the \*cessation time for the original right.

***days before ceasing to be a temporary resident*** is the number of days in the period that:

- (a) starts on the day on which you \*acquired the original right or, if you acquired the \*share from an \*employee share trust, on the day on which you first acquired a beneficial interest in the original right; and
  - (b) ends on the day on which you cease to be a \*temporary resident.
- (3) The factor to be applied for the purposes of paragraph 768-930(2)(a) is 1 if:
- (a) the \*CGT event happens before the \*cessation time for the original right; or
  - (b) you became an Australian resident who was not a \*temporary resident before the cessation time for the original right.

- (4) The factor to be applied for the purposes of paragraph 768-930(2)(b) is:

$$\frac{\text{Assessable part of discount}}{\text{Discount}}$$

where:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*assessable part of discount* is the amount of the discount that:

- (a) was included in your assessable income under Division 13A of Part III of the *Income Tax Assessment Act 1936* in relation to the original right; or
- (b) would have been included in your assessable income under that Division in relation to the original right if subsection 139BA(2) of that Act were disregarded.

*discount* is the amount of the discount.

### **768-945 Amending assessment to take account of effect on capital gain or loss of recalculating discount**

- (1) This section applies if:
  - (a) an amount is included in your assessable income, or you have a net capital loss, for a particular income year; and
  - (b) that amount is reduced, or increased, because of a change in the extent (if any) to which any of the following provisions of the *Income Tax Assessment Act 1936* apply in relation to the amount during a subsequent income year:
    - (i) section 23AF;
    - (ii) section 23AG;
    - (iii) subsection 139B(1A).
- (2) In paragraph (1)(b):
  - (a) the reference to an amount being reduced includes a reference to the amount being reduced to a nil amount; and
  - (b) the reference to an amount being increased includes a reference to the amount being increased from a nil amount.
- (3) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment to take account of the effect that the reduction or increase has on the determination of the amount of a \*capital gain or \*capital loss under subsection 768-920(6) or (7).
- (4) If section 768-920 applies to the \*share or right in relation to which the \*CGT event occurs because of subsection 768-920(1), the amendment must be made before the end of the period of 4 years starting immediately after the income year during which the period

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

of employment or service relating to the \*acquisition of the share or right ends.

- (5) If section 768-920 applies to the \*share or right in relation to which the \*CGT event occurs because of subsection 768-920(2), the amendment must be made before the end of the period of 4 years starting immediately after the income year during which the period of employment or service relating to the \*acquisition of the original right ends.

### **768-950 Individual becoming an Australian resident**

Section 855-45 does not apply to your becoming an Australian resident if you are a \*temporary resident immediately after you become an Australian resident.

### **768-955 Temporary resident who ceases to be temporary resident but remains an Australian resident**

- (1) If you are a \*temporary resident and you then cease to be a temporary resident (but remain, at that time, an Australian resident), there are rules relevant to each \*CGT asset that:
- (a) you owned just before you ceased to be a temporary resident; and
  - (b) is not \*taxable Australian property; and
  - (c) you \*acquired on or after 20 September 1985.
- (2) The first element of the \*cost base and \*reduced cost base of the asset (at the time you cease to be a \*temporary resident) is its \*market value at that time. This subsection has effect despite Subdivision 130-D.
- (3) Also, Parts 3-1 and 3-3 apply to the asset as if you had \*acquired it at the time you ceased to be a \*temporary resident.
- (4) This section does not apply to a \*share or right if:
- (a) it is a \*qualifying share or a \*qualifying right; and
  - (b) you have not made an election under section 139E of the *Income Tax Assessment Act 1936* covering the share or right; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(c) the \*cessation time for the share or right has not occurred.

**768-960 Temporary resident not attributable taxpayer for purposes of controlled foreign companies rules**

For the purposes of Part X of the *Income Tax Assessment Act 1936* (which deals with the attribution of income in respect of controlled foreign companies), you are taken not to be an \*attributable taxpayer in relation to a \*CFC or \*CFT at any time you are a \*temporary resident.

**768-965 Exemption of temporary resident from taxation in respect of foreign investment fund income**

If you are a \*temporary resident at the end of an income year, section 529 and Division 22 of Part XI of the *Income Tax Assessment Act 1936* do not apply to you in relation to a \*FIF or \*FLP in respect of the notional accounting period of the FIF or FLP that ends in that income year.

**768-970 Modification of rules for accruals system of taxation of certain non-resident trust estates**

At any time when you are a \*temporary resident, you are taken not to be a resident for the purposes of section 102AAZD of the *Income Tax Assessment Act 1936*.

**768-975 Calculation of beneficiary's share of net income of non-resident trust estate**

At any time when you are a \*temporary resident, you are taken not to be a resident for the purposes of subsection 96C(6) of the *Income Tax Assessment Act 1936*.

**768-980 Interest paid by temporary resident**

Interest that is paid by a \*temporary resident:

- (a) is an amount to which section 128B (liability to withholding tax) of the *Income Tax Assessment Act 1936* does not apply; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) is \*non-assessable non-exempt income if the interest is:
- (i) \*derived by a foreign resident; and
  - (ii) is not derived from carrying on \*business in Australia at or through a \*permanent establishment in Australia.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 770—Foreign income tax offsets**

### **Table of Subdivisions**

Guide to Division 770

770-A Entitlement rules for foreign income tax offsets

770-B Amount of foreign income tax offset

770-C Rules about payment of foreign income tax

770-D Administration

### **Guide to Division 770**

#### **770-1 What this Division is about**

You may get a non-refundable tax offset for foreign income tax paid on your assessable income.

There is a limit on the amount of the tax offset.

A resident of a foreign country does not get the offset for some foreign income taxes.

You may also get the offset for foreign income tax paid on some amounts that are not taxed in Australia.

#### **770-5 Object**

- (1) The object of this Division is to relieve double taxation where:
  - (a) you have paid foreign income tax on amounts included in your assessable income; and
  - (b) you would, apart from this Division, pay Australian income tax on the same amounts.
- (2) To achieve this object, this Division gives you a tax offset to reduce or eliminate Australian income tax otherwise payable on those amounts.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 770-A—Entitlement rules for foreign income tax offsets

### Table of sections

#### Basic entitlement rule for foreign income tax offset

770-10 Entitlement to foreign income tax offset

770-15 Meaning of *foreign income tax*, *credit absorption tax* and *unitary tax*

### Basic entitlement rule for foreign income tax offset

#### 770-10 Entitlement to foreign income tax offset

- (1) You are entitled to a \*tax offset for an income year for \*foreign income tax. An amount of foreign income tax counts towards the tax offset for the year if you paid it in respect of an amount that is all or part of an amount included in your assessable income for the year.

Note 1: The offset is for the income year in which your assessable income included an amount in respect of which you paid foreign income tax—even if you paid the foreign income tax in another income year.

Note 2: If the foreign income tax has been paid on an amount that is part non-assessable non-exempt income and part assessable income for you for the income year, only a proportionate share of the foreign income tax (the share that corresponds to the part that is assessable income) will count towards the tax offset (excluding the operation of subsection (2)).

Note 3: For offshore banking units, the amount of foreign income tax paid in respect of offshore banking income is reduced: see subsection 121EG(3A) of the *Income Tax Assessment Act 1936*.

#### *Taxes paid on section 23AI or 23AK amounts*

- (2) An amount of \*foreign income tax counts towards the \*tax offset for you for the year if you paid it in respect of an amount that is your \*non-assessable non-exempt income under either section 23AI or 23AK of the *Income Tax Assessment Act 1936* for the year.

Note 1: Sections 23AI and 23AK of the *Income Tax Assessment Act 1936* provide that amounts paid out of income previously attributed from a controlled foreign company or a foreign investment fund are non-assessable non-exempt income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 770-15

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Note 2: Foreign income taxes covered by this subsection are direct taxes (for example, a withholding tax on a dividend payment) and not underlying taxes, only some of which are covered by section 770-135.

*Exception for certain residence-based foreign income taxes*

- (3) An amount of \*foreign income tax you paid does not count towards the \*tax offset for the year if you paid it:
- (a) to a foreign country because you are a resident of that country for the purposes of a law relating to the foreign income tax; and
  - (b) in respect of an amount derived from a source outside that country.

*Exception for previously complying funds and previously foreign funds*

- (4) An amount of \*foreign income tax paid by a \*superannuation provider in relation to a \*superannuation fund does not count towards the \*tax offset for the year if:
- (a) the tax was paid in respect of an amount included in the fund's assessable income under table item 2 or 3 in section 295-320; and
  - (b) the provider paid the tax before the start of the income year.

Note: Table items 2 and 3 in section 295-320 include additional amounts in the assessable income of superannuation funds that change their status from complying to non-complying or from foreign to Australian.

*Exception for credit absorption tax and unitary tax*

- (5) An amount of \*credit absorption tax or \*unitary tax you paid does not count towards the \*tax offset for the year.

**770-15 Meaning of *foreign income tax*, *credit absorption tax* and *unitary tax***

- (1) ***Foreign income tax*** means tax that:
- (a) is imposed by a law other than an \*Australian law; and
  - (b) is:
    - (i) tax on income; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) tax on profits or gains, whether of an income or capital nature; or
- (iii) any other tax, being a tax that is subject to an agreement having the force of law under the *International Tax Agreements Act 1953*.

Note: Foreign income tax includes only that which has been correctly imposed in accordance with the relevant foreign law or, where the foreign jurisdiction has a tax treaty with Australia (having the force of law under the *International Tax Agreements Act 1953*), has been correctly imposed in accordance with that tax treaty.

- (2) ***Credit absorption tax*** means a tax imposed by a law of a foreign country, or of any part of, or place in, a foreign country to the extent that the tax would not have been payable if the entity concerned or another entity had not been entitled to an offset in respect of the tax under this Division.
- (3) ***Unitary tax*** means a tax imposed by a law of a foreign country, or of any part of, or place in, a foreign country, being a law which, for the purposes of taxing income, profits or gains of a company derived from sources within that country, takes into account, or is entitled to take into account, income, losses, outgoings or assets of the company (or of a company that for the purposes of that law is treated as being associated with the company) derived, incurred or situated outside that country, but does not include tax imposed by that law if that law only takes those matters into account:
  - (a) if such an associated company is a resident of the foreign country for the purposes of the law of the foreign country; or
  - (b) for the purposes of granting any form of relief in relation to tax imposed on dividends received by one company from another company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 770-B—Amount of foreign income tax offset

### Guide to Subdivision 770-B

#### 770-65 What this Subdivision is about

The amount of your tax offset is based on the amount of foreign income tax you have paid.

However, there is a limit on the maximum amount of your offset. The limit is the greater of \$1,000 and an amount worked out under this Subdivision. This amount is based on a comparison between your tax liability and the tax liability you would have if certain foreign-taxed and foreign-sourced income and related deductions were disregarded.

You may choose to use the limit of \$1,000 and not work out this amount.

There is an increase in the limit to ensure foreign income tax paid on some amounts that are not taxed always forms part of the offset.

#### Table of sections

##### Operative provisions

770-70	Amount of foreign income tax offset
770-75	Foreign income tax offset limit
770-80	Increase in offset limit for tax paid on amounts to which section 23AI or 23AK of the <i>Income Tax Assessment Act 1936</i> apply

#### Operative provisions

##### 770-70 Amount of foreign income tax offset

The amount of your \*tax offset for the year is the sum of the \*foreign income tax you paid that counts towards the offset for the year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note 1: The amount of foreign income tax you paid may be affected by Subdivision 770-C.

Note 2: The amount of the offset might be increased under section 770-230 of the *Income Tax (Transitional Provisions) Act 1997*, if you have pre-commencement excess foreign income tax.

### **770-75 Foreign income tax offset limit**

- (1) There is a limit (the *offset limit*) on the amount of your \*tax offset for a year. If your tax offset exceeds the offset limit, reduce the offset by the amount of the excess.
- (2) Your offset limit is the greater of:
  - (a) \$1,000; and
  - (b) this amount:
    - (i) the amount of income tax payable by you for the income year; *less*
    - (ii) the amount of income tax that would be payable by you for the income year if the assumptions in subsection (4) were made.

Note 1: If you do not intend to claim a foreign income tax offset of more than \$1,000 for the year, you do not need to work out the amount under paragraph (b).

Note 2: The amount of the offset limit might be increased under section 770-80.

- (3) For the purposes of paragraph (2)(b), work out the amount of income tax payable by you, or that would be payable by you, disregarding any \*tax offsets.
- (4) Assume that:
  - (a) your assessable income did not include:
    - (i) so much of any amount included in your assessable income as represents an amount in respect of which you paid \*foreign income tax that counts towards the \*tax offset for the year; and
    - (ii) any other amounts of \*ordinary income or \*statutory income from a source other than an \*Australian source; and
  - (b) you were not entitled to any deductions that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) are \*debt deductions that are attributable to an \*overseas permanent establishment of yours; or
- (ii) are deductions (other than debt deductions) that are reasonably related to amounts covered by paragraph (a) for that year.

Note: You must also assume you were not entitled to any deductions for certain converted foreign losses: see section 770-35 of the *Income Tax (Transitional Provisions) Act 1997*.

Example: If an entity has paid foreign income tax on a capital gain that comprises part of its net capital gain, only that capital gain on which foreign income tax has been paid is disregarded.

**770-80 Increase in offset limit for tax paid on amounts to which section 23AI or 23AK of the *Income Tax Assessment Act 1936* apply**

Your offset limit under subsection 770-75(2) is increased by any amounts of \*foreign income tax that count towards the \*tax offset for you for the year because of subsection 770-10(2).

**Subdivision 770-C—Rules about payment of foreign income tax**

**Table of sections**

**Rules about when foreign tax is paid**

- 770-130 When foreign income tax is considered paid—taxes paid by someone else
- 770-135 Foreign income tax paid by CFCs and FIFs on attributed amounts

**Rules about when foreign tax is considered not paid**

- 770-140 When foreign income tax is considered not paid—anti-avoidance rule

**Rules about when foreign tax is paid**

**770-130 When foreign income tax is considered paid—taxes paid by someone else**

- (1) This Act applies to you as if you had paid an amount of \*foreign income tax in respect of an amount (a *taxed amount*) that is all or part of an amount included in your \*ordinary income or \*statutory

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

income if you are covered by subsection (2) or (3) for an amount of foreign income tax paid in respect of the taxed amount.

- (2) You are covered by this subsection for an amount of \*foreign income tax paid in respect of a taxed amount if that foreign income tax has been paid in respect of the taxed amount by another entity under an \*arrangement with you or under the law relating to the foreign income tax.

Example: You are a partner in a partnership and the partnership pays foreign income tax on the partnership income.

- (3) You are covered by this subsection for an amount of \*foreign income tax paid in respect of the taxed amount to the extent that:
- (a) the taxed amount is taken, because of section 6B of the *Income Tax Assessment Act 1936* (the **1936 Act**), to be attributable to another amount of income of a particular kind or source; and
  - (b) foreign income tax has been paid in respect of the other amount of income; and
  - (c) the taxed amount is less than it would have been if that tax had not been paid.

Example: Aust Co (an Australian resident) is the sole beneficiary of an Australian resident trust H and is presently entitled to all the income of trust H. Trust H owns shares in For Co (a foreign company). For Co pays a dividend to trust H and the dividend is subject to withholding tax in For Co's country of residence.

Trust H allocates to Aust Co, the dividend, as well as other Australian source income trust H earned in the year (none of which was subject to foreign income tax). Aust Co is treated as having paid the foreign income tax paid by For Co under subsection 770-130(3). The foreign income tax is treated as paid in respect of the amount included in Aust Co's assessable income that is attributable to the dividend.

### **770-135 Foreign income tax paid by CFCs and FIFs on attributed amounts**

- (1) This Division applies to an entity as if it had paid an amount of \*foreign income tax worked out under subsection (7) in respect of an amount included in its assessable income if:
- (a) the amount is included in its assessable income as described in subsection (2); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) the conditions in subsections (3), (5) and (6) are satisfied.
- (2) An amount is included in an entity's assessable income as described in this subsection if:
- (a) the entity is a company and the amount is included under:
    - (i) section 456 (a *section 456 case*) of the 1936 Act in relation to a \*CFC and a statutory accounting period; or
    - (ii) section 457 (a *section 457 case*) of that Act in relation to a CFC; or
    - (iii) section 529 of that Act in relation to a foreign company (within the meaning of Part XI of that Act) (a *foreign company case*) in respect of a notional accounting period (within the meaning of that Part) (a *notional accounting period*); or
  - (b) the amount is included under section 529 of that Act in relation to a foreign trust (within the meaning of Part XI of that Act) (a *foreign trust case*) in respect of a notional accounting period.

Note: Section 456 of the 1936 Act includes, in the assessable income of certain Australian shareholders, amounts that are attributable to the profits of an Australian-controlled foreign company.

Section 457 does likewise when a controlled foreign company changes residence from an unlisted to a listed country or to Australia.

Section 529 includes, in the assessable income of resident taxpayers, amounts that are attributable to FIF interests held in foreign companies and in foreign trusts.

#### *Tax paid condition*

- (3) An amount of \*foreign income tax, income tax or \*withholding tax (the *tax amount*) must have been paid:
- (a) for a section 456 case—by the \*CFC in respect of an amount included in the notional assessable income of the CFC for the statutory accounting period; or
  - (b) for a section 457 case—by the CFC; or
  - (c) for a foreign company case or a foreign trust case—by the foreign company or foreign trust in respect of an amount included in its notional income (within the meaning of Part XI of the 1936 Act) of the notional accounting period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: Section 770-130 deems foreign income tax to have been paid in certain circumstances.

- (4) For the purposes of paragraphs (3)(a) and (b), the tax amount includes an amount that is taken to have been paid by the \*CFC under subsection 393(4) of the 1936 Act (about tax paid on reinsurance premiums).

*Association condition*

- (5) If the entity is a company, it must have an \*attribution percentage of 10% or more:
- (a) for a section 456 case—in relation to the \*CFC at the end of the statutory accounting period; or
  - (b) for a section 457 case—in relation to the CFC at the residence-change time (within the meaning of section 457 of the 1936 Act); or
  - (c) for a foreign company case—at the end of the notional accounting period.

Note: There is no association condition for a foreign trust case.

*Calculation method condition for FIFs*

- (6) For a foreign company case and a foreign trust case, the amount included under section 529 of the 1936 Act must have been determined by the application of the calculation method set out in Subdivision D of Division 18 of Part XI of that Act (the *calculation method*).

*Amount of foreign income tax*

- (7) The amount worked out under this subsection is:
- (a) for a section 456 case—the sum of all the tax amounts for the statutory accounting period multiplied by the company's \*attribution percentage in relation to the \*CFC at the time mentioned in paragraph (5)(a); or
  - (b) for a section 457 case—the sum of all the tax amounts to the extent they are attributable to the amount included in the company's assessable income under section 457 of the 1936 Act; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) for a foreign company case or a foreign trust case—an amount worked out using the following formula:

$$\frac{\text{Sum of all of the tax amounts for the notional accounting period}}{\text{Entity's share of calculated profit}} \times \frac{\text{Entity's share of calculated profit}}{\text{FIF's calculated profit}}$$

where:

*entity's share of calculated profit* means the share of the calculated profit of the foreign company or foreign trust in respect of the notional accounting period to which the entity is entitled as determined under the calculation method.

*FIF's calculated profit* means the calculated profit of the foreign company or foreign trust in respect of the notional accounting period as determined under the calculation method.

*Grossing-up of attributed amount*

- (8) For the purposes of this Act except this section and:
- (a) section 371 of the 1936 Act (for a section 456 case or a section 457 case); or
  - (b) section 605 of that Act (for a foreign company case or a foreign trust case);

the amount included in the entity's assessable income as described in subsection (2) is taken to be increased by the amount of tax worked out under subsection (7).

Note: Section 371 of the 1936 Act records an amount in an attribution account when the amount is included in the assessable income of an attributable taxpayer in relation to a CFC. Section 605 does the same thing for taxpayers with interests in FIFs.

## Rules about when foreign tax is considered not paid

### 770-140 When foreign income tax is considered not paid—anti-avoidance rule

Despite anything else in this Division, this Act applies to you as if you had *not* paid an amount of \*foreign income tax to the extent that you or any other entity become entitled to:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) a refund of the foreign income tax; or
- (b) any other benefit worked out by reference to the amount of the foreign income tax (other than a reduction in the amount of the foreign income tax).

### **Subdivision 770-D—Administration**

#### **Table of sections**

770-190 Amendment of assessments

#### **770-190 Amendment of assessments**

- (1) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purpose of giving effect to this Division for an income year if:
  - (a) an event described in subsection (2) (an ***amendment event***) happens after the time you lodged your \*income tax return for that year; and
  - (b) the amendment is made at any time during the period of 4 years starting immediately after the amendment event.

Note: Section 170 of that Act specifies the periods within which assessments may be amended.

- (2) The following are amendment events:
  - (a) you pay an amount of \*foreign income tax that counts towards your \*tax offset for the year;
  - (b) there is an increase in an amount of foreign income tax you paid that counts towards your offset for the year;
  - (c) there is a reduction in an amount of foreign income tax you paid that counts towards your offset for the year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 775—Foreign currency gains and losses**

### **Table of Subdivisions**

	Guide to Division 775
775-A	Objects of this Division
775-B	Realisation of forex gains or losses
775-C	Roll-over relief for facility agreements
775-D	Qualifying forex accounts that pass the limited balance test
775-E	Retranslation for qualifying forex accounts
775-F	Retranslation under foreign exchange retranslation election under Subdivision 230-D

### **Guide to Division 775**

#### **775-5 What this Division is about**

Your assessable income includes a forex realisation gain you make as a result of a forex realisation event.

You can deduct a forex realisation loss that you make as a result of a forex realisation event.

There are 5 main types of forex realisation events:

- (a) forex realisation event 1 happens if you dispose of foreign currency, or a right to receive foreign currency, to another entity;
- (b) forex realisation event 2 happens if you cease to have a right to receive foreign currency (otherwise than because you disposed of the right to another entity);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) forex realisation event 3 happens if you cease to have an obligation to receive foreign currency;
- (d) forex realisation event 4 happens if you cease to have an obligation to pay foreign currency;
- (e) forex realisation event 5 happens if you cease to have a right to pay foreign currency.

There are special rules for certain short-term forex realisation gains and losses.

You may choose roll-over relief for certain facility agreements.

You may elect to receive concessional tax treatment for a qualifying forex account that passes the limited balance test.

You may choose retranslation for a qualifying forex account.

### **Subdivision 775-A—Objects of this Division**

#### **Table of sections**

775-10 Objects of this Division

#### **775-10 Objects of this Division**

The objects of this Division are as follows:

- (a) to recognise \*foreign currency gains and losses for income tax purposes;
- (b) to quantify those gains and losses by reference to the change in the Australian dollar value of rights and obligations;
- (c) to treat certain foreign currency denominated financing facilities that are the economic equivalent of a loan as if the relevant facility were a loan;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) to reduce compliance costs by not requiring the recognition of certain low-value foreign currency gains and losses that involve substantial calculations.

### **Subdivision 775-B—Realisation of forex gains or losses**

#### **Table of sections**

775-15	Forex realisation gains are assessable
775-20	Certain forex realisation gains are exempt income
775-25	Certain forex realisation gains are non-assessable non-exempt income
775-30	Forex realisation losses are deductible
775-35	Certain forex realisation losses are disregarded
775-40	Disposal of foreign currency or right to receive foreign currency—forex realisation event 1
775-45	Ceasing to have a right to receive foreign currency—forex realisation event 2
775-50	Ceasing to have an obligation to receive foreign currency—forex realisation event 3
775-55	Ceasing to have an obligation to pay foreign currency—forex realisation event 4
775-60	Ceasing to have a right to pay foreign currency—forex realisation event 5
775-65	Only one forex realisation event to be counted
775-70	Tax consequences of certain short-term forex realisation gains
775-75	Tax consequences of certain short-term forex realisation losses
775-80	You may choose not to have sections 775-70 and 775-75 apply to you
775-85	Forex cost base of a right to receive foreign currency
775-90	Forex entitlement base of a right to pay foreign currency
775-95	Proceeds of assuming an obligation to pay foreign currency
775-100	Net costs of assuming an obligation to receive foreign currency
775-105	Currency exchange rate effect
775-110	Constructive receipts and payments
775-115	Economic set-off to be treated as legal set-off
775-120	Non-arm's length transactions
775-125	CGT consequences of the acquisition of foreign currency as a result of forex realisation event 2 or 3
775-130	Certain deductions not allowable
775-135	Right to receive or pay foreign currency
775-140	Obligation to pay or receive foreign currency
775-145	Application of forex realisation events to currency and fungible rights and obligations
775-150	Transitional election

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- 775-155 Applicable commencement date
- 775-160 Exception—event happens before the applicable commencement date
- 775-165 Exception—currency or right acquired, or obligation incurred, before the applicable commencement date
- 775-175 Application to things happening before commencement

**775-15 Forex realisation gains are assessable**

*Basic rule*

- (1) Your assessable income for an income year includes a \*forex realisation gain you make as a result of a \*forex realisation event that happens during that year.

*Exceptions*

- (2) However, your assessable income does not include a \*forex realisation gain to the extent that it:
  - (a) is a gain of a private or domestic nature; and
  - (b) is not covered by an item of the table:

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**Forex realisation gains to which this subsection does not apply**

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Item	You make the forex realisation gain as a result of this event...	happening to...	and the following condition is satisfied...
1	forex realisation event 1	*foreign currency or a right, or a part of a right, to receive foreign currency	a gain that would result from the occurrence of a *realisation event in relation to the foreign currency, or to the right, or the part of the right, would, apart from this Division, be taken into account under Part 3-1 or 3-3

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 775-15

<b>Forex realisation gains to which this subsection does not apply</b>			
<b>Item</b>	<b>You make the forex realisation gain as a result of this event...</b>	<b>happening to...</b>	<b>and the following condition is satisfied...</b>
2	forex realisation event 2	a right, or a part of a right, created or acquired in return for the occurrence of a *realisation event in relation to a *CGT asset you own, where subparagraph 775-45(1)(b)(iv) applies	a gain or loss that would result from the occurrence of the realisation event in relation to the CGT asset would be taken into account for the purposes of Part 3-1 or 3-3
3	forex realisation event 4	an obligation, or a part of an obligation, you incurred in return for the acquisition of a *CGT asset	a gain or loss that would result from the occurrence of a *realisation event in relation to the CGT asset would be taken into account for the purposes of Part 3-1 or 3-3

Note: Parts 3-1 and 3-3 deal with capital gains and losses.

(3) Section 775-70 provides for additional exceptions.

Note: Section 775-70 is about the tax consequences of certain short-term forex realisation gains.

*No double taxation*

(4) To the extent that a \*forex realisation gain would be included in your assessable income under this section and another provision of this Act, the gain is only included in your assessable income under this section.

Note: Under section 230-20, foreign exchange gains from a Division 230 financial arrangement are dealt with under Division 230 and not under this Division.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**775-20 Certain forex realisation gains are exempt income**

A \*forex realisation gain you make is exempt income to the extent that, if it had been a \*forex realisation loss, it would have been made in gaining or producing exempt income.

**775-25 Certain forex realisation gains are non-assessable non-exempt income**

A \*forex realisation gain you make is non-assessable non-exempt income to the extent that, if it had been a \*forex realisation loss, it would have been made in gaining or producing non-assessable non-exempt income.

**775-30 Forex realisation losses are deductible**

*Basic rule*

- (1) You can deduct from your assessable income for an income year a \*forex realisation loss that you make as a result of a \*forex realisation event that happens during that year.

*Exceptions*

- (2) However, you cannot deduct a \*forex realisation loss under this section to the extent that it:
  - (a) is a loss of a private or domestic nature; and
  - (b) is not covered by an item of the table:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 775-30

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**Forex realisation losses to which this subsection does not apply**

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<b>Item</b>	<b>You make the forex realisation loss as a result of this event...</b>	<b>happening to...</b>	<b>and the following condition is satisfied...</b>
1	forex realisation event 2	a right, or a part of a right, created or acquired in return for the occurrence of a *realisation event in relation to a *CGT asset you own, where subparagraph 775-45(1)(b)(iv) applies	a gain or loss that would result from the occurrence of the realisation event in relation to the CGT asset would be taken into account for the purposes of Part 3-1 or 3-3
2	forex realisation event 4	an obligation, or a part of an obligation, you incurred in return for the acquisition of a *CGT asset	a gain or loss that would result from the occurrence of a *realisation event in relation to the CGT asset would be taken into account for the purposes of Part 3-1 or 3-3

Note: Parts 3-1 and 3-3 deal with capital gains and losses.

(3) Section 775-75 provides for additional exceptions.

Note: Section 775-75 is about the tax consequences of certain short-term forex realisation losses.

*No double deductions*

(4) To the extent that this section and another provision of this Act would allow you a deduction for a \*forex realisation loss, you can only deduct the loss under this section.

Note: Under section 230-20, foreign exchange losses from a Division 230 financial arrangement are dealt with under Division 230 and not under this Division.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**775-35 Certain forex realisation losses are disregarded**

- (1) A \*forex realisation loss you make as a result of forex realisation event 1, 2 or 5 is disregarded to the extent that it is made in gaining or producing exempt income.
- (2) A \*forex realisation loss you make as a result of forex realisation event 3, 4 or 6 is disregarded to the extent that:
  - (a) it is made in gaining or producing exempt income or non-assessable non-exempt income; and
  - (b) the obligation, or the part of the obligation, does not give rise to a deduction.

**775-40 Disposal of foreign currency or right to receive foreign currency—forex realisation event 1**

*Forex realisation event 1*

- (1) **Forex realisation event 1** is \*CGT event A1 that happens if you dispose of:
  - (a) \*foreign currency; or
  - (b) a right, or a part of a right, to receive foreign currency.

Note: For extended meaning of **right to receive foreign currency**, see section 775-135.

*Disposal*

- (2) For the purposes of this section, use subsection 104-10(2) to work out whether you have disposed of:
  - (a) \*foreign currency; or
  - (b) a right, or a part of a right, to receive foreign currency.

Note: Under subsection 104-10(2), a disposal requires a change of ownership.

*Time of event*

- (3) For the purposes of this section, subsection 104-10(3) is modified so that the time of the event is when:
  - (a) the \*foreign currency is disposed of; or
  - (b) the right, or the part of the right, is disposed of.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Forex realisation gain*

- (4) You make a **forex realisation gain** if:
- (a) you make a \*capital gain from the event; and
  - (b) some or all of the capital gain is attributable to a \*currency exchange rate effect.

The amount of the **forex realisation gain** is so much of the capital gain as is attributable to a currency exchange rate effect.

Note: For **currency exchange rate effect**, see section 775-105.

- (5) For the purposes of paragraph (4)(a), Part 3-1 is modified so that section 118-20 is disregarded in working out the \*capital gain.

Note: Section 118-20 deals with reducing capital gains if an amount is otherwise assessable.

*Forex realisation loss*

- (6) You make a **forex realisation loss** if:
- (a) you make a \*capital loss from the event; and
  - (b) some or all of the capital loss is attributable to a \*currency exchange rate effect.

The amount of the **forex realisation loss** is so much of the capital loss as is attributable to a currency exchange rate effect.

Note: For **currency exchange rate effect**, see section 775-105.

*No indexation of cost base*

- (7) For the purposes of this section, disregard Division 114.

Note: Division 114 deals with indexation of the cost base.

*Foreign currency hedging gains and losses*

- (8) For the purposes of this section, disregard section 118-55.

Note: Section 118-55 deals with foreign currency hedging gains and losses.

*Capital proceeds*

- (9) For the purposes of this section, if the \*capital proceeds from the event are more or less than the \*market value of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the \*foreign currency; or
  - (b) the right, or the part of the right;
- the capital proceeds from the event are taken to be the market value. (The market value is worked out as at the time of the event.)

**775-45 Ceasing to have a right to receive foreign currency—forex realisation event 2**

*Forex realisation event 2*

- (1) **Forex realisation event 2** happens if:
- (a) you cease to have a right, or a part of a right, to receive \*foreign currency; and
  - (b) the right, or the part of the right, is one of the following:
    - (i) a right, or a part of a right, to receive, or that represents, \*ordinary income or \*statutory income (other than statutory income that is assessable under this Division or Division 102);
    - (ii) a right, or a part of a right, created or acquired in return for your ceasing to \*hold a \*depreciating asset;
    - (iii) a right, or a part of a right, created or acquired in return for your paying, or agreeing to pay, an amount of Australian currency or foreign currency;
    - (iv) a right, or a part of a right, created or acquired in return for the occurrence of a \*realisation event in relation to a \*CGT asset you own, and none of subparagraphs (i), (ii) and (iii) applies; and
  - (c) you did not cease to have the right, or the part of the right, because you disposed of the right or the part of the right (within the meaning of section 775-40).

Note 1: Disposals are dealt with by section 775-40 (forex realisation event 1).

Note 2: For extended meaning of **right to receive foreign currency**, see section 775-135.

*Time of event*

- (2) The time of the event is when you cease to have the right or the part of the right.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Forex realisation gain*

- (3) You make a **forex realisation gain** if:
- (a) the amount you receive in respect of the event happening exceeds the \*forex cost base of the right or the part of the right (the forex cost base is worked out as at the tax recognition time); and
  - (b) some or all of the excess is attributable to a \*currency exchange rate effect.

The amount of the **forex realisation gain** is so much of the excess as is attributable to a currency exchange rate effect.

Note 1: For **forex cost base**, see section 775-85.

Note 2: For **tax recognition time**, see subsection (7).

Note 3: For **currency exchange rate effect**, see section 775-105.

*Forex realisation loss*

- (4) You make a **forex realisation loss** if:
- (a) the amount you receive in respect of the event happening falls short of the \*forex cost base of the right or the part of the right (the forex cost base is worked out as at the tax recognition time); and
  - (b) some or all of the shortfall is attributable to a \*currency exchange rate effect.

The amount of the **forex realisation loss** is so much of the shortfall as is attributable to a currency exchange rate effect.

Note 1: For **forex cost base**, see section 775-85.

Note 2: For **tax recognition time**, see subsection (7).

Note 3: For **currency exchange rate effect**, see section 775-105.

- (5) You make a **forex realisation loss** if:
- (a) the event happens because an option to buy \*foreign currency expires without having been exercised, or is cancelled, released or abandoned; and
  - (b) you were capable of exercising the option immediately before the event happened.

The amount of the **forex realisation loss** is the amount you paid in return for the grant or acquisition of the option.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Non-cash benefit*

- (6) The amount you receive in respect of the event happening can include a \*non-cash benefit. Use the \*market value of the benefit to work out the amount you receive.

*Tax recognition time*

- (7) For the purposes of this section, the **tax recognition time** is worked out using the table:

<b>Tax recognition time</b>		
<b>Item</b>	<b>If the right, or part of the right, is...</b>	<b>the tax recognition time is...</b>
1	a right, or a part of a right, to receive, or that represents, *ordinary income or *statutory income (other than statutory income that is assessable under this Division or Division 102)	(a) in the case of ordinary income—when the ordinary income is *derived; or (b) in the case of statutory income—when the requirement first arose to include the statutory income in your assessable income.
2	a right, or a part of a right, created or acquired in return for your ceasing to *hold a *depreciating asset	when you stop holding the asset.
3	a right, or a part of a right, referred to in subsection 775-165(3) (which deals with extensions of loans)	the extension time referred to in that subsection.
4	a right, or a part of a right, created or acquired in return for your paying, or agreeing to pay, an amount of Australian currency, where item 3 does not apply	when the amount is paid.
5	a right, or a part of a right, created or acquired in return for your paying, or agreeing to pay, an amount of *foreign currency, where item 3 does not apply	when the amount is paid.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 775-50

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**Tax recognition time**

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Item	If the right, or part of the right, is...	the tax recognition time is...
6	a right, or a part of a right, created in return for the occurrence of a *realisation event in relation to a *CGT asset you own, and none of the above items apply	when the realisation event occurs.

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Note: Subsection 775-260(1) modifies the tax recognition time if forex realisation event 2 happens in relation to a qualifying forex account that has ceased to pass the limited balance test.

**775-50 Ceasing to have an obligation to receive foreign currency—  
forex realisation event 3**

*Forex realisation event 3*

- (1) **Forex realisation event 3** happens if:
- (a) you cease to have an obligation, or a part of an obligation, to receive \*foreign currency; and
  - (b) the obligation, or the part of the obligation, is one of the following:
    - (i) an obligation, or a part of the obligation, incurred in return for the creation or acquisition of a right to pay foreign currency;
    - (ii) an obligation, or a part of the obligation, incurred in return for the creation or acquisition of a right to pay Australian currency.

Note 1: For extended meaning of **obligation to receive foreign currency**, see section 775-140.

Note 2: For extended meaning of **right to pay foreign currency**, see section 775-135.

*Time of event*

- (2) The time of the event is when you cease to have the obligation or the part of the obligation.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Forex realisation gain*

- (3) You make a **forex realisation gain** if:
- (a) the amount you receive in respect of the event happening exceeds the net costs of assuming the obligation or the part of the obligation (the net costs are worked out as at the tax recognition time); and
  - (b) some or all of the excess is attributable to a \*currency exchange rate effect.

The amount of the **forex realisation gain** is so much of the excess as is attributable to a currency exchange rate effect.

Note 1: For **net costs of assuming the obligation**, see section 775-100.

Note 2: For **tax recognition time**, see subsection (7).

Note 3: For **currency exchange rate effect**, see section 775-105.

- (4) You make a **forex realisation gain** if:
- (a) the event happens because an option to sell \*foreign currency expires without having been exercised, or is cancelled, released or abandoned; and
  - (b) if the option had been exercised immediately before the event, you would have been obliged to buy the foreign currency.

The amount of the **forex realisation gain** is the amount you received in return for granting or assuming obligations under the option.

*Forex realisation loss*

- (5) You make a **forex realisation loss** if:
- (a) the amount you receive in respect of the event happening falls short of the net costs of assuming the obligation or the part of the obligation (the net costs are worked out as at the tax recognition time); and
  - (b) some or all of the shortfall is attributable to a \*currency exchange rate effect.

The amount of the **forex realisation loss** is so much of the shortfall as is attributable to a currency exchange rate effect.

Note 1: For **net costs of assuming the obligation**, see section 775-100.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 775-55

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Note 2: For *tax recognition time*, see subsection (7).

Note 3: For *currency exchange rate effect*, see section 775-105.

*Non-cash benefit*

- (6) The amount you receive in respect of the event happening can include a \*non-cash benefit. Use the \*market value of the benefit to work out the amount you receive.

*Tax recognition time*

- (7) For the purposes of this section, the *tax recognition time* is the time when you received an amount in respect of the event happening.

*Right to pay Australian currency*

- (8) To avoid doubt, for the purposes of this section, a *right to pay Australian currency* includes a right to pay Australian currency, where the right is subject to a contingency.

**775-55 Ceasing to have an obligation to pay foreign currency—forex realisation event 4**

*Forex realisation event 4*

- (1) *Forex realisation event 4* happens if:
- (a) you cease to have an obligation, or a part of an obligation, to pay \*foreign currency; and
  - (b) any of the following applies:
    - (i) the obligation, or the part of the obligation, is an expense or outgoing that you deduct;
    - (ii) the obligation, or the part of the obligation, is an element in the calculation of a net amount included in your assessable income (other than under this Division or Division 102 of this Act or Division 5 or 6 of Part III of the *Income Tax Assessment Act 1936*);
    - (iii) the obligation, or the part of the obligation, is an element in the calculation of a net amount that is

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

deductible (other than under Division 5 of Part III of the *Income Tax Assessment Act 1936*);

- (iv) you incurred the obligation, or the part of the obligation, in return for the acquisition of a \*CGT asset;
- (v) you incurred the obligation, or the part of the obligation, as the second, third, fourth or fifth element of the \*cost base of a CGT asset;
- (vi) you incurred the obligation, or the part of the obligation, in return for your starting to hold a \*depreciating asset, and you deduct an amount under Division 40 or 328 for the depreciating asset;
- (vii) you incurred the obligation, or the part of the obligation, as the second element of the \*cost of a depreciating asset, and you deduct an amount under Division 40 or 328 for the depreciating asset;
- (viii) you incurred the obligation, or the part of the obligation, as a \*project amount;
- (ix) you incurred the obligation, or the part of the obligation, in return for receiving an amount of Australian currency or foreign currency;
- (x) you incurred the obligation, or the part of the obligation, in return for the creation or acquisition of a right to receive an amount of Australian currency or foreign currency.

Note: For extended meaning of *obligation to pay foreign currency*, see section 775-140.

*Time of event*

- (2) The time of the event is when you cease to have the obligation or the part of the obligation.

*Forex realisation gain*

- (3) You make a *forex realisation gain* if:
  - (a) the amount you paid in respect of the event happening falls short of the proceeds of assuming the obligation or the part of the obligation (the proceeds are worked out as at the tax recognition time); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) some or all of the shortfall is attributable to a \*currency exchange rate effect.

The amount of the *forex realisation gain* is so much of the shortfall as is attributable to a currency exchange rate effect.

Note 1: For *proceeds of assuming the obligation*, see section 775-95.

Note 2: For *tax recognition time*, see subsection (7).

Note 3: For *currency exchange rate effect*, see section 775-105.

- (4) You make a *forex realisation gain* if:
  - (a) the event happens because an option to sell \*foreign currency expires without having been exercised, or is cancelled, released or abandoned; and
  - (b) if the option had been exercised immediately before the event, you would have been obliged to sell the foreign currency.

The amount of the *forex realisation gain* is the amount you received in return for granting or assuming obligations under the option.

*Forex realisation loss*

- (5) You make a *forex realisation loss* if:
  - (a) the amount you paid in respect of the event happening exceeds the proceeds of assuming the obligation or the part of the obligation (the proceeds are worked out as at the tax recognition time); and
  - (b) some or all of the excess is attributable to a \*currency exchange rate effect.

The amount of the *forex realisation loss* is so much of the excess as is attributable to a currency exchange rate effect.

Note 1: For *proceeds of assuming the obligation*, see section 775-95.

Note 2: For *tax recognition time*, see subsection (7).

Note 3: For *currency exchange rate effect*, see section 775-105.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Non-cash benefit*

- (6) The amount you paid in respect of the event happening can include a \*non-cash benefit. Use the \*market value of the benefit to work out the amount you paid.

*Tax recognition time*

- (7) For the purposes of this section, the **tax recognition time** is worked out using the table:

<b>Tax recognition time</b>		
<b>Item</b>	<b>In this case...</b>	<b>the tax recognition time is...</b>
1	(a) the obligation, or the part of the obligation, is an expense or outgoing that you deduct; and (b) the obligation, or the part of the obligation, was not incurred: (i) in return for the acquisition of an item of *trading stock; or (ii) in return for your starting to hold a *depreciating asset; and (c) the obligation, or the part of the obligation, was not incurred as the second element of the cost of a depreciating asset	the time when the expense or outgoing became deductible.
2	(a) the obligation, or the part of the obligation, is an expense or outgoing that you deduct; and (b) the obligation, or the part of the obligation, was incurred in return for the acquisition of an item of *trading stock	the time when the item becomes part of your trading stock on hand.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 775-55

<b>Tax recognition time</b>		
<b>Item</b>	<b>In this case...</b>	<b>the tax recognition time is...</b>
3	the obligation, or the part of the obligation, is an element in the calculation of a net amount included in your assessable income (other than under this Division or Division 102 of this Act or Division 5 or 6 of Part III of the <i>Income Tax Assessment Act 1936</i> )	the time of the determination of the exchange rate used to translate the element for the purpose of calculating the net amount.
4	the obligation, or the part of the obligation, is an element in the calculation of a net amount that is deductible (other than under Division 5 of Part III of the <i>Income Tax Assessment Act 1936</i> )	the time of the determination of the exchange rate used to translate the element for the purpose of calculating the net amount.
5	(a) you incurred the obligation, or the part of the obligation: <ul style="list-style-type: none"> <li>(i) in return for your starting to hold a *depreciating asset; or</li> <li>(ii) as the second element of the cost of a depreciating asset; and</li> </ul> (b) you deduct an amount under Division 40 or 328 for the depreciating asset	(a) in the case of the acquisition of a depreciating asset—when you began to hold the depreciating asset (worked out under Division 40); or (b) in the case of the second element of the cost of a depreciating asset—when you incurred the relevant expenditure.
6	you incurred the obligation, or the part of the obligation, as a *project amount	the first time when any part of the amount became deductible.
7	the obligation, or the part of the obligation, is referred to in subsection 775-165(5) (which deals with extension of loans)	the extension time referred to in that subsection.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Tax recognition time</b>		
<b>Item</b>	<b>In this case...</b>	<b>the tax recognition time is...</b>
8	you incurred the obligation, or the part of the obligation, in return for: <ul style="list-style-type: none"> <li>(a) receiving Australian currency or *foreign currency; or</li> <li>(b) the creation or acquisition of a right to receive an amount of Australian currency or foreign currency;</li> </ul> where item 7 does not apply	the time when you received the currency.
9	(a) you incurred the obligation, or the part of the obligation, in return for the acquisition of a *CGT asset; and (b) none of the above items apply	the time when you acquired the CGT asset (worked out under Division 109).
10	(a) you incurred the obligation, or the part of the obligation, as the second, third, fourth or fifth element of the * cost base of a CGT asset; and (b) none of the above items apply	the time of the transaction under which you incurred the obligation.
	Note 1: Foreign currency is a CGT asset. If you acquire foreign currency as the borrower under a loan, item 8 will apply to your obligation to repay the foreign currency borrowed under the loan.	
	Note 2: If you have made a choice for roll-over relief for a facility agreement, and forex realisation event 7 (material variation of a facility agreement) happens, subsection 775-220(6) modifies the tax recognition time for an obligation under a security that was in existence under the agreement at the time of that event.	
	Note 3: Subsection 775-260(2) modifies the tax recognition time if forex realisation event 4 happens in relation to a qualifying forex account that has ceased to pass the limited balance test.	
	Note 4: If you have made a choice for roll-over relief for a facility agreement, a forex realisation gain or forex realisation loss you make under the agreement as a result of forex realisation event 4 is disregarded—see section 775-200.	

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**775-60 Ceasing to have a right to pay foreign currency—forex realisation event 5**

*Forex realisation event 5*

- (1) **Forex realisation event 5** happens if:
- (a) you cease to have a right, or a part of a right, to pay \*foreign currency; and
  - (b) the right, or the part of the right, is one of the following:
    - (i) a right, or a part of a right, created or acquired in return for the assumption of an obligation to pay foreign currency;
    - (ii) a right, or a part of a right, created or acquired in return for the assumption of an obligation to pay Australian currency.

Note 1: For extended meaning of **right to pay foreign currency**, see section 775-135.

Note 2: For extended meaning of **obligation to pay foreign currency**, see section 775-140.

*Time of event*

- (2) The time of the event is when you cease to have the right or the part of the right.

*Forex realisation gain*

- (3) You make a **forex realisation gain** if:
- (a) the amount you pay in respect of the event happening falls short of the \*forex entitlement base of the right or the part of the right (the forex entitlement base is worked out as at the tax recognition time); and
  - (b) some or all of the shortfall is attributable to a \*currency exchange rate effect.

The amount of the **forex realisation gain** is so much of the shortfall as is attributable to a currency exchange rate effect.

Note 1: For **forex entitlement base**, see section 775-90.

Note 2: For **tax recognition time**, see subsection (7).

Note 3: For **currency exchange rate effect**, see section 775-105.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Forex realisation loss*

- (4) You make a **forex realisation loss** if:
- (a) the amount you pay in respect of the event happening exceeds the \*forex entitlement base of the right or the part of the right (the forex entitlement base is worked out as at the tax recognition time); and
  - (b) some or all of the excess is attributable to a \*currency exchange rate effect.

The amount of the **forex realisation loss** is so much of the excess as is attributable to a currency exchange rate effect.

Note 1: For **forex entitlement base**, see section 775-90.

Note 2: For **tax recognition time**, see subsection (7).

Note 3: For **currency exchange rate effect**, see section 775-105.

- (5) You make a **forex realisation loss** if:
- (a) the event happens because an option to sell \*foreign currency expires without having been exercised, or is cancelled, released or abandoned; and
  - (b) you were capable of exercising the option immediately before the event happened.

The amount of the **forex realisation loss** is the amount you paid in return for the grant or acquisition of the option.

*Non-cash benefit*

- (6) The amount you pay in respect of the event happening can include a \*non-cash benefit. Use the \*market value of the benefit to work out the amount you pay.

*Tax recognition time*

- (7) For the purposes of this section, the **tax recognition time** is the time when you pay an amount in respect of the event happening.

*Obligation to pay Australian currency*

- (8) To avoid doubt, for the purposes of this section, an **obligation to pay Australian currency** includes an obligation to pay Australian currency, where the obligation is subject to a contingency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**775-65 Only one forex realisation event to be counted**

*Option to buy foreign currency*

- (1) The following table applies to an option to buy a particular \*foreign currency if the exercise price is payable in another foreign currency:

<b>Option to buy foreign currency</b>			
<b>Item</b>	<b>If you are...</b>	<b>and both of these events happen when the option is exercised...</b>	<b>this is the result...</b>
1	the entity who is capable of exercising the option	(a) forex realisation event 1; (b) forex realisation event 4	ignore forex realisation event 4.
2	the entity who is capable of exercising the option	(a) forex realisation event 2; (b) forex realisation event 4	ignore forex realisation event 4.
3	the entity who granted the option	(a) forex realisation event 3; (b) forex realisation event 4	ignore forex realisation event 3.

*Option to sell foreign currency*

- (2) The following table applies to an option to sell a particular \*foreign currency if the exercise price is payable in another foreign currency:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Option to sell foreign currency**

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Item	If you are...	and both of these events happen when the option is exercised...	this is the result...
1	the entity who is capable of exercising the option	(a) forex realisation event 3; (b) forex realisation event 5	ignore forex realisation event 3.
2	the entity who granted the option	(a) forex realisation event 3; (b) forex realisation event 4	ignore forex realisation event 3.

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*Forward contracts*

- (3) The following table applies to a contract to buy a particular \*foreign currency in return for another foreign currency:

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**Forward contracts**

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Item	If both of these events happen when the contract is carried out...	this is the result...
1	(a) forex realisation event 1; (b) forex realisation event 4	ignore forex realisation event 4.
2	(a) forex realisation event 2; (b) forex realisation event 4	ignore forex realisation event 4.

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*Residual rule*

- (4) If:
- (a) 2 or more of forex realisation events 1, 2, 3, 4 and 5 happen to you at the same time in relation to the same rights and/or obligations; and
  - (b) none of the above subsections applies;
- apply the forex realisation event that is most appropriate, and ignore the remaining event or events.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 775-70

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**775-70 Tax consequences of certain short-term forex realisation gains**

- (1) The following table has effect unless you have made a choice under section 775-80:

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<b>Tax consequences of certain short-term forex realisation gains</b>		
<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
1	you make a *forex realisation gain as a result of forex realisation event 2, and:  (a) the right to receive *foreign currency was created in return for the occurrence of a *realisation event in relation to a *CGT asset you own; and  (b) item 6 of the table in subsection 775-45(7) applies; and  (c) the foreign currency became due for payment within 12 months after the occurrence of the realisation event	(a) the forex realisation gain is not included in your assessable income under section 775-15; and  (b) CGT event K10 happens.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Tax consequences of certain short-term forex realisation gains**

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<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
2	you make a *forex realisation gain as a result of forex realisation event 4, and: (a) the obligation to pay *foreign currency was incurred: (i) in return for the acquisition of a *CGT asset; or (ii) as the second, third, fourth or fifth element of the *cost base of a CGT asset; and (b) item 9 of the table in subsection 775-55(7) applies; and (c) the foreign currency became due for payment within 12 months after the time when: (i) if subparagraph (a)(i) applies—you acquired the CGT asset (worked out under Division 109); or (ii) if subparagraph (a)(ii) applies—you incurred the relevant expenditure	(a) the forex realisation gain is not included in your assessable income under section 775-15; and (b) both the *cost base and the *reduced cost base of the CGT asset are reduced by an amount equal to the forex realisation gain.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Tax consequences of certain short-term forex realisation gains</b>		
<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
3	<p>you make a *forex realisation gain as a result of forex realisation event 4, and:</p> <p>(a) the obligation to pay *foreign currency was incurred:</p> <p>(i) in return for your starting to hold a *depreciating asset; or</p> <p>(ii) as the second element of the cost of a depreciating asset; and</p> <p>(b) if subparagraph (a)(i) applies—the foreign currency became due for payment within the 24-month period that began 12 months before the time when you began to hold the depreciating asset (worked out under Division 40); and</p> <p>(c) if subparagraph (a)(ii) applies—the foreign currency became due for payment within 12 months after the time when you incurred the relevant expenditure</p>	<p>(a) the forex realisation gain is not included in your assessable income under section 775-15; and</p> <p>(b) if:</p> <p>(i) the forex realisation event happens in the income year in which the asset's *start time occurs; and</p> <p>(ii) the asset is not allocated to a pool under Subdivision 40-E or 328-D;</p> <p>the asset's *cost is reduced (but not below zero) by an amount equal to the forex realisation gain; and</p> <p>(c) if:</p> <p>(i) the forex realisation event happens in an income year that is later than the one in which the asset's *start time occurs; and</p> <p>(ii) the asset is not allocated to a pool under Subdivision 40-E or 328-D;</p> <p>the depreciating asset's *opening adjustable value for the income year in which the forex realisation event happens is reduced (but not below zero) by an amount equal to the forex realisation gain; and</p> <p>(d) if the asset is allocated to a pool under Subdivision 40-E or 328-D—the opening pool balance of the pool for the income year in which the forex realisation event happens is reduced (but not below zero) by an amount equal to the forex realisation gain.</p>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Tax consequences of certain short-term forex realisation gains**

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Item	In this case...	this is the result...
4	you make a *forex realisation gain as a result of forex realisation event 4, and: (a) the obligation to pay *foreign currency was incurred as a project amount; and (b) the foreign currency became due for payment within 12 months after the time when you incurred the project amount; and (c) the project amount is allocated to a project pool	(a) the forex realisation gain is not included in your assessable income under section 775-15; and (b) the pool value of the project pool for the income year in which you incurred the project amount is reduced (but not below zero) by an amount equal to the forex realisation gain.

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*Additional result where forex realisation gain exceeds cost etc.*

(2) The following table has effect:

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**Additional result where forex realisation gain exceeds cost etc.**

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Item	If...	and the following conditions are satisfied...	this is the result...
1	item 3 of the table in subsection (1) applies in relation to a *depreciating asset	(a) the forex realisation event happens in the income year in which the asset's *start time occurs; and (b) the asset is not allocated to a pool under Subdivision 40-E or 328-D; and (c) the forex realisation gain exceeds the asset's *cost	the excess is included in your assessable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 775-70

<b>Additional result where forex realisation gain exceeds cost etc.</b>			
<b>Item</b>	<b>If...</b>	<b>and the following conditions are satisfied...</b>	<b>this is the result...</b>
2	item 3 of the table in subsection (1) applies in relation to a *depreciating asset	(a) the forex realisation event happens in an income year that is later than the one in which the asset's *start time occurs; and (b) the asset is not allocated to a pool under Subdivision 40-E or 328-D; and (c) the forex realisation gain exceeds the asset's *opening adjustable value for the income year in which the forex realisation event happens	the excess is included in your assessable income.
3	item 3 of the table in subsection (1) applies in relation to a *depreciating asset	(a) the asset is allocated to a pool under Subdivision 40-E or 328-D; and (b) the forex realisation gain exceeds the opening pool balance of the pool for the income year in which the forex realisation event happens	the excess is included in your assessable income.
4	item 4 of the table in subsection (1) applies in relation to a project amount	the forex realisation gain exceeds the pool value of the project pool for the income year in which you incurred the project amount	the excess is included in your assessable income.

- (3) To the extent that a \*forex realisation gain:
- (a) would have been included in your assessable income under section 775-15 if this section had not been enacted; and
  - (b) would, apart from this subsection, be included in your assessable income under another provision of this Act;
- the gain is not included in your assessable income under that other provision.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**775-75 Tax consequences of certain short-term forex realisation losses**

- (1) The following table has effect unless you have made a choice under section 775-80:

<b>Tax consequences of certain short-term forex realisation losses</b>		
<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
1	you make a *forex realisation loss as a result of forex realisation event 2, and: (a) the right to receive *foreign currency was created in return for the occurrence of a *realisation event in relation to a *CGT asset you own; and (b) item 6 of the table in subsection 775-45(7) applies; and (c) the foreign currency became due for payment within 12 months after the occurrence of the realisation event	(a) the forex realisation loss is not deductible under section 775-30; and (b) CGT event K11 happens.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 775-75

<b>Tax consequences of certain short-term forex realisation losses</b>		
<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
2	<p>you make a *forex realisation loss as a result of forex realisation event 4, and:</p> <p>(a) the obligation to pay *foreign currency was incurred:</p> <p style="padding-left: 20px;">(i) in return for the acquisition of a *CGT asset; or</p> <p style="padding-left: 20px;">(ii) as the second, third, fourth or fifth element of the *cost base of a CGT asset; and</p> <p>(b) item 9 of the table in subsection 775-55(7) applies; and</p> <p>(c) the foreign currency became due for payment within 12 months after the time when:</p> <p style="padding-left: 20px;">(i) if subparagraph (a)(i) applies—you acquired the CGT asset (worked out under Division 109); or</p> <p style="padding-left: 20px;">(ii) if subparagraph (a)(ii) applies—you incurred the relevant expenditure</p>	<p>(a) the forex realisation loss is not deductible under section 775-30; and</p> <p>(b) both the *cost base and the *reduced cost base of the CGT asset are increased by an amount equal to the *forex realisation loss.</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Tax consequences of certain short-term forex realisation losses**

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Item	In this case...	this is the result...
3	<p>you make a *forex realisation loss as a result of forex realisation event 4, and:</p> <p>(a) the obligation to pay *foreign currency was incurred:</p> <p style="padding-left: 20px;">(i) in return for your starting to hold a *depreciating asset; or</p> <p style="padding-left: 20px;">(ii) as the second element of the cost of a depreciating asset; and</p> <p>(b) if subparagraph (a)(i) applies—the foreign currency became due for payment within the 24-month period that began 12 months before the time when you began to hold the depreciating asset (worked out under Division 40); and</p> <p>(c) if subparagraph (a)(ii) applies—the foreign currency became due for payment within 12 months after the time when you incurred the relevant expenditure</p>	<p>(a) the forex realisation loss is not deductible under section 775-30; and</p> <p>(b) if:</p> <p style="padding-left: 20px;">(i) the forex realisation event happens in the income year in which the asset's *start time occurs; and</p> <p style="padding-left: 20px;">(ii) the asset is not allocated to a pool under Subdivision 40-E or 328-D;</p> <p style="padding-left: 20px;">the asset's *cost is increased by an amount equal to the forex realisation loss; and</p> <p>(c) if:</p> <p style="padding-left: 20px;">(i) the forex realisation event happens in an income year that is later than the one in which the asset's *start time occurs; and</p> <p style="padding-left: 20px;">(ii) the asset is not allocated to a pool under Subdivision 40-E or 328-D;</p> <p style="padding-left: 20px;">the depreciating asset's *opening adjustable value for the income year in which the forex realisation event happens is increased by an amount equal to the forex realisation loss; and</p> <p>(d) if the asset is allocated to a pool under Subdivision 40-E or 328-D—the opening pool balance of the pool for the income year in which the forex realisation event happens is increased by an amount equal to the forex realisation loss.</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Tax consequences of certain short-term forex realisation losses**

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<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
4	<p>you make a *forex realisation loss as a result of forex realisation event 4, and:</p> <p>(a) the obligation to pay *foreign currency was incurred as a project amount; and</p> <p>(b) the foreign currency became due for payment within 12 months after the time when you incurred the project amount</p>	<p>(a) the forex realisation loss is not deductible under section 775-30; and</p> <p>(b) the pool value of the project pool for the income year in which you incurred the project amount is increased by an amount equal to the forex realisation loss.</p>

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(2) To the extent that:

- (a) section 775-30 would have allowed you a deduction for a \*forex realisation loss if this section had not been enacted; and
  - (b) apart from this subsection, another provision of this Act would allow you a deduction for the loss;
- you cannot deduct the loss under that other provision.

**775-80 You may choose not to have sections 775-70 and 775-75 apply to you**

- (1) You may choose not to have sections 775-70 and 775-75 apply to you.
- (2) A choice must be in writing.
- (3) A choice must be made:
  - (a) if you were in existence at the start of the applicable commencement date:
    - (i) within 90 days after the applicable commencement date; or
    - (ii) within 30 days after the commencement of this subsection; or
  - (b) if you came into existence within 90 days after the start of the applicable commencement date:
    - (i) within 90 days after you came into existence; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) within 30 days after the commencement of this subsection; or
- (c) if the Commissioner allows a longer period—within that longer period.

Note: For *applicable commencement date*, see section 775-155.

- (4) A choice has effect from the start of the applicable commencement date.
- (5) A choice may not be revoked.

### **775-85 Forex cost base of a right to receive foreign currency**

The *forex cost base* of a right, or a part of a right, to receive \*foreign currency is the total of:

- (a) the money you:
    - (i) paid; or
    - (ii) are required to pay; or
    - (iii) would be required to pay in the event of the exercise of an option;in respect of acquiring the right or part of the right; and
  - (b) the \*market value of any \*non-cash benefit you:
    - (i) provided; or
    - (ii) are required to provide; or
    - (iii) would be required to provide in the event of the exercise of an option;in respect of acquiring the right or part of the right;
- reduced by any amounts that are deductible under a provision of this Act other than this Division.

### **775-90 Forex entitlement base of a right to pay foreign currency**

The *forex entitlement base* of a right, or a part of a right, to pay \*foreign currency is the total of:

- (a) the money you:
  - (i) are entitled to receive; or
  - (ii) would be entitled to receive in the event of the exercise of an option;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 775-95

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in respect of the discharge or satisfaction of the right or the part of the right; and

- (b) the \*market value of any \*non-cash benefit you:
  - (i) are entitled to acquire or obtain; or
  - (ii) would be entitled to acquire or obtain in the event of the exercise of an option;

in respect of the discharge or satisfaction of the right or the part of the right;

reduced by:

- (c) any amounts that you paid to acquire the right or the part of the right, where the amounts are not deductible under a provision of this Act other than this Division; and
- (d) the market value of any non-cash benefit that you provided to acquire the right or the part of the right, where the market value is not deductible under a provision of this Act other than this Division.

**775-95 Proceeds of assuming an obligation to pay foreign currency**

For the purposes of this Division, the *proceeds* of assuming an obligation, or a part of an obligation, to pay \*foreign currency are the total of:

- (a) the money you:
  - (i) received; or
  - (ii) are entitled to receive; or
  - (iii) would be entitled to receive in the event of the exercise of an option;

in return for incurring the obligation or the part of the obligation; and

- (b) the \*market value of any \*non-cash benefit you:
  - (i) acquired or obtained; or
  - (ii) are entitled to acquire or obtain; or
  - (iii) would be entitled to acquire or obtain in the event of the exercise of an option;

in return for incurring the obligation or the part of the obligation;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

reduced by any amounts that are included in assessable income under a provision of this Act other than this Division.

**775-100 Net costs of assuming an obligation to receive foreign currency**

- (1) For the purposes of this Division, the *net costs* of assuming an obligation, or a part of an obligation, to receive \*foreign currency are the total of:
- (a) the money you:
    - (i) are required to pay; or
    - (ii) would be required to pay in the event of the exercise of an option;in respect of the fulfilment of the obligation or the part of the obligation; and
  - (b) the \*market value of any \*non-cash benefit you:
    - (i) are required to provide; or
    - (ii) would be required to provide in the event of the exercise of an option;in respect of the fulfilment of the obligation or the part of the obligation;
- reduced by the amount worked out under subsection (2).
- (2) The amount worked out under this subsection is the total of:
- (a) the money you:
    - (i) received; or
    - (ii) are entitled to receive;because you incurred the obligation or the part of the obligation; and
  - (b) the \*market value of any \*non-cash benefit you:
    - (i) received or obtained; or
    - (ii) are entitled to receive or obtain;because you incurred the obligation or the part of the obligation;
- reduced by any amounts that are included in assessable income under a provision of this Act other than this Division.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 775-105

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- (3) To avoid doubt, paragraphs (2)(a) and (b) do not apply to money or a \*non-cash benefit that you:
- (a) received or obtained; or
  - (b) are entitled to receive or obtain;
- because of the fulfilment of the obligation or the part of the obligation.

**775-105 Currency exchange rate effect**

- (1) A *currency exchange rate effect* is:
- (a) any currency exchange rate fluctuations; or
  - (b) a difference between:
    - (i) an expressly or implicitly agreed currency exchange rate for a future date or time; and
    - (ii) the applicable currency exchange rate at that date or time.
- (2) To work out whether there is a currency exchange rate effect and (if so), the extent of that effect, use whichever of the following translation rules is applicable to you:
- (a) the translation rules in section 960-50 (the standard rules);
  - (b) the translation rules in section 960-80 (the functional currency rules).

**775-110 Constructive receipts and payments**

For the purposes of this Subdivision, if an entity (the *payer*) did not actually pay an amount to another entity (the *recipient*), but the amount was applied or dealt with in any way on the recipient's behalf or as the recipient directs (including by discharging all or a part of an obligation owed by the recipient), then:

- (a) the payer is taken to have paid the amount as soon as it is applied or dealt with; and
- (b) the recipient is taken to have received the amount as soon as it is applied or dealt with.

Note: The set-off of an obligation to pay an amount against a right to receive an amount is an example of how this section would operate.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **775-115 Economic set-off to be treated as legal set-off**

If the economic effect of an \*arrangement is to provide for the set-off, in whole or in part, of one or more amounts against one or more other amounts, this Subdivision applies as if:

- (a) the parties to the arrangement had the respective rights and obligations that they would have had if the provision for economic set-off were structured as a provision for legal set-off of rights and obligations; and
- (b) if the economic set-off happens—the parties were taken, under section 775-110, to have paid and received the respective amounts that they would have paid and received if the economic set-off were structured as a legal set-off of rights and obligations.

### **775-120 Non-arm's length transactions**

If:

- (a) you and another entity did not deal with each other at arm's length in connection with a transaction that is relevant to working out:
  - (i) whether you make a \*forex realisation gain or a \*forex realisation loss; or
  - (ii) the amount of any \*forex realisation gain or a \*forex realisation loss made by you; and
- (b) apart from this section, a particular amount is more or less than it would have been if you and the other entity had been dealing with each other at arm's length;

this Subdivision applies to you as if that amount were the amount it would have been if you and the other entity had been dealing with each other at arm's length.

### **775-125 CGT consequences of the acquisition of foreign currency as a result of forex realisation event 2 or 3**

If you acquire \*foreign currency as a result of forex realisation event 2 or 3:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the first element of the foreign currency's \*cost base is replaced by the foreign currency's \*market value at the time you received the foreign currency; and
- (b) the first element of the foreign currency's \*reduced cost base is replaced by the foreign currency's market value at the time you received the foreign currency.

### 775-130 Certain deductions not allowable

If:

- (a) an amount is included in your assessable income under this Division; and
- (b) if this Division had not been enacted, the amount would not have been included in your assessable income under any other provision of this Act (other than Division 102); and
- (c) if this section had not been enacted, a deduction would be allowable to you under a provision listed in the table in subsection 51AAA(2) of the *Income Tax Assessment Act 1936*; and
- (d) if the amount had not been included in your assessable income under this Division, the deduction would not be allowable;

the deduction is not allowable.

### 775-135 Right to receive or pay foreign currency

#### *Extended meaning of right to receive foreign currency*

- (1) For the purposes of this Division, a ***right to receive foreign currency*** includes a right to receive an amount calculated by reference to a currency exchange rate effect, even if that amount is not an amount of \*foreign currency.
- (2) To avoid doubt, for the purposes of this Division, a ***right to receive foreign currency*** includes a right to receive \*foreign currency, where the right is subject to a contingency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Extended meaning of **right to pay foreign currency***

- (3) For the purposes of this Division, a **right to pay foreign currency** includes a right to pay an amount calculated by reference to a currency exchange rate effect, even if that amount is not an amount of \*foreign currency.
- (4) To avoid doubt, for the purposes of this Division, a **right to pay foreign currency** includes a right to pay \*foreign currency, where the right is subject to a contingency.

**775-140 Obligation to pay or receive foreign currency**

*Extended meaning of **obligation to pay foreign currency***

- (1) For the purposes of this Division, an **obligation to pay foreign currency** includes an obligation to pay an amount calculated by reference to a currency exchange rate effect, even if that amount is not an amount of \*foreign currency.
- (2) To avoid doubt, for the purposes of this Division, an **obligation to pay foreign currency** includes an obligation to pay \*foreign currency, where the obligation is subject to a contingency.

*Extended meaning of **obligation to receive foreign currency***

- (3) For the purposes of this Division, an **obligation to receive foreign currency** includes an obligation to receive an amount calculated by reference to a currency exchange rate effect, even if that amount is not an amount of \*foreign currency.
- (4) To avoid doubt, for the purposes of this Division, an **obligation to receive foreign currency** includes an obligation to receive \*foreign currency, where the obligation is subject to a contingency.

**775-145 Application of forex realisation events to currency and fungible rights and obligations**

- (1) Forex realisation event 1, 2 or 4 applies in relation to:
  - (a) \*foreign currency; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 775-150

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- (b) a fungible right, or a part of a fungible right, to receive foreign currency; or
  - (c) a fungible obligation, or a part of a fungible obligation, to pay foreign currency;
- on a first-in first-out basis.
- (2) The regulations may provide that any or all of forex realisation events 1, 2 and 4 apply, or apply in specified circumstances, to:
    - (a) \*foreign currency; or
    - (b) a fungible right, or a part of a fungible right, to receive foreign currency; or
    - (c) a fungible obligation, or a part of a fungible obligation, to pay foreign currency;on a weighted average basis (despite subsection (1)).
  - (3) The circumstances that may be specified for the purposes of subsection (2) include the circumstance that you have made an election to use a weighted average basis.
  - (4) Subsection (3) does not limit subsection (2).

**775-150 Transitional election**

- (1) You may elect to have this section apply to you.
  - Note: For the consequences of an election, see sections 775-160 and 775-165.
- (2) An election must be in writing.
- (3) An election must be made:
  - (a) within 60 days after the applicable commencement date; or
  - (b) within 30 days after the commencement of this subsection.
  - Note: For *applicable commencement date*, see section 775-155.
- (4) An election may not be revoked.

**775-155 Applicable commencement date**

For the purposes of this Division, your *applicable commencement date* is:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the first day of the 2003-04 income year; or
- (b) if that day is earlier than 1 July 2003—the first day of the 2004-05 income year.

**775-160 Exception—event happens before the applicable commencement date**

- (1) A \*forex realisation gain or \*forex realisation loss you make as a result of forex realisation event 1, 2, 3, 4 or 5 is disregarded if the event happened before the applicable commencement date.

Note: For *applicable commencement date*, see section 775-155.

- (2) Subsection (1) does not apply if:
  - (a) you have made an election under section 775-150; and
  - (b) the Commissioner is satisfied that the event happened under, or as a result of, an \*arrangement that was entered into or carried out for the purpose, or for purposes that included the purpose, of obtaining the benefit of the operation of subsection (1).

**775-165 Exception—currency or right acquired, or obligation incurred, before the applicable commencement date**

*Exception—foreign currency acquired before the applicable commencement date*

- (1) A \*forex realisation gain or \*forex realisation loss you make on the disposal of \*foreign currency as a result of forex realisation event 1 is disregarded if:
  - (a) the foreign currency was acquired before the applicable commencement date; and
  - (b) you have not made an election under section 775-150.

For the purposes of paragraph (a), the time of acquisition is worked out under Division 109.

Note: For *applicable commencement date*, see section 775-155.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Exception—right acquired before the applicable commencement date*

- (2) A \*forex realisation gain or \*forex realisation loss you make as a result of forex realisation event 1, 2 or 5 happening to a right or a part of a right is disregarded if:
- (a) the right, or the part of the right;
    - (i) was acquired before the applicable commencement date; or
    - (ii) arose under an eligible contract (within the meaning of the former Division 3B of Part III of the *Income Tax Assessment Act 1936*) that was entered into before the applicable commencement date; and
  - (b) you have not made an election under section 775-150.

For the purposes of subparagraph (a)(i), the time of acquisition is worked out under Division 109.

Note: For *applicable commencement date*, see section 775-155.

- (3) If:
- (a) at a particular time (the *extension time*) on or after the applicable commencement date and under a contract that was entered into before the applicable commencement date, the period for which money has been lent is extended; and
  - (b) either:
    - (i) the contract is separate from the original loan contract; or
    - (ii) the extension amounts to a variation of the original loan contract;

subparagraph (2)(a)(ii) does not apply to a right, or a part of a right, that arises after the extension time and relates to the loan.

Note: For *applicable commencement date*, see section 775-155.

*Exception—obligation incurred before the applicable commencement date*

- (4) A \*forex realisation gain or \*forex realisation loss you make as a result of forex realisation event 3 or 4 happening to an obligation or a part of an obligation is disregarded if:
- (a) either:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (i) you incurred the obligation, or the part of the obligation, before the applicable commencement date; or
  - (ii) the obligation, or the part of the obligation, arose under an eligible contract (within the meaning of the former Division 3B of Part III of the *Income Tax Assessment Act 1936*) that was entered into before the applicable commencement date; and
- (b) you have not made an election under section 775-150.

Note: For *applicable commencement date*, see section 775-155.

(5) If:

- (a) at a particular time (the *extension time*) on or after the applicable commencement date and under a contract that was entered into before the applicable commencement date, the period for which money has been lent is extended; and
- (b) either:
  - (i) the contract is separate from the original loan contract; or
  - (ii) the extension amounts to a variation of the original loan contract;

subparagraph (4)(a)(ii) does not apply to an obligation, or a part of an obligation, that arises after the extension time and relates to the loan.

Note: For *applicable commencement date*, see section 775-155.

### **775-175 Application to things happening before commencement**

The use of the present tense in a provision of this Division does not imply that the provision does not apply to things happening before the commencement of this Division.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 775-C—Roll-over relief for facility agreements**

### **Guide to Subdivision 775-C**

#### **775-180 What this Subdivision is about**

A *facility agreement* is an agreement where:

- (a) you have a right to issue eligible securities and another entity or entities must acquire the securities; and
- (b) the economic effect of the agreement is to enable you to obtain finance in a particular foreign currency.

If you choose roll-over relief for a facility agreement:

- (a) a forex realisation gain or a forex realisation loss you make as a result of forex realisation event 4 is disregarded if the event happens because you discharge your obligation under an eligible security issued by you under the agreement; and
- (b) if you issue an eligible security under the agreement otherwise than as a result of a roll-over—you are taken to have been given a loan (the *notional loan*); and
- (c) if an eligible security is rolled-over under the agreement—the period of the notional loan is extended by the term of the new security; and
- (d) forex realisation event 6 happens if you discharge your obligation under the notional loan; and
- (e) forex realisation event 7 happens if a material variation is made to the agreement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Table of sections

### Operative provisions

- 775-185 What is a *facility agreement*?
- 775-190 What is an *eligible security*?
- 775-195 You may choose roll-over relief for a facility agreement
- 775-200 Forex realisation event 4 does not apply
- 775-205 What is a *roll-over*?
- 775-210 Notional loan
- 775-215 Discharge of obligation to pay the principal amount of a notional loan under a facility agreement—forex realisation event 6
- 775-220 Material variation of a facility agreement—forex realisation event 7

## Operative provisions

### 775-185 What is a *facility agreement*?

A *facility agreement* is an agreement between an entity (the *first entity*) and another entity or entities under which:

- (a) the first entity has a right to issue \*eligible securities; and
- (b) an entity or entities must acquire the securities;

where the economic effect of the agreement is to enable the first entity to obtain finance in a particular \*foreign currency:

- (c) up to the foreign currency amount specified in the agreement; and
- (d) during the term of the agreement.

### 775-190 What is an *eligible security*?

An *eligible security* is:

- (a) a bill of exchange, or a promissory note, that is:
  - (i) non-interest bearing; and
  - (ii) issued at a discount to face value; and
  - (iii) denominated in a particular \*foreign currency; and
  - (iv) for a fixed term; or
- (b) a security that is:
  - (i) specified in the regulations; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) denominated in a foreign currency; and
- (iii) for a fixed term.

**775-195 You may choose roll-over relief for a facility agreement**

- (1) You may choose roll-over relief for a \*facility agreement if:
  - (a) you have entered into the agreement; and
  - (b) you have a right to issue \*eligible securities under the agreement; and
  - (c) the economic effect of the agreement is to enable you to obtain finance in a particular \*foreign currency:
    - (i) up to the foreign currency amount specified in the agreement; and
    - (ii) during the term of the agreement.

- (2) A choice must be made:
  - (a) within 90 days after the first time you issue an \*eligible security under the \*facility agreement; or
  - (b) within 90 days after the applicable commencement date; or
  - (c) within 30 days after the commencement of this subsection.

Note: For *applicable commencement date*, see section 775-155.

- (3) If you make a choice within 90 days after the first time you issue an \*eligible security under the \*facility agreement, the choice is taken to have been in effect throughout the period that began immediately before the first time you issued an eligible security under the facility agreement.

- (4) If:
  - (a) you make a choice:
    - (i) within 90 days after the applicable commencement date; or
    - (ii) within 30 days after the commencement of this subsection; and
  - (b) subsection (3) does not apply;the choice is taken to have been in effect throughout the period that began at whichever is the later of the following times:
  - (c) the start of the applicable commencement date;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) the first time you issued an \*eligible security under the \*facility agreement.

Note: For *applicable commencement date*, see section 775-155.

- (5) A choice must be in writing.
- (6) A choice continues to apply until the \*facility agreement ends.

Note: If forex realisation event 7 happens (material variation of facility agreement), subsection 775-220(5) terminates your choice.

- (7) A choice may not be revoked.

### **775-200 Forex realisation event 4 does not apply**

A \*forex realisation gain or a \*forex realisation loss you make as a result of forex realisation event 4 or 9 is disregarded to the extent to which the event happens because:

- (a) you discharge your obligation under an \*eligible security issued by you under a \*facility agreement; and
- (b) you have made a choice for roll-over relief for the facility agreement, and that choice is in effect.

### **775-205 What is a *roll-over*?**

A *roll-over* happens under a \*facility agreement if:

- (a) you discharge your obligation under an \*eligible security issued by you under the agreement (the *rolled-over security*); and
- (b) at the same time, you issue a new eligible security (the *new security*) under the agreement; and
- (c) the issue of the new security is related to the discharge of your obligation under the rolled-over security in one of the following ways:
  - (i) your obligation under the rolled-over security is wholly or partly set-off against your right to receive the \*foreign currency issue price of the new security;
  - (ii) your obligation under the rolled-over security is wholly or partly satisfied by the issue of the new security; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 775-210

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- (d) you have made a choice for roll-over relief for the agreement, and that choice is in effect; and
- (e) the new security is issued on or after the applicable commencement date; and
- (f) if you have not made an election under section 775-150—the rolled-over security is issued on or after the applicable commencement date.

Note: For *applicable commencement date*, see section 775-155.

**775-210 Notional loan**

- (1) The rules in this section have effect only for the purposes of this Subdivision.

*Notional loan*

- (2) If you issue an \*eligible security under a \*facility agreement otherwise than as a result of a roll-over, you are taken to have been given a loan (the *notional loan*):
  - (a) of a \*foreign currency principal amount equal to the foreign currency face value of the security; and
  - (b) for a period equal to the term of the security; and
  - (c) that is taken to be attached to the security; and
  - (d) the *start time* of which is the time when you issued the security.

Note 1: The period of the notional loan may be extended as the result of a later roll-over—see subsection (3).

Note 2: The notional loan may become attached to a later security as the result of a roll-over—see subsection (3).

Note 3: The foreign currency principal amount of the notional loan may remain the same, or may fall (but not rise), as a result of a later roll-over—see subsection (3).

Note 4: If, at a later time, the security is rolled-over, and the foreign currency face value of the new security exceeds the foreign currency face value of the rolled-over security, you are taken to have been given an additional notional loan of a foreign currency principal amount equal to the excess—see subsection (3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Effect of roll-over*

- (3) The table has effect if an \*eligible security is rolled-over under a \*facility agreement:

<b>Roll-over of eligible security</b>		
<b>Item</b>	<b>If the foreign currency face value of the new security...</b>	<b>this is the result...</b>
1	equals the *foreign currency face value of the rolled-over security	(a) the period of each notional loan attached to the rolled-over security is extended by the term of the new security; and  (b) each notional loan attached to the rolled-over security is taken to be attached to the new security.
2	exceeds the *foreign currency face value of the rolled-over security	(a) you are taken to have been given an additional notional loan: <ul style="list-style-type: none"> <li>(i) of a foreign currency principal amount equal to the excess; and</li> <li>(ii) for a period equal to the term of the new security; and</li> <li>(iii) that is taken to be attached to the new security; and</li> <li>(iv) the start time of which is the time when you issued the new security; and</li> </ul> (b) the period of each notional loan attached to the rolled-over security is extended by the term of the new security; and  (c) each notional loan attached to the rolled-over security is taken to be attached to the new security.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Roll-over of eligible security**

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<b>Item</b>	<b>If the foreign currency face value of the new security...</b>	<b>this is the result...</b>
3	falls short of the *foreign currency face value of the rolled-over security, and there is only one notional loan attached to the rolled-over security	(a) you are taken to have paid a foreign currency amount equal to the shortfall in order to discharge so much of your obligation to pay the foreign currency principal amount of the notional loan as equals the shortfall; and (b) the period of the notional loan is extended by the term of the new security; and (c) the notional loan is taken to be attached to the new security.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Roll-over of eligible security**

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<b>Item</b>	<b>If the foreign currency face value of the new security...</b>	<b>this is the result...</b>
4	falls short of the *foreign currency face value of the rolled-over security, and there are 2 or more notional loans attached to the rolled-over security	<p>(a) you are taken to have paid a foreign currency amount equal to the shortfall in order to discharge your obligation to pay so much of the total foreign currency principal amounts of the notional loans as equals the shortfall, and to have done so on a first-in first-out basis, that is to say:</p> <ul style="list-style-type: none"><li>(i) first, by fully or partly discharging (as the case requires) your obligation to pay the foreign currency principal amount of the notional loan with the earliest start date; and</li><li>(ii) second, if your obligation to pay the foreign currency principal amount of the notional loan with the earliest start date is fully discharged—by fully or partly discharging (as the case requires) your obligation to pay the foreign currency principal amount of the notional loan with the next start date, and so on; and</li></ul> <p>(b) the period of each notional loan attached to the rolled-over security that is not fully discharged is extended by the term of the new security; and</p> <p>(c) each notional loan attached to the rolled-over security that is not fully discharged is taken to be attached to the new security.</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Consequences if security is not rolled-over*

- (4) If:
- (a) you discharge your obligation under an \*eligible security issued under a \*facility agreement; and
  - (b) the security is not rolled-over at the time of discharge; and
  - (c) you have made a choice for roll-over relief for the facility agreement, and that choice is in effect;
- then, for each notional loan attached to the security, you are taken to have paid a \*foreign currency amount equal to the foreign currency principal amount of the notional loan in order to discharge your obligation to pay the foreign currency principal amount of the notional loan.

*Foreign currency*

- (5) For the purposes of the application of this section to a particular \*facility agreement that provides for the issue of \*eligible securities, **foreign currency** is the \*foreign currency in which the securities are denominated.

Note: Section 960-50 (Australian currency translation rule) does not affect the operation of this section—see subsection 960-50(10). You translate to Australian currency when you apply section 775-215 (forex realisation event 6).

**775-215 Discharge of obligation to pay the principal amount of a notional loan under a facility agreement—forex realisation event 6**

*Forex realisation event 6*

- (1) **Forex realisation event 6** happens if:
- (a) you discharge an obligation, or a part of an obligation, to pay the \*foreign currency principal amount of a notional loan attached to an \*eligible security issued by you under a \*facility agreement; and
  - (b) you have made a choice for roll-over relief for the agreement, and that choice is in effect.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Time of event*

- (2) The time of the event is when you discharge the obligation or the part of the obligation.

*Forex realisation gain*

- (3) You make a **forex realisation gain** if:
- (a) the amount of the obligation, or the part of the obligation, at the start time of the notional loan, exceeds the amount you paid in order to discharge the obligation or the part of the obligation; and
  - (b) some or all of the excess is attributable to a \*currency exchange rate effect.

The amount of the **forex realisation gain** is so much of the excess as is attributable to a currency exchange rate effect.

Note: For **currency exchange rate effect**, see section 775-105.

*Forex realisation loss*

- (4) You make a **forex realisation loss** if:
- (a) the amount of the obligation, or the part of the obligation, at the start time of the notional loan, falls short of the amount you paid in order to discharge the obligation or the part of the obligation; and
  - (b) some or all of the shortfall is attributable to a \*currency exchange rate effect.

The amount of the **forex realisation loss** is so much of the shortfall as is attributable to a currency exchange rate effect.

Note: For **currency exchange rate effect**, see section 775-105.

*Exempt income etc.*

- (5) For the purposes of the application of sections 775-20, 775-25 and 775-35 to the event, assume that the notional loan had been an actual loan.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**775-220 Material variation of a facility agreement—forex realisation event 7**

*Forex realisation event 7*

- (1) **Forex realisation event 7** happens if:
- (a) a material variation is made to the terms or conditions of a \*facility agreement; or
  - (b) a material variation is made to the effect of a facility agreement; or
  - (c) a material variation is made to the type or types of security that can be issued under a facility agreement;
- so long as you have made a choice for roll-over relief for the facility agreement, and that choice is in effect.

Note: See also subsections (7) and (8).

*Time of the event*

- (2) The time of the event is when the material variation happens.

*Forex realisation gain*

- (3) You make a **forex realisation gain** if:
- (a) the total of the forex realisation gains that you would have made as a result of forex realisation event 6 if you had, at the time of forex realisation event 7:
    - (i) discharged your liabilities under each of the notional loans to which the agreement relates; and
    - (ii) not rolled-over any \*eligible security;exceeds:
  - (b) the total of the forex realisation losses that you would have made as a result of forex realisation event 6 if you had, at the time of forex realisation event 7:
    - (i) discharged your liabilities under each of the notional loans to which the agreement relates; and
    - (ii) not rolled-over any eligible security.

The amount of the **forex realisation gain** is the amount of the excess.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: See also subsection (9).

*Forex realisation loss*

- (4) You make a **forex realisation loss** if:
- (a) the total of the forex realisation losses that you would have made as a result of forex realisation event 6 if you had, at the time of forex realisation event 7:
    - (i) discharged your liabilities under each of the notional loans to which the agreement relates; and
    - (ii) not rolled-over any \*eligible security;
- exceeds:
- (b) the total of the forex realisation gains that you would have made as a result of forex realisation event 6 if you had, at the time of forex realisation event 7:
    - (i) discharged your liabilities under each of the notional loans to which the agreement relates; and
    - (ii) not rolled-over any eligible security.

The amount of the **forex realisation loss** is the amount of the excess.

Note: See also subsection (9).

*Termination of choice*

- (5) If forex realisation event 7 happens in relation to a \*facility agreement:
- (a) your choice for roll-over relief for the facility agreement ceases to have effect immediately after the event; and
  - (b) you are not entitled to make a fresh choice for roll-over relief for the facility agreement.

*Modification of tax recognition time*

- (6) If:
- (a) forex realisation event 7 happens in relation to a \*facility agreement; and
  - (b) an \*eligible security issued by you under the facility agreement was in existence at the time of that event; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) at a later time, forex realisation event 4 happens because you cease to have an obligation, or a part of an obligation, to pay \*foreign currency under the security;

section 775-55 applies to you as if the tax recognition time for the obligation, or the part of the obligation, were the time of forex realisation event 7 (despite subsection 775-55(7)).

*Material variation*

- (7) To avoid doubt, if a variation to:
- (a) the terms or conditions of a facility agreement; or
  - (b) the effect of a facility agreement;
- results in the agreement ceasing to be a facility agreement, the variation is taken to be a material variation for the purposes of subsection (1).
- (8) The regulations may provide that a specified kind of variation is taken to be a material variation for the purposes of subsection (1).

*Total amount*

- (9) To avoid doubt, the total amount referred to in paragraph (3)(b) or (4)(b) may be zero.

**Subdivision 775-D—Qualifying forex accounts that pass the limited balance test**

**Guide to Subdivision 775-D**

**775-225 What this Subdivision is about**

You may elect to have this Subdivision apply to one or more qualifying forex accounts held by you.

If you elect to have this Subdivision apply to an account, a forex realisation gain or a forex realisation loss you make in relation to the account as a result of forex realisation event 2 or 4 is disregarded if the account passes the limited balance test.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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For an account to pass the limited balance test, the combined balance of all the accounts covered by your election must not be more than the foreign currency equivalent of \$250,000.

The limited balance test includes a buffer provision which allows the combined balance to be more than the foreign currency equivalent of \$250,000, but not more than the foreign currency equivalent of \$500,000, for not more than 2 15-day periods in any income year.

## Table of sections

### Operative provisions

- 775-230 Election to have this Subdivision apply to one or more qualifying forex accounts
- 775-235 Variation of election
- 775-240 Withdrawal of election
- 775-245 When does a qualifying forex account *pass the limited balance test?*
- 775-250 Tax consequences of passing the limited balance test
- 775-255 Notional realisation when qualifying forex account starts to pass the limited balance test
- 775-260 Modification of tax recognition time

## Operative provisions

### **775-230 Election to have this Subdivision apply to one or more qualifying forex accounts**

- (1) You may elect to have this Subdivision apply to one or more \*qualifying forex accounts held by you.
- (2) An election must be in writing.
- (2A) If:
  - (a) you make an election within 30 days after the commencement of this subsection; and
  - (b) the election is expressed to have come into effect on a specified day; and
  - (c) the specified day is included in the period:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 775-235

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- (i) beginning on 1 July 2003; and
  - (ii) ending on the day on which the election is made;  
the election is taken to have come into effect on the specified day.
- (3) An election continues in effect, in relation to a particular account, until:
- (a) you cease to hold the account; or
  - (b) the account ceases to be a \*qualifying forex account; or
  - (c) the election is varied by removing the account; or
  - (d) a withdrawal of the election takes effect;
- whichever happens first.
- Note 1: For variation of election, see section 775-235.  
Note 2: For withdrawal of election, see section 775-240.
- (4) If an election made by you under this section is in effect, you are not entitled to make another election under this section.
- (5) An \*ADI or a \*non-ADI financial institution is not entitled to make an election under this section.

**775-235 Variation of election**

- (1) If you have made an election under section 775-230, you may vary your election by:
- (a) adding one or more \*qualifying forex accounts; or
  - (b) removing one or more qualifying forex accounts.
- (2) A variation must be in writing.
- (3) Removing an account does not prevent you from adding the account in a future variation.

**775-240 Withdrawal of election**

- (1) If you have made an election under section 775-230, you may withdraw your election.
- (2) A withdrawal must be in writing.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) Withdrawing an election does not prevent you from making a fresh election under section 775-230 in relation to any or all of the same accounts.

**775-245 When does a qualifying forex account pass the limited balance test?**

*Basic rule*

- (1) For the purposes of this Subdivision, a \*qualifying forex account that you hold *passes the limited balance test* at a particular time if, at that time:
- (a) an election made by you under section 775-230 has effect in relation to:
    - (i) the account; or
    - (ii) the account and one or more other \*qualifying forex accounts; and
  - (b) the total of the credit balances of the account and each of those other accounts (if any) is not more than the \*foreign currency equivalent of \$250,000; and
  - (c) the total of the debit balances of the account and each of those other accounts (if any) is not more than the foreign currency equivalent of \$250,000.

Note: For buffering during an increased balance period, see subsections (2) and (3).

*Buffering during first and second increased balance period*

- (2) For the purposes of this section, an *increased balance period* is a continuous period consisting of:
- (a) an income year; or
  - (b) a particular part of an income year;
- where, at each time during the period, either or both of the following conditions is satisfied:
- (c) the total of the credit balances of the account or accounts covered by your section 775-230 election is more than the \*foreign currency equivalent of \$250,000, but not more than the foreign currency equivalent of \$500,000;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 775-245

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- (d) the total of the debit balances of the account or accounts covered by your section 775-230 election is more than the foreign currency equivalent of \$250,000, but not more than the foreign currency equivalent of \$500,000.

(3) The table has effect:

<b>Increased balance period</b>		
<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
1	(a) an increased balance period is the first or only increased balance period that occurs in a particular income year; and (b) the duration of the period is 15 days or less; and (c) it is not the case that: (i) the period began at the start of the income year; and (ii) another increased balance period ended at the end of the previous income year	paragraphs (1)(b) and (c) do not apply during the first-mentioned increased balance period.
2	(a) an increased balance period is the first or only increased balance period that occurs in a particular income year; and (b) both: (i) the period began at the start of the income year; and (ii) another increased balance period ended at the end of the previous income year; and (c) the total duration of those increased balance periods is 15 days or less	paragraphs (1)(b) and (c) do not apply during those increased balance periods.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Increased balance period**

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<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
3	(a) an increased balance period is the first or only increased balance period that occurs in a particular income year; and (b) the duration of the period is more than 15 days; and (c) it is not the case that: (i) the period began at the start of the income year; and (ii) another increased balance period ended at the end of the previous income year	paragraphs (1)(b) and (c) do not apply during the first 15 days of the first-mentioned increased balance period.
4	(a) an increased balance period is the first or only increased balance period that occurs in a particular income year; and (b) both: (i) the period began at the start of the income year; and (ii) another increased balance period ended at the end of the previous income year; and (c) the total duration of those increased balance periods is more than 15 days	paragraphs (1)(b) and (c) do not apply during the first 15 days of the period that consists of those increased balance periods.
5	(a) an increased balance period is the second increased balance period that occurs in a particular income year; and (b) the duration of the period is 15 days or less; and (c) item 1 or 2 applies to the first increased balance period that occurred in the income year	paragraphs (1)(b) and (c) do not apply during the first-mentioned increased balance period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 775-250

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**Increased balance period**

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<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
6	(a) an increased balance period is the second increased balance period that occurs in a particular income year; and (b) the duration of the period is more than 15 days; and (c) item 1 or 2 applies to the first increased balance period that occurred in the income year	paragraphs (1)(b) and (c) do not apply during the first 15 days of the first-mentioned increased balance period.

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*Translation of foreign currency*

- (4) For the purposes of the application of section 960-50 to this section, work out the \*foreign currency equivalent of an amount of Australian currency as at a particular time in an income year by translating the foreign currency to Australian currency at the average exchange rate for the third month that preceded the income year.

*Debit balances*

- (5) For the purposes of this section, a debit balance is to be expressed as a positive amount.

Note: For example, if you owe \$1,100 on a credit card account, the debit balance of that account is \$1,100.

**775-250 Tax consequences of passing the limited balance test**

- (1) A \*forex realisation gain or a \*forex realisation loss you make as a result of forex realisation event 2 or 4 is disregarded if the event happens in relation to a \*qualifying forex account that:
- (a) you hold at the time of the event; and
  - (b) passes the limited balance test at the time of the event.
- (2) If CGT event C1 or C2 happens in relation to a \*qualifying forex account that:
- (a) you hold at the time of the event; and
  - (b) passes the limited balance test at the time of the event;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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disregard so much of any \*capital gain or \*capital loss you make as a result of the event as is attributable to a \*currency exchange rate effect.

Note: For *currency exchange rate effect*, see section 775-105.

**775-255 Notional realisation when qualifying forex account starts to pass the limited balance test**

*Credit balance*

- (1) For the purposes of this Division, if:
- (a) you hold a \*qualifying forex account; and
  - (b) at a particular time:
    - (i) the account starts to pass the limited balance test; and
    - (ii) the account has a credit balance; and
    - (iii) you have one or more rights to receive a total amount of \*foreign currency represented by the credit balance of the account;
- you are treated as:
- (c) having ceased to have those rights at that time; and
  - (d) having re-acquired those rights immediately after that time.

Note: This means that forex realisation event 2 will happen when the account starts to pass the limited balance test.

*Debit balance*

- (2) For the purposes of this Division, if:
- (a) you hold a \*qualifying forex account; and
  - (b) at a particular time:
    - (i) the account starts to pass the limited balance test; and
    - (ii) the account has a debit balance; and
    - (iii) you have one or more obligations to pay a total amount of \*foreign currency represented by the debit balance of the account;
- you are treated as:
- (c) having ceased to have those obligations at that time; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) having started to again owe those obligations immediately after that time.

Note: This means that forex realisation event 4 will happen when the account starts to pass the limited balance test.

### **775-260 Modification of tax recognition time**

#### *Forex realisation event 2*

- (1) If:
  - (a) forex realisation event 2 happens in relation to a \*qualifying forex account that:
    - (i) you hold at the time of the event; and
    - (ii) does not pass the limited balance test at the time of the event; and
  - (b) apart from this subsection, the tax recognition time, worked out using the table in subsection 775-45(7), happened at a time when the account passed the limited balance test;section 775-45 applies to you as if the tax recognition time were the most recent time before the forex realisation event when the account ceased to pass the limited balance test (despite subsection 775-45(7)).

#### *Forex realisation event 4*

- (2) If:
  - (a) forex realisation event 4 happens in relation to a \*qualifying forex account that:
    - (i) you hold at the time of the event; and
    - (ii) does not pass the limited balance test at the time of the event; and
  - (b) apart from this subsection, the tax recognition time, worked out using the table in subsection 775-55(7), happened at a time when the account passed the limited balance test;section 775-55 applies to you as if the tax recognition time were the most recent time before the forex realisation event when the account ceased to pass the limited balance test (despite subsection 775-55(7)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 775-E—Retranslation for qualifying forex accounts**

### **Guide to Subdivision 775-E**

#### **775-265 What this Subdivision is about**

If you choose retranslation for a qualifying forex account:

- (a) a forex realisation gain or a forex realisation loss you make in relation to the account as a result of forex realisation event 2 or 4 is disregarded; and
- (b) forex realisation event 8 enables any gains or losses to be worked out on a retranslation basis.

#### **Table of sections**

##### **Operative provisions**

- 775-270 You may choose retranslation for a qualifying forex account
- 775-275 Withdrawal of choice
- 775-280 Tax consequences of choosing retranslation for an account
- 775-285 Retranslation of gains and losses relating to a qualifying forex account—  
forex realisation event 8

#### **Operative provisions**

##### **775-270 You may choose retranslation for a qualifying forex account**

- (1) You may choose retranslation for a \*qualifying forex account held by you.
- (1A) A choice under subsection (1) does not apply to a \*qualifying forex account held by you if a \*foreign exchange retranslation election by you is in effect in relation to the account under Subdivision 230-D.
- (2) A choice must be in writing.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 775-275

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- (2A) If:
- (a) either:
    - (i) you make a choice within 30 days after the commencement of the *New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003*; or
    - (ii) you make a choice within 90 days after the commencement of Part 1 of Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009*; and
  - (b) the choice is expressed to have come into effect on a specified day; and
  - (c) the specified day is included in the period:
    - (i) beginning on 1 July 2003; and
    - (ii) ending on the day on which the choice is made;
- the choice is taken to have come into effect on the specified day.
- (3) A choice continues in effect until:
- (a) you cease to hold the account; or
  - (b) the account ceases to be a \*qualifying forex account; or
  - (c) a withdrawal of the choice takes effect;
- whichever happens first.

Note: For withdrawal of choice, see section 775-275.

**775-275 Withdrawal of choice**

- (1) If you have made a choice for retranslation for a \*qualifying forex account held by you, you may withdraw your choice.
- (2) A withdrawal must be in writing.
- (3) Withdrawing a choice does not prevent you from making a fresh choice under section 775-270.

**775-280 Tax consequences of choosing retranslation for an account**

- (1) A \*forex realisation gain or \*forex realisation loss you make as a result of forex realisation event 2 or 4 is disregarded if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the event happens in relation to a \*qualifying forex account that you hold; and
  - (b) you have made a choice for retranslation for the account; and
  - (c) the choice is in effect when the event happens.
- (2) If:
- (a) CGT event C1 or C2 happens in relation to a \*qualifying forex account that you hold at the time of the event; and
  - (b) you have made a choice for retranslation for the account; and
  - (c) the choice is in effect when the event happens;
- disregard so much of any \*capital gain or \*capital loss you make as a result of the event as is attributable to a \*currency exchange rate effect.

Note: For *currency exchange rate effect*, see section 775-105.

### **775-285 Retranslation of gains and losses relating to a qualifying forex account—forex realisation event 8**

#### *Forex realisation event 8*

- (1) **Forex realisation event 8** happens if:
- (a) you have made a choice for retranslation for a \*qualifying forex account held by you; and
  - (b) that choice was in effect throughout a continuous period (the **retranslation period**) consisting of:
    - (i) an income year; or
    - (ii) a particular part of an income year; and
  - (c) either:
    - (i) there is a positive retranslation amount for the account for the retranslation period (worked out under subsection (2)); or
    - (ii) there is a negative retranslation amount for the account for the retranslation period (worked out under subsection (3)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Retranslation amount*

- (2) If the amount worked out using the formula in subsection (4) is a positive amount, that amount is a **positive retranslation amount** for the account for the retranslation period.
- (3) If the amount worked out using the formula in subsection (4) is a negative amount, that amount is a **negative retranslation amount** for the account for the retranslation period.
- (4) Work out an amount for the account for the retranslation period using the formula:

Closing balance of account for the retranslation period	–	Opening balance of account for the retranslation period	–	Total deposits made to account during the retranslation period	+	Total withdrawals made from account during the retranslation period
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- (5) For the purposes of subsection (4), a debit balance is to be expressed as a negative amount (for example, a debit balance of \$50,000 is to be expressed as – \$50,000).

*Forex realisation gain*

- (6) You make a **forex realisation gain** if there is a positive retranslation amount for the account for the retranslation period. The amount of the **forex realisation gain** is the positive retranslation amount.

*Forex realisation loss*

- (7) You make a **forex realisation loss** if there is a negative retranslation amount for the account for the retranslation period. The amount of the **forex realisation loss** is the negative retranslation amount.
- (8) For the purposes of subsection (7), reverse a negative amount (for example, a negative retranslation amount of – \$50,000 will become a forex realisation loss of \$50,000).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Translation of foreign currency*

- (9) For the purposes of the application of section 960-50 to this section:
- (a) if a retranslation period for an account did not begin immediately after the end of another retranslation period for the account—the opening balance of the account for the first-mentioned retranslation period is to be translated to Australian currency at the exchange rate applicable at the start of the first-mentioned retranslation period; and
  - (b) if a retranslation period for an account began immediately after the end of another retranslation period for the account—the opening balance of the account for the first-mentioned retranslation period is to be translated to Australian currency at the exchange rate applicable at the end of the other retranslation period; and
  - (c) the closing balance of an account for a retranslation period is to be translated to Australian currency at the exchange rate applicable at the end of the retranslation period; and
  - (d) each deposit is to be translated to Australian currency at the exchange rate applicable at the time of the deposit; and
  - (e) each withdrawal is to be translated to Australian currency at the exchange rate applicable at the time of the withdrawal.

*Deposits*

- (10) For the purposes of this section, a **deposit** includes any amount paid or transferred into the account.

*Withdrawals*

- (11) For the purposes of this section, a **withdrawal** includes any amount paid, advanced, drawn or transferred out of the account.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Subdivision 775-F—Retranslation under foreign exchange  
retranslation election under Subdivision 230-D**

**Guide to Subdivision 775-F**

**775-290 What this Subdivision is about**

If you have made a foreign exchange retranslation election under Subdivision 230-D:

- (a) a forex realisation gain or a forex realisation loss you make in relation to an arrangement that is not a Division 230 financial arrangement as a result of forex realisation event 1 to 5 or 8 is disregarded; and
- (b) forex realisation event 9 enables any gains or losses to be worked out on a retranslation basis.

**Table of sections**

775-295	When this Subdivision applies
775-300	Tax consequences of choosing retranslation for arrangement
775-305	Retranslation of gains and losses relating to arrangement to which foreign exchange retranslation election applies—forex realisation event 9
775-310	When election ceases to apply to arrangement
775-315	Balancing adjustment when election ceases to apply to arrangement

**775-295 When this Subdivision applies**

- (1) A <sup>\*</sup>foreign exchange retranslation election applies to an <sup>\*</sup>arrangement for the purposes of this Subdivision if:
- (a) you start to have the arrangement after the start of the income year in which the election is made; and
  - (b) the arrangement is recognised in financial reports of a kind referred to in paragraph 230-255(2)(a) that are audited, or required to be audited, as referred to in paragraph 230-255(2)(b); and

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<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the arrangement is one in relation to which you are required by:
- (i) \*accounting standard AASB 121 (or another accounting standard prescribed for the purposes of paragraph 230-265(1)(c)); or
  - (ii) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a \*foreign law;
- to recognise, in the financial reports referred to in paragraph 230-255(1)(a), amounts in profit or loss (if any) that are attributable to changes in currency exchange rates.
- (2) The \*foreign exchange retranslation election does not apply to an \*arrangement for the purposes of this Subdivision if:
- (a) the election is made by the \*head company of a \*consolidated group or \*MEC group; and
  - (b) the election specifies that the election is not to apply to \*financial arrangements in relation to \*life insurance business carried on by a member of the consolidated group or MEC group; and
  - (c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.
- (3) The \*foreign exchange retranslation election does not apply to an \*arrangement for the purposes of this Subdivision if the arrangement is associated with a business of a kind specified in regulations made for the purposes of subsection 230-270(4).

### **775-300 Tax consequences of choosing retranslation for arrangement**

- (1) A \*forex realisation gain or \*forex realisation loss you make as a result of forex realisation event 1, 2, 3, 4, 5 or 8 is disregarded if:
- (a) the event happens in relation to an \*arrangement that you hold; and
  - (b) you have made a \*foreign exchange retranslation election that applies to the arrangement; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) the election is in effect when the event happens.
- (2) If:
- (a) CGT event C1 or C2 happens in relation to an \*arrangement that you hold at the time of the event; and
  - (b) you have made a \*foreign exchange retranslation election that applies to the arrangement; and
  - (c) the election is in effect when the event happens;
- disregard so much of any \*capital gain or \*capital loss you make as a result of the event as is attributable to a \*currency exchange rate effect.

Note: For *currency exchange rate effect*, see section 775-105.

**775-305 Retranslation of gains and losses relating to arrangement to which foreign exchange retranslation election applies—forex realisation event 9**

*Forex realisation event 9*

- (1) **Forex realisation event 9** happens in relation to an \*arrangement during an income year if:
- (a) you have made a \*foreign exchange retranslation election that applies to the arrangement; and
  - (b) you are required by:
    - (i) \*accounting standard AASB 121 (or another accounting standard prescribed for the purposes of paragraph 230-265(1)(c)); or
    - (ii) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a \*foreign law;
- to recognise, in the financial report referred to in paragraph 230-255(1)(a) for that income year, amounts in profit or loss (if any) in relation to the arrangement that are attributable to changes in currency exchange rates.

The **forex realisation event 9** is taken to have happened in the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Forex realisation gain*

- (2) You make a **forex realisation gain** if the standard referred to in paragraph (1)(b) requires you to recognise an amount in profit in relation to the \*arrangement. That amount of the **forex realisation gain** is the amount the standard requires you to recognise.

*Forex realisation loss*

- (3) You make a **forex realisation loss** if the \*accounting standard referred to in paragraph (1)(b) requires you to recognise an amount in loss in relation to the \*arrangement. That amount of the **forex realisation loss** is the amount that the accounting standard requires you to recognise.

*Section does not apply to amounts previously recognised in equity*

- (4) Subsections (1), (2) and (3) do not apply to amounts that have previously been required by the standards referred to in paragraph 230-255(2)(a) to be recognised in equity.

**775-310 When election ceases to apply to arrangement**

- (1) For the purposes of this Division, a \*foreign exchange retranslation election under subsection 230-255(1) ceases to apply to an \*arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of paragraph 775-295(1)(b) or (c) during that income year.
- (2) If the election ceases to apply to an \*arrangement under subsection (1), the election cannot subsequently reapply to that arrangement (even if the requirements of paragraphs 775-295(1)(b) and (c) are satisfied once more in relation to the arrangement).

**775-315 Balancing adjustment when election ceases to apply to arrangement**

- (1) This section applies if:
- (a) you make a \*foreign exchange retranslation election; and
  - (b) the election ceases to have effect or ceases to apply to an \*arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 775-315

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- (2) You are taken, for the purposes of this Division, to have:
- (a) disposed of the \*arrangement for its fair value immediately before the election ceases to have effect or ceases to apply to the arrangement; and
  - (b) reacquired the arrangement at its fair value immediately after the election ceases to have effect or ceases to apply to the arrangement.

Note: Paragraph (a) means that there would be a forex realisation event 9 in relation to the arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 802—Foreign residents' income with an underlying foreign source**

### **Table of Subdivisions**

802-A Conduit foreign income

### **Subdivision 802-A—Conduit foreign income**

#### **Guide to Subdivision 802-A**

#### **802-5 What this Subdivision is about**

A distribution that an Australian corporate tax entity makes to a foreign resident is not subject to dividend withholding tax, and is not assessable income, to the extent that the entity declares it to be conduit foreign income.

An Australian corporate tax entity has an amount that is non-assessable non-exempt income if it receives a distribution including conduit foreign income from another such entity and it makes a distribution including conduit foreign income.

This Subdivision sets out the method of working out an entity's conduit foreign income.

It also discourages streaming of distributions to entities that can take advantage of the receipt of conduit foreign income.

#### **Table of sections**

##### **Operative provisions**

802-10	Objects
802-15	Foreign residents—exempting CFI from Australian tax
802-17	Trust estates and foreign resident beneficiaries—exempting CFI from Australian tax

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 4** International aspects of income tax

**Part 4-5** General

**Division 802** Foreign residents' income with an underlying foreign source

Section 802-10

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802-20	Distributions between Australian corporate tax entities—non-assessable non-exempt income
802-25	Conduit foreign income of an Australian corporate tax entity
802-30	Foreign source income amounts
802-35	Capital gains and losses
802-40	Effect of foreign income tax offset on conduit foreign income
802-45	Previous declarations of conduit foreign income
802-50	Receipt of an unfranked distribution from another Australian corporate tax entity
802-55	No double benefits
802-60	No streaming of distributions

**Operative provisions**

**802-10 Objects**

The objects of this Subdivision are:

- (a) to encourage the establishment in Australia of regional holding companies for foreign groups; and
- (b) to improve Australia's attractiveness as a continuing base for its multinational companies;

by providing relief from tax on \*distributions by \*Australian corporate tax entities to \*members who are foreign residents or other Australian corporate tax entities if those distributions relate to \*conduit foreign income.

**802-15 Foreign residents—exempting CFI from Australian tax**

- (1) So much of the \*unfranked part of a \*frankable distribution made by an \*Australian corporate tax entity that the entity declares, in its \*distribution statement, to be \*conduit foreign income:
  - (a) is not assessable income and is not \*exempt income of a foreign resident; and
  - (b) is an amount to which section 128B (Liability to withholding tax) of the *Income Tax Assessment Act 1936* does not apply.
- (2) The declaration must be made on or before the day on which the \*distribution is made.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: For a private company, this rule may bring forward the time at which the company is required to make its distribution statement: see section 202-75.

### **802-17 Trust estates and foreign resident beneficiaries—exempting CFI from Australian tax**

#### *Foreign resident beneficiaries*

- (1) So much of a share of the net income of a trust as is reasonably attributable to the whole or a part of the \*unfranked part of a \*frankable distribution made by an \*Australian corporate tax entity that the entity declares, in its \*distribution statement, to be \*conduit foreign income:
- (a) is not assessable income and is not \*exempt income of a beneficiary of the trust who:
    - (i) is a foreign resident; and
    - (ii) is presently entitled to the share of the income of the trust; and
  - (b) is an amount to which section 128B (Liability to withholding tax) of the *Income Tax Assessment Act 1936* does not apply.

Note: A frankable distribution to which a part of the net income of a trust is reasonably attributable may be made by the Australian corporate tax entity to the trust directly, or to the trust indirectly through one or more interposed trusts.

- (2) The declaration must be made on or before the day on which the \*distribution is made.

Note: For a private company, this rule may bring forward the time at which the company is required to make its distribution statement: see section 202-75.

#### *Trusts*

- (3) The trustee of a trust is not to be assessed (and pay tax) under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* in respect of so much of the net income of the trust as is \*non-assessable non-exempt income of a beneficiary of the trust under subsection (1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**802-20 Distributions between Australian corporate tax entities—  
non-assessable non-exempt income**

- (1) An \*Australian corporate tax entity (the *receiving entity*) has an amount that is not assessable income and is not \*exempt income for an income year if:
- (a) it receives from another Australian corporate tax entity a \*frankable distribution that has an \*unfranked part; and
  - (b) the \*distribution statement for the \*distribution declares an amount (a *received CFI amount*) of the unfranked part to be \*conduit foreign income; and
  - (c) the receiving entity, after the start of the income year but before the due day for lodging its \*income tax return for that income year:
    - (i) makes a frankable distribution that has an unfranked part; and
    - (ii) declares an amount (a *declared CFI amount*) of the unfranked part to be conduit foreign income.
- (2) The amount that is not assessable income and is not \*exempt income is the lesser of:
- (a) the sum of the received CFI amounts that the receiving entity receives during the income year (the *total received CFI amounts*); and
  - (b) the amount worked out using this formula:

$$\text{Total received CFI amounts} \times \frac{\text{Total declared CFI amounts}}{\text{Total received CFI amounts} - \text{Related expenses}}$$

where:

*related expenses* means the receiving entity's expenses that are reasonably related to the total received CFI amounts.

*total declared CFI amounts* means the sum of the declared CFI amounts in distributions made by the receiving entity before the due day for lodging its \*income tax return for the income year.

Example: AusCo 1 and AusCo 2 are both Australian corporate tax entities.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

AusCo 1 pays an unfranked dividend of \$80 to AusCo 2. AusCo 1 declares all of the \$80 to be its conduit foreign income (so the \$80 is a received CFI amount).

AusCo 2 has \$5 of deductible expenses relating to the \$80 dividend.

AusCo 2 pays an unfranked dividend of \$30. AusCo 2 declares \$15 of the \$30 to be conduit foreign income (so the \$15 is a declared CFI amount).

The amount that is not assessable income and is not exempt income for AusCo 2 (assuming there are no other received CFI amounts or declared CFI amounts) is:

$$\$80 \times \frac{\$15}{\$75} = \$16$$

The remaining \$64 is included in AusCo 2's assessable income and it can deduct \$4 (the part of the expenses related to the \$64).

- (3) If the receiving entity's expenses that are reasonably related to the total received CFI amounts equal or exceed the total received CFI amounts for an income year, the total received CFI amounts is not assessable income and is not \*exempt income of the receiving entity for the income year.
- (4) If a declared CFI amount is taken into account in working out an amount of \*non-assessable non-exempt income of an entity for an income year, that amount cannot be taken into account for the entity for a later income year.
- (5) Work out how much \*conduit foreign income in a \*frankable distribution flows through a trust or a partnership in the same way that you work out the \*share of a \*franking credit on a \*franked distribution that flows through a trust or a partnership. That amount is treated as a received CFI amount under this section.

Note: See sections 207-50, 207-55 and 207-57 for the share of a franking credit on a franked distribution that flows through a trust or a partnership.

### **802-25 Conduit foreign income of an Australian corporate tax entity**

An \*Australian corporate tax entity's *conduit foreign income* at a particular time (the *relevant time*) is worked out by applying sections 802-30 to 802-55.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 802-30

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Note: Subdivision 715-U modifies the single entity and the entry history rule for the purposes of working out conduit foreign income for consolidated groups and MEC groups.

**802-30 Foreign source income amounts**

- (1) Work out the amount of the entity's \*ordinary income and \*statutory income derived by the entity that has been, is or will be included in an income statement or similar statement of the entity or of another entity and that would not be included in the entity's assessable income if the entity:
- (a) for a company or a \*corporate limited partnership—were a foreign resident at the relevant time; or
  - (b) for a \*corporate unit trust or \*public trading trust—were not a \*resident unit trust for the income year in which the relevant time occurs.

Note: Income statements are prepared under the Framework for the Preparation and Presentation of Financial Statements (which is referred to in the Australian Accounting Standards).

- (2) Reduce the subsection (1) amount by any part of that amount that is or will be included in the entity's assessable income (apart from section 802-20).
- (3) Add to the amount remaining after subsection (2) these amounts:
- (a) if the entity receives from another \*Australian corporate tax entity a \*frankable distribution that has an \*unfranked part—any amount declared in the \*distribution statement for that \*distribution to be \*conduit foreign income;
  - (b) an amount that is treated as a received CFI amount for the purposes of section 802-20 because of subsection 802-20(5);
  - (c) an amount that is \*non-assessable non-exempt income under section 23AJ of the *Income Tax Assessment Act 1936* and that would be not be included under subsection (1).
- (4) Reduce the amount remaining after subsection (3) by these amounts:
- (a) an amount that is \*non-assessable non-exempt income under section 23AI or 23AK of the *Income Tax Assessment Act 1936*;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) an amount that is not included in the entity's assessable income because of the operation of paragraph 99B(2)(e) of that Act;
- (c) the amount worked out using the formula:

$$\text{Available franking credit} \times \frac{(1 - \text{*Corporate tax rate})}{\text{*Corporate tax rate}}$$

where:

***available franking credit*** means any part of the amount remaining after subsection (3) to the extent to which a \*franking credit arises or will arise for the entity.

- (5) Reduce the amount remaining after subsection (4) by any of the entity's expenses that are reasonably related to that amount, except expenses the entity has deducted or can deduct under this Act. In applying this subsection to an amount covered by paragraph (3)(a), assume that amount is \*non-assessable non-exempt income.
- (6) The result is an amount included in the entity's ***conduit foreign income***.
- (7) This section applies to an entity as if it had derived an amount if the amount has been applied for its benefit (including by discharging all or part of a debt it owes) or as it directs.

## 802-35 Capital gains and losses

### *Capital gains*

- (1) The entity's ***conduit foreign income*** includes these amounts:
  - (a) the amount by which a \*capital gain of the entity is reduced because of the operation of section 768-505;
  - (b) a capital gain that is disregarded because of the operation of subsection 23AH(3) of the *Income Tax Assessment Act 1936*;
  - (c) the amount of a capital gain that is disregarded as a result of the operation of an international tax sharing treaty (as defined in subsection 136AA(1) of the *Income Tax Assessment Act 1936*).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Capital losses*

- (2) The entity's *conduit foreign income* is reduced by these amounts:
- (a) the amount by which a \*capital loss of the entity is reduced because of the operation of section 768-505;
  - (b) a capital loss that is disregarded because of the operation of subsection 23AH(4) of the *Income Tax Assessment Act 1936*;
  - (c) the amount of a capital loss that is disregarded as a result of the operation of an international tax sharing treaty (as defined in subsection 136AA(1) of the *Income Tax Assessment Act 1936*).

*Timing rule*

- (3) The adjustments are made under this section at the end of the income year in which the \*CGT event occurred.

**802-40 Effect of foreign income tax offset on conduit foreign income**

The entity's *conduit foreign income* includes an amount if a tax offset arose for the entity under Division 770 for the income year immediately before the one in which the relevant time occurs. The amount is worked out using the formula:

$$\text{Offset} \times \frac{(1 - \text{*Corporate tax rate})}{\text{*Corporate tax rate}}$$

**802-45 Previous declarations of conduit foreign income**

The entity's *conduit foreign income* is reduced if:

- (a) the entity makes a \*frankable distribution that has an \*unfranked part; and
- (b) the entity declares an amount of the unfranked part to be conduit foreign income.

The amount of the reduction is the amount so declared.

Note: If the amount declared is less than the amount available for declaration, the difference is available for a later declaration.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**802-50 Receipt of an unfranked distribution from another Australian corporate tax entity**

- (1) The entity's *conduit foreign income* is reduced if:
  - (a) the entity (the *receiving entity*) receives from another \*Australian corporate tax entity a \*frankable distribution that has an \*unfranked part; and
  - (b) the \*distribution statement for the \*distribution declares an amount (the *declared amount*) of the unfranked part to be conduit foreign income; and
  - (c) some or all of the declared amount is not \*non-assessable non-exempt income under section 802-20.
- (2) The amount of the reduction is the amount that is not \*non-assessable non-exempt income under section 802-20 less any expenses reasonably related to that amount.

**802-55 No double benefits**

An amount cannot be both:

- (a) an unfranked non-portfolio dividend credit for an entity under section 46FB of the *Income Tax Assessment Act 1936*; and
- (b) counted towards:
  - (i) the entity's \*conduit foreign income; and
  - (ii) the entity's \*non-assessable non-exempt income under section 802-20.

**802-60 No streaming of distributions**

- (1) Subsection (2) has effect if:
  - (a) an \*Australian corporate tax entity makes one or more \*frankable distributions in a \*franking period; and
  - (b) at least one of the \*distributions has an \*unfranked part; and
  - (c) the entity declares an amount of the unfranked part to be \*conduit foreign income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 802-60

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- (2) If the entity does not, for that \*franking period, declare the same proportion of \*conduit foreign income for all \*membership interests and \*non-share equity interests then, instead of the amount that it declared to be conduit foreign income on those \*distributions, it is taken to have declared under section 802-45 the greater amount that it would have declared had it declared that same proportion on all those distributions.

Note: Breaching subsection (2) may make the entity subject to a penalty under section 288-80 in Schedule 1 to the *Taxation Administration Act 1953* (about over declaring conduit foreign income).

Example: There are 10,000 membership interests in AusCo Limited, 7,500 held by foreign residents and 2,500 held by Australian residents. It has \$1,800 of conduit foreign income.

AusCo makes an unfranked distribution of 50 cents per membership interest to all of its members. It declares \$1,500 of the distribution to be conduit foreign income for its 7,500 foreign membership interests (20 cents per membership interest or 40% of each distribution) and none for its Australian membership interests.

AusCo is taken to have declared the same proportion (40% of each distribution) of conduit foreign income for its Australian membership interests (which amounts to \$500 of conduit foreign income). It is therefore taken to have declared \$2,000 of conduit foreign income. This is an over-declaration of \$200 and a penalty under section 288-80 in Schedule 1 to the *Taxation Administration Act 1953* will apply.

- (3) For the purposes of subsection (2), ignore \*membership interests and \*non-share equity interests that do not carry a right to receive \*distributions (other than distributions on winding up).
- (4) Despite subsection (2), an entity that receives a \*frankable distribution that has an \*unfranked part is entitled to rely on the \*distribution statement made by the entity that made the distribution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Division 820—Thin capitalisation rules**

### **Table of Subdivisions**

	Guide to Division 820
820-A	Preliminary
820-B	Thin capitalisation rules for outward investing entities (non-ADI)
820-C	Thin capitalisation rules for inward investing entities (non-ADI)
820-D	Thin capitalisation rules for outward investing entities (ADI)
820-E	Thin capitalisation rules for inward investing entities (ADI)
820-EA	Some financial entities may choose to be treated as ADIs
820-FA	How the thin capitalisation rules apply to consolidated groups and MEC groups
820-FB	Grouping branches of foreign banks and foreign financial entities with a consolidated group, MEC group or single Australian resident company
820-G	Calculating the average values
820-H	Control of entities
820-HA	Controlled foreign entity debt and controlled foreign entity equity
820-I	Associate entities
820-J	Equity interests in trusts and partnerships
820-K	Zero-capital amounts
820-KA	Cost-free debt capital and excluded equity interests
820-L	Record keeping requirements

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Guide to Division 820

### 820-1 What this Division is about

This Division applies to foreign controlled Australian entities, Australian entities that operate internationally and foreign entities that operate in Australia.

Financing expenses that an entity can otherwise deduct from its assessable income may be disallowed under this Division in the following circumstances:

- for an entity that is not an authorised deposit-taking institution for the purposes of the *Banking Act 1959* (an *ADI*)—the entity’s debt exceeds the prescribed level (and the entity is therefore “thinly capitalised”);
- for an entity that is an ADI—the entity’s capital is less than the prescribed level (and the entity is therefore “thinly capitalised”).

### Table of sections

820-5	Does this Division apply to an entity?
820-10	Map of Division

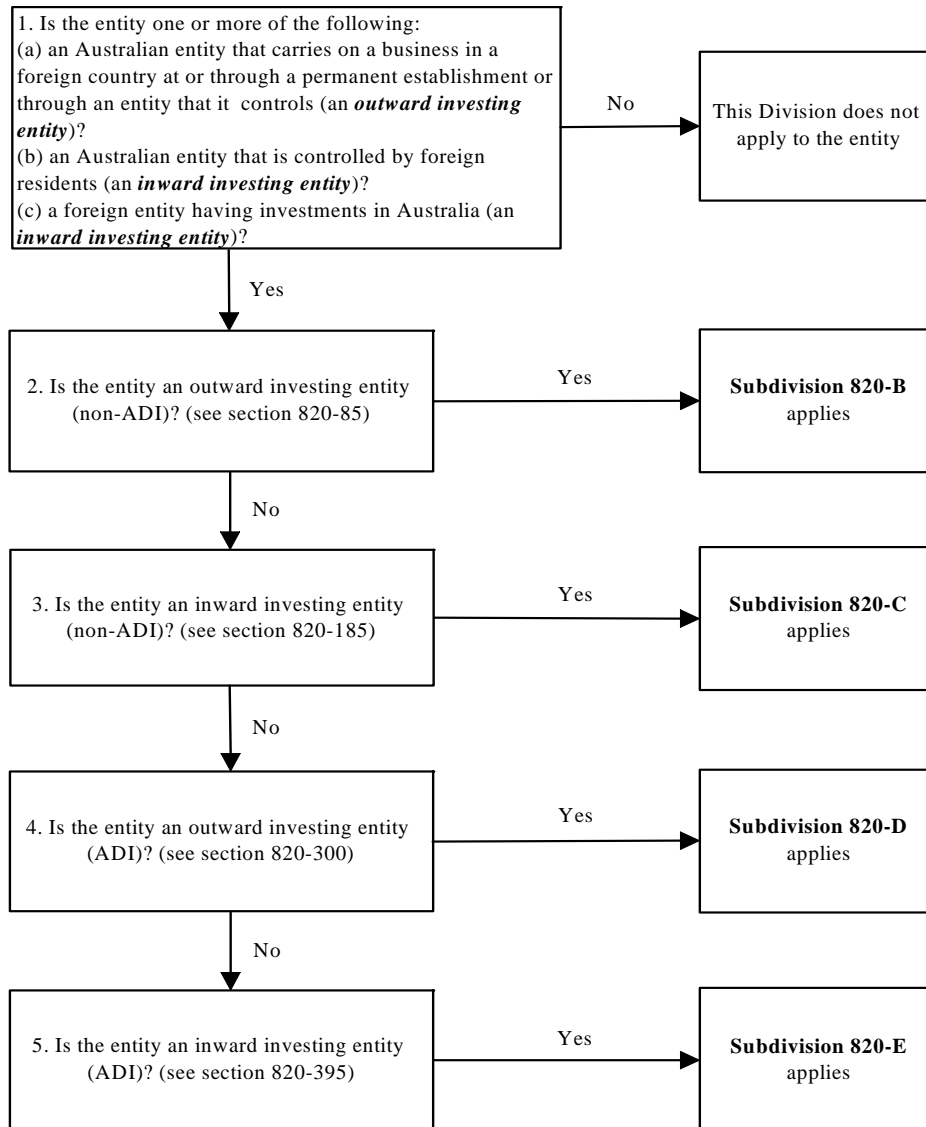
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**820-5 Does this Division apply to an entity?**

The following diagram shows you how to work out whether this Division applies to an entity.



\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## 820-10 Map of Division

The following table sets out a map of this Division.

<b>Map of Division</b>		
<b>Item</b>	<b>This Subdivision:</b>	<b>sets out:</b>
1	Subdivision 820-B or 820-C	(a) the meaning of maximum allowable debt for the Subdivision; and (b) how an entity covered by the Subdivision would have all or a part of its debt deductions disallowed if the maximum allowable debt is exceeded; and (c) the application of these rules in relation to a part of an income year.
2	Subdivision 820-D or 820-E	(a) the meaning of minimum capital amount for the Subdivision; and (b) how an entity covered by the Subdivision would have all or a part of its debt deductions disallowed if the minimum capital amount is not reached; and (c) the application of these rules in relation to a part of an income year.
3A	Subdivision 820-FA	how this Division applies to a consolidated group or MEC group.
3B	Subdivision 820-FB	special rules for grouping foreign bank branches with a consolidated group, MEC group or single Australian resident company.
4	Subdivision 820-G	the methods of calculating the average value of a matter for the purposes of this Division.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Map of Division**

<b>Item</b>	<b>This Subdivision:</b>	<b>sets out:</b>
5	Subdivision 820-H	the rules for determining: (a) whether or not an Australian entity controls a foreign entity (for the purposes of determining whether or not Subdivision 820-B or 820-D applies to that Australian entity); and (b) whether or not an Australian entity is controlled by a foreign entity (for the purposes of determining whether or not Subdivision 820-C applies to that Australian entity).
5A	Subdivision 820-HA	the meaning of controlled foreign entity debt and controlled foreign entity equity for the purposes of this Division.
6	Subdivision 820-I	the meaning of various concepts about associate entity for the purposes of this Division.
7	Subdivision 820-J	the meaning of equity interests in trusts and partnerships for the purposes of this Division.
8	Subdivision 820-K	the meaning of zero-capital amount for the purposes of this Division.
8A	Subdivision 820-KA	the meaning of cost-free debt capital, and excluded equity interest, for the purposes of this Division.
9	Subdivision 820-L	special record keeping requirements for the purposes of this Division.

**Subdivision 820-A—Preliminary****Table of sections**

820-30	Object of Division
820-32	Exemption for private or domestic assets and non-debt liabilities
820-35	Application—\$250,000 threshold
820-37	Application—assets threshold
820-39	Exemption of certain special purpose entities

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 820-30 Object of Division

The Object of this Division is to ensure that the following entities do not reduce their tax liabilities by using an excessive amount of \*debt capital to finance their Australian operations:

- (a) \*Australian entities that operate internationally;
- (b) Australian entities that are foreign controlled;
- (c) \*foreign entities that operate in Australia.

### 820-32 Exemption for private or domestic assets and non-debt liabilities

This Division does not apply to:

- (a) an asset that is used (or held for use) wholly or principally for private or domestic purposes; or
- (b) a \*non-debt liability that is wholly or principally of a private or domestic nature.

### 820-35 Application—\$250,000 threshold

Subdivision 820-B, 820-C, 820-D or 820-E does not apply to disallow any \*debt deduction of an entity for an income year if the total debt deductions of that entity and all its \*associate entities for that year are \$250,000 or less.

### 820-37 Application—assets threshold

- (1) Subdivision 820-B, 820-C, 820-D or 820-E does not apply to disallow any \*debt deduction of an entity for an income year if:
  - (a) the entity is an \*outward investing entity (non-ADI) or an \*outward investing entity (ADI) for a period that is all or any part of that year; and
  - (b) the entity is not also an \*inward investing entity (non-ADI) or an \*inward investing entity (ADI) for all or any part of that period; and
  - (c) the result of applying the following formula is equal to or greater than 0.9:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

$$\frac{\text{Sum of the average Australian assets of the entity and the average Australian assets of each of the entity's *associates}}{\text{Sum of the average total assets of the entity and the average total assets of each of the entity's associates}}$$

where:

***average Australian assets:***

- (a) of an \*Australian entity—is the average value, for that year, of all the assets of the entity, other than:
- (i) any assets attributable to the entity's \*overseas permanent establishments; or
  - (ii) any \*debt interests held by the entity, to the extent to which any value of the interests is all or a part of the \*controlled foreign entity debt of the entity; or
  - (iii) any \*equity interests or debt interests held by the entity, to the extent to which any value of the interests is all or a part of the \*controlled foreign entity equity of the entity; or
  - (iv) any debt interests that are \*issued by \*associates of the entity, that are \*on issue, and that are held by the entity; or
  - (v) any equity interests that the entity holds in associates of the entity; and
- (b) of a \*foreign entity—is the average value, for that year, of all the assets of the entity that are:
- (i) located in Australia; or
  - (ii) attributable to the entity's \*Australian permanent establishments; or
  - (iii) debt interests held by the entity, to the extent to which the interests are covered by subsection (2); or
  - (iv) equity interests held by the entity, to the extent to which the interests are covered by subsection (3);
- other than:
- (v) any debt interests that are issued by associates of the entity, that are on issue, and that are held by the entity; or
  - (vi) any equity interests that the entity holds in associates of the entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



*average total assets* of an entity is the average value, for that year, of all the assets of the entity, other than:

- (a) any \*debt interests that are \*issued by \*associates of the entity, that are \*on issue, and that are held by the entity; or
- (b) any \*equity interests that the entity holds in associates of the entity.

*Foreign entity—debt interest issued by an Australian entity*

- (2) If a \*foreign entity holds a \*debt interest that:

- (a) was \*issued by an \*Australian entity; and
- (b) is \*on issue;

this subsection covers the interest to the extent to which the interest is not attributable to any \*overseas permanent establishments of the Australian entity.

*Foreign entity—equity interest in an Australian entity*

- (3) If a \*foreign entity holds an \*equity interest in an \*Australian entity, this subsection covers the interest to the extent to which the interest is not attributable to any \*overseas permanent establishments of the Australian entity.

### **820-39 Exemption of certain special purpose entities**

- (1) Subdivision 820-B, 820-C, 820-D or 820-E does not apply to disallow any \*debt deduction of an entity for an income year if the entity meets the conditions in subsection (3) throughout the income year.
- (2) Subdivision 820-B, 820-C, 820-D or 820-E does not apply to disallow any \*debt deduction of an entity for an income year that is an amount incurred by the entity during a part of that year, if the entity meets the conditions in subsection (3) throughout that part.
- (3) The conditions are:
  - (a) the entity is one established for the purposes of managing some or all of the economic risk associated with assets, liabilities or investments (whether the entity assumes the risk from another entity or creates the risk itself); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the total value of \*debt interests in the entity is at least 50% of the total value of the entity's assets; and
  - (c) the entity is an insolvency-remote special purpose entity according to criteria of an internationally recognised rating agency that are applicable to the entity's circumstances.
- (4) The condition in paragraph (3)(c) can be met without the rating agency determining that the entity meets those criteria.

Note 1: While an entity meets the conditions in subsection (3), it is treated for the purposes of this Division as *not* being a member of a consolidated group or MEC group (see section 820-584).

Note 2: An entity that does not qualify for the exemption in this section may still be a securitisation vehicle under subsection 820-942(2), in which case the value of its securitised assets will count towards its zero-capital amount under Subdivision 820-K.

*Multi-tier special purpose entities*

- (5) An entity is taken to meet the conditions in subsection (3) throughout a period that is all or part of an income year, if the entity is one of 2 or more entities that together satisfy the condition that, assuming:
- (a) each of the entities had been a division or part of the same entity (the *notional entity*), rather than a separate entity, throughout that period; and
  - (b) the notional entity had consisted only of those divisions and parts throughout that period;
- the notional entity would meet the conditions in subsection (3) throughout that period.

**820-40 Meaning of debt deduction**

- (1) **Debt deduction**, of an entity and for an income year, is a cost incurred by the entity in relation to a \*debt interest issued by the entity, to the extent to which:
- (a) the cost is:
    - (i) interest, an amount in the nature of interest, or any other amount that is calculated by reference to the time value of money; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) the difference between the \*financial benefits received, or to be received, by the entity under the \*scheme giving rise to the debt interest and the financial benefits provided, or to be provided, under that scheme; or
  - (iii) any amount directly incurred in obtaining or maintaining the financial benefits received, or to be received, by the entity under the scheme giving rise to the debt interest; or
  - (iv) any other expense incurred by the entity that is specified in the regulations made for the purposes of this subparagraph; and
- (b) the entity can, apart from this Division, deduct the cost from its assessable income for that year;
- (2) A cost covered by paragraph (1)(a) includes, but is not limited to, any of the following:
- (a) an amount in substitution for interest;
  - (b) a discount in respect of a security;
  - (c) a fee or charge in respect of a debt, including application fees, line fees, service fees, brokerage and stamp duty in respect of document registration or security for the debt interest;
  - (d) an amount that is taken under an \*income tax law to be an amount of interest in respect of a lease, a hire purchase arrangement or any other \*arrangement specified in that law;
  - (e) any loss in respect of:
    - (i) a reciprocal purchase agreement (otherwise known as a repurchase agreement);
    - (ii) a sell-buyback arrangement;
    - (iii) a securities loan arrangement;
  - (f) any amount covered by paragraph (1)(a) that has been assigned or is dealt with in any way on behalf of the party who would otherwise be entitled to that amount.
- (3) To avoid doubt, the following amounts that are incurred by an entity in relation to a \*debt interest issued by the entity are not covered by paragraph (1)(a):

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) losses and outgoings directly associated with hedging or managing the financial risk in respect of the debt interest;
  - (b) losses incurred by the entity in relation to which the following apply:
    - (i) the losses would otherwise be a cost covered by subparagraph (1)(a)(ii); but
    - (ii) the benefits mentioned in that subparagraph are measured in a foreign currency or a unit of account other than Australian currency (for example, ounces of gold) and the losses have arisen only because of changes in the rate of converting that foreign currency or that unit of account into Australian currency;
  - (c) salary or wages;
  - (d) rental expenses for a lease if the lease is not a debt interest;
  - (e) an expense specified in the regulations made for the purposes of this paragraph.

### **Subdivision 820-B—Thin capitalisation rules for outward investing entities (non-ADI)**

#### **Guide to Subdivision 820-B**

##### **820-65 What this Subdivision is about**

This Subdivision sets out the thin capitalisation rules that apply to an Australian entity that has certain types of overseas investments and is not an authorised deposit-taking institution (an *ADI*). These rules deal with the following matters:

- how to work out the entity's maximum allowable debt for an income year;
- how all or a part of the debt deductions claimed by the entity may be disallowed if the maximum allowable debt is exceeded;
- how to apply these rules to a period that is less than an income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Table of sections

### Operative provisions

820-85	Thin capitalisation rule for outward investing entities (non-ADI)
820-90	Maximum allowable debt
820-95	Safe harbour debt amount—outward investor (general)
820-100	Safe harbour debt amount—outward investor (financial)
820-105	Arm's length debt amount
820-110	Worldwide gearing debt amount
820-115	Amount of debt deduction disallowed
820-120	Application to part year periods

## Operative provisions

### 820-85 Thin capitalisation rule for outward investing entities (non-ADI)

#### *Thin capitalisation rule*

- (1) This subsection disallows all or a part of each \*debt deduction of an entity for an income year (to the extent that it is not attributable to an \*overseas permanent establishment of the entity) if, for that year:
- (a) the entity is an \*outward investing entity (non-ADI) (see subsection (2)); and
  - (b) the entity's \*adjusted average debt (see subsection (3)) exceeds its \*maximum allowable debt (see section 820-90).

Note 1: This Subdivision does not apply if the total debt deductions of that entity and all its associate entities for that year are \$250,000 or less, see section 820-35.

Note 2: To work out the amount to be disallowed, see section 820-115.

Note 3: For the rules that apply to an entity that is an outward investing entity (non-ADI) for only a part of an income year, see section 820-120 in conjunction with subsection (2) of this section.

Note 4: A consolidated group or MEC group may be an outward investing entity (non-ADI) to which this Subdivision applies: see Subdivisions 820-FA and 820-FB.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Outward investing entity (non-ADI)*

- (2) The entity is an **outward investing entity (non-ADI)** for a period that is all or a part of an income year if, and only if, it is:
- (a) an \*outward investor (general) for that period (as set out in items 1 and 3 of the following table); or
  - (b) an \*outward investor (financial) for that period (as set out in items 2 and 4 of that table).

**Outward investing entity (non-ADI)**

<b>Item</b>	<b>If:</b>	<b>and:</b>	<b>then:</b>
1	the entity (the <b>relevant entity</b> ) is one or both of the following throughout a period that is all or a part of an income year: (a) an *Australian controller of at least one *Australian controlled foreign entity (not necessarily the same Australian controlled foreign entity throughout that period); (b) an Australian entity that carries on a *business at or through at least one *overseas permanent establishment (not necessarily the same permanent establishment throughout that period)	the relevant entity is not a *financial entity, nor an *ADI, at any time during that period	the relevant entity is an <b>outward investor (general)</b> for that period
2	the entity (the <b>relevant entity</b> ) satisfies this column in item 1	the relevant entity is a *financial entity throughout that period	the relevant entity is an <b>outward investor (financial)</b> for that period

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Outward investing entity (non-ADI)</b>			
<b>Item</b>	<b>If:</b>	<b>and:</b>	<b>then:</b>
3	(a) the entity (the <i>relevant entity</i> ) is an *Australian entity throughout a period that is all or a part of an income year; and (b) throughout that period, the relevant entity is an *associate entity of another Australian entity; and (c) that other Australian entity is an *outward investing entity (non-ADI) or an *outward investing entity (ADI) for that period	the relevant entity is not a *financial entity, nor an *ADI, at any time during that period	the relevant entity is an <i>outward investor (general)</i> for that period
4	the entity (the <i>relevant entity</i> ) and another Australian entity satisfy this column in item 3	the relevant entity is a *financial entity throughout that period	the relevant entity is an <i>outward investor (financial)</i> for that period

Note 1: To determine whether an entity is an Australian controller of an Australian controlled foreign entity, see Subdivision 820-H.

Note 2: The rules that apply to an outward investor (general) are different from those that apply to an outward investor (financial) in some instances. For example, see sections 820-95 and 820-100.

*Adjusted average debt*

- (3) The entity's *adjusted average debt* for an income year is the result of applying the method statement in this subsection. In applying the method statement, disregard any amount that is attributable to the entity's \*overseas permanent establishments.

*Method statement*

Step 1. Work out the average value, for that year (the *relevant year*), of all the \*debt capital of the entity that gives rise to \*debt deductions of the entity for that or any other income year.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Step 2. Reduce the result of step 1 by the average value, for the relevant year, of all the \*associate entity debt of the entity.
- Step 3. Reduce the result of step 2 by the average value, for the relevant year, of all the \*controlled foreign entity debt of the entity.
- Step 4. If the entity is a \*financial entity throughout the relevant year, add to the result of step 3 the average value, for the relevant year, of the entity's \*borrowed securities amount.
- Step 5. Add to the result of step 4 the average value, for the relevant year, of the \*cost-free debt capital of the entity. The result of this step is the ***adjusted average debt***.

Note: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

- (4) The entity's \*adjusted average debt does not exceed its \*maximum allowable debt if the adjusted average debt is nil or a negative amount.

### **820-90 Maximum allowable debt**

*Entity is not also an inward investment vehicle (general) or inward investment vehicle (financial)*

- (1) The entity's ***maximum allowable debt*** for an income year is the greatest of the following amounts if the entity is not also an \*inward investment vehicle (general) or an \*inward investment vehicle (financial) for all or any part of that year:
- (a) the \*safe harbour debt amount;
  - (b) the \*arm's length debt amount;
  - (c) unless the entity has \*worldwide equity of a negative amount—the \*worldwide gearing debt amount.

Note: The safe harbour debt amount and the worldwide gearing debt amount differ depending on whether the entity is an outward investor (general)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



or an outward investor (financial), see sections 820-95, 820-100 and 820-110.

*Entity is also an inward investment vehicle (general) or inward investment vehicle (financial)*

- (2) The entity's **maximum allowable debt** for an income year is the greater of the following amounts if the entity is also an \*inward investment vehicle (general) or an \*inward investment vehicle (financial) for all or any part of that year:
- (a) the \*safe harbour debt amount;
  - (b) the \*arm's length debt amount.

Note: The safe harbour debt amount differs depending on whether the entity is an outward investor (general) or an outward investor (financial), see sections 820-95 and 820-100.

### **820-95 Safe harbour debt amount—outward investor (general)**

If the entity is an \*outward investor (general) for the income year, the **safe harbour debt amount** is the result of applying the method statement in this section. In applying the method statement, disregard any amount that is attributable to the entity's \*overseas permanent establishments.

*Method statement*

- Step 1. Work out the average value, for the income year, of all the assets of the entity.
- Step 1A. Reduce the result of step 1 by the average value, for that year, of all the \*excluded equity interests in the entity.
- Step 2. Reduce the result of step 1A by the average value, for that year, of all the \*associate entity debt of the entity.
- Step 3. Reduce the result of step 2 by the average value, for that year, of all the \*associate entity equity of the entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Step 4. Reduce the result of step 3 by the average value, for that year, of all the \*controlled foreign entity debt of the entity.
- Step 5. Reduce the result of step 4 by the average value, for that year, of all the \*controlled foreign entity equity of the entity.
- Step 6. Reduce the result of step 5 by the average value, for that year, of all the \*non-debt liabilities of the entity. If the result of this step is a negative amount, it is taken to be nil.
- Step 7. Multiply the result of step 6 by  $\frac{3}{4}$ .
- Step 8. Add to the result of step 7 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the **safe harbour debt amount**.

Example: AK Pty Ltd, a company that is an Australian entity, has an average value of assets (other than assets attributable to its overseas permanent establishments) of \$100 million.

The average values of its relevant associate entity debt, associate entity equity, controlled foreign entity debt, controlled foreign entity equity and non-debt liabilities are \$10 million, \$8 million, \$5 million, \$2 million and \$5 million respectively. Deducting these amounts from the result of step 1 (through the application of steps 2 to 6) leaves \$70 million. Multiplying \$70 million by  $\frac{3}{4}$  results in \$52.5 million. As the average value of the company's associate entity excess amount is \$4.5 million, the safe harbour debt amount is therefore \$57 million.

### **820-100 Safe harbour debt amount—outward investor (financial)**

- (1) If the entity is an \*outward investor (financial) for the income year, the **safe harbour debt amount** is the lesser of the following amounts:
- (a) the \*total debt amount (worked out under subsection (2));
  - (b) the \*adjusted on-lent amount (worked out under subsection (3)).

However, if the 2 amounts are equal, it is the total debt amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Total debt amount*

- (2) The **total debt amount** is the result of applying the method statement in this subsection. In applying the method statement, disregard any amount that is attributable to the entity's \*overseas permanent establishments.

*Method statement*

- Step 1. Work out the average value, for the income year, of all the assets of the entity.
- Step 1A. Reduce the result of step 1 by the average value, for that year, of all the \*excluded equity interests in the entity.
- Step 2. Reduce the result of step 1A by the average value, for that year, of all the \*associate entity debt of the entity.
- Step 3. Reduce the result of step 2 by the average value, for that year, of all the \*associate entity equity of the entity.
- Step 4. Reduce the result of step 3 by the average value, for that year, of all the \*controlled foreign entity debt of the entity.
- Step 5. Reduce the result of step 4 by the average value, for that year, of all the \*controlled foreign entity equity of the entity.
- Step 6. Reduce the result of step 5 by the average value, for that year, of all the \*non-debt liabilities of the entity.
- Step 7. Reduce the result of step 6 by the average value, for that year, of the entity's \*zero-capital amount. If the result of this step is a negative amount, it is taken to be nil.
- Step 8. Multiply the result of step 7 by <sup>20/21</sup>.
- Step 9. Add to the result of step 8 the average value, for that year, of the entity's \*zero-capital amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Step 10. Add to the result of step 9 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the ***total debt amount***.

Example: GLM Limited, a company that is an Australian entity, has an average value of assets (other than assets attributable to its overseas permanent establishments) of \$160 million.

The average values of its relevant associate entity debt, associate entity equity, controlled foreign entity debt, controlled foreign entity equity, non-debt liabilities and zero capital amount are \$5 million, \$5 million, \$9 million, \$6 million, \$5 million and \$4 million respectively. Deducting these amounts from the result of step 1 (through applying steps 2 to 7) leaves \$126 million. Multiplying \$126 million by <sup>20/21</sup> results in \$120 million. Adding the average zero capital amount of \$4 million results in \$124 million. As the company does not have any associate entity excess amount, the total debt amount is therefore \$124 million.

*Adjusted on-lent amount*

- (3) The ***adjusted on-lent amount*** is the result of applying the method statement in this subsection. In applying the method statement, disregard any amount that is attributable to the entity's \*overseas permanent establishments.

*Method statement*

- Step 1. Work out the average value, for the income year, of all the assets of the entity.
- Step 1A. Reduce the result of step 1 by the average value, for that year, of all the \*excluded equity interests in the entity.
- Step 2. Reduce the result of step 1A by the average value, for that year, of all the \*associate entity equity of the entity.
- Step 3. Reduce the result of step 2 by the average value, for that year, of all the \*controlled foreign entity debt of the entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Step 4. Reduce the result of step 3 by the average value, for that year, of all the \*controlled foreign entity equity of the entity.
- Step 5. Reduce the result of step 4 by the average value, for that year, of all the \*non-debt liabilities of the entity.
- Step 6. Reduce the result of step 5 by the amount (the **average on-lent amount**) which is the average value, for that year, of the entity's \*on-lent amount (other than \*controlled foreign entity debt of the entity). If the result of this step is a negative amount, it is taken to be nil.
- Step 7. Multiply the result of step 6 by  $\frac{3}{4}$ .
- Step 8. Add to the result of step 7 the average on-lent amount.
- Step 9. Reduce the result of step 8 by the average value, for that year, of all the \*associate entity debt of the entity.
- Step 10. Add to the result of step 9 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the **adjusted on-lent amount**.

Example: GLM Limited, a company that is an Australian entity, has an average value of assets (other than assets attributable to its overseas permanent establishments) of \$160 million.

The average values of its relevant associate entity equity, controlled foreign entity debt, controlled foreign entity equity, non-debt liabilities and on-lent amount are \$5 million, \$9 million, \$6 million, \$5 million and \$35 million respectively. Deducting these amounts from the result of step 1 (through applying steps 2 to 6) leaves \$100 million. Multiplying \$100 million by  $\frac{3}{4}$  results in \$75 million. Adding the average on-lent amount of \$35 million results in \$110 million. Reducing the result of step 8 by the associate entity debt amount of \$5 million equals \$105 million. As the company does not have any associate entity excess amount, the adjusted on-lent amount is therefore \$105 million.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**820-105 Arm's length debt amount**

- (1) The *arm's length debt amount* is a notional amount that, having regard to the factual assumptions set out in subsection (2) and the relevant factors mentioned in subsection (3), would satisfy both paragraphs (a) and (b):
- (a) the amount represents a notional amount of \*debt capital that:
    - (i) the entity would reasonably be expected to have throughout the income year; and
    - (ii) would give rise to an amount of \*debt deductions of the entity for that or any other income year; and
    - (iii) would be attributable to the entity's Australian business as mentioned in subsection (2);
  - (b) commercial lending institutions that were not \*associates of the entity (the *notional lenders*) would reasonably be expected to have entered into \*schemes that would:
    - (i) give rise to \*debt interests that constituted that notional amount of debt capital of the entity; and
    - (ii) provide for terms and conditions for the debt interests that would reasonably be expected to have applied if the entity and the notional lenders had been dealing at arm's length with each other throughout the income year mentioned in subparagraph (1)(a)(i).

Note: The entity must keep records in accordance with section 820-980 if the entity works out an amount under this section.

*Factual assumptions*

- (2) Irrespective of what actually happened during that year, the following assumptions must be made in working out that amount:
- (a) the entity's commercial activities in connection with Australia (the *Australian business*) during that year do not include:
    - (i) any \*business carried on by the entity at or through its \*overseas permanent establishments; and
    - (ii) the holding of any \*associate entity debt, \*controlled foreign entity debt or \*controlled foreign entity equity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the entity had carried on the Australian business that it actually carried on during that year;
- (c) the nature of the entity's assets and liabilities (to the extent that they are attributable to the Australian business) had been as they were during that year;
- (d) except as stated in paragraph (1)(b) and paragraphs (e), (f) and (g) of this subsection, the entity had carried on the Australian business in the same circumstances as what actually existed during that year;
- (e) any guarantee, security or other form of credit support provided to the entity in relation to the Australian business during that year:
  - (i) by its \*associates; or
  - (ii) by the use of assets of the entity that are attributable to the entity's overseas permanent establishments;is taken not to have been received by the entity;
- (f) the entity's only activities during that year were the Australian business;
- (g) the entity's only assets and liabilities during that year were those referred to in paragraph (c) of this subsection.

However, the assumptions set out in paragraphs (f) and (g) of this subsection are not to be made in taking into account the relevant factors mentioned in subsection (3).

*Relevant factors*

- (3) On the basis of the factual assumptions set out in subsection (2), the following factors must be taken into account in determining whether or not an amount satisfies paragraphs (1)(a) and (b):
  - (a) the functions performed, the assets used, and the risks assumed, by the entity in relation to the Australian business throughout that year;
  - (b) the terms and conditions of the \*debt capital that the entity actually had in relation to the Australian business throughout that year;
  - (c) the nature of, and title to, any assets of the entity attributable to the Australian business that were available to the entity

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

throughout that year as security for its debt capital for that business;

- (d) the purposes for which \*schemes for debt capital had been actually entered into by the entity in relation to the Australian business throughout that year;
- (e) the entity's capacity to meet all its liabilities in relation to the Australian business (whether during that year or at any other time);
- (f) the profit of the entity (within the meaning of the \*accounting standards), and the return on its capital, in relation to the Australian business (whether during that year or at any other time);
- (g) the debt to equity ratios of the following throughout that year:
  - (i) the entity;
  - (ii) the entity in relation to the Australian business;
  - (iii) each of the entity's \*associate entities that engage in commercial activities similar to the Australian business;
- (h) the commercial practices adopted by independent parties dealing with each other at arm's length in the industry in which the entity carries on the Australian business throughout that year (whether in Australia or in comparable markets elsewhere);
- (i) the way in which the entity financed its commercial activities (other than the Australian business) throughout that year;
- (j) the general state of the Australian economy throughout that year;
- (k) all of the above factors existing at the time when the entity last entered into a scheme that gave rise to an actual \*debt interest attributable to the Australian business that remains \*on issue throughout that year;
- (l) any other factors which are specified in the regulations made for the purposes of this section, including factors specific to an \*outward investor (general) or an \*outward investor (financial).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Commissioner's power*

- (4) If the Commissioner considers an amount worked out by the entity under this section does not appropriately take into account the factual assumptions and the relevant factors, the Commissioner may substitute another amount that the Commissioner considers better reflects those assumptions and factors.

**820-110 Worldwide gearing debt amount**

*Outward investor (general)*

- (1) If the entity is an \*outward investor (general) for the income year, the **worldwide gearing debt amount** is the result of applying the method statement in this subsection.

*Method statement*

- Step 1. Divide the average value of all the entity's \*worldwide debt for the income year by the average value of all the entity's \*worldwide equity for that year.
- Step 2. Multiply the result of step 1 by  $^{12}/_{10}$ .
- Step 3. Add 1 to the result of step 2.
- Step 4. Divide the result of step 2 by the result of step 3.
- Step 5. Multiply the result of step 4 in this method statement by the result of step 6 in the method statement in section 820-95.
- Step 6. Add to the result of step 5 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the **worldwide gearing debt amount**.

Example: AK Pty Ltd, a company that is an Australian entity, has an average value of worldwide debt of \$83.4 million and an average value of worldwide equity of \$27 million. The result of applying steps 1 and 2 is therefore 3.706. Dividing 3.706 by 4.706 (through applying steps 3 and 4) and multiplying the result by \$70 million (which is the result of step 6 in the method statement in section 820-95) equals \$55.13

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

million. As the average value of the company's associate entity excess amount is \$4.5 million, the worldwide gearing debt amount is therefore \$59.63 million.

*Outward investor (financial)*

- (2) If the entity is an \*outward investor (financial) for that year, the **worldwide gearing debt amount** is the result of applying the method statement in this subsection.

*Method statement*

- Step 1. Divide the average value of all the entity's \*worldwide debt for the income year by the average value of all the entity's \*worldwide equity for that year.
- Step 2. Multiply the result of step 1 by  $12/10$ .
- Step 3. Add 1 to the result of step 2.
- Step 4. Divide the result of step 2 by the result of step 3.
- Step 5. Multiply the result of step 4 in this method statement by the result of step 7 in the method statement in subsection 820-100(2).
- Step 6. Add to the result of step 5 the average value, for that year, of the entity's \*zero-capital amount (other than any zero-capital amount that is attributable to the entity's \*overseas permanent establishments).
- Step 7. Add to the result of step 6 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the **worldwide gearing debt amount**.

Example: GLM Limited, a company that is an Australian entity, has an average value of worldwide debt of \$120 million and an average value of worldwide equity of \$40 million. The result of applying steps 1 and 2 is therefore 3.6. Dividing 3.6 by 4.6 (through applying steps 3 and 4) and multiplying the result by \$126 million (which is the result of step 7 of the method statement in subsection 820-100(2)) equals \$98.61 million. The average value of zero-capital amount (see step 7 of the method statement in subsection 820-100(2)) is \$4 million. Adding that

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

amount to \$98.61 million results in \$102.61 million. As the company does not have any associate entity excess amount, the worldwide gearing debt amount is therefore \$102.61 million.

### 820-115 Amount of debt deduction disallowed

The amount of \*debt deduction disallowed under subsection 820-85(1) is worked out using the following formula:

$$\text{Debt deduction} \times \frac{\text{Excess debt}}{\text{Average debt}}$$

where:

**average debt** means the sum of:

- (a) the average value, for the income year, of the entity's \*debt capital that is covered by step 1 of the method statement in subsection 820-85(3); and
- (b) the average value, for that year, of the entity's \*cost-free debt capital that is covered by step 5 of that method statement; (disregarding any amount that is attributable to the entity's \*overseas permanent establishments in working out the average values).

**debt deduction** means each \*debt deduction covered by subsection 820-85(1).

**excess debt** means the amount by which the entity's \*adjusted average debt for that year (see subsection 820-85(3)) exceeds its \*maximum allowable debt for that year.

Note: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

### 820-120 Application to part year periods

- (1) This subsection disallows all or a part of each \*debt deduction of an entity for an income year that is an amount incurred by the entity during a period that is a part of that year (to the extent that it is not attributable to an \*overseas permanent establishment of the entity), if:
  - (a) the entity is an \*outward investing entity (non-ADI) for that period; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the entity's \*adjusted average debt for that period exceeds the entity's \*maximum allowable debt for that period.

Note: To determine whether an entity is an outward investing entity (non-ADI) for that period, see subsection 820-85(2).

- (2) The entity's **adjusted average debt** for that period is the result of applying the method statement in this subsection. In applying the method statement, disregard any amount that is attributable to the entity's \*overseas permanent establishments.

*Method statement*

- Step 1. Work out the average value, for that period, of all the \*debt capital of the entity that gives rise to \*debt deductions of the entity for that or any other income year.
- Step 2. Reduce the result of step 1 by the average value, for that period, of all the \*associate entity debt of the entity.
- Step 3. Reduce the result of step 2 by the average value, for that period, of all the \*controlled foreign entity debt of the entity.
- Step 4. If the entity is a \*financial entity throughout that period, add to the result of step 3 the average value, for that period, of the entity's \*borrowed securities amount.
- Step 5. Add to the result of step 4 the average value, for that period, of the \*cost-free debt capital of the entity. The result of this step is the **adjusted average debt**.

- (3) The entity's \*adjusted average debt does not exceed its \*maximum allowable debt if the adjusted average debt is nil or a negative amount.
- (4) For the purposes of determining:
- the \*maximum allowable debt for the period mentioned in subsection (1); and
  - the amount of each \*debt deduction to be disallowed;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 820-180

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sections 820-90 to 820-115 apply in relation to that entity and that period with the modifications set out in the following table:

Modifications of sections 820-90 to 820-115		
Item	Provisions	Modifications
1	Sections 820-90 to 820-115	A reference to an income year is taken to be a reference to that period
2	Section 820-115	A reference to subsection 820-85(1) is taken to be a reference to subsection (1) of this section
3	Section 820-115	<i>adjusted average debt</i> is taken to have the meaning given by subsection (2) of this section <i>average debt</i> is taken to be the sum of: (a) the average value, for that period, of the entity's *debt capital that is covered by step 1 of the method statement in subsection (2) of this section; and (b) the average value, for that period, of the entity's *cost-free debt capital that is covered by step 5 of that method statement; (disregarding any amount that is attributable to the entity's *overseas permanent establishments in working out the average values).

### Subdivision 820-C—Thin capitalisation rules for inward investing entities (non-ADI)

#### Guide to Subdivision 820-C

#### 820-180 What this Subdivision is about

This Subdivision sets out the thin capitalisation rules that apply to a foreign entity or a foreign controlled Australian entity that is not an authorised deposit-taking institution (an *ADI*). These rules deal with the following matters:

- how to work out the entity's maximum allowable debt for an income year;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- how all or a part of the debt deductions claimed by the entity may be disallowed if the maximum allowable debt is exceeded;
- how to apply these rules to a period that is less than an income year.

## Table of sections

### Operative provisions

820-185	Thin capitalisation rule for inward investing entities (non-ADI)
820-190	Maximum allowable debt
820-195	Safe harbour debt amount—inward investment vehicle (general)
820-200	Safe harbour debt amount—inward investment vehicle (financial)
820-205	Safe harbour debt amount—inward investor (general)
820-210	Safe harbour debt amount—inward investor (financial)
820-215	Arm's length debt amount
820-220	Amount of debt deduction disallowed
820-225	Application to part year periods

## Operative provisions

### 820-185 Thin capitalisation rule for inward investing entities (non-ADI)

#### *Thin capitalisation rule*

- (1) This subsection disallows all or a part of each \*debt deduction of an entity for an income year if:
  - (a) the entity is an \*inward investing entity (non-ADI) for that year (see subsection (2)), but is not also an \*outward investing entity (non-ADI) (see section 820-85) for all or any part of that year; and
  - (b) for that year, the entity's \*adjusted average debt (see subsection (3)) exceeds its \*maximum allowable debt (see section 820-190).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 4** International aspects of income tax

**Part 4-5** General

**Division 820** Thin capitalisation rules

Section 820-185

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- Note 1: This Subdivision does not apply if the total debt deductions of that entity and all its associate entities for that year are \$250,000 or less, see section 820-35.
- Note 2: To work out the amount to be disallowed, see section 820-220.
- Note 3: For the rules that apply to an entity that is an outward investing entity (non-ADI) as well as an inward investing entity (non-ADI), see Subdivision 820-B.
- Note 4: For the rules that apply to an entity that is an inward investing entity (non-ADI) for only a part of an income year, see section 820-225 in conjunction with subsection (2) of this section.
- Note 5: To calculate an average value for the purposes of this Division, see Subdivision 820-G.
- Note 6: A consolidated group or MEC group may be an inward investing entity (non-ADI) to which this Subdivision applies: see Subdivisions 820-FA and 820-FB.

*Inward investing entity (non-ADI)*

- (2) The entity is an ***inward investing entity (non-ADI)*** for a period that is all or a part of an income year if, and only if, it is:
- (a) an \*inward investment vehicle (general) for that period (as set out in item 1 of the following table); or
  - (b) an \*inward investment vehicle (financial) for that period (as set out in item 2 of that table); or
  - (c) an \*inward investor (general) for that period (as set out in item 3 of that table); or
  - (d) an \*inward investor (financial) for that period (as set out in item 4 of that table).

<b>Inward investing entity (non-ADI)</b>			
<b>Item</b>	<b>If the entity is a:</b>	<b>and the entity:</b>	<b>the entity is an:</b>
1	*foreign controlled Australian entity throughout a period that is all or a part of an income year	is not a *financial entity, nor an *ADI, at any time during that period	<b><i>inward investment vehicle (general)</i></b> for that period
2	*foreign controlled Australian entity throughout a period that is all or a part of an income year	is a *financial entity throughout that period	<b><i>inward investment vehicle (financial)</i></b> for that period

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Inward investing entity (non-ADI)**

<b>Item</b>	<b>If the entity is a:</b>	<b>and the entity:</b>	<b>the entity is an:</b>
3	*foreign entity throughout a period that is all or a part of an income year	is not a *financial entity, nor an *ADI, at any time during that period	<i>inward investor (general)</i> for that period
4	*foreign entity throughout a period that is all or a part of an income year	is a *financial entity throughout that period	<i>inward investor (financial)</i> for that period

Note 1: To determine whether an entity is a foreign controlled Australian entity, see Subdivision 820-H.

Note 2: The rules that apply to these 4 types of entities are different in some instances. For example, see sections 820-195 to 820-210.

Note 3: An entity covered by item 3 or 4 of the table may be required to keep certain records, see Subdivision 820-L.

*Adjusted average debt*

- (3) The entity's *adjusted average debt* for an income year is the result of applying the method statement in this subsection.

*Method statement*

Step 1. Work out the average value, for that year (the *relevant year*), of all the \*debt capital of the entity that gives rise to \*debt deductions of the entity for that or any other income year.

Step 2. Reduce the result of step 1 by the average value, for the relevant year, of:

- (a) if the entity is an \*inward investment vehicle (general) or an \*inward investment vehicle (financial) for that year—all the \*associate entity debt of the entity; or

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) if the entity is an \*inward investor (general) or an \*inward investor (financial) for that year—all the associate entity debt of the entity, to the extent that it is attributable to the entity's \*Australian permanent establishments.

Step 3. If the entity is a \*financial entity throughout the relevant year, add to the result of step 2 the average value, for the relevant year, of the entity's \*borrowed securities amount.

Step 4. Add to the result of step 3 the average value, for the relevant year, of the \*cost-free debt capital of the entity. The result of this step is the *adjusted average debt*.

Note: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

- (4) The entity's \*adjusted average debt does not exceed its \*maximum allowable debt if the adjusted average debt is nil or a negative amount.

### 820-190 Maximum allowable debt

The entity's *maximum allowable debt* for an income year is the greater of the following amounts:

- (a) the \*safe harbour debt amount;  
(b) the \*arm's length debt amount.

Note: The safe harbour debt amount differs depending on whether the entity is an inward investment vehicle (general), inward investment vehicle (financial), inward investor (general) or inward investor (financial), see sections 820-195 to 820-215.

### 820-195 Safe harbour debt amount—inward investment vehicle (general)

If the entity is an \*inward investment vehicle (general) for the income year, the *safe harbour debt amount* is the result of applying the method statement in this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Method statement*

- Step 1. Work out the average value, for the income year, of all the assets of the entity.
- Step 1A. Reduce the result of step 1 by the average value, for that year, of all the \*excluded equity interests in the entity.
- Step 2. Reduce the result of step 1A by the average value, for that year, of all the \*associate entity debt of the entity.
- Step 3. Reduce the result of step 2 by the average value, for that year, of all the \*associate entity equity of the entity.
- Step 4. Reduce the result of step 3 by the average value, for that year, of all the \*non-debt liabilities of the entity. If the result of this step is a negative amount, it is taken to be nil.
- Step 5. Multiply the result of step 4 by  $\frac{3}{4}$ .
- Step 6. Add to the result of step 5 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the ***safe harbour debt amount***.

Example: ALWZ Ltd, a company that is an Australian entity, has an average value of assets of \$100 million.

The average values of its associate entity debt, associate entity equity and non-debt liabilities are \$10 million, \$5 million and \$5 million respectively. Deducting these amounts from the result of step 1 (through applying steps 2 to 4) leaves \$80 million. Multiplying \$80 million by  $\frac{3}{4}$  results in \$60 million. As the average value of the company's associate entity excess amount is \$2 million, the safe harbour debt amount is therefore \$62 million.

### **820-200 Safe harbour debt amount—inward investment vehicle (financial)**

- (1) If the entity is an \*inward investment vehicle (financial) for the income year, the ***safe harbour debt amount*** is the lesser of the following amounts:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the \*total debt amount (worked out under subsection (2));
- (b) the \*adjusted on-lent amount (worked out under subsection (3)).

However, if the 2 amounts are equal, it is the total debt amount.

*Total debt amount*

- (2) The **total debt amount** is the result of the method statement in this subsection.

*Method statement*

- Step 1. Work out the average value, for the income year, of all the assets of the entity.
- Step 1A. Reduce the result of step 1 by the average value, for that year, of all the \*excluded equity interests in the entity.
- Step 2. Reduce the result of step 1A by the average value, for that year, of all the \*associate entity debt of the entity.
- Step 3. Reduce the result of step 2 by the average value, for that year, of all the \*associate entity equity of the entity.
- Step 4. Reduce the result of step 3 by the average value, for that year, of all the \*non-debt liabilities of the entity.
- Step 5. Reduce the result of step 4 by the average value, for that year, of the entity's \*zero-capital amount. If the result of this step is a negative amount, it is taken to be nil.
- Step 6. Multiply the result of step 5 by <sup>20</sup>/<sub>21</sub>.
- Step 7. Add to the result of step 6 the average value, for that year, of the entity's \*zero-capital amount.
- Step 8. Add to the result of step 7 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the **total debt amount**.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Example: KJW Finance Pty Ltd, a company that is an Australian entity, has an average value of assets of \$120 million.

The average values of its associate entity debt, associate entity equity, its non-debt liabilities and its zero-capital amount are \$5 million, \$3 million, \$2 million and \$5 million respectively. Deducting these amounts from the result of step 1 (through applying steps 2 to 5) leaves \$105 million. Multiplying \$105 million by <sup>20</sup>/<sub>21</sub> results in \$100 million. Adding the zero-capital amount of \$5 million to \$100 million results in \$105 million. As the company does not have any associate entity excess amount, the total debt amount is therefore \$105 million.

*Adjusted on-lent amount*

- (3) The **adjusted on-lent amount** is the result of applying the method statement in this subsection.

*Method statement*

- Step 1. Work out the average value, for the income year, of all the assets of the entity.
- Step 1A. Reduce the result of step 1 by the average value, for that year, of all the \*excluded equity interests in the entity.
- Step 2. Reduce the result of step 1A by the average value, for that year, of all the \*associate entity equity of the entity.
- Step 3. Reduce the result of step 2 by the average value, for that year, of all the \*non-debt liabilities of the entity.
- Step 4. Reduce the result of step 3 by the amount (the **average on-lent amount**) which is the average value, for that year, of the entity's \*on-lent amount. If the result of this step is a negative amount, it is taken to be nil.
- Step 5. Multiply the result of step 4 by <sup>3</sup>/<sub>4</sub>.
- Step 6. Add to the result of step 5 the average on-lent amount.
- Step 7. Reduce the result of step 6 by the average value, for that year, of all the \*associate entity debt of the entity.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Step 8. Add to the result of step 7 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the **adjusted on-lent amount**.

Example: KJW Finance Pty Ltd, a company that is an Australian entity, has an average value of assets of \$120 million.

The average values of its associate entity equity, non-debt liabilities and on-lent amount are \$3 million, \$2 million and \$35 million respectively. Deducting these amounts from the result of step 1 (through applying steps 2 to 4) leaves \$80 million. Multiplying \$80 million by  $\frac{3}{4}$  results in \$60 million. Adding the average on-lent amount of \$35 million results in \$95 million. Reducing \$95 million by the associate entity debt amount of \$5 million results in \$90 million. As the company does not have any associate entity excess amount, the adjusted on-lent amount is therefore \$90 million.

### 820-205 Safe harbour debt amount—inward investor (general)

If the entity is an \*inward investor (general) for the income year, the **safe harbour debt amount** is the result of applying the method statement in this section.

*Method statement*

Step 1. Work out the average value, for the income year, of all of the following assets of the entity (the **Australian investments**):

- (a) assets that are attributable to the entity's \*Australian permanent establishments;
- (b) other assets that are held for the purposes of producing the entity's assessable income.

Step 1A. Reduce the result of step 1 by the average value, for that year, of all the \*excluded equity interests in the entity.

Step 2. Reduce the result of step 1A by the average value, for that year, of all the \*associate entity debt of the entity that has arisen because of the Australian investments.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Step 3. Reduce the result of step 2 by the average value, for that year, of all the \*associate entity equity of the entity that has arisen because of the Australian investments.
- Step 4. Reduce the result of step 3 by the average value, for that year, of all the \*non-debt liabilities of the entity that have arisen because of the Australian investments. If the result of this step is a negative amount, it is taken to be nil.
- Step 5. Multiply the result of step 4 by  $\frac{3}{4}$ .
- Step 6. Add to the result of step 5 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the *safe harbour debt amount*.

Example: RJ Corporation is a company that is not an Australian entity. The average value of its Australian investments is \$100 million.

The average value of its relevant associate entity debt, associate entity equity and non-debt liabilities is \$10 million, \$5 million and \$5 million respectively. Deducting those amounts from the result of step 1 leaves \$80 million. Multiplying \$80 million by  $\frac{3}{4}$  results in \$60 million. As the company does not have any associate entity excess amount, the safe harbour debt amount is therefore \$60 million.

### **820-210 Safe harbour debt amount—inward investor (financial)**

- (1) If the entity is an \*inward investor (financial) for that year, the *safe harbour debt amount* is the lesser of the following amounts:
- (a) the \*total debt amount (worked out under subsection (2));
  - (b) the \*adjusted on-lent amount (worked out under subsection (3)).

However, if the 2 amounts are equal, it is the total debt amount.

*Total debt amount*

- (2) The *total debt amount* is the result of applying the method statement in this subsection.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Method statement*

- Step 1. Work out the average value, for the income year, of all of the following assets of the entity (the **Australian investments**):
- (a) assets that are attributable to the entity's \*Australian permanent establishments;
  - (b) other assets that are held for the purposes of producing the entity's assessable income.
- Step 1A. Reduce the result of step 1 by the average value, for that year, of all the \*excluded equity interests in the entity.
- Step 2. Reduce the result of step 1A by the average value, for that year, of all the \*associate entity debt of the entity that has arisen because of the Australian investments.
- Step 3. Reduce the result of step 2 by the average value, for that year, of all the \*associate entity equity of the entity that has arisen because of the Australian investments.
- Step 4. Reduce the result of step 3 by the average value, for that year, of all the \*non-debt liabilities of the entity that have arisen because of the Australian investments.
- Step 5. Reduce the result of step 4 by the average value, for that year, of the entity's \*zero-capital amount that has arisen because of the Australian investments. If the result of this step is a negative amount, it is taken to be nil.
- Step 6. Multiply the result of step 5 by <sup>20</sup>/<sub>21</sub>.
- Step 7. Add to the result of step 6 the average value, for that year, of the entity's \*zero-capital amount that has arisen because of the Australian investments.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Step 8. Add to the result of step 7 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the **total debt amount**.

Example: FXS Financial SA is a company that is not an Australian entity. The average value of its Australian investments is \$120 million.

The average value of its relevant associate entity debt, associate entity equity, non-debt liabilities and zero-capital amount are \$5 million, \$2 million, \$3 million and \$5 million respectively. Deducting those amounts from the result of step 1 (through applying steps 2 to 5) leaves \$105 million. Multiplying \$105 million by <sup>20/21</sup> results in \$100 million. Adding the average zero-capital amount of \$5 million results in \$105 million. As the company does not have any associate entity excess amount, the total debt amount is therefore \$105 million.

*Adjusted on-lent amount*

- (3) The **adjusted on-lent amount** is the result of applying the method statement in this subsection.

*Method statement*

Step 1. Work out the average value, for the income year, of all of the following assets of the entity (the **Australian investments**):

- (a) assets that are attributable to the entity's \*Australian permanent establishments;
- (b) other assets that are held for the purposes of producing the entity's assessable income.

Step 1A. Reduce the result of step 1 by the average value, for that year, of all the \*excluded equity interests in the entity.

Step 2. Reduce the result of step 1A by the average value, for that year, of all the \*associate entity equity of the entity that has arisen because of the Australian investments.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- Step 3. Reduce the result of step 2 by the average value, for that year, of all the \*non-debt liabilities of the entity that has arisen because of the Australian investments.
- Step 4. Reduce the result of step 3 by the amount (the *average on-lent amount*) which is the average value, for that year, of the \*on-lent amount of the entity (to the extent that it is the value of all or a part of the Australian investments). If the result of this step is a negative amount, it is taken to be nil.
- Step 5. Multiply the result of step 4 by  $\frac{3}{4}$ .
- Step 6. Add to the result of step 5 the average on-lent amount.
- Step 7. Reduce the result of step 6 by the average value, for that year, of all the \*associate entity debt of the entity that has arisen because of the Australian investments. If the result of this step is a negative amount, it is taken to be nil.
- Step 8. Add to the result of step 7 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the *adjusted on-lent amount*.

Example: FXS Financial SA is a company that is not an Australian entity. The average value of its Australian investments is \$120 million.

The average value of its relevant associate entity equity, non-debt liabilities and on-lent amount are \$2 million, \$3 million and \$35 million respectively. Deducting those amounts from the result of step 1 (through applying steps 2 to 4) leaves \$80 million. Multiplying \$80 million by  $\frac{3}{4}$  results in \$60 million. Adding the average on-lent amount of \$35 million results in \$95 million. Reducing the result of step 6 by the associate entity debt amount of \$5 million results in \$90 million. As the company does not have any associate entity excess amount, the adjusted on-lent amount is therefore \$90 million.

### 820-215 Arm's length debt amount

- (1) The *arm's length debt amount* is a notional amount that, having regard to the factual assumptions set out in subsection (2) and the relevant factors mentioned in subsection (3), would satisfy both paragraphs (a) and (b):

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the amount represents a notional amount of \*debt capital that:
    - (i) the entity would reasonably be expected to have throughout the income year; and
    - (ii) would give rise to an amount of \*debt deductions of the entity for that or any other income year; and
    - (iii) would be attributable to the entity's Australian business as mentioned in subsection (2);
  - (b) commercial lending institutions that were not \*associates of the entity (the *notional lenders*) would reasonably be expected to have entered into \*schemes that would:
    - (i) give rise to \*debt interests that constituted that notional amount of debt capital of the entity; and
    - (ii) provide for terms and conditions for the debt interests that would reasonably be expected to have applied if the entity and the notional lenders had been dealing at arm's length with each other throughout the income year mentioned in subparagraph (1)(a)(i).

Note: The entity must keep records in accordance with section 820-980 if the entity works out an amount under this section.

*Factual assumptions*

- (2) Irrespective of what actually happened during that year, the following assumptions must be made in working out that amount:
  - (a) the entity's commercial activities in connection with Australia (the *Australian business*) during that year:
    - (i) if the entity is an \*inward investment vehicle (general) or \*inward investment vehicle (financial) for that year—do not include the holding of any \*associate entity debt; and
    - (ii) if the entity is an \*inward investor (general) or \*inward investor (financial) for that year—consist only of its Australian investments (within the meaning of section 820-205 or 820-210, as appropriate), other than the holding of any associate entity debt that is attributable to its \*Australian permanent establishments;
  - (b) the entity had carried on the Australian business that it actually carried on during that year;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the nature of the entity's assets and liabilities (to the extent that they are attributable to the Australian business) had been as they were during that year;
- (d) except as stated in paragraph (1)(b) and paragraphs (e), (f) and (g) of this subsection, the entity had carried on the Australian business in the same circumstances as what actually existed during that year;
- (e) any guarantee, security or other form of credit support provided to the entity in relation to the Australian business during that year:
  - (i) by its \*associates; or
  - (ii) by the use of assets of the entity that are attributable to the entity's overseas permanent establishments;is taken not to have been received by the entity;
- (f) the entity's only activities during that year were the Australian business;
- (g) the entity's only assets and liabilities during that year were those referred to in paragraph (c) of this subsection.

However, the assumptions set out in paragraphs (f) and (g) of this subsection are not to be made in taking into account the relevant factors mentioned in subsection (3).

*Relevant factors*

- (3) On the basis of the factual assumptions set out in subsection (2), the following factors must be taken into account in determining whether or not an amount satisfies paragraphs (1)(a) and (b):
  - (a) the functions performed, the assets used, and the risks assumed, by the entity in relation to the Australian business throughout that year;
  - (b) the terms and conditions of the \*debt capital that the entity actually had in relation to the Australian business throughout that year;
  - (c) the nature of, and title to, any assets of the entity attributable to the Australian business that were available to the entity throughout that year as security for its debt capital for that business;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) the purposes for which \*schemes for debt capital had been actually entered into by the entity in relation to the Australian business throughout that year;
- (e) the entity's capacity to meet all its liabilities in relation to the Australian business (whether during that year or at any other time);
- (f) the profit of the entity (within the meaning of the \*accounting standards), and the return on its capital, in relation to the Australian business (whether during that year or at any other time);
- (g) the debt to equity ratios of the following throughout that year:
  - (i) the entity;
  - (ii) the entity in relation to the Australian business;
  - (iii) each of the entity's \*associate entities that engage in commercial activities similar to the Australian business;
- (h) the commercial practices adopted by independent parties dealing with each other at arm's length in the industry in which the entity carries on the Australian business throughout that year (whether in Australia or in comparable markets elsewhere);
- (i) the general state of the Australian economy throughout that year;
- (j) all of the above factors existing at the time when the entity last entered into a \*scheme that gave rise to an actual \*debt interest attributable to the Australian business that remains \*on issue throughout that year;
- (k) any other factors which are specified in the regulations made for the purposes of this section, including factors that are specific to an \*inward investment vehicle (general), an \*inward investment vehicle (financial), an \*inward investor (general) or an \*inward investor (financial).

*Commissioner's power*

- (4) If the Commissioner considers an amount worked out by the entity under this section does not appropriately take into account the factual assumptions and the relevant factors, the Commissioner

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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may substitute another amount that the Commissioner considers better reflects those assumptions and factors.

### 820-220 Amount of debt deduction disallowed

The amount of \*debt deduction disallowed under subsection 820-185(1) is worked out using the following formula:

$$\text{Debt deduction} \times \frac{\text{Excess debt}}{\text{Average debt}}$$

where:

**average debt** means the sum of:

- (a) the average value, for the income year, of the entity's \*debt capital that is covered by step 1 of the method statement in subsection 820-185(3); and
- (b) the average value, for that year, of the entity's \*cost-free debt capital that is covered by step 4 of that method statement.

**debt deduction** means each \*debt deduction of the entity for that year.

**excess debt** means the amount by which the \*adjusted average debt (see subsection 820-185(3)) exceeds the entity's \*maximum allowable debt for that year.

Note: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

### 820-225 Application to part year periods

- (1) This subsection disallows all or a part of each \*debt deduction of an entity for an income year that is an amount incurred by the entity during a period that is a part of that year, if:
  - (a) the entity is an \*inward investing entity (non-ADI) for that period, but is not also an \*outward investing entity (non-ADI) for all or any part of that period; and
  - (b) the entity's \*adjusted average debt for that period exceeds the entity's \*maximum allowable debt for that period.

Note: To determine whether an entity is an inward investing entity (non-ADI) for a period, see subsection 820-185(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The entity's *adjusted average debt* for that period is the result of applying the method statement in this subsection.

*Method statement*

- Step 1. Work out the average value, for that period, of all the \*debt capital of the entity that gives rise to \*debt deductions of the entity for that or any other income year.
- Step 2. Reduce the result of step 1 by the average value, for that period, of:
- (a) if the entity is an \*inward investment vehicle (general) or an \*inward investment vehicle (financial) for that period—all the \*associate entity debt of the entity; or
  - (b) if the entity is an \*inward investor (general) or an \*inward investor (financial) for that period—all the associate entity debt of the entity, to the extent that it is attributable to the entity's \*Australian permanent establishments.
- Step 3. If the entity is a \*financial entity throughout that period, add to the result of step 2 the average value, for that period, of the entity's \*borrowed securities amount.
- Step 4. Add to the result of step 3 the average value, for that period, of the \*cost-free debt capital of the entity. The result of this step is the *adjusted average debt*.

Note: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

- (2A) The entity's \*adjusted average debt does not exceed its \*maximum allowable debt if the adjusted average debt is nil or a negative amount.
- (3) For the purposes of determining:
- (a) the \*maximum allowable debt for the period mentioned in subsection (1); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) the amount of each \*debt deduction to be disallowed; sections 820-190 to 820-220 apply in relation to that entity and that period with the modifications set out in the following table:

Modifications of sections 820-190 to 820-220		
Item	Provisions	Modifications
1	Sections 820-190 to 820-220	A reference to an income year is taken to be a reference to that period
2	Section 820-220	A reference to subsection 820-185(1) is taken to be a reference to subsection (1) of this section
3	Section 820-220	<i>adjusted average debt</i> is taken to have the meaning given by subsection (2) of this section <i>average debt</i> is taken to be the sum of: (a) the average value, for that period, of the entity's *debt capital that is covered by step 1 of the method statement in subsection (2) of this section; and (b) the average value, for that period, of the entity's *cost-free debt capital that is covered by step 4 of that method statement.

### Subdivision 820-D—Thin capitalisation rules for outward investing entities (ADI)

#### Guide to Subdivision 820-D

##### 820-295 What this Subdivision is about

This Subdivision sets out the thin capitalisation rules that apply to an entity that is both an authorised deposit-taking institution (an *ADI*) and an Australian entity that has certain types of overseas investments. These rules deal with the following matters:

- how to work out the entity's minimum capital amount for an income year;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- how all or a part of the debt deductions claimed by the entity may be disallowed if the minimum capital amount is not reached;
- how to apply these rules to a period that is less than an income year.

## Table of sections

### Operative provisions

820-300	Thin capitalisation rule for outward investing entities (ADI)
820-305	Minimum capital amount
820-310	Safe harbour capital amount
820-315	Arm's length capital amount
820-320	Worldwide capital amount
820-325	Amount of debt deduction disallowed
820-330	Application to part year periods

## Operative provisions

### 820-300 Thin capitalisation rule for outward investing entities (ADI)

#### *Thin capitalisation rule*

- (1) This subsection disallows all or a part of each \*debt deduction of an entity for an income year (to the extent that it is not attributable to an \*overseas permanent establishment of the entity) if, for that year:
- (a) the entity is an \*outward investing entity (ADI) (see subsection (2)); and
  - (b) the entity's \*adjusted average equity capital (see subsection (3)) is less than the entity's \*minimum capital amount (see section 820-305).

Note 1: This Subdivision does not apply if the total debt deductions of that entity and all its associate entities for that year are \$250,000 or less, see section 820-35.

Note 2: To work out the amount to be disallowed, see section 820-325.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 820-300

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Note 3: For the rules that apply to an entity that is an outward investing entity (ADI) for only part of an income year, see section 820-330 in conjunction with subsection (2) of this section.

Note 4: A consolidated group or MEC group may be an outward investing entity (ADI) to which this Subdivision applies: see Subdivisions 820-FA and 820-FB.

*Outward investing entity (ADI)*

- (2) The entity is an **outward investing entity (ADI)** for a period that is all or a part of an income year if, and only if, throughout that period, the entity is an \*ADI to which at least one of the following paragraphs applies:
- (a) the entity is an \*Australian controller of at least one \*Australian controlled foreign entity (not necessarily the same Australian controlled foreign entity throughout that period);
  - (b) the entity is an \*Australian entity that carries on a \*business at or through at least one \*overseas permanent establishment (not necessarily the same permanent establishment throughout that period);
  - (c) the entity is:
    - (i) an Australian entity; and
    - (ii) an \*associate entity of another entity that is an \*outward investing entity (non-ADI) or an \*outward investing entity (ADI) for that period.

Note: To determine whether an entity is an Australian controller of an Australian controlled foreign entity, see Subdivision 820-H.

*Adjusted average equity capital*

- (3) The entity's **adjusted average equity capital** for an income year is:
- (a) the average value, for that year, of all the \*ADI equity capital of the entity (other than ADI equity capital attributable to its \*overseas permanent establishments); minus
  - (b) the average value, for that year, of all the \*controlled foreign entity equity of the entity (other than controlled foreign entity equity attributable to its overseas permanent establishments).

Note: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**820-305 Minimum capital amount**

The entity's *minimum capital amount* for an income year is the least of the following amounts:

- (a) the \*safe harbour capital amount;
- (b) the \*arm's length capital amount;
- (c) the \*worldwide capital amount.

Note: The entity cannot use the worldwide capital amount if the entity is also a foreign controlled Australian entity throughout that year, see section 820-320.

**820-310 Safe harbour capital amount**

The *safe harbour capital amount* is the result of applying the method statement in this section.

*Method statement*

Step 1. Work out the average value, for the income year, of all the \*risk-weighted assets of the entity, other than risk-weighted assets attributable to any of the following:

- (a) the entity's \*overseas permanent establishments;
- (b) assets comprised by the \*controlled foreign entity equity of the entity (other than controlled foreign entity equity attributable to the entity's overseas permanent establishments);
- (c) assets for which \*prudential capital deductions must be made by the entity (other than prudential capital deductions attributable to the entity's overseas permanent establishments).

Step 2. Multiply the result of step 1 by 4%.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Step 3. Add to the result of step 2 the average value, for that year, of all the \*tier 1 prudential capital deductions for the entity (to the extent that they are not attributable to any of the entity's \*overseas permanent establishments or any \*Australian controlled foreign entities of which the entity is an \*Australian controller). The result of this step is the *safe harbour capital amount*.

Example: The Southern Cross Bank is an Australian bank that carries on its banking business through its overseas permanent establishments and through foreign entities that it controls. For the income year, its average value of risk-weighted assets is \$150 million (having discounted those risk-weighted assets that are excluded by step 1) and the average value of its relevant tier 1 prudential capital deductions is \$2 million. Multiplying \$150 million by 4% equals \$6 million, which is the result of step 2. Adding \$2 million to \$6 million equals \$8 million, which is the safe harbour capital amount.

### 820-315 Arm's length capital amount

- (1) The *arm's length capital amount* is a notional amount that, having regard to:
- (a) the factual assumptions set out in subsection (2); and
  - (b) the relevant factors mentioned in subsection (3);
- would represent the minimum amount of \*equity capital that the entity would reasonably be expected to have in carrying on the Australian business mentioned in subsection (2) throughout the income year if, throughout that year:
- (c) the part of the entity carrying on that business had operated as if it were a separate entity; and
  - (d) that separate entity had been dealing at arm's length with:
    - (i) the other part of the entity; and
    - (ii) all the \*Australian controlled foreign entities of which the entity is an \*Australian controller.

Note: The entity must keep records in accordance with section 820-980 if the entity works out an amount under this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Factual assumptions*

- (2) Irrespective of what actually happened during that year, the following assumptions must be made in working out that minimum amount:
- (a) the entity's commercial activities in connection with Australia (the **Australian business**) during that year do not include:
    - (i) any \*business carried on by the entity at or through its \*overseas permanent establishments; or
    - (ii) the holding of any \*controlled foreign entity equity;
  - (b) the entity had carried on the Australian business that it actually carried on during that year;
  - (c) the nature of the entity's assets and liabilities (to the extent that they are attributable to the Australian business) had been as they were during that year;
  - (d) except as mentioned in subsection (1), the entity had carried on the Australian business in the same circumstances as what actually existed during that year.

*Relevant factors*

- (3) On the basis of the factual assumptions set out in subsection (2), the following factors must be taken into account in determining that minimum amount:
- (a) the functions performed, the assets used, and the risks assumed, throughout that year, by:
    - (i) the entity; and
    - (ii) the entity in relation to the Australian business;
  - (b) the credit rating of the entity throughout that year, including the effect of that credit rating on all of the following:
    - (i) the entity's ability to borrow in relation to the Australian business;
    - (ii) the interest rate at which the entity borrowed in relation to that business;
    - (iii) the entity's gross profit margin in relation to that business;
  - (c) the capital ratios of the following throughout that year:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) the entity;
- (ii) the entity in relation to the Australian business;
- (iii) each of the entity's \*associate entities that engage in commercial activities similar to the Australian business;
- (d) the purposes for which \*schemes for \*debt capital and for \*equity capital had been actually entered into, throughout that year, by:
  - (i) the entity; and
  - (ii) the entity in relation to the Australian business;
- (e) the profit (within the meaning of the \*accounting standards), and the return on capital, whether during that year or at any other time, of:
  - (i) the entity; and
  - (ii) the entity in relation to the Australian business;
- (f) the commercial practices adopted by independent parties dealing with each other at arm's length in the industry in which the entity carries on the Australian business throughout that year (whether in Australia or in comparable markets elsewhere);
- (g) the way in which the entity financed its business (other than the Australian business) throughout that year;
- (h) the general state of the Australian economy throughout that year;
- (i) any other factors which are specified in the regulations made for the purposes of this section.

*Commissioner's power*

- (4) If the Commissioner considers an amount worked out by the entity under this section does not appropriately take into account the factual assumptions and the relevant factors, the Commissioner may substitute another amount that the Commissioner considers better reflects those assumptions and factors.

**820-320 Worldwide capital amount**

- (1) This section only applies if the entity is not also a \*foreign controlled Australian entity throughout the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The **worldwide capital amount** is the result of applying the method statement in this subsection.

*Method statement*

- Step 1. Work out the average value, for the income year, of all the \*risk-weighted assets of the entity, other than risk-weighted assets attributable to any of the following:
- (a) the entity's \*overseas permanent establishments;
  - (b) assets comprised by the \*controlled foreign entity equity of the entity;
  - (c) assets for which \*prudential capital deductions must be made by the entity.
- Step 2. Multiply the entity's worldwide group capital ratio for that year (see subsection (3)) by  $\frac{8}{10}$ .
- Step 3. Multiply the result of step 1 by the result of step 2.
- Step 4. Add to the result of step 3 the average value, for that year, of all the \*tier 1 prudential capital deductions for the entity (to the extent that they are not attributable to any of the entity's \*overseas permanent establishments or to any \*Australian controlled foreign entities of which the entity is an \*Australian controller). The result of this step is the **worldwide capital amount**.

Example: Southern Cross Bank has an average value of risk-weighted assets of \$150 million (having discounted those risk-weighted assets that are excluded by step 1) and the average value of its relevant tier 1 prudential capital deductions is \$2 million. The entity's worldwide group capital ratio is 0.0875. Multiplying that ratio by  $\frac{8}{10}$  equals 0.07, which is the result of step 2. Multiplying \$150 million by 0.07 equals \$10.5 million, which is the result of step 3. Adding that amount to the average value of the relevant tier 1 prudential capital deductions equals \$12.5 million, which is the worldwide capital amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Worldwide group capital ratio*

- (3) The entity's **worldwide group capital ratio** for the income year is the result of applying the method statement in this subsection.

*Method statement*

- Step 1. Work out the average value, for the income year, of the tier 1 capital (within the meaning of the \*prudential standards) of the consolidated group of which the entity is a member (within the meaning of those standards) in accordance with those standards.
- Step 2. Divide the result of step 1 by the average value, for that year, of the \*risk-weighted assets of that group in accordance with the \*prudential standards. The result is the **worldwide group capital ratio**.

Example: For the Southern Cross Bank, the average value of the tier 1 capital for the relevant consolidated group is \$14 million. Dividing \$14 million by the group's risk weighted assets of \$160 million equals 0.0875, which is the worldwide group capital ratio.

**820-325 Amount of debt deduction disallowed**

The amount of \*debt deduction disallowed under subsection 820-300(1) is worked out using the following formula:

$$\text{Debt deduction} \times \frac{\text{Capital shortfall}}{\text{Average debt}}$$

where:

**average debt** means the average value, for the income year, of all the \*debt capital of the entity that gives rise to \*debt deductions of the entity for that or any other income year (other than any debt capital that is attributable to any of the entity's \*overseas permanent establishments).

**capital shortfall** means the amount by which the \*adjusted average equity capital of the entity for that year (see subsection 820-300(3)) is less than the entity's \*minimum capital amount for that year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**debt deduction** means each \*debt deduction covered by subsection 820-300(1).

Note: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

### 820-330 Application to part year periods

- (1) This subsection disallows all or a part of each \*debt deduction of an entity for an income year that is an amount incurred by the entity during a period that is a part of that year (to the extent that it is not attributable to an \*overseas permanent establishment of the entity) if, for that period:
- the entity is an \*outward investing entity (ADI); and
  - the \*adjusted average equity capital of the entity is less than the entity's \*minimum capital amount.

Note: To determine whether an entity is an outward investing entity (non-ADI) for that period, see subsection 820-300(2).

- (2) The entity's **adjusted average equity capital** for that period is:
- the average value, for that period, of all the \*ADI equity capital of the entity (other than ADI equity capital attributable to any of its \*overseas permanent establishments); minus
  - the average value, for that period, of all the \*controlled foreign entity equity of the entity (other than controlled foreign entity equity attributable to any of its overseas permanent establishments).
- (3) For the purposes of determining:
- the entity's \*minimum capital amount for that period; and
  - the amount of each \*debt deduction to be disallowed;
- sections 820-305 to 820-325 apply in relation to that entity and that period with the modifications set out in the following table:

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#### Modifications of sections 820-305 to 820-325

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Item	Provisions	Modifications
1	Sections 820-305 to 820-325	A reference to an income year is taken to be a reference to that period

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Modifications of sections 820-305 to 820-325**

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Item	Provisions	Modifications
2	Section 820-325	A reference to subsection 820-300(1) is taken to be a reference to subsection (1) of this section
3	Section 820-325	<i>adjusted average equity capital</i> has the meaning given by subsection (2) of this section <i>average debt</i> is taken to be the average value, for that period, of all the *debt capital of the entity that gives rise to *debt deductions of the entity for that or any other income year, to the extent that the debt capital is not attributable to any of the entity's *overseas permanent establishments

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**Subdivision 820-E—Thin capitalisation rules for inward investing entities (ADI)**

**Guide to Subdivision 820-E**

**820-390 What this Subdivision is about**

This Subdivision applies to a foreign entity that is an authorised deposit-taking institution (an *ADI*). These rules deal with the following matters:

- how to work out the entity's minimum capital amount for an income year;
- how all or a part of the debt deductions claimed by the entity may be disallowed if the minimum capital amount is not reached;
- how to apply these rules to a period that is less than an income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Table of sections****Operative provisions**

820-395	Thin capitalisation rule for inward investing entities (ADI)
820-400	Minimum capital amount
820-405	Safe harbour capital amount
820-410	Arm's length capital amount
820-415	Amount of debt deduction disallowed
820-420	Application to part year periods

**Operative provisions****820-395 Thin capitalisation rule for inward investing entities (ADI)***Thin capitalisation rule*

- (1) This subsection disallows all or a part of each \*debt deduction of an entity for an income year if, for that year:
- (a) the entity is an \*inward investing entity (ADI) (see subsection (2)); and
  - (b) the entity's \*average equity capital (see subsection (3)) is less than its \*minimum capital amount (see section 820-400);
- to the extent that the debt deduction:
- (c) is attributable to an \*Australian permanent establishment of the entity at or through which it carries on its banking business; and
  - (d) is not an \*allowable OB deduction.

Note 1: This Subdivision does not apply if the total debt deductions of that entity and all its associate entities for that year are \$250,000 or less, see section 820-35.

Note 2: To work out the amount to be disallowed, see section 820-415.

Note 3: For the rules that apply to an entity that is an inward investing entity (ADI) for part of an income year, see section 820-420 in conjunction with subsection (2) of this section.

Note 4: A consolidated group or MEC group may be an inward investing entity (ADI) to which this Subdivision applies: see Subdivision 820-FB.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Inward investing entity (ADI)*

- (2) The entity is an ***inward investing entity (ADI)*** for a period that is all or a part of an income year if, and only if, throughout that period, the entity is a \*foreign bank that carries on its banking business in Australia at or through one or more of its \*Australian permanent establishments.

Note: The entity is required to keep certain records, see Subdivision 820-L.

*Average equity capital*

- (3) The entity's ***average equity capital*** for an income year is the sum of the following:
- (a) the average value, for that year, of the \*ADI equity capital of the entity that:
    - (i) is attributable to the \*Australian permanent establishments at or through which it carries on its banking business in Australia; but
    - (ii) has not been allocated to the \*OB activities of the Australian permanent establishments;
  - (b) the average value, for that year, of the total amounts that:
    - (i) are made available by the entity to the Australian permanent establishments of the entity as loans to the Australian permanent establishments; and
    - (ii) do not give rise to any \*debt deductions of the entity for that or any other income year.

Note: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

### **820-400 Minimum capital amount**

The entity's ***minimum capital amount*** for an income year is the lesser of the following amounts:

- (a) the \*safe harbour capital amount;
- (b) the \*arm's length capital amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**820-405 Safe harbour capital amount**

The entity's *safe harbour capital amount* for the income year is the result of applying the method statement in this section.

*Method statement*

- Step 1. Work out the average value, for the income year, of that part of the \*risk-weighted assets of the entity that:
- (a) is attributable to the \*Australian permanent establishments at or through which it carries on its banking business in Australia; but
  - (b) is not attributable to the \*OB activities of the Australian permanent establishments.
- Step 2. Multiply the result of step 1 by 4%. The result of this step is the *safe harbour capital amount*.

Example: The Global Bank is a foreign bank that carries on its banking business in Australia through a permanent establishment. The average value of its relevant risk-weighted assets is \$140 million. Multiplying that amount by 4% results in \$5.6 million, which is the safe harbour capital amount.

**820-410 Arm's length capital amount**

- (1) The *arm's length capital amount* is a notional amount that, having regard to:
- (a) the factual assumptions set out in subsection (2); and
  - (b) the relevant factors mentioned in subsection (3);
- would represent the minimum amount of \*equity capital that the entity would reasonably be expected to have in carrying on the Australian business mentioned in subsection (2) throughout the income year if, throughout that year:
- (c) the part of the entity carrying on that business had operated as if it were a separate entity; and
  - (d) that separate entity had been dealing at arm's length with the other part of the entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: The entity must keep records in accordance with section 820-980 if the entity works out an amount under this section.

*Factual assumptions*

- (2) Irrespective of what actually happened during that year, the following assumptions must be made in working out that minimum amount:
- (a) the entity's commercial activities in connection with Australia (the **Australian business**) during that year consist only of banking business attributable to its \*Australian permanent establishments (other than its \*OB activities);
  - (b) the entity had carried on the Australian business that it actually carried on during that year;
  - (c) the nature of the entity's assets and liabilities (to the extent that they are attributable to the Australian business) had been as they were during that year;
  - (d) except as mentioned in subsection (1), the entity had carried on the Australian business in the same circumstances as what actually happened during that year.

*Relevant factors*

- (3) On the basis of the factual assumptions set out in subsection (2), the following factors must be taken into account in determining that minimum amount:
- (a) the functions performed, the assets used, and the risks assumed, throughout that year, by:
    - (i) the entity; and
    - (ii) the entity in relation to the Australian business;
  - (b) the credit rating of the entity throughout that year, including the effect of that credit rating on all of the following:
    - (i) the entity's ability to borrow in relation to the Australian business;
    - (ii) the interest rate at which the entity borrowed in relation to that business;
    - (iii) the entity's gross profit margin in relation to that business;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the capital ratios of the following throughout that year:
  - (i) the entity;
  - (ii) the entity in relation to the Australian business;
  - (iii) each of the entity's \*associate entities that engage in commercial activities similar to the Australian business;
- (d) the purposes for which \*schemes for \*debt capital and for \*equity capital had been actually entered into, throughout that year, by:
  - (i) the entity; and
  - (ii) the entity in relation to the Australian business;
- (e) the profit (within the meaning of the \*accounting standards or any other accounting standards that would otherwise apply to the entity), and the return on capital, whether during that year or at any other time, of:
  - (i) the entity; and
  - (ii) the entity in relation to the Australian business;
- (f) the commercial practices adopted by independent parties dealing with each other at arm's length in the industry in which the entity carries on the Australian business throughout that year (whether in Australia or in comparable markets elsewhere);
- (g) the general state of the Australian economy throughout that year;
- (h) any other factors which are specified in the regulations made for the purposes of this section.

*Commissioner's power*

- (4) If the Commissioner considers an amount worked out by the entity under this section does not appropriately take into account the factual assumptions and the relevant factors, the Commissioner may substitute another amount that the Commissioner considers better reflects those assumptions and factors.

**820-415 Amount of debt deduction disallowed**

The amount of \*debt deduction disallowed under subsection 820-395(1) is worked out using the following formula:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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$$\text{Debt deduction} \times \frac{\text{Capital shortfall}}{\text{Average debt}}$$

where:

**average debt** means the average value, for the income year, of all the \*debt capital of the entity that gives rise to \*debt deductions of the entity (other than \*allowable OB deductions) for that or any other income year.

**capital shortfall** means the amount by which the entity's \*average equity capital for that year (see subsection 820-395(3)) is less than the entity's \*minimum capital amount for that year.

**debt deduction** means each \*debt deduction of the entity (other than \*allowable OB deduction) for the income year.

Note: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

### 820-420 Application to part year periods

- (1) This subsection disallows all or a part of each \*debt deduction of an entity for an income year that is an amount incurred by the entity during a period that is a part of that year if, for that period:
  - (a) the entity is an \*inward investing entity (ADI); and
  - (b) the entity's \*average equity capital is less than its \*minimum capital amount;to the extent that the debt deduction:
  - (c) is attributable to an \*Australian permanent establishment of the entity at or through which it carries on its banking business; and
  - (d) is not an \*allowable OB deduction.

Note: To determine whether an entity is an inward investing entity (ADI) for that period, see subsection 820-395(2).

- (2) The entity's **average equity capital** for that period is the sum of the following:
  - (a) the average value, for that period, of the \*equity capital of the entity that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (i) is attributable to its \*Australian permanent establishments at or through which it carries on its banking business in Australia; but
- (ii) has not been allocated to the \*OB activities of the Australian permanent establishments;
- (b) the average value, for that period, of the total amounts that:
  - (i) are made available by the entity to the Australian permanent establishments of the entity as loans to the Australian permanent establishments; and
  - (ii) do not give rise to any \*debt deductions of the entity for that or any other income year.
- (3) For the purposes of determining:
  - (a) the entity's \*minimum capital amount for that period; and
  - (b) the amount of each \*debt deduction to be disallowed;
 sections 820-400 to 820-415 apply in relation to that entity and that period with the modifications set out in the following table:

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**Modifications of sections 820-400 to 820-415**


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<b>Item</b>	<b>Provisions</b>	<b>Modifications</b>
1	Sections 820-400 to 820-415	A reference to an income year is taken to be a reference to that period
2	Section 820-415	The reference to subsection 820-395(1) is taken to be a reference to subsection (1) of this section
3	Section 820-415	<i>average debt</i> is taken to be the average value, for that period, of all the *debt capital of the entity that gives rise to its *debt deductions (other than *allowable OB deductions) for that year that are amounts incurred by the entity during that period  <i>average equity capital</i> has the meaning given by subsection (2) of this section

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 820-EA—Some financial entities may choose to be treated as ADIs

### Table of sections

820-430	When choice can be made, and what effect it has
820-435	Conditions
820-440	Revocation of choice
820-445	How this Subdivision interacts with Subdivision 820-FA

### 820-430 When choice can be made, and what effect it has

- (1) An entity may choose to be treated, for the purposes of this Division (except this Subdivision), as set out in the table. However, the entity can make the choice only if subsection (5) is satisfied.

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Choice by financial entity to be treated as an ADI		
	Column 1	Column 2
Item	For a period that the choice covers, and for which the entity would, apart from this Subdivision, have been:	The entity is treated as if it had instead been:
1	an *outward investor (financial)	an *outward investing entity (ADI)
2	an *inward investor (financial)	an *inward investing entity (ADI)
3	an *inward investment vehicle (financial)	an *outward investing entity (ADI)

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- (2) The choice:
- (a) has effect accordingly, except as provided in subsection (4); and
  - (b) ceases to have effect only as provided in this Subdivision; and
  - (c) covers each period:
    - (i) that started on or after a day specified in the choice (or on the day the choice is made if no day is specified); and
    - (ii) that is all or part of an income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) Subdivision 820-E applies to the entity, in relation to a period for which this section treats it as an \*inward investing entity (ADI), as if all the entity's \*business were banking business of the entity.
- (4) The choice does not have effect for the purposes of determining whether the entity is covered by paragraph 820-910(2)(a) (about working out the associate entity debt of another entity).

*Conditions for making the choice*

- (5) For the income year that is or includes the first period for which the entity would be treated in accordance with the choice, the entity must satisfy:
  - (a) subsection 820-435(1); or
  - (b) subsections 820-435(2) and (3).

Also, the entity must *not* have made a previous choice under this section that has ceased to have effect.

*Conditions are retested every 3 years*

- (6) The choice ceases to have effect, or is taken to have ceased to have effect, as appropriate, at the *end* of an income year covered by subsection (7) of this section, unless the entity:
  - (a) satisfies subsection 820-435(1) for that income year; or
  - (b) satisfies subsections 820-435(2) and (3) for that income year.
- (7) This subsection covers every third income year after the one referred to in subsection (5).

### **820-435 Conditions**

- (1) An entity satisfies this subsection for an income year if the average value, for that income year, of the entity's \*on-lent amount is at least 80% of the average value, for that income year, of all the entity's assets.
- (2) An entity satisfies this subsection for an income year if the first period that is all or part of that income year, and for which the entity would be treated in accordance with a choice under section 820-430, consists of one or more periods, each of which is either or both of these:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) a period throughout which the entity is a \*financial entity because of paragraph (d) of the definition of *financial entity* in subsection 995-1(1) (which covers licensed (or exempt) dealers in derivatives);
- (b) a period throughout which:
- (i) the entity is the \*head company of a \*consolidated group or \*MEC group; and
  - (ii) at least one \*member of the group is a financial entity because of that paragraph.
- (3) An entity satisfies this subsection for an income year if it satisfies subsection (2) and the amount worked out using this formula is greater than or equal to 0.8:

$$\frac{\text{On-lent amount} + \left( \text{UG on derivatives} - \text{UL on derivatives} \right)}{\text{Total assets} - \text{UL on derivatives}}$$

where:

**on-lent amount** means the average value, for that income year, of the entity's \*on-lent amount.

**total assets** means the average value, for that income year, of all the entity's assets.

**UG on derivatives** means the average value, for that income year, of the entity's assets consisting of unrealised gains on trading derivatives within the meaning of the *Corporations Act 2001*.

**UL on derivatives** means the lesser of:

- (a) the average value, for that income year, of the entity's liabilities consisting of unrealised losses on trading derivatives within the meaning of the *Corporations Act 2001*; and
- (b) the average value, for that income year, of the entity's assets consisting of unrealised gains on trading derivatives within the meaning of that Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*On-lent amount increased for financial entity whose assets include precious metals*

- (4) In working out whether an entity satisfies subsection (1) or (3) for an income year, the average value, for that income year, of the entity's \*on-lent amount is increased by the average value, for that income year, of the entity's assets that consist of \*precious metals, but only if the entity satisfies subsection (5) for that income year.
- (5) An entity satisfies this subsection for an income year if the first period that is all or part of that income year, and for which the entity would be treated in accordance with a choice under section 820-430, consists of one or more periods, each of which is either or both of these:
  - (a) a period throughout which the entity is a \*financial entity;
  - (b) a period throughout which:
    - (i) the entity is the \*head company of a \*consolidated group or \*MEC group; and
    - (ii) at least one \*member of the group is a financial entity.

**820-440 Revocation of choice**

- (1) A choice under section 820-430 can be revoked only with the written approval of the Commissioner. The Commissioner may approve a revocation only if satisfied that the entity's circumstances have changed significantly since the choice was made.
- (2) If revoked, the choice does not have effect for a period that starts on or after the day on which the Commissioner's approval is given, unless the revocation is expressed to take effect on an earlier day. In that case, it does not have effect for a period that starts on or after the earlier day.

**820-445 How this Subdivision interacts with Subdivision 820-FA**

A choice under section 820-430 does not have effect for so much of a period as happens while the entity is a \*subsidiary member of a \*consolidated group or \*MEC group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: If the head company of the group makes a choice under that section, that choice will have effect instead.

## **Subdivision 820-FA—How the thin capitalisation rules apply to consolidated groups and MEC groups**

### **Guide to Subdivision 820-FA**

#### **820-579 What this Subdivision is about**

This Subdivision tells you:

- how to classify the head company of a consolidated group or MEC group (in terms of which Subdivision of this Division to apply to the head company); and
- how to apply this Division to the head company (including how the application is modified).

#### **Table of sections**

##### **Operative provisions**

820-581	How this Division applies to head company for income year in which group comes into existence or ceases to exist
820-583	Classification of head company
820-584	Exempt special purpose entities treated as not being member of group
820-585	Exemption for consolidated group headed by foreign-controlled Australian ADI or its holding company
820-587	Additional application of Subdivision 820-D to MEC group that includes foreign-controlled Australian ADI
820-588	Choice to treat specialist credit card institutions as being financial entities and not ADIs
820-589	How Subdivision 820-D applies to a MEC group

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### **820-581 How this Division applies to head company for income year in which group comes into existence or ceases to exist**

If a \*consolidated group or \*MEC group:

- (a) comes into existence at a time during an income year that is not the start of the income year; or
- (b) ceases to exist at a time during an income year that is not the end of the income year;

then, for each of the following periods during that income year:

- (c) a period throughout which a company is the \*head company of that group; or
- (d) a period throughout which that company is the head company of a different consolidated group or MEC group; or
- (e) a period throughout which that company is a \*member of no consolidated group or MEC group;

this Division (except this section) is to have either:

- (f) a single application in relation to the whole of the period; or
- (g) 2 or more applications, each in relation to a part of that period.

**Example:** Austco Ltd is not a member of a consolidated group for the first 6 months of an income year, but then becomes the head company of a consolidated group which continues in existence for the rest of the income year.

For those first 6 months Austco is an outward investor (general) under section 820-85. For the rest of the income year Austco is an outward investor (general) under subsection 820-583(2).

This section ensures that section 820-120 (about part year periods) applies to Austco instead of section 820-85, so that Subdivision 820-B has 2 separate applications to Austco: one for the first 6 months and the other for the rest of the income year. Under the second application, account is taken of the position of the subsidiary members that are taken to be part of Austco as head company of the consolidated group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 820-583 Classification of head company

#### *Outward investing entity (non-ADI)*

- (1) The \*head company of a \*consolidated group or of a \*MEC group is an ***outward investing entity (non-ADI)*** for a period that is all or part of an income year if, and only if, it is:
  - (a) an \*outward investor (general) for that period (because of subsection (2)); or
  - (b) an \*outward investor (financial) for that period (because of subsection (3)).

#### *Outward investor (general)*

- (2) The \*head company of a \*consolidated group or of a \*MEC group is an ***outward investor (general)*** for a period that is all or part of an income year if:
  - (a) for that period, the head company satisfies the condition in the second column of item 1 or 3 of the table in subsection 820-85(2); and
  - (b) no \*member of the group is a \*financial entity or \*ADI at any time during that period.

#### *Outward investor (financial)*

- (3) The \*head company of a \*consolidated group or of a \*MEC group is an ***outward investor (financial)*** for a period that is all or part of an income year if:
  - (a) for that period, the head company satisfies the condition in the second column of item 1 or 3 of the table in subsection 820-85(2); and
  - (b) throughout that period, there is at least one \*member of the group that is a \*financial entity; and
  - (c) no \*member of the group is an \*ADI at any time during that period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Inward investing entity (non-ADI)*

- (4) The \*head company of a \*consolidated group or of a \*MEC group is an ***inward investing entity (non-ADI)*** for a period that is all or part of an income year if, and only if, it is:
- (a) an \*inward investment vehicle (general) for that period (because of subsection (5)); or
  - (b) an \*inward investment vehicle (financial) for that period (because of subsection (6)).

*Inward investment vehicle (general)*

- (5) The \*head company of a \*consolidated group or of a \*MEC group is an ***inward investment vehicle (general)*** for a period that is all or part of an income year if:
- (a) throughout that period, the head company is a \*foreign controlled Australian entity; and
  - (b) no member of the group is a \*financial entity or \*ADI at any time during that period;
- unless the head company is an \*outward investing entity (non-ADI) for all or part of that period.

*Inward investment vehicle (financial)*

- (6) The \*head company of a \*consolidated group or of a \*MEC group is an ***inward investment vehicle (financial)*** for a period that is all or part of an income year if:
- (a) throughout that period, the head company is a \*foreign controlled Australian entity; and
  - (b) throughout that period, there is at least one \*member of the group that is a \*financial entity; and
  - (c) no member of the group is an \*ADI at any time during that period;
- unless the head company is an \*outward investing entity (non-ADI) for all or part of that period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Outward investing entity (ADI)*

- (7) The \*head company of a \*consolidated group or of a \*MEC group is an ***outward investing entity (ADI)*** for a period that is all or part of an income year if, and only if:
- (a) apart from Part 3-90 (about consolidation of groups) and this Subdivision, at least one \*member of the group would be an \*outward investing entity (ADI) for that period; or
  - (b) these conditions are met:
    - (i) at least one member of the group would, apart from that Part and this Subdivision, be an \*outward investing entity (non-ADI) for that period; and
    - (ii) at least one member of the group is an \*ADI throughout that period.

**820-584 Exempt special purpose entities treated as not being member of group**

While an entity meets the conditions in subsection 820-39(3) (about insolvency-remote special purpose entities established to manage economic risk), the entity is treated for the purposes of this Division (except this section) as *not* being a \*member of a \*consolidated group or \*MEC group of which it is a member.

Note: This section has the effect that the circumstances of the entity are not taken into account in applying this Division to the head company of the group. The entity itself is exempt from this Division because of section 820-39.

**820-585 Exemption for consolidated group headed by foreign-controlled Australian ADI or its holding company**

- (1) This Division does not disallow any of a \*debt deduction for an income year if:
- (a) the debt deduction is of the \*head company of a \*consolidated group and the head company satisfies subsection (2) for that income year; or
  - (b) the debt deduction is an amount incurred by the head company of a consolidated group during a period that is part

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

of that income year, and the head company satisfies subsection (2) for that period.

- (2) The \*head company satisfies this subsection for a period that is all or part of an income year if, throughout that period:
- (a) the head company is both a \*foreign controlled Australian company and an \*ADI (and would also be an ADI apart from Part 3-90 (about consolidation of groups)); or
  - (b) the head company:
    - (i) is a \*foreign controlled Australian company; and
    - (ii) beneficially owns all the \*membership interests in a \*member of the group that is both a \*foreign controlled Australian entity and an \*ADI throughout that period; and
    - (iii) would, apart from Part 3-90 (about consolidation of groups), have no other assets and no \*debt capital; unless at least one member of the group would, apart from that Part and this Subdivision, be an \*outward investing entity (non-ADI) or \*outward investing entity (ADI) for all or part of that period.
- (3) Subsection (1) does not apply if, at each time in the period mentioned in subsection (2), all the \*ADIs that are \*members of the group then are \*specialist credit card institutions.

**820-587 Additional application of Subdivision 820-D to MEC group that includes foreign-controlled Australian ADI**

Subdivision 820-D applies to the \*head company of a \*MEC group as if it were an \*outward investing entity (ADI) for a period that is all or part of an income year if:

- (a) the head company is *not* an outward investing entity (ADI) for that period; and
- (b) throughout that period, at least one \*member of the group is both a \*foreign controlled Australian entity and an \*ADI; and
- (c) throughout that period, there is at least one \*eligible tier-1 company of the \*top company for the group that:
  - (i) is a member of the group; and
  - (ii) is *not* an ADI; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(iii) has no \*wholly-owned subsidiary that is an ADI.

**820-588 Choice to treat specialist credit card institutions as being financial entities and not ADIs**

- (1) If the conditions in subsection (2) are met in relation to a \*consolidated group or \*MEC group and a period that is all or part of an income year, this Division (except this section) has effect as if:
- (a) none of the \*members of the group were an \*ADI at any time in the period; and
  - (b) each member of the group that is an ADI (ignoring paragraph (a)) at any time in the period were a financial entity at that time.

Note 1: One result of this Division having effect in that way is that Subdivision 820-D (and related provisions, such as section 820-589) will not apply in relation to the head company, because:

- (a) the head company of the group will not be classified under section 820-583 as an outward investing entity (ADI); and
- (b) section 820-587 will not apply that Subdivision.

Note 2: Another result of this Division having effect in that way is that Subdivision 820-B or 820-C may apply in relation to the head company, because it may be classified under section 820-583 as either:

- (a) an outward investing entity (non-ADI) and an outward investor (financial); or
- (b) an inward investing entity (non-ADI) and an inward investment vehicle (financial).

- (2) The conditions are that:
- (a) at all times in the period at least one \*member of the \*consolidated group or \*MEC group is an \*ADI; and
  - (b) each ADI that is a member of the group at any time in the period is a \*specialist credit card institution at that time; and
  - (c) the \*head company of the group for the period chooses, before lodging its \*income tax return for the income year, that this Division should have effect in that way in relation to the group and every period for which the conditions in paragraphs (a) and (b) are met in the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) An \*ADI is a *specialist credit card institution* at a time if, at that time, the ADI's authority under section 9 of the *Banking Act 1959* to carry on banking business (as defined in that Act) authorises the ADI to carry on only banking business that:
- (a) is participation in a payment system (as defined in the *Payment Systems (Regulation) Act 1998*) that is a credit card scheme and is designated under section 11 of that Act; and
  - (b) is either or both of the following:
    - (i) credit card acquiring (as defined in regulations made for the purposes of the *Banking Act 1959*);
    - (ii) credit card issuing (as defined in those regulations).
- (4) To avoid doubt, a choice for the purposes of paragraph (2)(c) cannot be revoked.

### **820-589 How Subdivision 820-D applies to a MEC group**

- (1) This section has effect for the purposes of working out the \*adjusted average equity capital of the \*head company of a \*MEC group for a period (the *test period*) that is all or part of an income year if Subdivision 820-D applies to the head company in relation to that period.

Note: Section 820-587 extends the application of Subdivision 820-D.

- (2) The \*head company's \*ADI equity capital at a particular time during the test period is to be worked out:
- (a) taking into account an \*equity interest or \*debt interest in the head company only if it is held at that time by an entity that is *not* a member of the group; and
  - (b) on the basis that an equity interest or debt interest in an \*eligible tier-1 company (other than the head company) that is a member of the group at that time is treated as an equity interest or debt interest (as appropriate) in the head company, but only if it is held at that time by an entity that is *not* a member of the group; and
  - (c) on the basis of the information that would be contained in a set of consolidated accounts:
    - (i) prepared, in accordance with the \*accounting standard on consolidated accounts, as at that time; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) covering the members of the group as at that time.

**Subdivision 820-FB—Grouping branches of foreign banks and foreign financial entities with a consolidated group, MEC group or single Australian resident company**

**Guide to Subdivision 820-FB**

**820-595 What this Subdivision is about**

If:

- (a) the head company of a consolidated group or MEC group; or
- (b) an Australian company that cannot consolidate;

is a member of the same wholly-owned group as a foreign bank or foreign financial entity, the company can choose to treat as part of itself the Australian branches of the foreign bank or foreign financial entity, affecting how the rest of this Division applies.

**Table of sections**

**Choice to group with branches of foreign banks and foreign financial entities**

820-597 Choice by head company of consolidated group or MEC group

820-599 Choice by Australian resident company outside consolidatable group and MEC group

**Effect of choice**

820-601 Application

820-603 General

820-605 Effect on establishment entity if certain debt deductions disallowed

820-607 Effect on test periods under this Division

820-609 Effect on classification of head company or single company

820-610 Choice not to be outward investing entity (ADI) or inward investing entity (ADI)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- 820-611 Values to be based on what would be in consolidated accounts for group  
 820-613 How Subdivision 820-D applies  
 820-615 How Subdivision 820-E applies

## **Choice to group with branches of foreign banks and foreign financial entities**

### **820-597 Choice by head company of consolidated group or MEC group**

- (1) This section applies if there is a period (the *grouping period*) for which all these conditions are met:
- (a) the period was all or part of an income year of the \*head company of a \*consolidated group or \*MEC group;
  - (b) the consolidated group or MEC group existed throughout the period;
  - (c) the head company and an entity (the *establishment entity*) covered by one of the following subparagraphs are both members of the same \*wholly-owned group throughout the period:
    - (i) a \*foreign bank that carried on its banking \*business in Australia through at least one \*Australian permanent establishment at each time in the period;
    - (ii) a \*foreign entity that was a \*financial entity and had at least one Australian permanent establishment at each time in the period;
  - (d) there is not a longer period in the income year for which the conditions in paragraphs (a), (b) and (c) are met in relation to the head company and the establishment entity.
- Note: It does not matter whether the income year ended on the same day for the head company and the establishment entity.
- (2) The \*head company may choose to have all of the \*Australian permanent establishments of the establishment entity treated as part of the head company for the grouping period for the purposes of this Division.
- (3) If the conditions in subsection (1) are met in relation to the \*head company and more than one other establishment entity, the head

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

company may make a different choice in relation to each of the other establishment entities.

**820-599 Choice by Australian resident company outside consolidatable group and MEC group**

- (1) This section applies if there is a period (also the *grouping period*) for which all these conditions are met:
- (a) the period was all or part of an income year of a company (the *single company*);
  - (b) throughout the period the single company:
    - (i) was an \*Australian entity; and
    - (ii) was not a \*prescribed dual resident; and
    - (iii) was not a \*member of a \*consolidatable group; and
    - (iv) was not a member of a \*consolidated group; and
    - (v) was not a member of a \*MEC group;
  - (c) the single company and an entity (the *establishment entity*) covered by one of the following subparagraphs are both members of the same \*wholly-owned group throughout the period:
    - (i) a \*foreign bank that carried on its banking \*business in Australia through at least one \*Australian permanent establishment at each time in the period;
    - (ii) a \*foreign entity that was a \*financial entity and had at least one Australian permanent establishment at each time in the period;
  - (d) there is not a longer period in the income year for which the conditions in paragraphs (a), (b) and (c) are met in relation to the single company and the establishment entity.
- Note: It does not matter whether the income year ended on the same day for the single company and the establishment entity.
- (2) The single company may choose to have all of the \*Australian permanent establishments of the establishment entity treated as part of the single company for the grouping period for the purposes of this Division.
- (3) If the conditions in subsection (1) are met in relation to the single company and more than one other establishment entity, the single

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

company may make a different choice in relation to each of the other establishment entities.

## **Effect of choice**

### **820-601 Application**

Sections 820-603 to 820-615 apply if a choice is made under section 820-597 or 820-599.

### **820-603 General**

- (1) The choice cannot be revoked in relation to the grouping period. It binds the \*head company or the single company, as appropriate, and the establishment entity.
- (2) The rest of this section applies:
  - (a) to each \*Australian permanent establishment that:
    - (i) was an Australian permanent establishment of the establishment entity; and
    - (ii) if the establishment entity was a \*foreign bank—was an Australian permanent establishment through which the entity carried on banking \*business in Australia at any time in the grouping period; and
  - (b) in relation to each time (the *test time*) that was in the grouping period and was when the Australian permanent establishment:
    - (i) was an Australian permanent establishment of the establishment entity; and
    - (ii) if the establishment entity was a foreign bank—was an Australian permanent establishment through which the entity carried on banking business in Australia.
- (3) In the case of a choice under section 820-597, this Division (except Subdivision 820-FA, this Subdivision and Subdivision 820-L) applies as if, at the test time, the \*Australian permanent establishment:
  - (a) had been part of the \*head company; and
  - (b) had *not* been part of the establishment entity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) were a \*subsidiary member of the \*consolidated group or \*MEC group.
- (4) In the case of a choice under section 820-599, this Division (except Subdivision 820-FA, this Subdivision and Subdivision 820-L) applies as if, at the test time:
- (a) the \*Australian permanent establishment had been part of the single company and had *not* been part of the establishment entity; and
  - (b) the single company were a \*consolidated group of which the single company was the \*head company and the Australian permanent establishment was a \*subsidiary member.
- (5) In either case, without limiting subsection (3) or (4), this Division (except Subdivision 820-FA, this Subdivision and Subdivision 820-L) applies as if:
- (a) the \*Australian permanent establishment were an entity at that time; and
  - (b) each asset and liability of the establishment entity at the test time that is attributable to the Australian permanent establishment were an asset or liability of the Australian permanent establishment at that time; and
  - (c) without limiting paragraph (b) of this subsection, each cost that:
    - (i) is a \*debt deduction of the establishment entity incurred at the test time; and
    - (ii) is attributable to the Australian permanent establishment;were a cost incurred by the Australian permanent establishment at that time;
- For the effects of disallowing debt deductions, see section 820-605.
- (6) However, the application of this Division because of this section is subject to the modifications set out in sections 820-607 to 820-615.
- (7) For the purposes of this Division (as applying because of this Subdivision), this Act (except this Division) applies as if the matters referred to in subsections (3), (4) and (5) of this section were the case.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: For example, this means that a head company is treated for the purposes of this Division as if it had debt deductions based on the actual costs incurred by an Australian permanent establishment while it is treated as part of the head company because of this section.

### **820-605 Effect on establishment entity if certain debt deductions disallowed**

If:

- (a) apart from this Division, a \*debt deduction would be a deduction of the establishment entity for an income year; and
- (b) this Division (as applying because of this Subdivision) disallows all or part of the deduction (treated as a deduction of the \*head company or single company);

this section disallows the deduction of the establishment entity, or that part of it, as appropriate.

Note 1A: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

Note 1: This Division does not disallow a debt deduction that the establishment entity incurs during the grouping period and that consists of a cost that is:

- attributable to an Australian permanent establishment covered by the choice under section 820-597 or 820-599; and
- paid or owed to the head company or single company.

The cost is not a debt deduction of the head company or single company for the purposes of this Division as applying because of this Subdivision. This is because subsection 820-603(3) or (4) treats the Australian permanent establishment as being part of the head company or single company, so the cost is treated as being paid or owed by the head company or single company to itself.

Because subsection 820-603(3) or (4) also treats the Australian permanent establishment as not being part of the establishment entity, the cost is not a debt deduction of the establishment entity, so it is not disallowed by this Division as applying to the establishment entity.

Note 2: This Division also does not disallow a debt deduction that the head company or single company incurs during the grouping period and that consists of a cost that is:

- paid or owed to the establishment entity; and
- is attributable to an Australian permanent establishment covered by the choice under section 820-597 or 820-599.

The cost is not a debt deduction of the head company or single company for the purposes of this Division as applying because of this

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision. This is because subsection 820-603(3) or (4) treats the Australian permanent establishment as being part of the head company or single company, so the cost is treated as being paid or owed by the head company or single company to itself.

### 820-607 Effect on test periods under this Division

If, apart from this section, this Division (except this Subdivision) would have a single application to the \*head company or single company, or to the establishment entity, in relation to a period (the *test period*) that:

- (a) is all or part of an income year of that entity; and
- (b) overlaps the grouping period;

this Division (except this section) is to have separate applications to that entity as follows:

- (c) a single application in relation to the period of overlap; and
- (d) a single application in relation to the part (if any) of the test period that is before the period of overlap; and
- (e) a single application in relation to the part (if any) of the test period that is after the period of overlap.

### 820-609 Effect on classification of head company or single company

- (1) The \*head company or single company is an *outward investing entity (ADI)* for a period (the *trial period*) that is all or part of the grouping period if:

- (a) apart from this Subdivision, the head company or single company would be an \*outward investing entity (ADI) for the trial period; or
- (b) apart from this Subdivision, the head company or single company would be:
  - (i) an \*outward investing entity (non-ADI) and an \*outward investor (financial) for the trial period; or
  - (ii) an \*outward investing entity (non-ADI) and an \*outward investor (general) for the trial period;

and at least one of the \*Australian permanent establishments is a \*permanent establishment through which a \*foreign bank carries on banking \*business in Australia.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The \*head company is also an *outward investing entity (ADI)* for the trial period if, apart from this Subdivision:
- (a) section 820-585 would prevent the disallowance of a \*debt deduction for the income year including the trial period; or
  - (b) section 820-587 would apply Subdivision 820-D to the head company as if it were an \*outward investing entity (ADI) for the trial period.
- (3) The single company is also an *outward investing entity (ADI)* for the trial period if it is both a \*foreign controlled Australian company and an \*ADI for that period.
- (4) The \*head company or single company is an *inward investing entity (ADI)* for the trial period if:
- (a) apart from this Subdivision, it would be an \*inward investment vehicle (general) or an \*inward investment vehicle (financial), and not an \*outward investor (general) or an \*outward investor (financial), for the trial period; and
  - (b) at least one of the \*Australian permanent establishments is a \*permanent establishment through which a \*foreign bank carries on banking \*business in Australia.
- (5) The \*head company or single company is an *outward investing entity (non-ADI)* and an *outward investor (financial)* for the trial period if, apart from this Subdivision, it would be an \*outward investing entity (non-ADI) and:
- (a) an \*outward investor (financial); or
  - (b) an \*outward investor (general);
- for that period, and:
- (c) at least one of the \*Australian permanent establishments is a \*permanent establishment of a \*foreign entity that is a \*financial entity; and
  - (d) none of the Australian permanent establishments is a permanent establishment through which a \*foreign bank carries on banking \*business in Australia.
- (6) The \*head company or single company is an *inward investing entity (non-ADI)* and an *inward investment vehicle (financial)* for

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the trial period if, apart from this Subdivision, it would be an \*inward investing entity (non-ADI) and:

- (a) an \*inward investment vehicle (financial); or
- (b) an \*inward investment vehicle (general);

for that period and not an \*outward investor (general) or an \*outward investor (financial) for that period and:

- (c) at least one of the \*Australian permanent establishments is a \*permanent establishment of a \*foreign entity that is a \*financial entity; and
  - (d) none of the Australian permanent establishments is a permanent establishment through which a \*foreign bank carries on banking \*business in Australia.
- (7) This section has effect despite any other provision of this Division, except Subdivision 820-EA and section 820-610.

Note: If the head company or single company is an outward investor (financial) or inward investment vehicle (financial) under this section and satisfies subsection 820-430(5), it may choose under Subdivision 820-EA to be treated as an outward investing entity (ADI). Section 820-603 affects whether the company satisfies that subsection, by treating as part of the company each relevant foreign financial entity's Australian permanent establishment.

### **820-610 Choice not to be outward investing entity (ADI) or inward investing entity (ADI)**

(1) This section applies if:

- (a) apart from this section, the \*head company or single company would, under section 820-609, be an \*outward investing entity (ADI) or an \*inward investing entity (ADI) for the trial period; and
- (b) at all times in the trial period, each of the following entities that is an \*ADI is a \*specialist credit card institution:
  - (i) the head company or single company;
  - (ii) an establishment entity whose \*Australian permanent establishments the head company or single company has chosen under section 820-597 or 820-599 to have treated as part of the company for the period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The \*head company or single company is an *outward investing entity (non-ADI)* and an *outward investor (financial)* for the trial period if:
- (a) apart from this section, the company would, under section 820-609, be an \*outward investing entity (ADI) for the trial period; and
  - (b) the company chooses, before lodging its \*income tax return for the income year including the trial period, to be an outward investing entity (non-ADI) and an outward investor (financial) for that period.
- (3) The \*head company or single company is an *inward investing entity (non-ADI)* and an *inward investment vehicle (financial)* for the trial period if:
- (a) apart from this section, the company would, under section 820-609, be an \*inward investing entity (ADI) for the trial period; and
  - (b) the company chooses, before lodging its \*income tax return for the income year including the trial period, to be an inward investing entity (non-ADI) and an inward investment vehicle (financial) for that period.
- (4) This section has effect despite sections 820-85, 820-185 and 820-609.

### **820-611 Values to be based on what would be in consolidated accounts for group**

- (1) For the purposes of this Division as applying because of this Subdivision, the value or amount of a particular matter as at a particular time during the grouping period is to be worked out, so far as practicable, on the basis of the information that would be contained in a set of consolidated accounts:
- (a) prepared, in accordance with the \*accounting standard on consolidated accounts, as at that time; and
  - (b) covering the \*consolidated group, \*MEC group or single company, as appropriate, and each \*Australian permanent establishment that section 820-603 treats as part of the \*head company or single company at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: This subsection does not depend on whether such a set of consolidated accounts was prepared, or had to be prepared, for other purposes.

- (2) To avoid doubt, subsection (1) also applies to working out the value or amount, as at a particular time, of a matter mentioned in any of sections 820-613 to 820-615.

### 820-613 How Subdivision 820-D applies

- (1) This section has effect for the purposes of applying Subdivision 820-D to the \*head company or single company in relation to a period (the *test period*) that is all or part of the grouping period.

Note: Subdivision 820-D applies to the head company or single company if it is classified as an outward investing entity (ADI) because of section 820-609, either alone or in conjunction with a choice made by the company under section 820-430.

#### *Adjusted average equity capital*

- (2) The \*adjusted average equity capital of the \*head company or single company for the test period is increased by the average value, for the period, of the amount worked out under subsection (3).

Note 1: In the case of a choice under section 820-599, paragraph 820-603(4)(b) treats the single company and the relevant Australian permanent establishments as a consolidated group.

Note 2: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

- (3) The amount worked out under this subsection as at a particular day is the total of the amounts worked out under the following paragraphs for each of the establishment entity's \*Australian permanent establishments that section 820-603 treats as part of the \*head company or single company on that day:

- (a) so much of the establishment entity's \*ADI equity capital, at the end of the day, as:
- (i) is attributable to that Australian permanent establishment; and
  - (ii) has not been allocated to the \*OB activities of the entity;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the amounts that, as at the end of that day:
- (i) are made available by the establishment entity to the Australian permanent establishment as loans to it; and
  - (ii) do not give rise to any \*debt deductions of the entity for the income year or any other income year.

Note: The amounts are to be worked out, so far as practicable, on the basis of the information that would be contained in a set of consolidated accounts. See section 820-611.

#### *Risk-weighted assets*

- (4) For each of the establishment entity's \*Australian permanent establishments that is covered by the choice, the \*risk-weighted assets of the \*head company or single company include that part of the entity's risk-weighted assets that:
- (a) is attributable to that Australian permanent establishment; and
  - (b) is not attributable to the entity's \*OB activities.

### **820-615 How Subdivision 820-E applies**

- (1) This section has effect for the purposes of applying Subdivision 820-E to the \*head company or single company in relation to a period (the *test period*) that is all or part of the grouping period.

Note: Subdivision 820-E applies to the head company or single company if it is classified as an inward investing entity (ADI) because of section 820-609.

#### *Average equity capital*

- (2) The *average equity capital* of the \*head company or single company for the test period is:
- (a) the average value, for that period, of all the \*ADI equity capital of the company; plus
  - (b) the average value, for that period, of the amount worked out under subsection 820-613(3).

Note 1: In the case of a choice under section 820-599, paragraph 820-603(4)(b) treats the single company and the relevant Australian permanent establishments as a consolidated group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Note 2: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

*Safe harbour capital amount*

- (3) The *safe harbour capital amount* of the \*head company or single company for the test period is worked out using the following method statement.

*Method statement*

Step 1. Work out the average value, for the test period, of the \*head company's or single company's \*risk-weighted assets.

Step 2. Multiply the result of step 1 by 4%. The result of this step is the *safe harbour capital amount*.

*Risk-weighted assets*

- (4) For each of the establishment entity's \*Australian permanent establishments covered by the choice, the \*risk-weighted assets of the \*head company or single company include that part of the entity's risk-weighted assets that:
- (a) is attributable to that Australian permanent establishment; and
  - (b) is not attributable to the entity's \*OB activities.

## Subdivision 820-G—Calculating the average values

### Guide to Subdivision 820-G

#### 820-625 What this Subdivision is about

This Subdivision sets out the methods of calculating the average values for the purposes of this Division. It also includes special rules about values and valuation that are relevant to that calculation.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: Section 820-25 of the *Income Tax (Transitional Provisions) Act 1997* provides for a transitional rule that affects the operation of this Subdivision in relation to an income year that begins before 1 July 2002 and ends before 30 June 2003.

## Table of sections

### How to calculate the average values

- 820-630 Methods of calculating average values
- 820-635 The opening and closing balances method
- 820-640 The 3 measurement days method
- 820-645 The frequent measurement method

### Special rules about values and valuation

- 820-675 Amount to be expressed in Australian currency
- 820-680 Valuation of assets, liabilities and equity capital
- 820-682 Recognition of assets and liabilities—modifying application of accounting standards
- 820-683 Recognition of internally generated intangible items—modifying application of accounting standards
- 820-684 Valuation of intangible assets if no active market—modifying application of accounting standards
- 820-685 Valuation of debt capital
- 820-690 Commissioner's power

## How to calculate the average values

### 820-630 Methods of calculating average values

#### *Methods of calculation for entities that are not ADIs*

- (1) An entity to which Subdivision 820-B or 820-C applies for a period that is all or a part of an income year must use one of the following methods to calculate the average value of a matter mentioned in that Subdivision for the purposes of that application:
  - (a) the method set out in section 820-635 (the ***opening and closing balances method***);
  - (b) the method set out in section 820-640 (the ***3 measurement days method***);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(c) the method set out in section 820-645 (the *frequent measurement method*).

Note 1: This subsection therefore applies only to an outward investing entity (non-ADI) or an inward investing entity (non-ADI).

Note 2: An entity cannot apply the 3 measurement days method if it is unable to meet the requirements in subsection 820-640(1). An entity's ability to apply that method may therefore be limited.

(2) The entity must use the same method to calculate all such average values for that period for the purposes of that application.

*Commissioner's power*

(3) If the entity fails to comply with subsection (2), the Commissioner may, irrespective of the methods used by the entity, recalculate all the average values for the entity and that period by using the opening and closing balances method.

*Method of calculation for ADIs*

(4) An entity to which Subdivision 820-D or 820-E applies for a period that is all or a part of an income year must use the frequent measurement method to calculate the average value of a matter mentioned in that Subdivision for the purposes of that application.

Note: This subsection therefore applies only to an outward investing entity (ADI) or an inward investing entity (ADI).

### 820-635 The opening and closing balances method

An entity that uses the opening and closing balances method for a period must apply the following method statement to calculate the average value of a matter for that period.

*Method statement*

Step 1. Work out the value of the particular matter as at the first day of that period.

Step 2. Work out the value of the particular matter as at the last day of that period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Step 3. Add the results of steps 1 and 2.

Step 4. Divide the result of step 3 by 2. The result of this step is the average value.

Example: ALWZ Corporation, a company that is an Australian entity, held assets valued at \$95 million on the first day of an income year. It held assets valued at \$105 million at the end of that year. Adding those amounts and dividing the result by 2 gives the average value of its assets for that year, which is \$100 million.

### 820-640 The 3 measurement days method

#### *Application*

- (1) An entity must not use the 3 measurement days method for a period that is a part of an income year unless the following days occur during that period:
  - (a) the last day of the first half of the income year;
  - (b) one or both of the following days:
    - (i) the first day of that year;
    - (ii) the last day of that year.

#### *Method statement*

- (2) An entity that uses the 3 measurement days method for a period must apply the following method statement to calculate the average value of a matter for that period.

#### *Method statement*

Step 1. Work out the value of the particular matter as at the first measurement day (see subsection (3)).

Step 2. Work out the value of the particular matter as at the second measurement day (see subsection (3)).

Step 3. Work out the value of the particular matter as at the third measurement day (see subsection (3)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Step 4. Add the results of steps 1, 2 and 3.

Step 5. Divide the result of step 4 by 3. The result of this step is the average value.

Example: RJ Corporation held assets valued at \$115 million on the first day of an income year. It held assets valued at \$105 million on the last day of the first half of that year, and \$80 million on the last day of that year. Adding these amounts and dividing the result by 3 gives the average value of its assets for that year, which is \$100 million.

*Measurement days*

- (3) The following are the *first*, *second* and *third measurement days*:
- (a) the *first measurement day* is the first day of the income year if it occurs during that period, otherwise it is the first day of that period;
  - (b) the *second measurement day* is the last day of the first half of that year;
  - (c) the *third measurement day* is the last day of that year if it occurs during that period, otherwise it is the last day of that period.

**820-645 The frequent measurement method**

- (1) An entity that uses the frequent measurement method for a period (the *measurement period*) must calculate the average value of a matter for that period by applying:
- (a) the method statement in subsection (2) (generally based on quarterly periods); or
  - (b) the method statement in subsection (4) (generally based on regular intervals).

This section does not prevent the entity from applying the method statement in subsection (2) for one matter and the method statement in subsection (4) for another matter in relation to that period.

- (2) This is the method statement for the purposes of paragraph (1)(a).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Method statement*

- Step 1. Work out the value of the particular matter as at each of the following measurement days:
- (a) the first day of the measurement period;
  - (b) the last day of each quarterly period of that income year (see subsection (3)) that occurs during the measurement period (if any);
  - (c) the last day of the measurement period if it is not a day covered by paragraph (b).
- Step 2. Add up those values.
- Step 3. Divide the result of step 2 by the number of measurement days. The result of this step is the average value.

Example: KJW Finance Corporation, a company that is an Australian entity, held assets valued at \$130 million on the first day of an income year. On the last day of each quarterly period for that year it held assets valued at \$140 million, \$120 million, \$110 million and \$100 million respectively. Adding these amounts and dividing the result by 5 gives the average value of its assets for that year, which is \$120 million.

*Quarterly period*

- (3) The *quarterly periods of the income year* are:
- (a) the period consisting of the first, second and third months of that year; and
  - (b) each successive period of 3 months that occurs after that period during that year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) This is the method statement for the purposes of paragraph (1)(b):

*Method statement*

- Step 1. Work out the value of the particular matter as at each of the following measurement days:
- (a) the first day of the measurement period;
  - (b) the last day of each regular interval for the measurement period (see subsection (5));
  - (c) the last day of the measurement period if it is not a day mentioned in paragraph (b).
- Step 2. Add up those values.
- Step 3. Divide the result of step 2 by the number of measurement days. The result of this step is the average value.

Example: TW Corporation, a company that is an Australian entity, adopts a weekly interval for the purposes of this subsection. The measurement period is a period of 12 weeks. On the first day of that period it had \$70 million of debt capital. Its debt capital was \$80 million on the last day of each of the first 7 weeks, and \$95 million on the last day of the remaining 5 weeks. Adding these amounts and dividing the result by 13 (the number of measurement days) gives the average value of its debt capital for that period, which is \$85 million.

*Regular intervals*

- (5) The *regular intervals* for the measurement period are:
- (a) a period which consists of a fixed number of days or months (not less than one day and not more than 3 months) adopted by the entity and begins at the start of the first day of the measurement period; and
  - (b) each successive period of the same duration that occurs during the measurement period.

Note: Examples of a regular interval therefore include a daily, weekly, fortnightly, monthly or quarterly interval.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (6) The entity must use the same regular intervals when calculating the average values of different matters under subsection (4) for that period.

### **Special rules about values and valuation**

#### **820-675 Amount to be expressed in Australian currency**

- (1) For the purposes of this Division, an amount (including a value used in a calculation under this Division) is to be expressed in Australian currency.
- (2) An entity must comply with the \*accounting standards in converting an amount into Australian currency.
- (3) Subsection (2) has effect whether the \*accounting standard would otherwise apply to the entity or not.

#### **820-680 Valuation of assets, liabilities and equity capital**

- (1) For the purposes of this Division, an entity must comply with the \*accounting standards in determining what are its assets and liabilities and in calculating:
- (a) the value of its assets (including revaluing its assets for the purposes of that calculation); and
  - (b) the value of its liabilities (including its \*debt capital); and
  - (c) the value of its \*equity capital.

Note: This requirement to comply with the accounting standards is modified in certain cases (see sections 820-682, 820-683 and 820-684).

- (1A) In particular, for the purposes of this Division, the entity has an asset or liability at a particular time if, and only if, according to the \*accounting standards, the asset or liability can or must be recognised at that time.

Note: This application of the accounting standards is modified in certain cases (see sections 820-682 and 820-683).

#### *Requirements for revaluation of assets*

- (2) A revaluation of assets mentioned in paragraph (1)(a) must be made by a person:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (a) who is an expert in valuing such assets; and
- (b) whose pecuniary or other interests could not reasonably be regarded as being capable of affecting the person's ability to give an unbiased opinion in relation to that revaluation.

Note 1: The entity must also keep records in accordance with section 820-985 about the revaluation, unless the exception in subsection (2A) of this section applies.

Note 2: This subsection also applies to some revaluations that are not allowed by the accounting standards (see subsection 820-684(5)).

*Revaluation reflected in statutory financial statements for the same period*

- (2A) A revaluation of an asset need not comply with subsection (2) if:
- (a) the revaluation is for the purpose of the entity calculating the value of its assets for the purposes of this Division as applying to the entity for a particular period; and
  - (b) the entity is required by an Australian law to prepare financial statements for a period that is or includes all or part of that period; and
  - (c) those financial statements reflect the revaluation.

*External validation of a revaluation made internally*

- (2B) A revaluation of assets mentioned in paragraph (1)(a) may be made by a person (the *internal expert*) if:
- (a) apart from this subsection, paragraph (2)(b) would prevent the internal expert from making the revaluation, but only because, in making it, he or she would be:
    - (i) performing duties as an employee of the entity; or
    - (ii) providing services under an \*arrangement with the entity that is substantially similar to a contract of employment; and
  - (b) another person (the *external expert*):
    - (i) is not prevented by subsection (2) from making the revaluation; and
    - (ii) has reviewed the methodology for making it (including the validity of any assumptions to be made, and the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

accuracy and reliability of the data and other information to be used); and

(iii) has agreed that that methodology is suitable for making it; and

(c) the internal expert makes the revaluation in accordance with that methodology.

Note: This subsection also applies to some revaluations that are not allowed by the accounting standards (see subsection 820-684(5)).

*Revaluation of individual assets*

(2C) Subsection (1) does not prevent the entity from revaluing one or more assets in a class of assets (as distinct from revaluing all the assets in the class) if the value of no asset in that class has fallen since the entity last calculated the total value of all the assets in that class in accordance with the \*accounting standards.

*When further revaluation of assets required*

(2D) If:

(a) the entity revalues one or more assets (whether constituting a class of assets or not) for the purpose of calculating the value of its assets for the purposes of this Division as applying to the entity for a particular period (the **first period**); and

(b) the revaluation is *not* required by the \*accounting standards; and

(c) if the revaluation *had* been required by the accounting standards, the entity could have relied on it in preparing financial statements that the entity is required by an Australian law to prepare for a period (the **later period**) that ends *after* the first period;

the entity may also rely on the revaluation in calculating the value of its assets for the purposes of this Division as applying to the entity for a period that is or includes all or part of the later period.

(2E) If subsection (2D) does *not* permit the entity to rely on the revaluation in calculating the value of its assets for the purposes of this Division as applying to the entity for a period that is later than the first period, the revaluation is disregarded in determining

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

whether subsection (1) requires the entity to revalue the one or more assets in calculating the value of its assets for those purposes.

Note: As a result, the entity may not be required to make a further revaluation of the one or more assets. However, if the entity does not, it must use the value of the one or more assets that is reflected in financial statements for the relevant period that comply with the accounting standards.

*Accounting standards need not otherwise apply to the entity*

- (3) Subsection (1) has effect whether the \*accounting standard would otherwise apply to the entity or not.

### **820-682 Recognition of assets and liabilities—modifying application of accounting standards**

*Deferred tax assets and deferred tax liabilities*

- (1) Despite subsections 820-680(1) and (1A), an entity must not recognise:
- (a) a deferred tax liability (within the meaning of the \*accounting standards) as a liability for the purposes of this Division; or
  - (b) a deferred tax asset (within the meaning of the accounting standards) as an asset for the purposes of this Division.

Note: Subsections 820-680(1) and (1A) require compliance with accounting standards.

*Surpluses and deficits in defined benefit superannuation plans*

- (2) Despite subsections 820-680(1) and (1A), an entity must not recognise an amount relating to a defined benefit plan (within the meaning of the \*accounting standards) as:
- (a) a liability for the purposes of this Division; or
  - (b) an asset for the purposes of this Division.

Note: Subsections 820-680(1) and (1A) require compliance with accounting standards.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Not applicable to ADIs*

- (3) This section does not apply in relation to an entity for a period if, for the period, the entity is an \*outward investing entity (ADI) or an \*inward investing entity (ADI).

*Not applicable to records about Australian permanent establishments*

- (4) This section does not apply for the purposes of section 820-960.

### **820-683 Recognition of internally generated intangible items— modifying application of accounting standards**

*Accounting standards prevent recognition of some items*

- (1) Subsection (2) applies in relation to an item, other than internally generated goodwill (within the meaning of \*accounting standard AASB 138), if:
- (a) the item cannot be recognised under that standard as an internally generated intangible asset (within the meaning of that standard) because that standard determines that the cost of the item cannot be distinguished from the cost of developing the entity's business as a whole; and
  - (b) the item would otherwise meet criteria under that standard for recognition as such an asset.

Note 1: As a general rule, an entity must comply with the accounting standards when recognising its assets for the purposes of this Division (see subsections 820-680(1) and (1A)).

Note 2: This section does not apply to ADIs (see subsection (6)).

*Entity may choose to recognise the item as an intangible asset*

- (2) Despite subsections 820-680(1) and (1A), the entity may choose to recognise the item as such an asset for a period for the purposes of this Division (other than section 820-960).

Note: Section 820-960 is about records for Australian permanent establishments.

- (3) A choice under subsection (2):
- (a) must be in writing and may cover more than one item; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) must be made before the due day for lodging the entity's \*income tax return for the income year that is, or that includes, the period; and
  - (c) subject to subsection (4), has effect, for the entity and the item, for the period and each later period.
- (4) The entity may, in writing, revoke a choice under subsection (2). The revocation has effect:
- (a) for each period in the income year for which the entity is next required to lodge an \*income tax return; and
  - (b) for each later period.
- (5) When:
- (a) recognising an item as an asset under this section; and
  - (b) calculating the value of the asset (including revaluing the asset);

the entity must, to the maximum extent possible, comply with the \*accounting standards as if the recognition were allowed by those standards. This subsection has effect subject to section 820-684.

Note: Section 820-684 will allow the entity to revalue the asset even if accounting standard AASB 138 would prevent this because of the absence of an active market.

*Choice not available to ADIs*

- (6) An entity cannot make a choice under subsection (2) for a period if, for the period, the entity is an \*outward investing entity (ADI) or an \*inward investing entity (ADI).

**820-684 Valuation of intangible assets if no active market—  
modifying application of accounting standards**

*Accounting standards prevent revaluation of some assets*

- (1) Subsection (2) applies if complying with \*accounting standard AASB 138 would prevent an entity from revaluing an intangible asset (within the meaning of that standard) because of the absence of an active market (within the meaning of that standard).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 1: As a general rule, an entity must comply with the accounting standards when revaluing its assets for the purposes of this Division (see subsection 820-680(1)).

Note 2: This section does not apply to ADIs (see subsection (7)).

*Entity may choose to revalue the asset*

- (2) Despite subsection 820-680(1), the entity may choose to revalue the asset for a period for the purposes of this Division (other than section 820-960).

Note: Section 820-960 is about records for Australian permanent establishments.

- (3) A choice under subsection (2):

- (a) must be in writing and may cover more than one asset; and
- (b) must be made before the due day for lodging the entity's \*income tax return for the income year that is, or that includes, the period; and
- (c) subject to subsection (4), has effect, for the entity and the item, for the period and each later period.

- (4) The entity may, in writing, revoke a choice under subsection (2). The revocation has effect:

- (a) for each period in the income year for which the entity is next required to lodge an \*income tax return; and
- (b) for each later period.

*Requirements for such revaluations*

- (5) Subsections 820-680(2) and (2B) apply in relation to a revaluation under subsection (2) in a corresponding way to the way they apply in relation to a revaluation mentioned in paragraph 820-680(1)(a).

Note 1: Subsections 820-680(2) and (2B) set out requirements and other matters in relation to revaluations under subsection 820-680(1).

Note 2: The entity must also keep records in accordance with section 820-985 about the revaluation.

- (6) When revaluing an asset under subsection (2), the entity must, to the maximum extent possible, comply with the \*accounting standards as if the revaluation were allowed by those standards.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Choice not available to ADIs*

- (7) An entity cannot make a choice under subsection (2) for a period if, for the period, the entity is an \*outward investing entity (ADI) or an \*inward investing entity (ADI).

**820-685 Valuation of debt capital**

For the purposes of this Division, the regulations may make additional provisions for the valuation of the \*debt capital of an entity.

**820-690 Commissioner's power**

If the Commissioner considers that, in relation to a calculation under this Division, an entity has:

- (a) overvalued its assets; or
- (b) undervalued its liabilities (including its \*debt capital);

the Commissioner may, having regard to the \*accounting standards and this Subdivision, substitute a value that the Commissioner considers is appropriate.

**Subdivision 820-H—Control of entities**

**Guide to Subdivision 820-H**

**820-740 What this Subdivision is about**

This Subdivision sets out rules about the following:

- the meaning of an Australian controller of a foreign entity (for the purpose of determining whether or not an entity is an outward investing entity (non-ADI) or outward investing entity (ADI));
- the meaning of a foreign controlled Australian entity (for the purpose of determining whether or not an entity is an inward investing entity (non-ADI));

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- the method of working out the extent to which one entity is controlled by another entity for those purposes.

## Table of sections

### **Australian controller of a foreign entity**

- 820-745 What is an Australian controlled foreign entity?  
820-750 What is an Australian controller of a controlled foreign company?  
820-755 What is an Australian controller of a controlled foreign trust?  
820-760 What is an Australian controller of a controlled foreign corporate limited partnership?

### **Foreign controlled Australian entity**

- 820-780 What is a foreign controlled Australian entity?  
820-785 What is a foreign controlled Australian company?  
820-790 What is a foreign controlled Australian trust?  
820-795 What is a foreign controlled Australian partnership?

### **Thin capitalisation control interest**

- 820-815 General rule about thin capitalisation control interest in a company, trust or partnership  
820-820 Special rules about calculating TC control interest held by an entity  
820-825 Special rules about calculating TC control interests held by a group of entities  
820-830 Special rules about determining percentage of TC control interest  
820-835 Commissioner's power

### **TC direct control interest, TC indirect control interest and TC control tracing interest**

- 820-855 TC direct control interest in a company  
820-860 TC direct control interest in a trust  
820-865 TC direct control interest in a partnership  
820-870 TC indirect control interest in a company, trust or partnership  
820-875 TC control tracing interest in a company, trust or partnership

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



## Australian controller of a foreign entity

### 820-745 What is an Australian controlled foreign entity?

An *Australian controlled foreign entity*, in relation to a particular time, is an entity that is any of the following at that time:

- (a) a \*controlled foreign company (except a \*corporate limited partnership);
- (b) a \*controlled foreign trust;
- (c) a \*controlled foreign corporate limited partnership.

### 820-750 What is an Australian controller of a controlled foreign company?

An entity is an *Australian controller* of a \*controlled foreign company mentioned in paragraph 820-745(a) at a particular time if, and only if, at that time:

- (a) that entity is an \*Australian entity holding a \*TC control interest in the controlled foreign company that is 10% or more; or
- (b) all of the following subparagraphs apply:
  - (i) the controlled foreign company is such a company because of paragraph 340(c) of the *Income Tax Assessment Act 1936*;
  - (ii) not more than 5 Australian entities, including that entity, control that controlled foreign company (either alone or together with \*associate entities and whether or not any associate entity is also an Australian entity);
  - (iii) that entity holds a \*TC control interest in the controlled foreign company that is at least 1%.

Note: A corporate limited partnership that is a foreign entity may be a controlled foreign corporate limited partnership, see section 820-760.

### 820-755 What is an Australian controller of a controlled foreign trust?

An entity is an *Australian controller* of a \*controlled foreign trust at a particular time if, and only if, at that time, the entity is an

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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\*Australian entity holding a \*TC control interest in the trust that is 10% or more.

### **820-760 What is an Australian controller of a controlled foreign corporate limited partnership?**

*Australian controller of a controlled foreign corporate limited partnership*

- (1) An entity is an **Australian controller** of a \*controlled foreign corporate limited partnership at a particular time if, and only if, at least one of the following paragraphs applies to the entity at that time:
- (a) the entity is an \*Australian entity that is a \*general partner of the partnership;
  - (b) the entity is an Australian entity holding a \*TC control interest in the partnership that is 10% or more.

*Controlled foreign corporate limited partnership*

- (2) A \*corporate limited partnership is a **controlled foreign corporate limited partnership** at a particular time if, and only if, at that time:
- (a) it is not an \*Australian entity; and
  - (b) at least one of the following subparagraphs applies to it:
    - (i) at least one \*general partner of the partnership is an \*Australian entity or an \*Australian controlled foreign entity;
    - (ii) not more than 5 Australian entities (each of which holds a \*TC control interest in the partnership that is at least 1%) hold a total of TC control interests in the partnership that is 50% or more.

### **Foreign controlled Australian entity**

#### **820-780 What is a foreign controlled Australian entity?**

A **foreign controlled Australian entity**, in relation to a particular time, is an entity that is any of the following at that time:

- (a) a \*foreign controlled Australian company;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) a \*foreign controlled Australian trust;
- (c) a \*foreign controlled Australian partnership.

### 820-785 What is a foreign controlled Australian company?

- (1) A company (except a \*corporate limited partnership) is a **foreign controlled Australian company** (or an **FCAC**) at a particular time if, and only if, at that time, it is an \*Australian entity to which at least one of the following paragraphs applies:
- (a) not more than 5 \*foreign entities (each of which holds a \*TC control interest in the company that is at least 1%) hold a total of TC control interests in the company that is 50% or more;
  - (b) a foreign entity holds a TC control interest in the company that is 40% or more, and no other entity or entities (except an \*associate entity of the foreign entity or entities including the foreign entity or its associate entities) control the company;
  - (c) not more than 5 foreign entities control the company (whether or not with associate entities and whether or not any associate entity is a foreign entity).

Note: A corporate limited partnership that is an Australian entity may be a foreign controlled Australian partnership, see section 820-795.

#### *Exception*

- (2) Despite subsection (1), a company is not an FCAC at a particular time if, at that time:
- (a) the company would, apart from this subsection, be an FCAC only because of paragraph (1)(a) or (b); but
  - (b) the total of the following interests would be less than 20% if paragraphs 820-875(2)(a) and (b) were disregarded:
    - (i) the \*TC direct control interest in the company held by the \*foreign entity or entities mentioned in paragraph (1)(a) or (b);
    - (ii) the \*TC indirect control interest in the company held by the foreign entity or entities;
    - (iii) the TC direct control interests in the company held by any \*associate entities of the foreign entity or entities (other than any TC direct control interests that have

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

been taken into account in calculating the interest mentioned in subparagraph (ii));

- (iv) the TC indirect control interests in the company held by the entity's associate entities (other than any TC indirect control interests that have been taken into account in calculating the interest mentioned in subparagraph (ii)).

Note: Paragraphs 820-875(2)(a) and (b) set out special rules under which an entity is taken to hold a TC control tracing interest in another entity that is equal to 100%, which could then be taken into account in calculating a TC indirect control interest.

### **820-790 What is a foreign controlled Australian trust?**

- (1) A trust is a *foreign controlled Australian trust* (or an *FCAT*) at a particular time if, and only if, at that time, it is an \*Australian trust to which at least one of the following paragraphs applies:
- (a) not more than 5 \*foreign entities (each of which holds a \*TC control interest in the trust that is at least 1%) hold a total of TC control interests in the trust that is 50% or more;
  - (b) a foreign entity holds a TC control interest in the trust that is 40% or more, and no other entity or entities (except an \*associate entity of the foreign entity or entities including the foreign entity or its associate entities) control the trust;
  - (c) all of the following subparagraphs apply to the trust:
    - (i) at least one of the objects or beneficiaries of the trust is a foreign entity;
    - (ii) there has been at least one distribution of income or capital of the trust made to such an object or beneficiary (whether directly or indirectly) during the income year in which that particular time occurs, or during the preceding 2 income years;
    - (iii) the total TC control interests in the trust that are held by all its beneficiaries that are \*Australian entities do not exceed 50%;
  - (d) a foreign entity is in a position to control the trust (see subsection (2)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) A \*foreign entity is in a position to control a trust if, and only if:
- (a) the entity, or an \*associate entity of the entity, whether alone or with other associate entities (the *relevant entity*), has the power to obtain the beneficial enjoyment of the trust's capital or income (whether or not by exercising its power of appointment or revocation, and whether with or without another entity's consent); or
  - (b) the relevant entity is able to control the application of the trust's capital or income in any manner (whether directly or indirectly); or
  - (c) the relevant entity is able to do a thing mentioned in paragraph (a) or (b) under a \*scheme; or
  - (d) a trustee of the trust is accustomed or is under an obligation (whether formally or informally), or might reasonably be expected, to act in accordance with the relevant entity's directions, instructions or wishes; or
  - (e) the relevant entity is able to remove or appoint a trustee of the trust.

*Exception*

- (3) Despite subsection (1), a trust is not an FCAT at a particular time if, at that time:
- (a) the trust would, apart from this subsection, be an FCAT only because of paragraph (1)(a) or (b); but
  - (b) the total of the following interests would be less than 20% if paragraphs 820-875(2)(a) and (b) were disregarded:
    - (i) the \*TC direct control interest in the trust held by the \*foreign entity or entities mentioned in paragraph (1)(a), (b) or (c);
    - (ii) the \*TC indirect control interest in the trust held by the foreign entity or entities;
    - (iii) the TC direct control interests in the trust held by any \*associate entities of the foreign entity or entities (other than any TC direct control interests that have been taken into account in calculating the interest mentioned in subparagraph (ii));

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (iv) the TC indirect control interests in the trust held by the entity's associate entities (other than any TC indirect control interests that have been taken into account in calculating the interest mentioned in subparagraph (ii)).

Note: Paragraphs 820-875(2)(a) and (b) set out special rules under which an entity is taken to hold a TC control tracing interest in another entity that is equal to 100%, which could then be taken into account in calculating a TC indirect control interest.

## 820-795 What is a foreign controlled Australian partnership?

### *Corporate limited partnership*

- (1) A \*corporate limited partnership is a **foreign controlled Australian partnership** (or an **FCAP**) at a particular time if, and only if, at that time:
- (a) it is an \*Australian entity; and
  - (b) at least one of the following subparagraphs applies to it:
    - (i) not more than 5 \*foreign entities (each of which holds a \*TC control interest in the partnership that is at least 1%) hold a total of TC control interests in the partnership that are 50% or more;
    - (ii) at least one \*general partner of the partnership is a foreign entity or a \*foreign controlled Australian entity.

### *Partnership that is not a corporate limited partnership*

- (2) A partnership other than a \*corporate limited partnership is a **foreign controlled Australian partnership** (or an **FCAP**) at a particular time if, and only if, at that time:
- (a) at least one of the partners is an \*Australian entity; and
  - (b) at least one of the following subparagraphs applies to it:
    - (i) not more than 5 \*foreign entities (each of which holds a \*TC control interest in the partnership that is at least 1%) hold a total of TC control interests in the partnership that is 50% or more;
    - (ii) a foreign entity holds a TC control interest in the partnership that is 40% or more, and no other entity or entities (except an \*associate entity of the foreign entity

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

or entities including the foreign entity or its associate entities) control the partnership.

*Exception*

- (3) Despite subsections (1) and (2), a partnership is not an FCAP at a particular time if, at that time:
- (a) the partnership would, apart from this subsection, be an FCAP only because of subparagraph (1)(b)(i), (2)(b)(i) or (ii); but
  - (b) the total of the following interests would be less than 20% if paragraphs 820-875(2)(a) and (b) were disregarded:
    - (i) the \*TC direct control interest in the partnership held by the \*foreign entity or entities mentioned in subparagraph (1)(b)(i), (2)(b)(i) or (ii);
    - (ii) the \*TC indirect control interest in the partnership held by the foreign entity or entities;
    - (iii) the TC direct control interests in the partnership held by any \*associate entities of the foreign entity or entities (other than any TC direct control interests that have been taken into account in calculating the interest mentioned in subparagraph (ii));
    - (iv) the TC indirect control interests in the partnership held by the entity's associate entities (other than any TC indirect control interests that have been taken into account in calculating the interest mentioned in subparagraph (ii)).

Note: Paragraphs 820-875(2)(a) and (b) set out special rules under which an entity is taken to hold a TC control tracing interest in another entity that is equal to 100%, which could then be taken into account in calculating a TC indirect control interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Thin capitalisation control interest

### 820-815 General rule about thin capitalisation control interest in a company, trust or partnership

#### *Meaning of TC control interest*

- (1) The *thin capitalisation control interest* (or *TC control interest*) that an entity holds in a company, trust or partnership at a particular time is the total of the following interests:
  - (a) the \*TC direct control interest (if any) held by the entity in the company, trust or partnership at that time;
  - (b) the \*TC indirect control interest (if any) held by the entity in the company, trust or partnership at that time;
  - (c) the TC direct control interests (if any) held by the entity's \*associate entities in the company, trust or partnership at that time;
  - (d) the TC indirect control interests (if any) held by the entity's associate entities in the company, trust or partnership at that time.

This section has effect subject to sections 820-820 to 820-835 (which set out special rules to avoid double counting).

Note: For the rules about a TC direct control interest, see sections 820-855 to 820-865. For the rules about a TC indirect control interest, see sections 820-870 to 820-875.

- (2) This section does not apply to an \*associate entity of the entity if:
  - (a) the associate entity is a \*foreign entity and the associate entity is such an associate entity only because of subsection 820-905(3A); or
  - (b) the associate entity is such an associate entity only because of subsection 820-905(3B).

### 820-820 Special rules about calculating TC control interest held by an entity

- (1) This section applies for the purposes of calculating the \*TC control interest that an entity holds in a company, trust or partnership.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (2) Disregard a \*TC indirect control interest held by the entity to the extent to which it is calculated by reference to:
  - (a) a \*TC direct control interest taken into account under paragraph 820-815(c); or
  - (b) a TC indirect control interest taken into account under paragraph 820-815(d).
- (3) Disregard a \*TC indirect control interest held by an \*associate entity of the entity to the extent to which it is calculated by reference to:
  - (a) a \*TC direct control interest taken into account under paragraph 820-815(a) or (c); or
  - (b) a TC indirect control interest taken into account under paragraph 820-815(b) or (d).
- (3A) Subsection (3) does not apply to an \*associate entity of the entity if:
  - (a) the associate entity is a \*foreign entity and the associate entity is such an associate entity only because of subsection 820-905(3A); or
  - (b) the associate entity is such an associate entity only because of subsection 820-905(3B).
- (4) Take into account only one of the following things if both would otherwise be counted in calculating the \*TC control interest:
  - (a) the holding of a \*TC direct control interest by the entity or any other entity;
  - (b) an entitlement to acquire that TC direct control interest.
- (5) The operation of this section in relation to an entity does not prevent the operation of section 820-825 in relation to a group of entities that includes that entity.

### **820-825 Special rules about calculating TC control interests held by a group of entities**

- (1) This section applies for the purposes of calculating the total \*TC control interests that a group of entities holds in a company, trust or partnership.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) Take into account a particular \*TC direct control interest or \*TC indirect control interest only once if it would otherwise be counted more than once because the entity holding it is an \*associate entity of one or more entities in the group.
- (2A) Subsection (2) does not apply to an \*associate entity of one or more entities in the group if:
  - (a) the associate entity is a \*foreign entity and the associate entity is such an associate entity only because of subsection 820-905(3A); or
  - (b) the associate entity is such an associate entity only because of subsection 820-905(3B).
- (3) Take into account only one of the following things if both of them would otherwise be counted in calculating the total \*TC control interests:
  - (a) the holding of a \*TC direct control interest by an entity;
  - (b) an entitlement to acquire that TC direct control interest.
- (4) The operation of this section in relation to a group of entities does not prevent the operation of section 820-820 in relation to an entity that is a member of that group.

### **820-830 Special rules about determining percentage of TC control interest**

- (1) This section applies for the purposes of determining whether an entity, or a group of entities, holds at least a particular percentage of \*TC control interests for the purposes of a provision in this Subdivision.
- (2) If, apart from this subsection, an entity, or each of 2 or more entities, would hold a \*TC direct control interest equal to 100%, or a \*TC control tracing interest equal to 100%, in another entity (the *controlled entity*):
  - (a) only the entity, or one of the 2 or more entities, is to be taken to hold that particular interest in the controlled entity equal to 100%; and
  - (b) another entity is not to be taken to hold that particular interest in the controlled entity (whether or not it would, apart from

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

this subsection, hold that interest in the controlled entity equal to 100%).

### 820-835 Commissioner's power

For the purposes of this Subdivision, the Commissioner may decide:

- (a) which one of 2 things is to be taken into account for the purposes of subsection 820-820(4) or subsection 820-825(3);  
or
- (b) which one of 2 or more entities is to be chosen for the purposes of paragraph 820-830(2)(a).

### TC direct control interest, TC indirect control interest and TC control tracing interest

#### 820-855 TC direct control interest in a company

- (1) A *thin capitalisation direct control interest* (or a *TC direct control interest*) that an entity holds in a company (except a \*corporate limited partnership) at a particular time is the percentage of the direct control interest (if any) that the entity holds in the company at that time under the provisions applied by subsection (2).

Note: For the TC direct control interest that an entity holds in a corporate limited partnership, see section 820-865.

- (2) For the purposes of subsection (1), provisions of Part X of the *Income Tax Assessment Act 1936* are applied with the modifications set out in the following table.

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#### Modifications of provisions in Part X of the *Income Tax Assessment Act 1936*

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Item	Provisions	Modifications
1	Section 350 (including any other provision in Part X of the <i>Income Tax Assessment Act 1936</i> that defines a term used in the section)	The section applies for the purposes of this Subdivision rather than only for the purposes of Part X of the <i>Income Tax Assessment Act 1936</i>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Modifications of provisions in Part X of the *Income Tax Assessment Act 1936***

<b>Item</b>	<b>Provisions</b>	<b>Modifications</b>
2	Subsections 350(6) and (7)	If section 350 is used for the purposes of determining whether or not a company is a *foreign controlled Australian company, the subsections apply as if subsection (6) referred to *foreign entities and foreign entity rather than *Australian entities and Australian entity If section 350 is used for the purposes of determining whether or not an entity is an *Australian controller of a *controlled foreign company, the subsections do not apply
3	Section 350	A reference to an *associate is taken to be a reference to an *associate entity

**820-860 TC direct control interest in a trust**

- (1) A *thin capitalisation direct control interest* (or a *TC direct control interest*) that an entity holds in a trust at a particular time is the percentage of the direct control interest (if any) that the entity holds in the trust at that time under the provisions applied by subsection (2).
- (2) For the purposes of subsection (1), provisions of Part X of the *Income Tax Assessment Act 1936* are applied with the modifications set out in the following table.

**Modifications of provisions in Part X of the *Income Tax Assessment Act 1936***

<b>Item</b>	<b>Provisions</b>	<b>Modifications</b>
1	Section 351 (including any other provision in Part X of the <i>Income Tax Assessment Act 1936</i> that defines a term used in the section)	The section applies for the purposes of this Subdivision rather than only for the purposes of Part X of the <i>Income Tax Assessment Act 1936</i>
2	Subsections 351(3) and (4)	The subsections do not apply

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) In addition, for the purposes of determining whether or not an entity (other than a trust mentioned in paragraph (a) or (b)) is a \*foreign controlled Australian entity:
- (a) if a trust is covered by paragraph 820-790(1)(c)—a foreign entity that is an object of the trust at a particular time is taken to hold, at that time, a TC direct control interest in the trust that is equal to 100%; and
  - (b) if a trust is covered by paragraph 820-790(1)(d)—a foreign entity that is in a position to control the trust at a particular time is taken to hold, at that time, a \*TC direct control interest in the trust that is equal to 100%.

Note: The foreign entity therefore holds a TC control tracing interest in the trust (see section 820-875). That interest may then be taken into account in calculating any TC indirect control interest that the foreign entity holds in another entity in relation to which the trust is an interposed entity (see section 820-870). As a result, that other entity may become a foreign controlled Australian entity.

### 820-865 TC direct control interest in a partnership

A *thin capitalisation direct control interest* (or a *TC direct control interest*) that an entity holds in a partnership at a particular time is whichever of the following percentages is applicable, and if there are 2 or more such percentages, the greatest of them:

- (a) in the case of a \*corporate limited partnership—100% if the entity is a \*general partner of the partnership;
- (b) in the case of a partnership that is not a corporate limited partnership—the percentage of the control of voting power in the partnership that the entity has at that time;
- (c) in any case—the percentage that the entity holds, or is entitled to acquire, at that time, of any of the following:
  - (i) the total amount of assets or capital contributed to the partnership;
  - (ii) the total rights of partners to distributions of capital, assets or profits on the dissolution of the partnership;
  - (iii) the total rights of partners to distributions of capital, assets or profits otherwise than on the dissolution of the partnership.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**820-870 TC indirect control interest in a company, trust or partnership**

*What is a TC indirect control interest?*

- (1) An entity holds a ***thin capitalisation indirect control interest*** (or a ***TC indirect control interest***) in a company, trust or partnership at a particular time if, and only if:
- (a) there is an interposed entity, or a continuous series of at least 2 interposed entities, between that entity and the company, trust or partnership; and
  - (b) the interposed entity, or each of the interposed entities, is:
    - (i) a \*foreign controlled Australian entity if this section is used for the purposes of determining whether or not an entity is a foreign controlled Australian entity; or
    - (ii) an \*Australian controlled foreign entity if this section is used for the purposes of determining whether or not an entity is an Australian controlled foreign entity or an \*Australian controller of such an entity.

Note: In the case of a continuous series of interposed entities between an entity and a company, trust or partnership, the entity must hold a TC control tracing interest in the first interposed entity (see subsection (2)). In addition, under subsection (2), each interposed entity in the series must hold a TC control tracing interest in the next interposed entity (except in the case of the last one, which holds a TC control tracing interest in the company, trust or partnership).

*What is an interposed entity?*

- (2) For the purposes of this section, an entity (the ***middle entity***) is interposed between 2 other entities at a particular time if, and only if, at that time:
- (a) the first of those 2 entities holds a \*TC control tracing interest in the middle entity; and
  - (b) the middle entity holds a TC control tracing interest in the second of those 2 entities.

Note: For the rules about a TC control tracing interest, see section 820-875.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*How to calculate a TC indirect control interest*

- (3) The \*TC indirect control interest that an entity (the *top entity*) holds in a company, trust or partnership at a particular time is calculated in accordance with subsection (4), (5) or (6) (as appropriate).

*One interposed entity only*

- (4) The \*TC indirect control interest is the result of applying the following method statement if there is only one interposed entity between the top entity and the company, trust or partnership at that time.

*Method statement*

- Step 1. Calculate the \*TC control tracing interest that the top entity holds in the interposed entity at that time.
- Step 2. Multiply the result of step 1 by the \*TC control tracing interest that the interposed entity holds in the company, trust or partnership at that time.

*2 interposed entities*

- (5) The \*TC indirect control interest is the result of applying the following method statement if there are 2 interposed entities between the top entity and the company, trust or partnership at that time.

*Method statement*

- Step 1. Calculate the \*TC control tracing interest that the top entity holds in the first of those interposed entities at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Step 2. Multiply the result of step 1 by the \*TC control tracing interest that the first interposed entity holds in the next interposed entity (the *second interposed entity*) at that time.

Step 3. Multiply the result of step 2 by the \*TC control tracing interest that the second interposed entity holds in the company, trust or partnership at that time.

*More than 2 interposed entities*

- (6) The \*TC indirect control interest is the result of applying the following method statement if there are more than 2 interposed entities between the top entity and the company, trust or partnership at that time.

*Method statement*

Step 1. Calculate the \*TC control tracing interest that the top entity holds in the first of those interposed entities at that time.

Step 2. Multiply the result of step 1 by the \*TC control tracing interest that the first interposed entity holds in the next interposed entity (the *second interposed entity*) at that time.

Step 3. Multiply the result of step 2 by the \*TC control tracing interest that the second interposed entity holds in the next interposed entity at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Step 4. Continue this pattern of multiplying the result of the last multiplication by the \*TC control tracing interest in the next interposed entity held by the preceding entity, ending with a multiplication by the TC control tracing interest held by the last interposed entity in the company, trust or partnership.

**820-875 TC control tracing interest in a company, trust or partnership**

- (1) A *thin capitalisation control tracing interest* (or a *TC control tracing interest*) that an entity holds in a company, trust or a partnership at a particular time is equal to the \*TC direct control interest in the company, trust or partnership that the entity holds at that time.
- (2) Despite subsection (1), an entity is taken to hold a \*TC control tracing interest in a company, trust or partnership that is equal to 100% at a particular time if, at that time:
  - (a) the entity and its \*associate entities hold a total of \*TC direct control interests in the company, trust or partnership that is 50% or more; or
  - (b) the following subparagraphs apply:
    - (i) the entity (the *controlling entity*) and its associate entities hold a total of TC direct control interests that is 40% or more in the company, trust or partnership;
    - (ii) no other entity or entities (except the controlling entity, its associate entities or entities including the controlling entity or its associate entities) control the company, trust or partnership; or
  - (c) the entity (whether or not together with associate entities) controls the company, trust or partnership.
- (3) Paragraph (2)(b) does not apply if the \*TC direct control interests mentioned in subparagraph (2)(b)(i) are held in a \*corporate limited partnership.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 820-HA—Controlled foreign entity debt and controlled foreign entity equity

### Guide to Subdivision 820-HA

#### 820-880 What this Subdivision is about

Controlled foreign entity debt and controlled foreign entity equity are concepts used in this Division. This Subdivision sets out the meaning of each of these concepts.

#### Table of sections

820-881	Application
820-885	What is <i>controlled foreign entity debt</i> ?
820-890	What is <i>controlled foreign entity equity</i> ?

#### 820-881 Application

This Subdivision applies to:

- (a) an entity (the *relevant entity*) that is an \*outward investing entity (non-ADI), or an \*outward investing entity (ADI), for a period (the *relevant period*) that is all or a part of an income year; and
- (b) each entity (*controlled entity of the relevant entity*) that is an \*Australian controlled foreign entity of which:
  - (i) the relevant entity is an \*Australian controller; or
  - (ii) an \*associate entity of the relevant entity is an Australian controller.

#### 820-885 What is *controlled foreign entity debt*?

- (1) The relevant entity's *controlled foreign entity debt* at a particular time during the relevant period is the total value of all the \*debt interests held by the relevant entity at that time that satisfy all of the following:
  - (a) the interests are \*on issue at that time;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) each of the interests was \*issued by an entity that is a controlled entity of the relevant entity at that time;
  - (c) each of the interests gives rise to a cost, at any time, that is covered by paragraph 820-40(1)(a).
- (2) For the purposes of subsection (1), take into account the value of a \*debt interest issued by a controlled entity of the relevant entity only to the extent that the interest is *not* attributable to any of the following assets that are held by the controlled entity throughout the relevant period:
- (a) assets attributable to the controlled entity's \*Australian permanent establishments;
  - (b) other assets that are held by the controlled entity for the purposes of producing assessable income of the controlled entity.

**820-890 What is *controlled foreign entity equity*?**

- (1) The relevant entity's ***controlled foreign entity equity*** at a particular time during the relevant period is the total value of:
- (a) all the \*equity interests that the entity holds, at that time, in entities that are controlled entities of the relevant entity at that time; and
  - (b) all the \*debt interests \*on issue and held by the entity at that time that satisfy both of the following:
    - (i) the interests were \*issued by entities that are controlled entities of the relevant entity at that time;
    - (ii) none of the interests gives rise to any cost, at any time, that is covered by paragraph 820-40(1)(a).
- (2) For the purposes of subsection (1), take into account the value of an \*equity interest in, or a \*debt interest issued by, a controlled entity of the relevant entity only to the extent that the interest is *not* attributable to any of the following assets that are held by the controlled entity throughout the relevant period:
- (a) assets attributable to the controlled entity's \*Australian permanent establishments;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) other assets that are held by the controlled entity for the purposes of producing assessable income of the controlled entity.

## **Subdivision 820-I—Associate entities**

### **Guide to Subdivision 820-I**

#### **820-900 What this Subdivision is about**

This Subdivision sets out the meaning of various concepts about associate entities for the purposes of this Division.

#### **Table of sections**

820-905	Associate entity
820-910	Associate entity debt
820-915	Associate entity equity
820-920	Associate entity excess amount

#### **820-905 Associate entity**

##### *Meaning of associate entity*

- (1) An entity (the **first entity**) that is not an individual is an **associate entity** of another entity at a particular time if, at that time, the first entity is an \*associate of that other entity and at least one of the following paragraphs applies:
- (a) that other entity holds an \*associate interest of 50% or more in the first entity (see subsections (4) to (8));
  - (b) the first entity is accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of that other entity in relation to:
    - (i) the distribution or retention of the first entity's profits; or
    - (ii) the financial policies relating to the first entity's assets, \*debt capital or \*equity capital;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

whether those directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed entities.

However, this subsection does not apply to the first entity in its capacity as the \*responsible entity of a \*registered scheme (see subsection (2A)).

- (2) An entity (the *first entity*) that is an individual is an *associate entity* of another entity at a particular time if, at that time:
- (a) the first entity is an \*associate of that other entity; and
  - (b) the first entity:
    - (i) is accustomed or under an obligation (whether formal or informal); or
    - (ii) might reasonably be expected; to act in accordance with the directions, instructions or wishes of that other entity in relation to the first entity's financial affairs, whether those directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed entities.
- (2A) An entity (the *first entity*), in its capacity as the \*responsible entity of a \*registered scheme at a particular time, is an *associate entity* of another entity at that time if the first entity, in that capacity, is an \*associate of that other entity at that time and at least one of the following paragraphs applies at that time:
- (a) that other entity holds an \*associate interest of 50% or more in the registered scheme (see subsections (4) to (8));
  - (b) that other entity holds an associate interest of 20% or more in the registered scheme and the first entity, in that capacity, is accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of that other entity in relation to:
    - (i) the distribution or retention of the profits of the registered scheme; or
    - (ii) the financial policies relating to the assets, \*debt capital or \*equity capital of the registered scheme;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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whether those directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed entities.

Note: The first entity, in another capacity, may also be an associate entity of an entity under another provision of this section (see also section 960-100).

- (3) Subsection (1) or (2A) also has effect as if the first entity satisfies paragraph (b) of that subsection at a particular time if any of the following is expected to act in the manner mentioned in that paragraph at that time:
- (a) a director of the first entity if it is a company;
  - (b) a partner of the first entity if it is a partnership;
  - (c) the \*general partner of the first entity if it is a \*corporate limited partnership;
  - (d) the trustee of the first entity if it is a trust;
  - (e) a member of the first entity's committee of management if it is an unincorporated association or body.
- (3A) If:
- (a) an entity (the *first entity*) is an \*associate entity of another entity (the *head entity*) under subsection (1), (2), (2A) or (3) at a particular time; and
  - (b) a third entity is also an associate entity of the head entity under subsection (1), (2), (2A) or (3) at that time;
- the first entity is an *associate entity* of the third entity at that time.
- (3B) If an entity (the *first entity*) is an \*associate entity of another entity under subsection (1), (2), (2A), (3) or (3A) at a particular time, that other entity is also an *associate entity* of the first entity at that time.
- (3C) However, an entity in its capacity as the \*responsible entity of a \*registered scheme (the *responsible entity*) is not an \*associate entity of another entity under subsection (3B) at a particular time if, at that time, the responsible entity:
- (a) would be an associate entity of that other entity under subsection (3B) (apart from the effect of this subsection); but
  - (b) is not an associate entity of that other entity under subsection (2A).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Associate interest in a company (except a corporate limited partnership)*

- (4) An **associate interest** that an entity holds in a company (except a \*corporate limited partnership) at a particular time is the percentage of the direct control interest (if any) that the entity holds in the company at that time under the provisions applied by subsection (5).
- (5) For the purposes of subsection (4), provisions of Part X of the *Income Tax Assessment Act 1936* are applied with the modifications set out in the following table:

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<b>Modifications of provisions in Part X of the <i>Income Tax Assessment Act 1936</i></b>		
<b>Item</b>	<b>Provisions</b>	<b>Modifications</b>
1	Section 350 (including any other provision in Part X of the <i>Income Tax Assessment Act 1936</i> that defines a term used in the section)	The section applies for the purposes of this subsection rather than only for the purposes of Part X of the <i>Income Tax Assessment Act 1936</i>
2	Subsections 350(6) and (7)	The subsections do not apply

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*Associate interest in a trust*

- (6) An **associate interest** that an entity holds in a trust at a particular time is the percentage of the direct control interest (if any) that the entity holds in the trust at that time under the provisions applied by subsection (7).
- (7) For the purposes of subsection (6), provisions of Part X of the *Income Tax Assessment Act 1936* are applied with the modifications set out in the following table:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Modifications of provisions in Part X of the *Income Tax Assessment Act 1936***

<b>Item</b>	<b>Provisions</b>	<b>Modifications</b>
1	Section 351 (including any other provision in Part X of the <i>Income Tax Assessment Act 1936</i> that defines a term used in the section)	The section applies for the purposes of this subsection rather than only for the purposes of Part X of the <i>Income Tax Assessment Act 1936</i>
2	Subsections 351(3) and (4)	The subsections do not apply

*Associate interest in a partnership*

- (8) An ***associate interest*** that an entity holds in a partnership at a particular time is whichever of the following percentages is applicable, and if there are 2 or more such percentages, the greatest of them:
- (a) in the case of a \*corporate limited partnership—100% if the entity is a \*general partner of the partnership;
  - (b) in the case of a partnership that is not a corporate limited partnership—the percentage of the control of voting power in the partnership that the entity has at that time;
  - (c) in any other case—the percentage that the entity holds, or is entitled to acquire, at that time, of any of the following:
    - (i) the total amount of assets or capital contributed to the partnership;
    - (ii) the total rights of partners to distributions of capital, assets or profits on the dissolution of the partnership;
    - (iii) the total rights of partners to distributions of capital, assets or profits otherwise than on the dissolution of the partnership.

**820-910 Associate entity debt**

- (1) This section applies to an entity (the ***relevant entity***) that is an \*outward investing entity (non-ADI), or an \*inward investing entity (non-ADI), for a period (the ***relevant period***) that is all or a part of an income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (2) This section also applies, for the relevant entity, to an \*associate entity (a **relevant associate entity**) of the relevant entity, if:
- (a) either:
    - (i) the associate entity is an \*outward investing entity (non-ADI), an \*inward investment vehicle (general), or an \*inward investment vehicle (financial), for the relevant period; or
    - (ii) the associate entity is an \*inward investor (general) or an \*inward investor (financial) for the relevant period, and the condition in subsection (2A) of this section is satisfied; and
  - (b) neither section 820-35 (\$250,000 debt deductions threshold) nor section 820-37 (exemption for entity with 90% Australian assets) prevents Subdivision 820-B, 820-C, 820-D or 820-E from disallowing any \*debt deduction of the relevant associate entity for the income year; and
  - (c) for some or all of the relevant period, the relevant associate entity does *not* meet the conditions in subsection 820-39(3) (about exemption of certain special purpose entities); and
  - (d) the relevant associate entity is not an \*exempt entity for the income year.
- (2A) The condition referred to in subparagraph (2)(a)(ii) is that the relevant period consists of one or more periods each of which is either or both of these:
- (a) a period throughout which the \*associate entity carries on its \*business in Australia at or through one or more of its \*Australian permanent establishments;
  - (b) a period throughout which the associate entity holds any of the following assets:
    - (i) assets that are attributable to the associate entity's Australian permanent establishments;
    - (ii) other assets that are held for the purposes of producing the associate entity's assessable income.
- (3) The relevant entity's **associate entity debt** at a particular time during the relevant period is the total value of all the \*debt interests held by the relevant entity at that time that satisfy all of the following:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the interests are \*on issue at that time;
  - (b) each of the interests was \*issued by a relevant associate entity;
  - (c) each of the interests gives rise to costs:
    - (i) that are \*debt deductions, for an income year, of the relevant associate entity that issued the interest; and
    - (ii) to the extent that the costs are not amounts mentioned in paragraph 820-40(2)(c) and are costs ordinarily payable to an entity other than the relevant entity—that are assessable income of the relevant entity for an income year;
  - (d) the terms and conditions for each of the interests are those that would apply if the relevant entity and the relevant associate entity that issued the interest were dealing at arm's length with each other.
- (4) For the purposes of subsection (3), take into account the value of a \*debt interest issued by a \*foreign entity only to the extent that the interest is attributable to any of the following assets that are held by the foreign entity throughout the relevant period:
- (a) assets that are attributable to the foreign entity's \*Australian permanent establishments;
  - (b) other assets held by the foreign entity for the purposes of producing the foreign entity's assessable income.

### **820-915 Associate entity equity**

- (1) This section applies to an entity (the *relevant entity*) that is an \*outward investing entity (non-ADI) or an \*inward investing entity (non-ADI) for a period (the *relevant period*) that is all or a part of an income year.
- (2) This section also applies, for the relevant entity, to each entity (*relevant associate entity*) that is an \*associate entity of the relevant entity and that is:
  - (a) an \*Australian entity; or
  - (b) a \*foreign entity that, throughout the relevant period, holds any of the following assets:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) assets that are attributable to the foreign entity's  
\*Australian permanent establishments;
  - (ii) other assets that are held for the purposes of producing  
the foreign entity's assessable income.
- (3) The relevant entity's *associate entity equity* at a particular time during the relevant period is the total value of:
- (a) all the \*equity interests that the entity holds, at that time, in relevant associate entities; and
  - (b) all the \*debt interests \*on issue and held by the relevant entity at that time that satisfy all of the following:
    - (i) the interests were \*issued by relevant associate entities;
    - (ii) neither the value of each of the interests, nor any part of that value, is all or a part of any \*cost-free debt capital of the issuer of the interest at that time;
    - (iii) none of the interests gives rise to any cost, at any time, that is covered by paragraph 820-40(1)(a); and
  - (c) all the debt interests on issue and held by the relevant entity at that time that satisfy both of the following:
    - (i) the interests were issued by relevant associate entities;
    - (ii) each of the interests gives rise to a cost, at any time, that is covered by paragraph 820-40(1)(a), but the cost is not deductible from the assessable income of the issuer of the interest for any income year.
- (4) For the purposes of subsection (3), take into account the value of an \*equity interest in, or a \*debt interest issued by, a \*foreign entity only to the extent that the interest is attributable to assets covered by subparagraph (2)(b)(i) or (ii) that are held by the foreign entity throughout the relevant period.

### 820-920 Associate entity excess amount

- (1) This section applies to an entity (the *relevant entity*) that is an \*outward investing entity (non-ADI) or an \*inward investing entity (non-ADI) for a period that is all or a part of an income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The relevant entity's **associate entity excess amount** at a particular time during that period is the result of applying the method statement in this subsection.

*Method statement*

- Step 1. Work out the premium excess amount (see subsection (3)), as at that particular time, for an \*associate entity of the relevant entity that is the issuer of an \*equity interest or a \*debt interest any value of which is all or a part of the relevant entity's \*associate entity equity at that time.
- Step 2. Add to the result of step 1 the attributable safe harbour excess amount (see subsection (4)) for that \*associate entity as at that time.
- Step 3. Apply steps 1 and 2 to all such \*associate entities of the relevant entity and add all the results that are positive amounts. The result of this step is the **associate entity excess amount**.

- (3) An \*associate entity's **premium excess amount** at a particular time during that period is the result of applying the method statement in this subsection. In applying the method statement, disregard any amount that is attributable to an entity's \*overseas permanent establishments if it is an \*outward investing entity (non-ADI) at that time.

*Method statement*

- Step 1. Work out the value, as at that particular time, of all the \*associate entity equity of the relevant entity that is attributable to the \*associate entity (disregarding the value of any \*debt interest \*issued by the associate entity that is held by the relevant entity at that time).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Step 2. Work out the value, as at that time, of all the \*equity capital of the \*associate entity that is attributable to \*equity interests that the relevant entity holds in the associate entity at that time (except equity interests whose value is all or a part of the relevant entity's \*controlled foreign entity equity at that time).
- Step 3. Reduce the result of step 1 by the result of step 2. However, if the result of step 2 is a negative amount, the result of step 2 is taken to be nil for the purpose of this step.
- Step 4. Multiply the result of step 3 by:
- (a)  $\frac{20}{21}$  if the \*associate entity excess amount is applied for the purpose of working out the \*total debt amount of the relevant entity for that period under subsection 820-100(2), 820-200(2) or 820-210(2); or
  - (b)  $\frac{3}{4}$  if the associate entity excess amount is applied for the purpose of working out the \*adjusted on-lent amount of the relevant entity for that period under subsection 820-100(3), 820-200(3) or 820-210(3); or
  - (c)  $\frac{3}{4}$  if the associate entity excess amount is applied for the purpose of working out the \*safe harbour debt amount of the relevant entity for that period under section 820-95, 820-195 or 820-205; or
  - (d) the result of step 4 of the method statement in subsection (1) or (2) of section 820-110 (as appropriate) if the associate entity excess amount is applied for the purpose of working out the \*worldwide gearing debt amount of the relevant entity for that period.

The result of this step is the *premium excess amount*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) The \*associate entity's *attributable safe harbour excess amount* at a particular time during that period is the result of applying the method statement in this subsection. In applying the method statement, disregard any amount that is attributable to an entity's \*overseas permanent establishments if it is an \*outward investing entity (non-ADI) at that time.

*Method statement*

- Step 1. Work out the \*safe harbour debt amount of the \*associate entity for the day during which that particular time occurs, as if:
- (a) the associate entity were an \*outward investing entity (non-ADI) or \*inward investing entity (non-ADI), as appropriate, for the period consisting only of that day; and
  - (b) if the associate entity would otherwise be treated as an \*outward investor (financial) for that day and the relevant entity is not a \*financial entity throughout that day—the associate entity were an \*outward investor (general) for that day; and
  - (c) if the associate entity would otherwise be treated as an \*inward investment vehicle (financial) for that day and the relevant entity is not a financial entity throughout that day—the associate entity were an \*inward investment vehicle (general) for that day; and
  - (d) if the associate entity would otherwise be treated as an \*inward investor (financial) for that day and the relevant entity is not a financial entity throughout that day—the associate entity were an \*inward investor (general) for that day.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Step 2. Reduce the result of step 1 by the value of the \*adjusted average debt of the \*associate entity for that day as if it had been the kind of entity that it is taken to be under step 1 for that day. If the result of this step is a negative amount, it is taken to be nil.

Step 3. Multiply the result of step 2 by the sum of:

- (a) the value, as at that time, of all the \*equity capital of the \*associate entity that is attributable to the relevant entity at that time; and
- (b) the value, as at that time, of all the \*debt interests \*issued by the associate entity that are covered by subsection (5), and held by the relevant entity, at that time; and
- (c) the value, as at that time, of all the debt interests issued by the associate entity that are covered by subsection (6), and held by the relevant entity, at that time.

Step 4. Divide the result of step 3 by the sum of:

- (a) the value, as at that time, of all the \*equity capital of the \*associate entity; and
- (b) the value, as at that time, of all the \*debt interests \*issued by the associate entity that are covered by subsection (5) at that time; and
- (c) the value, as at that time, of all the debt interests issued by the associate entity that are covered by subsection (6) at that time.

(5) For the purposes of the method statement in subsection (4), this subsection covers a \*debt interest at a particular time if the interest satisfies all of the following:

- (a) the interest is \*on issue at that time;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) neither the value of the interest, nor any part of that value, is all or a part of any \*cost-free debt capital of the issuer of the interest at that time;
  - (c) the interest does not give rise to any cost, at any time, that is covered by paragraph 820-40(1)(a).
- (6) For the purposes of the method statement in subsection (4), this subsection covers a \*debt interest at a particular time if the interest satisfies both of the following:
- (a) the interest is \*on issue at that time;
  - (b) the interest gives rise to a cost, at any time, that is covered by paragraph 820-40(1)(a), but the cost is not deductible from the assessable income of the issuer of the interest for any income year.

## **Subdivision 820-J—Equity interest in a trust or partnership**

### **Guide to Subdivision 820-J**

#### **820-925 What this Subdivision is about**

This Subdivision provides for the meanings of an equity interest in a trust or partnership for the purposes of this Division.

#### **Table of sections**

920-930 *Equity interest* in a trust or partnership

#### **820-930 *Equity interest* in a trust or partnership**

##### *Application of provisions*

- (1) For the purposes of this Division and Division 230, an ***equity interest*** in an entity that is a trust or partnership has the meaning given by the provisions in Division 974 that are applied with the following modifications:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 4** International aspects of income tax

**Part 4-5** General

**Division 820** Thin capitalisation rules

Section 820-930

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**Modifications of Division 974**

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<b>Item</b>	<b>Provisions</b>	<b>Modifications</b>
1	Subdivisions 974-C and 974-D	A reference in those provisions to a company is taken to be a reference to an entity that is a trust or a partnership
2	Subdivisions 974-C and 974-D	A reference in those provisions to the equity test in subsection 974-75(1) is taken to be a reference to the equity test in subsection (2) of this section
3	Section 974-75	The section does not apply and subsections (2) to (4) of this section apply instead
4	Section 974-80	The example does not apply
5	Section 974-95	A reference in those provisions to the table in subsection 974-75(1) is taken to be a reference to the table in subsection (2) of this section
6	Subsection 974-95(4)	The subsection does not apply
7	Subdivision 974-F	The Subdivision applies for the purposes of this section
8	Subdivisions 974-C, 974-D and 974-F	A reference in those provisions to the regulations is taken to be a reference to the regulations made under the provisions applied by this subsection

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Note: An interest that satisfies both the equity test and the debt test set out in Subdivision 974-B is treated as a debt interest and not an equity interest (see that Subdivision in conjunction with the provisions applied by subsection (1)).

*Equity tests*

- (2) A \*scheme satisfies the equity test in this subsection in relation to an entity that is a trust or partnership if the scheme gives rise to an interest set out in the following table:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Equity interests</b>	
<b>Item</b>	<b>Interest</b>
1	In the case of a trust, an interest as a beneficiary of the trust In the case of a partnership, an interest as a partner in the partnership
2	An interest that carries a right to a variable or fixed return from the entity if either the right itself, or the amount of the return, is in substance or effect *contingent on the economic performance (whether past, current or future) of: (a) the entity; or (b) a part of the entity's activities; or (c) an *associate of the entity or a part of the activities of an associate of the entity  The return may be a return of an amount invested in the interest
3	An interest that carries a right to a variable or fixed return from the entity if either the right itself, or the amount of the return, is at the discretion of: (a) the entity; or (b) an *associate of the entity  The return may be a return of an amount invested in the interest
4	An *interest issued by the entity that: (a) gives its holder (or an *associate of the holder) a right to be issued with an *equity interest in the entity or an associate of the entity; or (b) is an interest that will, or may, convert into an equity interest in the entity or an associate of the entity

This subsection has effect subject to subsection (3) (requirement for financing arrangement).

Note: Section 974-90 as applied by subsection (1) allows regulations to be made clarifying when a right or return is taken to be at the discretion of an entity or an associate.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Financing arrangement*

- (3) A \*scheme that would otherwise give rise to an \*equity interest in an entity that is a trust or partnership because of an item in the table in subsection (2) (other than item 1) does not give rise to an equity interest in the entity unless the scheme is a \*financing arrangement (see section 974-130 as applied by this section) for the trust or partnership.

*Form interest may take*

- (4) The interest referred to in item 2, 3 or 4 in the table in subsection (2) may take the form of a proprietary right, a chose in action or any other form.

*Regulations*

- (5) Subject to regulations made under subsection (6), the regulations made under Subdivisions 974-C, 974-D and 974-F are applied for the purposes of this section as if they were regulations made under the provisions applied by subsection (1).
- (6) Regulations may be made under the provisions applied by subsection (1) specifically in relation to:
- (a) an \*equity interest in a trust; or
  - (b) an equity interest in a partnership.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Subdivision 820-K—Zero-capital amount****Guide to Subdivision 820-K****820-940 What this Subdivision is about**

The zero-capital amount represents the value of certain assets that receive special treatment in working out the maximum allowable debt of a financial entity. This Subdivision sets out the rules about the calculation of this amount.

**Table of sections**

820-942 How to work out the zero-capital amount

**820-942 How to work out the zero-capital amount**

- (1) An entity's *zero-capital amount* at a particular time is the result of the method statement in this subsection.

*Method statement*

- Step 1. Work out the total value, as at that particular time, of all the assets of the entity that represent \*debt interests that:
- (a) are of a kind commonly dealt in by entities that carry on a \*business of dealing in securities; and
  - (b) the entity has sold under a reciprocal purchase agreement (otherwise known as a repurchase agreement), sell-buyback arrangement or securities loan arrangement; and
  - (c) the entity has not yet repurchased under the agreement or arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Step 2. Add to the result of step 1 the total value, as at that time, of all the \*debt interests issued to the entity to which the following paragraphs apply at that time:

- (a) the debt interests remain \*on issue;
- (b) each of the debt interests is a loan of money for which no fees, charges or other consideration for the purpose of enhancing the credit rating of the issuer of the interest has been paid or is payable to the entity, any of the entity's \*associates or another entity that is a \*foreign entity;
- (c) each of the entities issuing the interests has the required credit rating for the interests concerned in accordance with subsections (4) and (5).

Step 3. Add to the result of step 2 the total value, as at that time, of all the \*debt interests that are assets of the entity (whether they are debt interests issued to the entity or not) and to which the following paragraphs apply at that time:

- (a) the risk weight of each of the debt interests is either 0% or 20% under the \*prudential standards;
- (b) the debt interests do not satisfy all of the paragraphs in step 2.

Step 3A. Add to the result of step 3 the total value, as at that time, of all the assets of the entity, to the extent that they:

- (a) consist of rights to the return of assets covered by subsection (2A); and
- (b) are covered by none of steps 1, 2 and 3.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Step 4. Add to the result of step 3A the total value, as at that time, of all the \*securitised assets that the entity has at that time if the entity is a \*securitisation vehicle at that time (see subsections (2) and (3)). The result is the ***zero-capital amount***.

(2A) This subsection covers an asset that:

- (a) the entity provided as security for the performance of its obligations in relation to securities it acquired under a reciprocal purchase agreement (otherwise known as a repurchase agreement), sell-buyback arrangement or securities loan arrangement; and
- (b) does not consist of \*shares.

*Securitisation vehicle*

(2) An entity is a ***securitisation vehicle*** if:

- (a) it is an entity established for the purposes of acquiring, funding and holding \*securitised assets (see subsection (3)); and
- (b) it has acquired the securitised assets from another entity (the ***originator***); and
- (c) the acquisition of the securitised assets is wholly funded by the issuing of \*debt interests by the entity; and
- (d) in issuing the debt interests, the entity does not receive any guarantee, security or other form of credit support from any of its \*associate entities, the originator or any associate entity of the originator; and
- (e) the entity has not issued debt interests for any purpose other than for the purpose of funding the acquisition of the securitised assets; and
- (f) there are no debt interests issued to the entity by any of the entity's associate entities, the originator or any associate entity of the originator; and
- (g) any \*arrangements the entity has with any of its associate entities, the originator or any associate entity of the originator are those that would reasonably be expected to have been

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

entered into by parties dealing at arm's length with each other.

Note: An entity that does not qualify as a securitisation vehicle may be exempt from the thin capitalisation rules under section 820-39.

*Securitised assets*

- (3) An asset of an entity is a *securitised asset* if:
- (a) the entity is a \*securitisation vehicle; and
  - (b) the asset consists of:
    - (i) \*debt interests issued by an entity other than the originator in relation to the securitisation vehicle that is mentioned in paragraph (2)(b); or
    - (ii) a lease for the hire of goods that would be a lease covered by paragraph (b) of the definition of *on-lent amount* if a reference to an entity in that definition were a reference to that originator; or
    - (iii) a \*scheme that, apart from the operation of paragraph 974-25(1)(b), would have given rise to a debt interest covered by subparagraph (i); and
  - (c) the asset provides security for the issuing of debt interests that funded the acquisition of the asset by the securitisation vehicle (see paragraph (2)(c)).

*What is the required credit rating?*

- (4) For the purposes of step 2 of the method statement in subsection (1), the required credit rating for an entity issuing a \*debt interest is:
- (a) if the interest is a \*subordinated debt interest—a long-term foreign currency corporate credit rating of at least A (or equivalent) given to the entity by an internationally recognised rating agency; or
  - (b) if the interest is a not a subordinated debt interest—a long-term foreign currency corporate credit rating of at least BBB (or equivalent) given to the entity by an internationally recognised rating agency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*When must an entity have the required credit rating*

- (5) The entity must have the required credit rating as specified in any of the following paragraphs:
- (a) the entity had the required credit rating for the \* debt interest when the interest was issued;
  - (b) the following subparagraphs apply:
    - (i) the entity did not have any long-term foreign currency corporate credit rating given to it by an internationally recognised rating agency when the debt interest was issued; but
    - (ii) the entity had the required credit rating for that interest at any time during the period of 6 months immediately before the interest was issued;
  - (c) the following subparagraphs apply:
    - (i) when the debt interest was issued, and throughout the period of 6 months immediately before the interest was issued, the entity did not have any long-term foreign currency corporate credit rating given to it by an internationally recognised rating agency; but
    - (ii) the entity has the required credit rating for that interest at any time during the period of 6 months immediately after the interest was issued.

**Subdivision 820-KA—Cost-free debt capital and excluded equity interests****Guide to Subdivision 820-KA****820-945 What this Subdivision is about**

This Subdivision sets out the meaning of cost-free debt capital, and excluded equity interest, for the purposes of this Division.

**Table of sections**

820-946 *Cost-free debt capital and excluded equity interest*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**820-946 *Cost-free debt capital and excluded equity interest***

- (1) This subsection applies to an entity for a period (the ***relevant period***) that is all or a part of an income year if the entity satisfies all of the following:
- (a) the entity is an \*outward investing entity (non-ADI) or \*inward investing entity (non-ADI) for that period;
  - (b) if the entity is a \*foreign entity—the entity holds any of the following assets throughout that period:
    - (i) assets that are attributable to the entity’s \*Australian permanent establishments;
    - (ii) other assets that are held for the purposes of producing the entity’s assessable income;
  - (c) neither section 820-35 (\$250,000 debt deductions threshold) nor section 820-37 (exemption for entity with 90% Australian assets) prevents Subdivision 820-B, 820-C, 820-D or 820-E from disallowing any \*debt deduction of the entity for the income year;
  - (da) for some or all of that period, the entity does *not* meet the conditions in subsection 820-39(3) (about exemption of certain special purpose entities);
  - (d) the entity is not an \*exempt entity for the income year.
- Note: Paragraph (c) corresponds to the threshold tests for this Division set out in sections 820-35 and 820-37.
- (2) The ***cost-free debt capital*** of the entity at a particular time during the relevant period is the total value of all the \*debt interests \*issued by the entity that satisfy all of the following:
- (a) the interests are \*on issue at that time;
  - (b) none of the interests gives rise to any cost, at any time, that is covered by paragraph 820-40(1)(a);
  - (c) each of the interests is covered by subsection (3) or (4) of this section at that time.
- (2A) An \*equity interest in the entity is an ***excluded equity interest*** at a particular time during the relevant period if, and only if:
- (a) if subsection (1) does not apply to the holder of the interest for all or part of the relevant period:
    - (i) the entity is an \*associate of the holder; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) at that time, the interest has been \*on issue for a period of less than 180 days; or
  - (b) if subsection (1) applies to the holder for all or part of the relevant period:
    - (i) the entity is an associate of the holder; and
    - (ii) at that time, the interest has been on issue for a period of less than 180 days; and
    - (iii) the interest is covered by subsection (3) at that time.
- However, the interest is taken *not* to have been an ***excluded equity interest*** at the time if the total period for which the interest remains on issue is 180 days or more.
- (3) This subsection covers a \*debt interest or \*equity interest held by an entity (the ***holder***) at the particular time mentioned in subsection (2) or (2A) if:
    - (a) subsection (1) also applies to the holder for a period (the ***overlapped period***) that is, or includes, all or a part of the relevant period; and
    - (b) for the purposes of applying this Division to both the holder and the issuer of the interest (the ***issuer***), and in relation to only that part of the overlapped period that falls within the relevant period, either or both of the following apply:
      - (i) the \*valuation days used to calculate the average value of the holder's assets are different from the valuation days used to calculate the issuer's \*adjusted average debt;
      - (ii) the number of valuation days used to calculate the average value of the holder's assets are different from the number of valuation days used to calculate the issuer's adjusted average debt.
  - (4) This subsection covers a \*debt interest held by an entity (the ***holder***) at the particular time mentioned in subsection (2) if:
    - (a) subsection (1) does not apply to the holder for a period that is, or includes, all or a part of the relevant period; and
    - (b) at that time, the debt interest has been \*on issue for a period of less than 180 days.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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However, if the total period for which the interest remains on issue is 180 days or more, this subsection is taken *not* to have covered the interest at that time.

- (5) For the purposes of subsection (2), take into account the value of a \*debt interest issued by a \*foreign entity only to the extent that the interest is attributable to assets covered by subparagraph (1)(b)(i) or (ii) that are held by the foreign entity throughout the relevant period.

## **Subdivision 820-L—Record keeping requirements**

### **Guide to Subdivision 820-L**

#### **820-950 What this Subdivision is about**

This Subdivision sets out special record keeping requirements and related provisions about the following:

- (a) an entity that carries on its business at or through its Australian permanent establishments;
- (b) an arm's length debt amount or arm's length capital amount worked out under this Division.

#### **Table of sections**

##### **Records about Australian permanent establishments**

820-960 Records about Australian permanent establishments

820-965 Review of Commissioner's decision

##### **Records about arm's length amounts**

820-980 Records about arm's length debt amount and arm's length capital amount

##### **Records about asset revaluations**

820-985 Methodology of revaluation and independence of valuer

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Offences committed by certain entities**

820-990 Offences—treatment of partnerships

820-995 Offences—treatment of unincorporated companies

**Records about Australian permanent establishments****820-960 Records about Australian permanent establishments**

- (1) If an entity:
- (a) is an \*inward investor (general), \*inward investor (financial) or \*inward investing entity (ADI), for all or a part of an income year; and
  - (b) carries on its \*business at or through one or more of its \*Australian permanent establishments throughout that year; and
  - (c) has total revenues attributable to those Australian permanent establishments for that year that are at least \$2,000,000;
- the entity must keep for that year the records for which subsection (1A) or (1B) provides.

Note: A person must comply with the requirements in section 262A of the *Income Tax Assessment Act 1936* about the keeping of these records (see subsections (2AA) and (3) of that section).

*Australian accounting standards*

- (1A) If the entity chooses this subsection, it must keep the following records for the \*Australian permanent establishments:
- (a) a statement of financial position (within the meaning of the \*accounting standards);
  - (b) a statement of financial performance (within the meaning of those standards).
- The statements must:
- (c) be prepared in accordance with the \*accounting standards (in particular, but not limited to, accounting standards AASB 1001, AASB 1018 and AASB 1040); and
  - (d) include all the notes required to accompany them under the standards.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Overseas and international accounting standards*

- (1B) If the entity chooses this subsection, it must keep for the \*Australian permanent establishments the statements (however described) that, under standards covered by subsection (1C) or (1D) (the ***overseas or international accounting standards***), correspond to the statements referred to in subsection (1A). The statements must:
- (a) be prepared in accordance with those standards; and
  - (b) include all the notes required to accompany them under those standards.
- (1C) This subsection covers the standards (however described) that correspond to the \*accounting standards and are made by the responsible body in:
- (a) the United Kingdom of Great Britain and Northern Ireland; or
  - (b) the United States of America; or
  - (c) Canada; or
  - (d) New Zealand; or
  - (e) Japan; or
  - (f) the French Republic; or
  - (g) the Federal Republic of Germany.
- (1D) This subsection covers the international accounting standards made or adopted by the International Accounting Standards Board.

*Requirements for the records under subsection (1A) or (1B)*

- (2) The entity must prepare the records for which subsection (1A) or (1B) provides:
- (a) before the time by which the entity must lodge its \*income tax return for the income year; and
  - (b) as if:
    - (i) the \*Australian permanent establishments were an entity (the ***notional entity***) for which those records would be required to be prepared under the \*accounting standards or the overseas or international accounting standards, as appropriate; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) for the purposes of the statement of financial position or the corresponding statement, as appropriate—the assets, liabilities (including \*debt capital) and \*equity capital that are attributable to the Australian permanent establishments for that income year were assets, liabilities and equity of the notional entity for that year; and
- (iii) for the purposes of the statement of financial performance or the corresponding statement, as appropriate—the revenues and expenses that are attributable to the Australian permanent establishments for that year were the revenues and expenses of the notional entity for that year; and
- (iv) the \*accounting standards, or the overseas or international accounting standards, as appropriate, referred to income years instead of financial years or the corresponding term in the overseas or international accounting standards.

*Commissioner's power to exempt from complying with Australian accounting standards*

- (4) The Commissioner may decide that an entity, or entities in a class of entities, need not comply with all or any part of the \*accounting standards for one or more income years for the purposes of subsection (1A) if the Commissioner is satisfied that it would be unreasonable that the entity, or the entities in that class, be required to do so.

Note: The Commissioner's power under this subsection does not extend to the overseas or international accounting standards.

- (5) The Commissioner:
  - (a) may make a decision under subsection (4) in such cases and to such extent as the Commissioner thinks fit; and
  - (b) must make the decision in writing; and
  - (c) cause a copy of the decision to be published in the *Gazette*.The decision has effect despite subsection (1A).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Excluding Australian permanent establishments not covered by applicable double tax treaty*

- (6) An entity need not comply with this section for an income year in relation to an \*Australian permanent establishment if:
- (a) throughout that year, the entity was, for the purposes of a double tax agreement (within the meaning of Part X of the *Income Tax Assessment Act 1936*) in relation to a foreign country, a resident of that foreign country (even if the entity was also an Australian resident or a resident of another foreign country); and
  - (b) throughout the period during that year when the entity was carrying on its \*business at or through that Australian permanent establishment, the Australian permanent establishment was *not* a permanent establishment within the meaning of that double tax agreement.

### **820-965 Review of Commissioner's decision**

A person who is dissatisfied with a decision of the Commissioner under subsection 820-960(4) may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

### **Records about arm's length amounts**

#### **820-980 Records about arm's length debt amount and arm's length capital amount**

- (1) An entity must keep records under this section for an \*arm's length debt amount or \*arm's length capital amount that the entity worked out for the purposes of this Division.
- (2) The records must contain particulars about the factual assumptions and relevant factors mentioned in section 820-105, 820-215, 820-315 or 820-410 (as appropriate) that have been taken into account in working out that amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) The entity must prepare the records before the time by which the entity must lodge its \*income tax return for the income year in relation to all or a part of which the amount is worked out.

Note: A person must comply with the requirements in section 262A of the *Income Tax Assessment Act 1936* about the keeping of these records (see subsections (2AA) and (3) of that section).

## **Records about asset revaluations**

### **820-985 Methodology of revaluation and independence of valuer**

- (1) An entity must keep records under this section for a revaluation of assets mentioned in subsection 820-680(2) (except a revaluation that need not comply with that subsection because of subsection 820-680(2A)) or 820-684(2).
- (2) The records must contain particulars about:
- (a) the methodology used in making the revaluation (including any assumptions made); and
  - (b) how that methodology was applied (including the data and other information used); and
  - (c) who made the revaluation; and
  - (d) that person's qualifications and experience as an expert in valuing assets of the relevant kind; and
  - (e) the remuneration and expenses paid to that person.
- (3) If the revaluation was made in accordance with subsection 820-680(2B) (about external validation of a revaluation made internally), the records must also contain particulars of:
- (a) who was the external expert referred to in that subsection; and
  - (b) his or her qualifications and experience as an expert in valuing assets of the relevant kind; and
  - (c) the remuneration and expenses paid to him or her; and
  - (d) his or her review of the methodology for making the revaluation (as required by subparagraph 820-680(2B)(b)(ii)); and
  - (e) his or her agreement that the methodology is suitable for making it (as required by subparagraph 820-680(2B)(b)(iii)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



This subsection extends to subsection 820-680(2B) as it applies because of subsection 820-684(5).

Note: Section 820-684 allows some revaluations that are not allowed by the accounting standards.

- (4) The entity must prepare the records before the time by which the entity must lodge its \*income tax return for the income year in relation to all or a part of which the revaluation is made.

Note: A person must comply with the requirements in section 262A of the *Income Tax Assessment Act 1936* about the keeping of these records (see subsections (2AA) and (3) of that section).

## Offences committed by certain entities

### 820-990 Offences—treatment of partnerships

- (1) The provisions set out in the following paragraphs (the *relevant provisions*) apply, in relation to records required to be kept under this Subdivision, to a partnership as if it were a person, but with the modifications set out in this section:
- (a) sections 820-960 and 820-980;
  - (b) section 262A of the *Income Tax Assessment Act 1936*;
  - (c) Part III of the *Taxation Administration Act 1953*.
- (2) If the relevant provisions would otherwise require or permit something to be done by the partnership, the thing may be done by one or more of the partners on behalf of the partnership.
- (3) An obligation that would otherwise be imposed on the partnership by the relevant provisions:
- (a) is imposed on each partner instead; but
  - (b) may be discharged by any of the partners.
- (4) The partners are jointly and severally liable to pay an amount that would otherwise be payable by the partnership under the relevant provisions.
- (5) An offence against any of the relevant provisions that would otherwise be committed by the partnership is taken to have been committed by each partner who:
- (a) did the relevant act or made the relevant omission; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) aided, abetted, counselled or procured the relevant act or omission; or
  - (c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly or whether by any act or omission of the partner).
- (6) For the purposes of subsection (5):
- (a) to establish that a partnership engaged in a particular conduct, it is sufficient to show that the conduct was engaged in by a partner:
    - (i) in the ordinary course of the business of the partnership; or
    - (ii) within the scope of the actual or apparent authority of the partner; and
  - (b) to establish that a partnership had a particular state of mind when it engaged in that conduct, it is sufficient to show that the partner had the relevant state of mind.
- (7) For the purposes of the relevant provisions, a change in the composition of a partnership does not affect the continuity of the partnership.

### **820-995 Offences—treatment of unincorporated companies**

- (1) The provisions set out in the following paragraphs (the *relevant provisions*) apply, in relation to records required to be kept under this Subdivision, to an unincorporated company as if it were a person, but with the modifications set out in this section:
- (a) sections 820-960 and 820-980;
  - (b) section 262A of the *Income Tax Assessment Act 1936*;
  - (c) Part III of the *Taxation Administration Act 1953*.
- (2) If the relevant provisions would otherwise require or permit something to be done by the company, the thing may be done by one or more members of the company's committee of management (the *members*) on behalf of the company.
- (3) An obligation that would otherwise be imposed on the company by the relevant provisions:
- (a) is imposed on each member instead; but

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) may be discharged by any of the members.
- (4) The members are jointly and severally liable to pay an amount that would otherwise be payable by the company under the relevant provisions.
- (5) An offence against any of the relevant provisions that would otherwise be committed by the company is taken to have been committed by each member who:
  - (a) did the relevant act or made the relevant omission; or
  - (b) aided, abetted, counselled or procured the relevant act or omission; or
  - (c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly or whether by any act or omission of the member).
- (6) For the purposes of subsection (5), to establish that the company had a particular state of mind when it engaged in a particular conduct, it is sufficient to show that a member had the relevant state of mind.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Division 830—Foreign hybrids****Table of Subdivisions**

	Guide to Division 830
830-A	Meaning of “foreign hybrid”
830-B	Extension of normal partnership provisions to foreign hybrid companies
830-C	Special rules applicable while an entity is a foreign hybrid
830-D	Special rules applicable when an entity becomes or ceases to be a foreign hybrid

**Guide to Division 830****830-1 What this Division is about**

This Division:

- (a) provides for certain entities (called foreign hybrids) that are treated as partnerships for the purposes of foreign income tax, but as companies for the purposes of tax within the meaning of this Act, to be treated as partnerships for the purposes of this Act; and
- (b) applies special rules to the entities in addition to those that normally apply to partnerships.

**Subdivision 830-A—Meaning of “foreign hybrid”****Table of sections**

830-5	Foreign hybrid
830-10	Foreign hybrid limited partnership
830-15	Foreign hybrid company

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 830-5 Foreign hybrid

The expression *foreign hybrid* means:

- (a) a \*foreign hybrid limited partnership; or
- (b) a \*foreign hybrid company.

### 830-10 Foreign hybrid limited partnership

- (1) A \*limited partnership is a *foreign hybrid limited partnership* in relation to an income year if:
  - (a) it was formed in a foreign country; and
  - (b) \*foreign income tax (except \*credit absorption tax or \*unitary tax) is imposed under the law of the foreign country on the partners, not the limited partnership, in respect of the income or profits of the partnership for the income year; and
  - (c) at no time during the income year is the limited partnership, for the purposes of a law of any foreign country that imposes foreign income tax (except credit absorption tax or unitary tax) on entities because they are residents of the foreign country, a resident of that country; and
  - (d) disregarding subsection 94D(5) of the *Income Tax Assessment Act 1936*, at no time during the income year is it an Australian resident; and
  - (e) disregarding that subsection, in relation to the same income year of another taxpayer:
    - (i) the limited partnership is a \*CFC at the end of a \*statutory accounting period that ends in the income year; and
    - (ii) at the end of the statutory accounting period, the taxpayer is an \*attributable taxpayer in relation to the CFC with an \*attribution percentage greater than nil.
- (2) If a partner in a \*limited partnership makes an election under subsection 485AA(1) of the *Income Tax Assessment Act 1936* in relation to the partner's interest in the partnership, then, for the purpose of applying that Act and this Act in relation to the partner's interest, the limited partnership is a *foreign hybrid limited partnership* in relation to any income year during which the election is in force.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**830-15 Foreign hybrid company**

- (1) A company is a *foreign hybrid company* in relation to an income year if:
- (a) at all times during the income year when the company is in existence, the partnership treatment requirements for the income year in subsection (2) or (3) are satisfied; and
  - (b) at no time during the income year is the company, for the purposes of a law of any foreign country that imposes \*foreign income tax (except \*credit absorption tax or \*unitary tax) on entities because they are residents of the foreign country, a resident of that country; and
  - (c) at no time during the income year is the company an Australian resident; and
  - (d) disregarding this Division, in relation to the same income year of another taxpayer:
    - (i) the company is a \*CFC at the end of a \*statutory accounting period that ends in the income year; and
    - (ii) at the end of the statutory accounting period, the taxpayer is an \*attributable taxpayer in relation to the CFC with an \*attribution percentage greater than nil.

*Partnership treatment requirements specific to USA*

- (2) For the purposes of paragraph (1)(a), the partnership treatment requirements are satisfied if:
- (a) the company was formed in the United States of America; and
  - (b) for the purposes of the law of that country relating to \*foreign income tax (except \*credit absorption tax or \*unitary tax) imposed by that country, the company is a limited liability company that:
    - (i) is treated as a partnership; or
    - (ii) is an eligible entity that is disregarded as an entity separate from its owner.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Partnership treatment requirements relating to any foreign country*

- (3) For the purposes of paragraph (1)(a), the partnership treatment requirements are also satisfied if:
- (a) the company was formed in a foreign country (which may be the United States of America); and
  - (b) for the purposes of the law of that country relating to \*foreign income tax (except \*credit absorption tax or \*unitary tax) imposed by that country, the company is treated as a partnership; and
  - (c) regulations are in force setting out requirements to be satisfied by a company in relation to the income year for the purposes of this paragraph, and the company satisfies those requirements.
- (4) Regulations for the purposes of paragraph (3)(c) cannot set out requirements in relation to any income year before the one in which the regulations are made.
- (5) If a \*shareholder in a company makes an election under subsection 485AA(2) of the *Income Tax Assessment Act 1936* in relation to the shareholder's share or shares in the company, then, for the purpose of applying that Act and this Act in relation to the shareholder's share or shares, the company is a ***foreign hybrid company*** in relation to any income year during which the election is in force.

**Subdivision 830-B—Extension of normal partnership provisions to foreign hybrid companies**

Note: The normal partnership provisions will apply of their own force to foreign hybrids that are foreign hybrid limited partnerships.

**Table of sections**

830-20	Treatment of company as a partnership
830-25	Partners are the shareholders in the company
830-30	Individual interest of a partner in net income etc. equals percentage of notional distribution of company's profits
830-35	Partner's interest in assets
830-40	Control and disposal of share in partnership income

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**830-20 Treatment of company as a partnership**

If a company is a \*foreign hybrid company in relation to an income year, the \*foreign hybrid tax provisions apply as if the company were a partnership, and for that purpose the following provisions of this Subdivision have effect.

**830-25 Partners are the shareholders in the company**

The partners in the partnership are the \*shareholders in the company.

**830-30 Individual interest of a partner in net income etc. equals percentage of notional distribution of company's profits**

The individual interest of a partner in the \*net income or \*partnership loss of the partnership of the income year is equal to the percentage that, if the profits of the company for the income year were distributed at the end of the income year to its \*shareholders:

- (a) if paragraph (b) does not apply—as dividends; or
- (b) if the company's \*constitution or other rules provide for the distribution of profits other than as dividends—in accordance with the constitution or those rules;

the partner, as a shareholder, could reasonably be expected to receive of the total distribution.

**830-35 Partner's interest in assets**

- (1) The interest that each partner has in the assets of the partnership, under the partnership agreement, is equal to the percentage in subsection (2).
- (2) The percentage is the percentage that, if the capital of the company were distributed to its \*shareholders on a winding-up of the company at the end of the income year, the partner, as a shareholder, could reasonably be expected to receive of the total distribution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 830-40 Control and disposal of share in partnership income

- (1) This section applies for the purposes of determining under section 94 of the *Income Tax Assessment Act 1936* whether the partnership is so constituted or controlled, or its operations are so conducted, that a partner does not have the real and effective control and disposal of the partner's share, or a part of the partner's share, in the \*net income of the partnership of an income year.
- (2) The reference to the partner's share, or a part of the partner's share, in the \*net income is a reference to any rights that the \*shareholder has under the \*constitution or other rules of the company that were taken into account under section 830-30 in working out the individual interest of the partner in the partnership's net income or \*partnership loss of the income year.

### Subdivision 830-C—Special rules applicable while an entity is a foreign hybrid

Note: In the case of a foreign hybrid company, references in this Subdivision that relate to partnerships are to be read subject to Subdivision 830-B. For example, a reference to a partner will be a reference to a shareholder in the company who is treated by Subdivision 830-B as a partner.

#### Table of sections

830-45	Partner's revenue and net capital losses from foreign hybrid not to exceed partner's loss exposure amount
830-50	Deduction etc. where partner's foreign hybrid revenue loss amount and foreign hybrid net capital loss amount are less than partner's loss exposure amount
830-55	Meaning of <i>foreign hybrid net capital loss amount</i>
830-60	Meaning of <i>loss exposure amount</i>
830-65	Meaning of <i>outstanding foreign hybrid revenue loss amount</i>
830-70	Meaning of <i>outstanding foreign hybrid net capital loss amount</i>
830-75	Extended meaning of <i>subject to tax</i>

### 830-45 Partner's revenue and net capital losses from foreign hybrid not to exceed partner's loss exposure amount

- (1) This section applies to a \*limited partner in a \*foreign hybrid in relation to an income year if the sum of the following amounts:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) any amount (a *foreign hybrid revenue loss amount*) allowable to the partner as a deduction under subsection 92(2) of the *Income Tax Assessment Act 1936* in respect of a \*partnership loss of the foreign hybrid for the income year;
  - (b) any \*foreign hybrid net capital loss amount of the partner in respect of the foreign hybrid for the income year;
- exceeds the partner's \*loss exposure amount for the income year.

*Reduction in foreign hybrid revenue loss amount or foreign hybrid net capital loss amount*

- (2) If this section applies, the amount mentioned in paragraph (1)(a) or (b), or each of the amounts mentioned in those paragraphs, is reduced so that in total they equal the partner's \*loss exposure amount. The partner must choose how much of the reduction is applied to each of the amounts.

*Effect of reducing foreign hybrid net capital loss amount*

- (3) If the partner's \*foreign hybrid net capital loss amount in respect of the \*foreign hybrid for the income year is reduced under subsection (2), the partner's \*net capital gain or \*net capital loss for the income year is worked out by assuming that the \*capital gains and \*capital losses taken into account in working out the partner's foreign hybrid net capital loss amount were instead a capital loss equal to the foreign hybrid net capital loss amount after the reduction.

**830-50 Deduction etc. where partner's foreign hybrid revenue loss amount and foreign hybrid net capital loss amount are less than partner's loss exposure amount**

- (1) This section applies if:
  - (a) the sum of a partner's \*foreign hybrid revenue loss amount and \*foreign hybrid net capital loss amount for a \*foreign hybrid for an income year does not exceed the partner's \*loss exposure amount for the foreign hybrid for the income year (the difference being the partner's *available loss exposure amount*); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the partner has one or more \*outstanding foreign hybrid revenue loss amounts or one or more \*outstanding foreign hybrid net capital loss amounts, or both, in respect of the foreign hybrid for the income year.

*Where sum of outstanding foreign hybrid revenue loss amounts and outstanding foreign hybrid net capital loss amounts does not exceed available loss exposure amount*

- (2) If the sum of the \*outstanding foreign hybrid revenue loss amounts and the \*outstanding foreign hybrid net capital loss amounts does not exceed the \*available loss exposure amount:
  - (a) a deduction is allowable to the partner for the income year equal to the sum of the outstanding foreign hybrid revenue loss amounts; and
  - (b) the partner makes a \*capital loss for the income year under section 104-270 equal to the sum of the outstanding foreign hybrid net capital loss amounts.

*Where sum of outstanding foreign hybrid revenue loss amounts and outstanding foreign hybrid net capital loss amounts exceeds available loss exposure amount*

- (3) If the sum of the \*outstanding foreign hybrid revenue loss amounts and the \*outstanding foreign hybrid net capital loss amounts exceeds the \*available loss exposure amount, then either or both of the following apply:
  - (a) a deduction is allowable to the partner for the income year equal to some or all of the outstanding foreign hybrid revenue loss amounts;
  - (b) the partner makes a \*capital loss under section 104-270 equal to some or all of the outstanding foreign hybrid net capital loss amounts;such that the sum of the deduction and the capital loss equals the available loss exposure amount.

*Partner to choose how to apply subsection (3)*

- (4) The partner must choose:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) which of paragraphs (3)(a) and (b) is to apply or whether both are to apply; and
- (b) the amount of the deduction or \*capital loss, or the amounts of both; and
- (c) the particular outstanding foreign hybrid revenue loss amounts or outstanding foreign hybrid net capital loss amounts, or both, to which they relate.

**830-55 Meaning of *foreign hybrid net capital loss amount***

If:

- (a) the sum of a partner's \*capital losses from \*CGT events happening during an income year in relation to a \*foreign hybrid or \*CGT assets of a foreign hybrid;

exceeds:

- (b) the sum of the partner's \*capital gains from CGT events happening during the income year in relation to the foreign hybrid or CGT assets of the foreign hybrid;

the partner has a ***foreign hybrid net capital loss amount*** in respect of the foreign hybrid for the income year equal to the excess.

**830-60 Meaning of *loss exposure amount***

- (1) The ***loss exposure amount*** of a partner in a \*foreign hybrid for an income year is worked out as follows:

*Method statement*

Step 1. Work out the sum of the amounts or \*market values of the contributions made by the partner to the \*foreign hybrid that, as at the end of the income year:

- (a) have not been repaid or returned to the partner; and
- (b) have been contributed for at least 180 days, or are intended by the partner to remain contributed for at least 180 days.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Step 2. Subtract the sum of the amounts of:

- (a) all \*limited recourse debts owed by the partner at the end of the income year, to the extent that the \*borrowings concerned were for the purpose of enabling the partner to make contributions to the \*foreign hybrid and the debts were secured by the partner's interest in the foreign hybrid; and
- (b) all the partner's \*foreign hybrid revenue loss amounts in respect of the foreign hybrid for previous income years, after any reduction under subsection 830-45(2); and
- (c) all the partner's \*foreign hybrid net capital loss amounts in relation to the partnership for previous income years, after any reduction under subsection 830-45(2); and
- (d) all deductions allowed to the partner under subsection 830-50(2) or (3) in respect of the foreign hybrid for previous income years; and
- (e) all \*capital losses that, as a result of subsection 830-50(2) or (3), the partner made in respect of \*CGT event K12 in respect of the foreign hybrid for previous income years.

*Contribution in case of foreign hybrid company*

- (2) For the purposes of step 1 in the method statement in subsection (1), if:
- (a) the \*foreign hybrid is a \*foreign hybrid company; and
  - (b) the partner \*acquired its \*shares in the company from another shareholder; and
  - (c) the payment or other consideration for the acquisition of the shares did not constitute the making of a contribution by the partner to the foreign hybrid;
- the payment or other consideration is taken:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) to be a contribution by the partner to the foreign hybrid; and
- (e) to be so contributed for as long as the partner holds the shares; and
- (f) to have been repaid to the partner to the extent of any payment that:
  - (i) the foreign hybrid makes to the partner in respect of the share; and
  - (ii) the foreign hybrid describes as a return of capital; and
  - (iii) is attributable to the period during which the partner has held the shares.

**830-65 Meaning of *outstanding foreign hybrid revenue loss amount***

- (1) This section applies if a \*foreign hybrid revenue loss amount of a partner in a \*foreign hybrid in relation to an income year (the ***reduction year***) is reduced under subsection 830-45(2).
- (2) The partner has, for each later income year, an ***outstanding foreign hybrid revenue loss amount*** equal to the amount of the reduction, less the sum of any deductions allowable to the partner under subsection 830-50(2) or (3) in respect of the outstanding foreign hybrid revenue loss amount for income years between the reduction year and the later income year.

*Outstanding foreign hybrid revenue loss amount not to form part of tax loss*

- (3) To avoid doubt, a partner's \*outstanding foreign hybrid revenue loss amount for an income year cannot form part of a \*tax loss for the purposes of Division 36.

**830-70 Meaning of *outstanding foreign hybrid net capital loss amount***

- (1) This section applies if a \*foreign hybrid net capital loss amount of a partner in a \*foreign hybrid in relation to an income year (the ***reduction year***) is reduced under subsection 830-45(2).
- (2) The partner has, for each later income year, an ***outstanding foreign hybrid net capital loss amount*** equal to the amount of the reduction, less the sum of any \*capital losses that, as a result of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

subsection 830-50(2) or (3), the partner makes in respect of \*CGT event K12 in respect of the outstanding foreign hybrid net capital loss amount for income years between the reduction year and the later income year.

### 830-75 Extended meaning of *subject to tax*

#### *Where entity becomes a partner*

(1) If:

- (a) an entity becomes a partner (the ***first partner***) in a \*foreign hybrid in relation to an income year; and
- (b) a gain or profit of a capital nature accrues to another partner as a result of the disposal of the whole or part of that other partner's interest in an asset of the foreign hybrid that happens when the first partner becomes a partner; and
- (c) apart from this subsection, the gain or profit is not \*subject to tax in a \*listed country in any \*tax accounting period; and
- (d) if the foreign hybrid had disposed of the whole or an equivalent part of the asset at the time of the disposal of the whole or the part of the interest, any gain or profit of a capital nature that accrued to the foreign hybrid in respect of the disposal would have been subject to tax in a listed country in a tax accounting period;

then, for the purposes of Part X of the *Income Tax Assessment Act 1936*, the gain or profit mentioned in paragraph (b) is taken to be subject to tax in the listed country, and in the tax accounting period, mentioned in paragraph (d).

#### *Where partner increases its interest*

(2) If:

- (a) an entity is a partner (the ***first partner***) that increases its interest in a \*foreign hybrid in relation to an income year; and
- (b) a gain or profit of a capital nature accrues to another partner as a result of the disposal of the whole or part of that other partner's interest in an asset of the foreign hybrid that happens when the first partner increases its interest in the foreign hybrid; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) apart from this subsection, the gain or profit is not \*subject to tax in a \*listed country in any \*tax accounting period; and
- (d) if the foreign hybrid had disposed of the whole or an equivalent part of the asset at the time of the disposal of the whole or the part of the interest, any gain or profit of a capital nature that accrued to the foreign hybrid in respect of the disposal would have been subject to tax in a listed country in a tax accounting period;

then, for the purposes of Part X of the *Income Tax Assessment Act 1936*, the gain or profit mentioned in paragraph (b) is taken to be subject to tax in the listed country, and in the tax accounting period, mentioned in paragraph (d).

*Where entity ceases to be a partner*

(3) If:

- (a) an entity ceases to be a partner in a \*foreign hybrid in relation to an income year; and
- (b) a gain or profit of a capital nature accrues to the entity as a result of the disposal of its interest in an asset of the foreign hybrid that happens when the entity ceases to be a partner; and
- (c) apart from this subsection, the gain or profit is not \*subject to tax in a \*listed country in any \*tax accounting period; and
- (d) any gain or profit of a capital nature that accrues to the entity as a result of the disposal of its interest in the foreign hybrid that happens when the entity ceases to be a partner is subject to tax in a listed country in a tax accounting period;

then, for the purposes of Part X of the *Income Tax Assessment Act 1936*, the gain or profit mentioned in paragraph (b) is taken to be subject to tax in the listed country, and in the tax accounting period, mentioned in paragraph (d).

*Where partner disposes of part of its interest*

(4) If:

- (a) an entity is a partner that disposes of part of its interest in a \*foreign hybrid in relation to an income year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) a gain or profit of a capital nature accrues to the entity as a result of the disposal of part of its interest in an asset of the foreign hybrid that happens when the entity disposes of the part of its interest in the foreign hybrid; and
- (c) apart from this subsection, the gain or profit is not \*subject to tax in a \*listed country in any \*tax accounting period; and
- (d) any gain or profit of a capital nature that accrues to the entity as a result of the disposal of the part of its interest in the foreign hybrid is subject to tax in a listed country in a tax accounting period;

then, for the purposes of Part X of the *Income Tax Assessment Act 1936*, the gain or profit mentioned in paragraph (b) is taken to be subject to tax in the listed country, and in the tax accounting period, mentioned in paragraph (d).

### **Subdivision 830-D—Special rules applicable when an entity becomes or ceases to be a foreign hybrid**

Note: In the case of a foreign hybrid company, references in this Subdivision that relate to partnerships are to be read subject to Subdivision 830-B. For example, a reference to a partner will be a reference to a shareholder in the company who is treated by Subdivision 830-B as a partner.

#### **Table of sections**

830-80	Setting the tax cost of partners' interests in the assets of an entity that becomes a foreign hybrid
830-85	Setting the tax cost of assets of an entity when it ceases to be a foreign hybrid
830-90	What the expression <i>tax cost is set</i> means
830-95	What the expression <i>tax cost setting amount</i> means
830-100	What the expression <i>tax cost</i> means
830-105	What the expression <i>asset-based income tax regime</i> means
830-110	No disposal of assets etc. on entity becoming or ceasing to be a foreign hybrid
830-115	Tax losses cannot be transferred to a foreign hybrid
830-120	End of CFC's last statutory accounting period
830-125	How long interest in asset, or asset, held

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**830-80 Setting the tax cost of partners' interests in the assets of an entity that becomes a foreign hybrid**

- (1) This section applies if:
  - (a) an entity is a \*foreign hybrid in relation to an income year (the *hybrid year*); and
  - (b) the entity was in existence at the end of the preceding income year (which may be the income year before this Division first applies to the entity); and
  - (c) the entity was not a foreign hybrid in relation to that preceding income year.
- (2) For the purposes of applying an \*asset-based income tax regime for the hybrid year and each later income year in relation to which the entity continues to be a foreign hybrid, the \*tax cost is set at the start of the hybrid year, for each asset of the \*foreign hybrid in which each partner has an interest at that time.

**830-85 Setting the tax cost of assets of an entity when it ceases to be a foreign hybrid**

- (1) This section applies if:
  - (a) an entity is a \*foreign hybrid in relation to an income year; and
  - (b) the entity is in existence at the start of the next income year; and
  - (c) the entity is not a foreign hybrid in relation to that income year (the *post-hybrid year*).
- (2) For the purposes of applying an \*asset-based income tax regime for the post-hybrid year and each later income year in relation to which the entity continues not to be a foreign hybrid, the \*tax cost is set at the start of the post-hybrid year, for each asset of the entity at that time.

**830-90 What the expression *tax cost is set* means**

The following table explains what the expression *tax cost is set* at the start of the hybrid year or the post-hybrid year means, in relation to an asset in which a partner has an interest or in relation

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

to an asset of the entity, for the purposes of each \*asset-based income tax regime:

<b>Tax cost is set</b>		
<b>Item</b>	<b>If the following asset-based income tax regime is to apply:</b>	<b>The expression means that:</b>
1	Subdivisions 40-A to 40-D, sections 40-425 to 40-445 and Subdivision 328-D	the *adjustable value of the interest or the asset at the start of the hybrid year or the post-hybrid year is varied so that it equals the partner's *tax cost setting amount for the interest, or the entity's tax cost setting amount for the asset, at that time in relation to the *asset-based income tax regime
2	Division 70	the value of the interest or the asset at the start of the hybrid year or the post-hybrid year under Division 70 is varied so that it equals the partner's *tax cost setting amount for the interest, or the entity's tax cost setting amount for the asset, at that time in relation to the *asset-based income tax regime
3	Part 3-1 or 3-3	the *cost base or *reduced cost base of the interest or the asset at the start of the hybrid year or the post-hybrid year is varied so that it equals the partner's *tax cost setting amount for the interest, or the entity's tax cost setting amount for the asset, at that time in relation to the *asset-based income tax regime

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Tax cost is set</b>		
<b>Item</b>	<b>If the following asset-based income tax regime is to apply:</b>	<b>The expression means that:</b>
4	Division 16E of Part III of the <i>Income Tax Assessment Act 1936</i>	the Division applies as if the interest or the asset were *acquired by the partner or the entity at the start of the hybrid year or the post-hybrid year for a payment equal to the partner's *tax cost setting amount for the interest, or the entity's tax cost setting amount for the asset, at that time in relation to the *asset-based income tax regime
5	Any other provision of this Act or the <i>Income Tax Assessment Act 1936</i>	the cost of the interest or asset at the start of the hybrid year or the post-hybrid year is varied so that it equals the partner's *tax cost setting amount for the interest, or the entity's tax cost setting amount for the asset, at that time in relation to the *asset-based income tax regime

### **830-95 What the expression *tax cost setting amount* means**

- (1) A partner's *tax cost setting amount* for an interest of the partner in an asset at the start of the hybrid year, in relation to an \*asset-based income tax regime, is worked out as follows:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Method statement*

Step 1. Work out what would have been the entity's \*tax cost of the asset for the purposes of applying the \*asset-based income tax regime as at the start of the hybrid year if it were not a \*foreign hybrid in relation to the hybrid year.

Step 2. Multiply the result of step 1 by:

- (a) if the entity is a \*foreign hybrid company in relation to the hybrid year—the percentage applicable to the partner under subsection 830-35(2); or
- (b) if the entity is a \*foreign hybrid limited partnership in relation to the hybrid year—the individual interest of the partner in the asset, expressed as a percentage of the interests of all of the partners in the asset.

Step 3. If the partner paid a premium in respect of the \*acquisition of its interest in the asset (see subsection (2)), add the amount of the premium to the result of step 2. If the partner received a discount in respect of the acquisition (see subsection (2)), subtract the amount of the discount from the result of step 2, but not to the extent that this would result in a negative amount.

The result of step 3 is the partner's *tax cost setting amount* in respect of the asset.

- (2) Work out whether the partner paid a premium or received a discount for its interest in the asset using the following method statement:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Method Statement*

Step 1. Add up all the amounts paid by the partner before the start of the hybrid year for its \*shares in the entity (if the entity was a company), or for its interests in the assets of the entity and in the entity (if the entity was a \*limited partnership), that it held at the start of the hybrid year, and subtract all amounts received by the partner in respect of those shares or interests by way of reduction in capital of the entity.

Step 2. Work out the amount that, if the capital of the entity had been distributed to its \*shareholders on a winding-up or to its partners on a dissolution, at the end of the income year before the hybrid year, the partner could reasonably be expected to have received of the total distribution.

Step 3. If the result of step 1 exceeds the result of step 2, the partner paid a premium for its interest in the asset. If the result of step 2 exceeds the result of step 1, the partner received a discount for its interest in the asset.

Step 4. Work out the amount of the premium or discount using the formula:

$$\frac{\text{Result of step 1 in the method statement in subsection (1)}}{\text{Sum of results of step 1 in the method statement in subsection (1) for the partner for all of the *foreign hybrids assets in relation to the *asset-based income tax regime}} \times \text{Excess mentioned in step 3 in the method statement in this subsection}$$

- (3) The entity's **tax cost setting amount** for an asset at the start of the post-hybrid year in relation to an \*asset-based income tax regime is equal to the sum of what the partners' \*tax costs for their interests in the asset would be at that time for the purpose of applying the asset-based income tax regime if the entity had continued to be a \*foreign hybrid in relation to that income year.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**830-100 What the expression *tax cost* means**

The *tax cost* of a partner's interest in an asset or of an asset of the entity for the purposes of applying an \*asset-based income tax regime at the start of the post-hybrid year or the hybrid year is worked out using the following table:

<b>Tax cost of an asset</b>		
<b>Item</b>	<b>If the asset-based income tax regime is:</b>	<b>the tax cost of the interest or the asset is:</b>
1	Subdivisions 40-A to 40-D, sections 40-425 to 40-445 and Subdivision 328-D	the *adjustable value of the interest or the asset at the start of the post-hybrid year or the hybrid year
2	Division 70	the value of the interest or the asset at the start of the post-hybrid year or the hybrid year under Division 70
3	Part 3-1 or 3-3	the *cost base or *reduced cost base of the interest or the asset at the start of the post-hybrid year or the hybrid year
4	Division 16E of Part III of the <i>Income Tax Assessment Act 1936</i>	the amount that the partner or entity would need to receive if it were to dispose of the interest or asset at the start of the post-hybrid year or the hybrid year without an amount being assessable income of, or deductible to, the partner or entity under section 159GS of the <i>Income Tax Assessment Act 1936</i>
5	Any other provision of this Act or the <i>Income Tax Assessment Act 1936</i>	the cost of the interest or the asset at the start of the post-hybrid year or the hybrid year

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**830-105 What the expression *asset-based income tax regime* means**

The provisions listed in the first column in relation to each item in the table in section 830-100 are an *asset-based income tax regime*.

**830-110 No disposal of assets etc. on entity becoming or ceasing to be a foreign hybrid**

To avoid doubt, the fact that an entity becomes or ceases to be a \*foreign hybrid in relation to an income year does not cause:

- (a) a \*CGT event to happen to any \*CGT asset consisting of:
  - (i) any \*share or interest in the entity; or
  - (ii) any interest in an asset of the entity; or
- (b) a disposal or any other event to happen to any other asset consisting of such a share or interest.

**830-115 Tax losses cannot be transferred to a foreign hybrid**

- (1) If an entity is a \*foreign hybrid in relation to an income year, it cannot deduct in that income year a \*tax loss for a \*loss year in relation to which it was not a foreign hybrid.

*Former foreign hybrid can deduct tax losses for income years before it became a foreign hybrid*

- (2) This section does not prevent an entity that:
  - (a) is not a \*foreign hybrid in relation to an income year (the *post-hybrid year*); and
  - (b) was a foreign hybrid in relation to a previous income year; and
  - (c) was not a foreign hybrid in relation to an income year (the *pre-hybrid year*) before the previous year;from deducting, in the post-hybrid year, a \*tax loss for the pre-hybrid year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 830-120 End of CFC's last statutory accounting period

If:

- (a) a taxpayer is a partner in an entity that becomes a \*foreign hybrid in relation to an income year; and
- (b) the entity was a \*CFC at the end of the taxpayer's preceding income year; and
- (c) the last \*statutory accounting period of the CFC did not end at the end of the taxpayer's preceding income year; and
- (d) if it had so ended, the taxpayer would have been an \*attributable taxpayer in relation to the CFC;

for the purposes of working out the \*attributable income of the CFC for the taxpayer in respect of the last statutory accounting period of the CFC, that statutory accounting period ends at the end of the taxpayer's preceding income year.

### 830-125 How long interest in asset, or asset, held

*Partner's interest in asset when entity becomes a foreign hybrid*

- (1) If an entity becomes a \*foreign hybrid company in relation to an income year, the interest that a partner has in an asset as mentioned in section 830-35 is taken to have been held by the partner (except for the purposes of having the \*tax cost of the interest set) from the later of the following times:
  - (a) when the entity \*acquired the asset;
  - (b) when the partner acquired its \*shares in the entity.

*Entity's asset when it ceases to be a foreign hybrid company*

- (2) If:
  - (a) an entity is not a \*foreign hybrid company in relation to an income year (the *post-hybrid year*); and
  - (b) the entity was a \*foreign hybrid company in relation to the preceding income year; and
  - (c) during:
    - (i) that preceding income year; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(ii) any earlier income year in relation to which the entity was also a foreign hybrid;

but not at the start of the first income year in relation to which the entity was a foreign hybrid company, the partners in the foreign hybrid company \*acquired an interest in an asset that is an asset of the entity at the start of the post-hybrid year;

the asset is taken to have been held by the entity (except for the purposes of having the \*tax cost of the asset set) from the time the partners acquired their interests in the asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 840—Withholding taxes

### Table of Subdivisions

Guide to Division 840

840-M Managed investment trust withholding tax

### Guide to Division 840

#### 840-1 What this Division is about

This Division provides the rules to determine if you are liable to pay income tax in respect of certain Australian sourced income paid to you, or which you are entitled to receive.

The rules are relevant for foreign residents and certain other entities.

The income tax payable is a withholding tax. The associated withholding obligations are in the *Taxation Administration Act 1953*.

Amounts on which there is a liability to pay withholding tax are non-assessable non-exempt income.

#### Subdivision 840-M—Managed investment trust withholding tax

### Guide to Subdivision 840-M

#### 840-800 What this Subdivision is about

If you are a foreign resident you may be liable to pay income tax on certain amounts of Australian sourced net income (other than dividends, interest and royalties) of a managed investment trust that are either paid to you or to which you become entitled.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

A beneficiary of a trust in the capacity of a trustee of another trust will not be liable to income tax on these amounts.

Amounts on which there is a liability to pay withholding tax are non-assessable non-exempt income.

## Table of sections

### Operative provisions

840-805	Liability for managed investment trust withholding tax
840-810	When managed investment trust withholding tax is payable
840-815	Certain income is non-assessable non-exempt income
840-820	Agency rules

## Operative provisions

### 840-805 Liability for managed investment trust withholding tax

#### *Liability*

- (1) You are liable to pay income tax at the rate declared by the Parliament on the amount identified in subsection (2), (3) or (4) as the fund payment part if that subsection applies to you.

Note 1: The tax, which is called managed investment trust withholding tax, is imposed by the *Income Tax (Managed Investment Trust Withholding Tax) Act 2008* and the rate of the tax is set out in that Act.

Note 2: See Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953* for provisions dealing with withholding from fund payments.

Note 3: This subsection does not apply to residents of information exchange countries for the first income year starting on or after the first 1 July after the day on which the *Tax Laws Amendment (Election Commitments No. 1) Act 2008* receives the Royal Assent. Subdivision 840-M of the *Income Tax (Transitional Provisions) Act 1997* applies instead.

#### *Payments from managed investment trusts*

- (2) This subsection applies to you if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) you are paid an amount from a trust that is a \*managed investment trust in relation to an income year, or an amount is applied or dealt with as you direct by such a trust; and
- (b) all or part of that amount (the *fund payment part*) is represented by a payment that is a \*fund payment in relation to that year; and
- (c) you are, in respect of the fund payment part, a beneficiary (but not a beneficiary in the capacity of a trustee of another trust); and
- (d) you are a foreign resident when you are paid the amount or when the amount is applied or dealt with as you direct.

*Payments from custodians*

- (3) This subsection applies to you if:
  - (a) you are paid an amount from a \*custodian, or an amount is applied or dealt with as you direct by a custodian; and
  - (b) all or part of that amount (the *fund payment part*) is reasonably attributable to a payment that is a \*fund payment in relation to an income year by a trust that is a \*managed investment trust in relation to that year; and
  - (c) you are, in respect of the fund payment part, a beneficiary (but not a beneficiary in the capacity of a trustee of another trust); and
  - (d) you are a foreign resident when you are paid the amount or when the amount is applied or dealt with as you direct; and
  - (e) either:
    - (i) the custodian is not a company; or
    - (ii) if it is a company, it would be acting in the capacity as your \*agent apart from section 840-820.

*Entitlements to amounts from other entities*

- (4) This subsection applies to you if:
  - (a) you are a beneficiary of a trust (that is not a \*managed investment trust or a \*custodian) and are presently entitled to a share of the income or capital of the trust; and
  - (b) all or part of that share (also the *fund payment part*) is reasonably attributable to a payment that is a \*fund payment

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- in relation to an income year made by a trust that is a managed investment trust in relation to that year; and
- (c) you are not, in respect of that share, a beneficiary in the capacity of a trustee of another trust; and
  - (d) you are a foreign resident at the time (the *entitlement time*) when you became presently entitled.

*Entitlement to capital of a trust*

- (5) For the purposes of this section, section 95A of the *Income Tax Assessment Act 1936* applies in relation to capital of a trust in the same way as it applies to income of the trust.

*Exception*

- (6) This section does not apply to you if:
  - (a) you are paid the fund payment part, or it is applied or dealt with as you direct; or
  - (b) you become presently entitled to it;in the course of a \*business you carry on at or through an \*Australian permanent establishment.

**840-810 When managed investment trust withholding tax is payable**

- (1) \*Managed investment trust withholding tax is due and payable by you at the end of 21 days after:
  - (a) if subsection 840-805(2) or (3) applies to you—the end of the month in which the fund payment part is paid, applied or dealt with; or
  - (b) if subsection 840-805(4) applies to you—the end of the month in which the entitlement time occurs.
- (2) If any of the \*managed investment trust withholding tax that you are liable to pay remains unpaid after the time by which it is due to be paid, you are liable to pay the \*general interest charge on the unpaid amount for each day in the period that:
  - (a) starts at the beginning of the day by which the withholding tax was due to be paid; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(b) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:

- (i) the withholding tax;
- (ii) general interest charge on any of the withholding tax.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

- (3) The Commissioner may give you a notice specifying:
  - (a) the amount of any \*managed investment trust withholding tax that the Commissioner has ascertained is payable by you; and
  - (b) the day on which that tax became due and payable.
- (4) The ascertainment of an amount of \*managed investment trust withholding tax is not an assessment for the purposes of this Act.
- (5) The production of a notice given under subsection (3), or of a copy of it certified by or on behalf of the Commissioner, is conclusive evidence that the notice was given and of the particulars in it.

#### **840-815 Certain income is non-assessable non-exempt income**

An amount on which \*managed investment trust withholding tax is payable is not assessable income and is not \*exempt income of an entity.

#### **840-820 Agency rules**

- (1) This section applies to:
  - (a) a payment (the *first payment*) made to a \*custodian in the capacity as \*agent for another entity; and
  - (b) another payment made by the custodian to the extent that it is reasonably attributable to the first payment.
- (2) This Subdivision has effect as if the \*custodian were not an \*agent in relation to the payments.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 842—Exempt Australian source income and gains of foreign residents**

### **Table of Subdivisions**

842-B Some items of Australian source income of foreign residents that are exempt from income tax

### **Subdivision 842-B—Some items of Australian source income of foreign residents that are exempt from income tax**

### **Guide to Subdivision 842-B**

#### **842-100 What this Subdivision is about**

If you are a foreign resident, some of the income you derive while in Australia, or from Australian sources, may be exempt income.

### **Table of sections**

842-105 Amounts of Australian source ordinary income and statutory income that are exempt

#### **842-105 Amounts of Australian source ordinary income and statutory income that are exempt**

The amounts of \*ordinary income and \*statutory income covered by the table are exempt from income tax. In some cases, the exemption is subject to exceptions or special conditions, or both.

Note 1: Ordinary and statutory income that is exempt from income tax is called exempt income: see section 6-20. The note to subsection 6-15(2) describes some of the other consequences of it being exempt income.

Note 2: Even if an exempt payment is made to you, the Commissioner can still require you to lodge an income tax return or information under section 161 of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Chapter 4** International aspects of income tax

**Part 4-5** General

**Division 842** Exempt Australian source income and gains of foreign residents

Section 842-105

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<b>Exempt amounts</b>			
<b>Item</b>	<b>If you are:</b>	<b>the following amounts are exempt from income tax:</b>	<b>subject to these exceptions and special conditions:</b>
1	a foreign resident	your remuneration paid by an *Australian government agency	the remuneration is paid to you: (a) for expert advice to that agency; or (b) as a member of a Royal Commission
2	a foreign resident who is: (a) the representative of the government of a foreign country, visiting Australia on behalf of that government; or (b) a member of the entourage of such a representative	your *ordinary income, and your *statutory income, in your official capacity as such a representative or member	none
3	a foreign resident visiting Australia: (a) in the capacity of representative of any society or association established for educational, scientific, religious or philanthropic purposes; and (b) for the purpose of attending an international conference, or for the purpose of carrying on investigation or research for the society or association	your *ordinary income, and your *statutory income, in that capacity	none

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Exempt amounts**

<b>Item</b>	<b>If you are:</b>	<b>the following amounts are exempt from income tax:</b>	<b>subject to these exceptions and special conditions:</b>
4	a foreign resident visiting Australia: (a) in the capacity of representative of the media outside Australia; and (b) for the purpose of reporting the proceedings relating to any of the matters referred to in items 2 and 3	your *ordinary income, and your *statutory income, in that capacity	none
5	a member of the naval, military or air forces of the government of a foreign country	pay and allowances you earn in Australia as a member of those forces	the pay and allowances are not paid or provided by the Commonwealth
6	a foreign resident visiting Australia	your *ordinary income, and your *statutory income, that: (a) is from an occupation you carry on while in Australia; and (b) is not exempt from income tax in the country where you are ordinarily resident	in the opinion of the Treasurer, the visit and occupation are principally directed to assisting in the defence of Australia

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 4** International aspects of income tax

**Part 4-5** General

**Division 842** Exempt Australian source income and gains of foreign residents

Section 842-105

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**Exempt amounts**

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<b>Item</b>	<b>If you are:</b>	<b>the following amounts are exempt from income tax:</b>	<b>subject to these exceptions and special conditions:</b>
7	(a) a foreign resident pursuing in Australia a course of study or training; and (b) in Australia for the sole purpose of pursuing that course	your * ordinary income, and your * statutory income, by way of a scholarship, bursary, or other educational allowance, provided by the Commonwealth	none

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 855—Capital gains and foreign residents**

### **Table of Subdivisions**

Guide to Division 855

855-A Disregarding a capital gain or loss by foreign residents

855-B Becoming an Australian resident

### **Guide to Division 855**

#### **855-1 What this Division is about**

A foreign resident can disregard a capital gain or loss unless the relevant CGT asset is a direct or indirect interest in Australian real property, or relates to a business carried on by the foreign resident through a permanent establishment in Australia.

Special rules apply for individuals who were Australian residents but have become foreign residents (see also Subdivision 104-I) and for foreign resident beneficiaries of fixed trusts.

There are also rules dealing with what happens when a foreign resident becomes an Australian resident.

### **Subdivision 855-A—Disregarding a capital gain or loss by foreign residents**

#### **Table of sections**

855-5	Objects of this Subdivision
855-10	Disregarding a capital gain or loss from CGT events
855-15	When an asset is taxable Australian property
855-20	Taxable Australian real property
855-25	Indirect Australian real property interests
855-30	Principal asset test
855-35	Reducing a capital gain or loss from a business asset—Australian permanent establishments

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

855-40 Capital gains and losses of foreign residents through fixed trusts

### **855-5 Objects of this Subdivision**

- (1) The objects of this Subdivision are to improve:
  - (a) Australia's status as an attractive place for business and investment; and
  - (b) the integrity of Australia's capital gains tax base.
- (2) This is achieved by:
  - (a) aligning Australia's tax laws with international practice; and
  - (b) ensuring interests in an entity remain subject to Australia's capital gains tax laws if the entity's underlying value is principally derived from Australian real property.

### **855-10 Disregarding a capital gain or loss from CGT events**

- (1) Disregard a \*capital gain or \*capital loss from a \*CGT event if:
  - (a) you are a foreign resident, or the trustee of a \*foreign trust for CGT purposes, just before the CGT event happens; and
  - (b) the CGT event happens in relation to a \*CGT asset that is not \*taxable Australian property.

Note: A capital gain or capital loss from a CGT asset you have used at any time in carrying on a business through a permanent establishment in Australia may be reduced under section 855-35.

- (2) The \*CGT asset in relation to which a \*CGT event happens includes the following:
  - (a) for CGT event D1 (about creating contractual or other rights)—the CGT asset that is the subject of the creation of the contractual or other rights;  

Example: You grant an easement over land in Australia. The land is the subject of the creation of the rights in the easement. Therefore, the CGT event happens in relation to the land.
  - (b) for CGT event D2 (about granting an option)—the CGT asset that is the subject of the option;
  - (c) for CGT event F1 (about granting a lease)—the CGT asset that is the subject of the lease;
  - (d) for CGT event J1 (about a company ceasing to be a member of wholly-owned group after roll-over)—the roll-over asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 855-15 When an asset is taxable Australian property

There are 5 categories of \*CGT assets that are *taxable Australian property*. They are set out in this table.

CGT assets that are taxable Australian property	
Item	Description
1	*Taxable Australian real property (see section 855-20)
2	A *CGT asset that: (a) is an *indirect Australian real property interest (see section 855-25); and (b) is not covered by item 5 of this table
3	A *CGT asset that: (a) you have used at any time in carrying on a *business through a permanent establishment (within the meaning of section 23AH of the <i>Income Tax Assessment Act 1936</i> ) in Australia; and (b) is not covered by item 1, 2 or 5 of this table
4	An option or right to *acquire a *CGT asset covered by item 1, 2 or 3 of this table
5	A *CGT asset that is covered by subsection 104-165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident)

Note: An asset is also taxable Australian property if it was acquired by a company after 28 January 1988 and before 26 May 1988 from a foreign resident as a result of a disposal for which there was a roll-over under section 160ZZN or 160ZZO of the *Income Tax Assessment Act 1936*: see section 136-25 of the *Income Tax (Transitional Provisions) Act 1997*.

### 855-20 Taxable Australian real property

A \*CGT asset is *taxable Australian real property* if it is:

- (a) real property situated in Australia; or
- (b) a \*mining, quarrying or prospecting right (to the extent that the right is not real property), if the minerals, \*petroleum or quarry materials are situated in Australia.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 855-25 Indirect Australian real property interests

- (1) A \*membership interest held by an entity (the *holding entity*) in another entity (the *test entity*) at a time is an *indirect Australian real property interest* at that time if:
  - (a) the interest passes the \*non-portfolio interest test (see section 960-195):
    - (i) at that time; or
    - (ii) throughout a 12 month period that began no earlier than 24 months before that time and ended no later than that time; and
  - (b) the interest passes the principal asset test in section 855-30 at that time.
- (2) For the purposes of subsection (1), in working out whether the interest passes the \*non-portfolio interest test and the principal asset test in section 855-30:
  - (a) apply section 350 of the *Income Tax Assessment Act 1936* as if the words “, or is entitled to acquire,” (wherever occurring) were omitted; and
  - (b) apply section 351 of that Act as if:
    - (i) the words “, or that the beneficiary is entitled to acquire” (wherever occurring) were omitted; and
    - (ii) the words “, or that the entity is entitled to acquire” in paragraph 351(2)(d) were omitted.
- (3) The first element of the \*cost base and \*reduced cost base of a \*CGT asset on 10 May 2005 is the \*market value of the asset on that day if, on that day:
  - (a) the CGT asset was a \*membership interest you held in another entity; and
  - (b) you were a foreign resident, or the trustee of a trust that was not a \*resident trust for CGT purposes; and
  - (c) the CGT asset was a \*post-CGT asset; and
  - (d) the CGT asset did not have the necessary connection with Australia (within the meaning of this Act as in force on that day) disregarding the operation of paragraph (b) of item 5 and paragraph (b) of item 6 of the table in section 136-25 (as in force on that day).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) Also, Parts 3-1 and 3-3 apply to the asset as if you had \*acquired it on that day.

### **855-30 Principal asset test**

- (1) The purpose of this section is to define when an entity's underlying value is principally derived from Australian real property (see paragraph 855-5(2)(b)).
- (2) A \*membership interest held by an entity (the **holding entity**) in another entity (the **test entity**) passes the principal asset test if the sum of the \*market values of the test entity's assets that are \*taxable Australian real property exceeds the sum of the \*market values of its assets that are *not* taxable Australian real property.
- (3) For the purposes of subsection (2), treat an asset of an entity (the **first entity**) that is a \*membership interest in another entity (the **other entity**) as if it were instead the following 2 assets:
- (a) an asset that is \*taxable Australian real property (the **TARP asset**);
  - (b) an asset that is not taxable Australian real property (the **non-TARP asset**).
- (4) For the purposes of subsection (2), treat the \*market value of the TARP asset and the non-TARP asset according to the following table.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 855-30

<b>Market value of the TARP asset and the non-TARP asset</b>			
<b>Item</b>	<b>If:</b>	<b>the market value of the TARP asset is:</b>	<b>the market value of the non-TARP asset is:</b>
1	(a) the first entity's *direct participation interest in the other entity is less than 10%; or  (b) the holding entity's *total participation interest in the other entity is less than 10%	zero	the *market value of the *membership interest mentioned in subsection (3)
2	item 1 does not apply	the product of: (a) the sum of the *market values of all the assets of the other entity that are *taxable Australian real property; and (b) the first entity's *direct participation interest in the other entity	the product of: (a) the sum of the market values of all the assets of the other entity that are <i>not</i> taxable Australian real property; and (b) the first entity's direct participation interest in the other entity

Note: For the purposes of item 2 of the table, it is necessary to work out the market value of any TARP assets and non-TARP assets in relation to any membership interests held by the other entity before working out the value of the TARP asset and non-TARP asset held by the first entity.

- (5) For the purposes of this section, disregard the \*market value of any asset acquired by the test entity, or by any other entity, if the \*acquisition was done for a purpose (other than an incidental purpose) that included ensuring that a \*membership interest in any entity would not pass the principal asset test in this section.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**855-35 Reducing a capital gain or loss from a business asset—  
Australian permanent establishments**

- (1) This section applies to a \*CGT asset that is \*taxable Australian property under item 3 of the table in section 855-15 because you have used it at any time in carrying on a \*business through a permanent establishment (within the meaning of section 23AH of the *Income Tax Assessment Act 1936*) in Australia.
- (2) The \*capital gain or \*capital loss you make from a \*CGT event in relation to the asset is reduced if you used it in this way for only part of the period from when you \*acquired it to when the CGT event happened.
- (3) The gain or loss is reduced by this fraction:

$$\frac{\text{Number of days the asset was not used  
in the way described in subsection (1)}}{\text{Number of days in that period}}$$

**855-40 Capital gains and losses of foreign residents through fixed trusts**

- (1) The purpose of this section is to provide comparable taxation treatment as between direct ownership, and indirect ownership through a \*fixed trust, by foreign residents of \*CGT assets that are not \*taxable Australian property.
- (2) A \*capital gain you make in respect of your interest in a \*fixed trust is disregarded if:
  - (a) you are a foreign resident when you make the gain; and
  - (b) the gain is attributable to a \*CGT event happening to a \*CGT asset of a trust (the ***CGT event trust***) that is:
    - (i) the fixed trust; or
    - (ii) another fixed trust in which that trust has an interest (directly, or indirectly through a \*chain of fixed trusts); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(c) either:

- (i) the asset is not \*taxable Australian property for the CGT event trust at the time of the CGT event; or
- (ii) the asset is an interest in a fixed trust and the conditions in subsections (5), (6), (7) and (8) are satisfied.

Note: Section 115-215 treats a portion of a trust's capital gain as a capital gain made by a beneficiary, and applies the CGT discount to that portion as if the gain were made directly by the beneficiary.

- (3) You are not liable to pay tax as a trustee of a \*fixed trust in respect of an amount to the extent that the amount gives rise to a \*capital gain that is disregarded for a beneficiary under subsection (2).
- (4) To avoid doubt, subsection (3) does not affect the operation of subsection 98A(1) or (3) of the *Income Tax Assessment Act 1936* (about taxing beneficiaries who are foreign residents at the end of an income year).

*Conditions*

- (5) The conditions in subsections (6), (7) and (8) must be satisfied if the relevant \*CGT event happens to an interest in a \*fixed trust (the ***first trust***) and the interest is \*taxable Australian property at the time of the CGT event.
- (6) At least 90% (by \*market value) of the \*CGT assets of:
  - (a) the first trust; or
  - (b) a \*fixed trust in which the first trust has an interest (directly, or indirectly through a \*chain of fixed trusts);must not be \*taxable Australian property at the time of the relevant \*CGT event.
- (7) If the condition in subsection (6) is not satisfied for the first trust (but is satisfied for a trust covered by paragraph (6)(b)), the condition in subsection (8) must be satisfied for the first trust, and for each other trust in the \*chain of trusts between the first trust and the trust that satisfied the condition in subsection (6).
- (8) The condition is that, assuming any interest in a \*fixed trust in that \*chain not to be \*taxable Australian property, at least 90% (by

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

\*market value) of the \*CGT assets of the trust must not be taxable Australian property.

## **Subdivision 855-B—Becoming an Australian resident**

### **Table of sections**

855-45	Individual or company becomes an Australian resident
855-50	Trust becomes a resident trust
855-55	CFC becomes an Australian resident

### **855-45 Individual or company becomes an Australian resident**

- (1) If you become an Australian resident, there are rules relevant to each \*CGT asset that you owned just before you became an Australian resident, except an asset:
    - (a) that is \*taxable Australian property; or
    - (b) that you \*acquired before 20 September 1985.
- Note: This section has effect subject to section 768-950 (individuals who become Australian residents and are temporary residents immediately after they become Australian residents).
- (2) The first element of the \*cost base and \*reduced cost base of the asset (at the time you become an Australian resident) is its \*market value at that time.
  - (3) Also, Parts 3-1 and 3-3 apply to the asset as if you had \*acquired it at the time you became an Australian resident.
  - (4) This section does not apply to a \*share or right if:
    - (a) it is a \*qualifying share or a \*qualifying right; and
    - (b) you have not made an election under section 139E of the *Income Tax Assessment Act 1936* covering the share or right; and
    - (c) the \*cessation time for the share or right has not occurred.

### **855-50 Trust becomes a resident trust**

- (1) If a trust becomes a \*resident trust for CGT purposes, there are rules relevant to each \*CGT asset that the trustee owned just before the trust became a resident trust for CGT purposes, except one:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 855-55

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- (a) that is \*taxable Australian property; or
  - (b) that the trustee \*acquired before 20 September 1985.
- (2) The first element of the \*cost base and \*reduced cost base of the asset (at the time the trust becomes a \*resident trust for CGT purposes) is its \*market value at that time.
- (3) Also, Parts 3-1 and 3-3 apply to the asset as if the trustee had \*acquired it at the time the trust became a \*resident trust for CGT purposes.

*Exception*

- (4) This section does not apply to a trust if, just before it became a \*resident trust for CGT purposes, it was a \*CFT because of paragraph 342(a) of the *Income Tax Assessment Act 1936*.

Note: This section is disregarded in calculating the attributable income of a trust: see section 102AAZB of the *Income Tax Assessment Act 1936*.

**855-55 CFC becomes an Australian resident**

- (1) This section applies to a \*CFC that stops at a time (the *residence change time*) being a resident of a \*listed country or an \*unlisted country and becomes an Australian resident.
- (2) Section 855-45 does not apply to the \*CFC.
- (3) The modifications of Parts 3-1 and 3-3 of this Act in sections 411 to 414 of the *Income Tax Assessment Act 1936* have the effect they would have, in relation to each \*commencing day asset owned by the \*CFC at the residence change time, if those modifications were used to work out the taxable income of the CFC rather than its \*attributable income.
- (4) However, if a \*capital gain on a \*commencing day asset of the \*CFC (for a period before the residence change time) was subject to tax (within the meaning of Part X of the *Income Tax Assessment Act 1936*) in a \*listed country, the modifications of Parts 3-1 and 3-3 of this Act in sections 411 to 414 of the *Income Tax Assessment Act 1936* have the effect they would have in relation to the asset if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) those modifications were used to work out the taxable income of the CFC rather than its \*attributable income; and
- (b) the \*commencing day of the CFC were the residence change time.

Note: This section is disregarded in calculating the attributable income of a CFC: see section 410 of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Chapter 5—Administration**

### **Part 5-30—Record-keeping and other obligations**

#### **Division 900—Substantiation rules**

##### **Table of Subdivisions**

	Guide to Division 900
900-A	Application of Division
900-B	Substantiating work expenses
900-C	Substantiating car expenses
900-D	Substantiating business travel expenses
900-E	Written evidence
900-F	Travel records
900-G	Retaining and producing records
900-H	Relief from effects of failing to substantiate
900-I	Award transport payments

##### **Guide to Division 900**

###### **900-1 What this Division is about**

This Division sets out the substantiation rules that apply to certain types of losses or outgoings.

##### **Subdivision 900-A—Application of Division**

###### **Table of sections**

900-5	Application of the requirements of Division 900
900-10	Substantiation requirement
900-12	Application to recipients and payers of certain withholding payments

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **900-5 Application of the requirements of Division 900**

- (1) The requirements of this Division apply to an individual.
- (2) They also apply to a partnership that includes at least one individual, as if the partnership were an individual.
- (3) They do not apply to any other entity.

### **900-10 Substantiation requirement**

To deduct certain types of losses or outgoings, you need to substantiate them under this Division.

<b>Item</b>	<b>For this type of loss or outgoing:</b>	<b>see:</b>
1.	Work expenses	Subdivision 900-B
2.	Car expenses	Subdivision 900-C
3.	Business travel expenses	Subdivision 900-D

Note: There are exceptions to these requirements:

- Subdivision 900-B has some specific exceptions about work expenses.
- Subdivision 900-H provides for relief from the effects of failing to substantiate.
- Subdivision 900-I has an exception about certain losses or outgoings related to award transport payments.

### **900-12 Application to recipients and payers of certain withholding payments**

#### *Application to recipients*

- (1) If an individual receives, or is entitled to receive, \*withholding payments covered by subsection (3), this Division applies to him or her:
  - (a) in the same way as it applies to an employee; and
  - (b) as if an entity that makes (or is liable to make) such payments to him or her were his or her employer; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 900-12

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- (c) as if the withholding payments covered by subsection (3) that he or she receives (or is entitled to receive) were salary or wages.

*Application to payers*

- (2) This Division applies to an entity that makes, or is liable to make, \*withholding payments covered by subsection (3):
- (a) in the same way as it applies to an employer; and
  - (b) as if an individual to whom the entity makes (or is liable to make) such payments were the entity's employee.

*Withholding payments covered*

- (3) This subsection covers a \*withholding payment covered by any of the provisions in Schedule 1 to the *Taxation Administration Act 1953* listed in the table.

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<b>Withholding payments covered</b>		
<b>Item</b>	<b>Provision</b>	<b>Subject matter</b>
1	Section 12-35	Payment to employee
2	Section 12-40	Payment to company director
3	Section 12-45	Payment to office holder
3A	Section 12-47	Payment to *religious practitioner
4	Section 12-50	Return to work payment
5	Subdivision 12-C	*Superannuation benefits, *employment termination payments, unused leave payments and annuities
6	Subdivision 12-D	Benefit and compensation payments

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**Subdivision 900-B—Substantiating work expenses**

**Table of sections**

900-15	Getting written evidence
900-20	Keeping travel records
900-25	Retaining the written evidence and travel records
900-30	Meaning of <i>work expense</i>
900-35	Exception for small total of expenses

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- 900-40 Exception for laundry expenses below a certain limit
- 900-45 Exception for work expense related to award transport payment
- 900-50 Exception for domestic travel allowance expenses
- 900-55 Exception for overseas travel allowance expenses
- 900-60 Exception for reasonable overtime meal allowance
- 900-65 Crew members on international flights need not keep travel records

### **900-15 Getting written evidence**

- (1) To deduct a \*work expense:
- (a) it must qualify as a deduction under some provision of this Act outside this Division; and
  - (b) you need to substantiate it by getting written evidence.
- Subdivision 900-E tells you about the evidence you need.

To find out whether an expense qualifies as a deduction under this Act, see  
Division 8 (Deductions).

- (2) If your expense is for fuel or oil, you have a choice of either:
- (a) getting written evidence of it under Subdivision 900-E; or
  - (b) keeping odometer records for the period when you owned or leased the \*car in the income year.

Subdivision 28-H tells you about odometer records.

Note: In certain circumstances (for example, under a hire purchase agreement) the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

### **900-20 Keeping travel records**

You need to keep travel records if your expense is for travel that involves you being away from your ordinary residence for 6 or more nights in a row.

The travel may be within or outside Australia. Subdivision 900-F tells you about travel records.

Note: Members of international flight crews may be exempt from keeping travel records for losses or outgoings covered by travel allowances: see section 900-65.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 900-25 Retaining the written evidence and travel records

- (1) Once you have the material required by section 900-15 or 900-20, you must retain it for 5 years. There is no need to lodge it with your \*income tax return. The Commissioner may require you to produce it: see Subdivision 900-G. The period for which you must retain it is called the *retention period*.
- (2) The 5 years start on the due day for lodging your \*income tax return for the income year. If you lodge your return later, the 5 years start on the day you lodge it.
- (3) However, the \*retention period is extended if, when the 5 years end, you are involved in a dispute with the Commissioner that relates to the expense. See section 900-170.
- (4) If you do not retain the material for the \*retention period, you cannot deduct the expense. If you have already deducted it, your assessment may be amended to disallow the deduction.
- (5) If you lose any of the material, there are rules that might help you in section 900-205.

### 900-30 Meaning of work expense

#### *General*

- (1) A **work expense** is a loss or outgoing you incur in producing your salary or wages.

Note: This Division also applies to withholding payments that are not salary or wages: see subsection 900-12(3).

#### *Travel allowance expenses included*

- (2) Travel allowance expenses count as \*work expenses. A **travel allowance expense** is a loss or outgoing you incur for travel that is covered by a \*travel allowance. The loss or outgoing must:
  - (a) be for accommodation or for food or drink; or
  - (b) be incidental to the travel.
- (3) A **travel allowance** is an allowance your employer pays or is to pay to you to cover losses or outgoings:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) that you incur for travel away from your ordinary residence that you undertake in the course of your duties as an employee; and
- (b) that are losses or outgoings for accommodation or for food or drink, or are incidental to the travel.

The travel may be within or outside Australia.

Note: This Division also applies to individuals who are not employees: see section 900-12.

*Meal allowance expenses included*

- (4) Meal allowance expenses count as \*work expenses. A **meal allowance expense** is a loss or outgoing that you incur for food or drink that is covered by a \*meal allowance.
- (5) A **meal allowance** is an allowance that your employer pays or is to pay to you as an employee to enable you to buy food or drink. However, an allowance is not a meal allowance if it is a \*travel allowance or part of one.

Note: This Division also applies to individuals who are not employees: see section 900-12.

*Motor vehicle expenses excluded*

- (6) A loss or outgoing to do with a \*motor vehicle is not treated as a \*work expense unless it is:
  - (a) a loss or outgoing incurred, or a payment made, in respect of travel outside Australia; or
  - (b) a taxi fare or similar loss or outgoing.

However, most losses or outgoings to do with a \*motor vehicle are covered by the rules about \*car expenses. See Division 28 and Subdivision 900-C.

*Other types of losses or outgoings included*

- (7) In addition to losses or outgoings within the general scope of subsection (1), any of the following is a \*work expense:
  - (a) the decline in value of property you own and that is used, or is \*installed ready for use, by you in order to produce your salary or wages;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 900-35

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- (b) expenditure you incur that qualifies as a deduction under section 25-60 (Parliament election expenses) or section 25-65 (about local government election expenses);
- (c) expenditure you incur that entitles you to a deduction under section 25-100 (transport expenses incurred in your travel between workplaces), other than \*car expenses.

- Note 1: This Division also applies to payments that are *not* salary or wages, but *are* PAYE earnings: see section 900-12.
- Note 2: In certain circumstances (for example, under a hire purchase agreement) the notional buyer of property is taken to be its owner (see subsection 240-20(2)).
- Note 3: See Subdivision 900-C for car expenses that are also transport expenses incurred in your travel between workplaces.

**900-35 Exception for small total of expenses**

- (1) If the total of all the \*work expenses (including \*laundry expenses, but excluding \*travel allowance expenses and \*meal allowance expenses) that you want to deduct is \$300 or less, you can deduct them without getting written evidence or keeping travel records.

- Note 1: If the total is more than \$300, you need to substantiate *all* the work expenses, not just the excess over \$300.
- Note 2: Whether or not your work expenses total \$300 or less, for certain expenses that are each \$10 or less and total \$200 or less you can get written evidence by making your own record, instead of getting a document from the supplier: see section 900-125.

- (2) This limit can be increased from time to time by regulations made under section 909-1.
- (3) A \*transport expense that Subdivision 900-I (Award transport payments) lets you deduct without following the rules in this Division does not count towards this limit.

**900-40 Exception for laundry expenses below a certain limit**

- (1) Even if the \*work expenses you claim total more than \$300, you can still deduct up to \$150 of \*laundry expenses without getting written evidence of them.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) However, this exception does not increase the \$300 limit in section 900-35 to \$450: your \*laundry expenses still count toward that limit.

Example: You want to deduct laundry expenses of \$140 and union dues of \$200. These work expenses total more than \$300, so the exception in section 900-35 doesn't apply. This means you must substantiate the union dues expense. However, because of the exception in this section, you don't need to get written evidence of the laundry expenses.

- (3) This limit can be increased from time to time by regulations made under section 909-1.
- (4) A *laundry expense* is a \*work expense to do with washing, drying or ironing clothes (but not dry cleaning).

### **900-45 Exception for work expense related to award transport payment**

You may be able to deduct, without getting written evidence or keeping travel records, a \*transport expense you incurred that is related to an allowance or reimbursement paid or payable to you by your employer under an \*industrial instrument that was in force on 29 October 1986. Subdivision 900-I tells you about this.

Note: This Division also applies to entities that are *not* employers, but pay (or are liable to pay) withholding payments covered by subsection 900-12(3).

### **900-50 Exception for domestic travel allowance expenses**

- (1) You can deduct a \*travel allowance expense for travel within Australia without getting written evidence or keeping travel records if the Commissioner considers reasonable the total of the losses or outgoings you claim for travel covered by the allowance.
- (2) In deciding whether the total of the losses or outgoings you claim is reasonable, the Commissioner must take into account the total of the losses or outgoings of the following kinds that it would be reasonable for you to incur for the travel:
- (a) accommodation;
  - (b) food or drink;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) losses or outgoings incidental to the travel.

**900-55 Exception for overseas travel allowance expenses**

- (1) You can deduct a \*travel allowance expense for travel outside Australia without getting written evidence under the same conditions as for domestic \*travel allowances, except that you still have to get written evidence for losses or outgoings for accommodation.
- (2) Consequently, in deciding whether the total of the losses or outgoings you claim is reasonable, the Commissioner must disregard losses or outgoings for accommodation.
- (3) However, for overseas travel covered by a \*travel allowance you must still keep travel records if the travel involves you being away from your ordinary residence for 6 or more nights in a row: Subdivision 900-F tells you about travel records.

**900-60 Exception for reasonable overtime meal allowance**

You can deduct a \*meal allowance expense without getting written evidence if:

- (a) the allowance is to enable you to buy food or drink in connection with overtime that you work; and
- (b) the allowance is paid or payable to you under an \*industrial instrument; and
- (c) the Commissioner considers reasonable the total of the losses or outgoings you claim that are covered by the allowance.

**900-65 Crew members on international flights need not keep travel records**

You can deduct a \*travel allowance expense without keeping travel records if:

- (a) the allowance covers travel by you as a crew member of an aircraft; and
- (b) the travel is principally outside Australia; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) the total of the losses or outgoings you claim for the travel that are covered by the allowance does not exceed the allowance.

## **Subdivision 900-C—Substantiating car expenses**

### **Table of sections**

900-70	Getting written evidence
900-75	Retaining the written evidence and odometer records

### **900-70 Getting written evidence**

- (1) For the “one-third of actual expenses” method or the “log book” method of deducting a \*car expense, you need to substantiate the expense by getting written evidence. Subdivision 900-E tells you about the evidence you need.
- Subdivision 28-E tells you about the “one-third of actual expenses” method and Subdivision 28-F tells you about the “log book” method.
- (2) If you are using the “one-third of actual expenses” method and your expense is for fuel or oil, you have a choice of either:
- (a) getting written evidence of it under Subdivision 900-E; or
  - (b) keeping odometer records for the period when you owned or leased the \*car in the income year.

Subdivision 28-H tells you about odometer records.

Note: In certain circumstances (for example, under a hire purchase agreement) the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

- (3) If you are using the “log book” method and your expense is for fuel or oil, you do not need to get written evidence of it, because section 28-100 already requires you to keep odometer records for the period when you \*held the \*car in the income year.

### **900-75 Retaining the written evidence and odometer records**

- (1) Once you have the material required by this Subdivision, you must retain it for 5 years. There is no need to lodge it with your \*income tax return. The Commissioner may require you to produce it: see

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 900-80

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Subdivision 900-G. The period for which you must retain it is called the *retention period*.

- (2) The 5 years start on the due day for lodging your \*income tax return for the income year. If you lodge your return later, the 5 years start on the day you lodge it.
- (3) However, the \*retention period is extended if, when the 5 years end, you are involved in a dispute with the Commissioner that relates to the expense. See section 900-170.
- (4) If you do not retain the material for the \*retention period, you cannot deduct the expense. If you have already deducted it, your assessment may be amended to disallow the deduction.
- (5) If you lose any of the material, there are rules that might help you in section 900-205.

**Subdivision 900-D—Substantiating business travel expenses**

**Table of sections**

900-80	Getting written evidence
900-85	Keeping travel records
900-90	Retaining the written evidence and travel records
900-95	Meaning of <i>business travel expense</i>

**900-80 Getting written evidence**

- (1) To deduct a \*business travel expense:
  - (a) it must qualify as a deduction under some provision of this Act outside this Division; and
  - (b) you need to substantiate it by getting written evidence.Subdivision 900-E tells you about the evidence you need.

To find out whether an expense qualifies as a deduction under this Act, see Division 8 (Deductions).

- (2) If your expense is for fuel or oil, you have a choice of either:
  - (a) getting written evidence of it under Subdivision 900-E; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) keeping odometer records for the period when you owned or leased the \*car in the income year.

Subdivision 28-H tells you about odometer records.

Note: In certain circumstances (for example, under a hire purchase agreement) the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

### **900-85 Keeping travel records**

You need to keep travel records if your expense is for travel that involves you being away from your ordinary residence for 6 or more nights in a row. Subdivision 900-F tells you about travel records.

### **900-90 Retaining the written evidence and travel records**

- (1) Once you have the material required by section 900-80 or 900-85, you must retain it for 5 years. There is no need to lodge it with your \*income tax return. The Commissioner may require you to produce it: see Subdivision 900-G. The period for which you must retain it is called the *retention period*.
- (2) The 5 years start on the due day for lodging your \*income tax return for the income year. If you lodge your return later, the 5 years start on the day you lodge it.
- (3) However, the \*retention period is extended if, when the 5 years end, you are involved in a dispute with the Commissioner that relates to the expense. See section 900-170.
- (4) If you do not retain the material for the \*retention period, you cannot deduct the expense. If you have already deducted it, your assessment may be amended to disallow the deduction.
- (5) If you lose any of the material, there are rules that might help you in section 900-205.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**900-95** *Meaning of business travel expense*

*General*

- (1) A **business travel expense** is a \*travel expense, in so far as you incur it in producing your assessable income other than salary or wages.

*Travel expense*

- (2) A loss or outgoing is a **travel expense** if you incur it for travel by you that involves you being away from your ordinary residence for at least one night. The travel may be within or outside Australia.

*Salary and wages travel expenses excluded*

- (3) In so far as you incur \*travel expenses in producing your salary or wages, the expenses are not treated as \*business travel expenses. Instead, they are dealt with as \*work expenses in Subdivision 900-B.

Note: This Division also applies to withholding payments that are not salary or wages: see subsection 900-12(3).

*Travel allowance expenses excluded*

- (4) \*Travel allowance expenses are not treated as \*business travel expenses. They too are dealt with as \*work expenses in Subdivision 900-B.

*Motor vehicle expenses excluded*

- (5) A loss or outgoing to do with a \*motor vehicle is not treated as a \*business travel expense unless it is:
- (a) a loss or outgoing incurred, or a payment made, in respect of travel outside Australia; or
  - (b) a taxi fare or similar loss or outgoing.

However, most \*motor vehicle expenses are covered by the rules about \*car expenses. See Division 28 and Subdivision 900-C.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 900-E—Written evidence**

### **Guide to Subdivision 900-E**

#### **900-100 What this Subdivision is about**

This Subdivision tells you how you must get written evidence to support a claim for a deduction.

#### **Table of sections**

##### **Operative provisions**

900-105	Ways of getting written evidence
900-110	Time limits
900-115	Written evidence from supplier
900-120	Written evidence of depreciating asset expense
900-125	Evidence of small expenses
900-130	Evidence of expenses considered otherwise too hard to substantiate
900-135	Evidence on a payment summary

#### **Operative provisions**

##### **900-105 Ways of getting written evidence**

Each of the following sections has a set of rules for a particular way of getting written evidence to substantiate a deduction. Which ones you can use depends on the type of expense. You only need to use one set of rules to support an expense.

##### **900-110 Time limits**

- (1) There is no time limit for getting written evidence of an expense (unless you want to record the expense yourself under section 900-125 or 900-130). But until you get written evidence of it, you are not entitled to a deduction for the expense.
- (2) If when you lodge your <sup>\*</sup>income tax return for the income year you have good reason to expect to get written evidence of the expense within a reasonable time, you can deduct the expense without

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<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 900-115

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actually getting the evidence. But if you don't get the evidence within a reasonable time, your entitlement to the deduction ceases. If you have already deducted the expense, your assessment may be amended to disallow the deduction.

- (3) Even if you only get written evidence of the expense *after* the end of the income year, you deduct the expense for that income year, not the income year in which you get the evidence.

**900-115 Written evidence from supplier**

- (1) You may use this set of rules for any type of expense except the decline in value of a \*depreciating asset.
- (2) You must get a document from the supplier of the goods or services the expense is for. The document must set out:
  - (a) the name or business name of the supplier; and
  - (b) the amount of the expense, expressed in the currency in which it was incurred; and
  - (c) the nature of the goods or services; and
  - (d) the day the expense was incurred; and
  - (e) the day it is made out.
- (3) There are 2 exceptions to these requirements:
  - (a) if the document does not show the day the expense was incurred, you may use a bank statement or other reasonable, independent evidence that shows when it was paid;
  - (b) if the document the supplier gave you does not specify the nature of the goods or services, you may write in the missing details yourself before you lodge your \*income tax return for the income year.
- (4) The document must be in English. However, if the expense was incurred in a country outside Australia, the document can instead be in a language of that country.

**900-120 Written evidence of depreciating asset expense**

- (1) You may use this set of rules only for a \*depreciating asset expense.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) You must get evidence of the original acquisition of the \*depreciating asset. It must be a document that you get from the supplier of the asset and that specifies:
  - (a) the name or business name of the supplier; and
  - (b) the cost of the asset to you; and
  - (c) the nature of the asset; and
  - (d) the day you acquired the asset; and
  - (e) the day it is made out.
- (3) However, if the document the supplier gave you does not specify the nature of the asset, you may write in the missing details yourself before you lodge your \*income tax return for the income year in which you first claim a deduction for the decline in value of the asset.
- (4) If you don't get the document in time, for example because you only decided to use the asset for income-producing purposes several years after you acquired it, there are rules that might help you in Subdivision 900-H (Relief from effects of failing to substantiate).
- (5) The document must be in English. However, if you \*imported the asset into Australia, the document can instead be in a language of the country from which the asset was originally exported.

### **900-125 Evidence of small expenses**

- (1) If your expense is small, and you have a small total of small expenses, you can make a record of the expenses instead of getting a document from the supplier.
- (2) Each expense must be \$10 or less, and the total of all your expenses that:
  - (a) are each \$10 or less; and
  - (b) you incurred in the income year and wish to deduct; and
  - (c) you must get written evidence for under this Division;must be \$200 or less. These limits can be increased from time to time by regulations made under section 909-1.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 900-130

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- (3) If the expense is not the decline in value of a \*depreciating asset, you must get a document with the same information as required by section 900-115, except that you may create the document and record all the details yourself. You must do so as soon as possible after incurring the expense.
- (4) If the expense is the decline in value of a \*depreciating asset, you must, as soon as possible after the last day of the income year, record in a document the following:
  - (a) the nature of the property;
  - (b) the amount of the decline in value;
  - (c) who made the record;
  - (d) the day the record is made.
- (5) A record must be in English.

**900-130 Evidence of expenses considered otherwise too hard to substantiate**

- (1) If the Commissioner considers it unreasonable to expect you to have got written evidence of an expense in any other way permitted by this Subdivision, you can use the method in section 900-125 to get written evidence of your claim.
- (2) The expense may be more than \$10 and does not count towards the \$200 limit in section 900-125.

**900-135 Evidence on a payment summary**

- (1) If the nature and amount of a \*work expense are shown on your copy of a \*payment summary given to you by your employer, you can use the copy as written evidence of the expense.

Note: This Division also applies to entities that are *not* employers, but pay (or are liable to pay) withholding payments covered by subsection 900-12(3).
- (2) Expenses of the same nature need not be separately itemised; it is acceptable if they are totalled together on the \*payment summary.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 900-F—Travel records**

### **Guide to Subdivision 900-F**

#### **900-140 What this Subdivision is about**

This Subdivision tells you how to keep travel records. A travel record is a record of activities you undertake during your travel.

#### **Table of sections**

900-145 Purpose of a travel record

##### **Operative provisions**

900-150 Recording activities in travel records

900-155 Showing which of your activities were income-producing activities

#### **900-145 Purpose of a travel record**

The purpose of a travel record is to show which of your activities were undertaken in the course of producing your assessable income, so that your losses or outgoings, or portions of them, can be attributed to income-producing purposes.

#### **Operative provisions**

##### **900-150 Recording activities in travel records**

- (1) You record an activity by specifying in a diary or similar document:
  - (a) the nature of the activity;
  - (b) the day and approximate time when it began;
  - (c) how long it lasted;
  - (d) where you engaged in it.
- (2) An activity must be recorded before it ends, or as soon as possible afterwards. Each entry must be in English.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**900-155 Showing which of your activities were income-producing activities**

- (1) You need not record an income-producing activity. But if you don't, the activity cannot be taken into account in working out the extent to which you can deduct an expense you incur for the travel.

Example: If you fly to Los Angeles for the sole purpose of attending a 7 day conference, but you don't record the conference in your travel record, you cannot deduct the cost of the air fare. This is so even if you have written evidence that you paid the fare (eg a receipt), as required by Subdivision 900-E.

- (2) You don't need to record any other kind of activity, although you may do so.

**Subdivision 900-G—Retaining and producing records**

**Guide to Subdivision 900-G**

**900-160 What this Subdivision is about**

This Subdivision tells you how long you need to retain records of an expense and when you have to produce those records.

**Table of sections**

900-165 The retention period

**Operative provisions**

900-170 Extending the retention period if an expense is disputed

900-175 Commissioner may tell you to produce your records

900-180 How to comply with a notice

900-185 What happens if you don't comply

**900-165 The retention period**

Whenever you are required to retain records of an expense under this Division or Division 28, you need to retain the records for 5 years.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Operative provisions**

### **900-170 Extending the retention period if an expense is disputed**

The \*retention period is automatically extended if one of the following types of dispute relating to the expense is unresolved when the 5 years end:

- (a) an objection;
- (b) a review or appeal arising from an objection;
- (c) a request for amendment of an assessment.

The extension lasts until the dispute is resolved.

### **900-175 Commissioner may tell you to produce your records**

- (1) The Commissioner may give you a written notice telling you to produce records of expenses specified in the notice. The records must be ones that you have to retain for the \*retention period: you do not have to produce records if the retention period for those records is over.
- (2) The notice must give you 28 days or more to comply, starting on the day after the notice is given. The Commissioner may allow you more time to comply with the notice.

### **900-180 How to comply with a notice**

- (1) To comply with the notice, you must produce to the Commissioner, for each of the expenses, the material that this Division or Division 28 requires you to retain during the \*retention period.
- (2) You must also produce a summary that, for each expense for which you produce written evidence (see Subdivision 900-E):
  - (a) notes the expense; and
  - (b) has a cross-reference to the written evidence of the expense; and
  - (c) summarises the particulars set out in the written evidence; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 900-185

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- (d) if the expense was in a foreign currency—shows the amount of the expense in Australian currency.

The summary must be in English in a form approved by the Commissioner.

**900-185 What happens if you don't comply**

- (1) If you do not comply with a notice for a particular expense, you cannot deduct the expense. If you have already deducted it, your assessment may be amended to disallow the deduction.
- (2) You do not commit an offence merely by not complying with the notice, despite section 8C of the *Taxation Administration Act 1953*.

**Subdivision 900-H—Relief from effects of failing to substantiate**

**Table of sections**

900-195	Commissioner's discretion to review failure to substantiate
900-200	Reasonable expectation that substantiation would not be required
900-205	What if your documents are lost or destroyed?

**900-195 Commissioner's discretion to review failure to substantiate**

Not doing something necessary to follow the rules in this Division does not affect your right to a deduction if the nature and quality of the evidence you have to substantiate your claim satisfies the Commissioner:

- (a) that you incurred the expense; and  
(b) that you are entitled to deduct the amount you claim.

**900-200 Reasonable expectation that substantiation would not be required**

Not doing something necessary to follow the rules in this Division does not affect your right to deduct an amount if the only reason was that you had a reasonable expectation that you would not need to do it in order to be able to deduct that amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **900-205 What if your documents are lost or destroyed?**

- (1) If you have a *complete copy* of a document that is lost or destroyed during the \*retention period, it is treated as the original from the time of the loss or destruction.
- (2) If you don't have such a copy, but the Commissioner is satisfied that you took reasonable precautions to prevent the loss or destruction, the rest of this section explains what to do.
- (3) If the lost or destroyed document was a travel record, log book or other document that is *not* written evidence of an expense under Subdivision 900-E, you do not need to replace it; your deduction is not affected by your failing to retain or produce the document.
- (4) If the lost or destroyed document *was* written evidence, you must try to get a substitute document that meets all the original requirements (except the time limit for getting the original).
- (5) If you succeed, your deduction is not affected by your failing to retain or produce the original document. The substitute document is treated as the original from the time of the loss or destruction.
- (6) If it is not reasonably possible to succeed, your deduction is not affected by your failing to retain or produce the original document.
- (7) If it is reasonably possible for you to get a substitute document, but you don't get one, this section does not protect you from the consequences of failing to retain or produce the original.

### **Subdivision 900-I—Award transport payments**

#### **Guide to Subdivision 900-I**

#### **900-210 What this Subdivision is about**

This Subdivision tells you when you can deduct an expense related to an award transport payment without getting written evidence or keeping travel records.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Table of sections

### Operative provisions

900-215	Deducting an expense related to an award transport payment
900-220	Definition of <i>award transport payment</i>
900-225	Substituted industrial instruments
900-230	Changes to industrial instruments applied for before 29 October 1986
900-235	Changes to industrial instruments solely referable to matters in the instrument
900-240	Deducting in anticipation of receiving award transport payment
900-245	Effect of exception in this Subdivision on exception for small total of expenses
900-250	Effect of exception in this Subdivision on methods of calculating car expense deductions

## Operative provisions

### 900-215 Deducting an expense related to an award transport payment

#### *The exception*

(1) If:

- (a) you are paid one or more \*award transport payments in the income year; and
- (b) the total of the \*transport expenses, to the extent that they relate to the award transport payments, that you incur during any income year and claim as deductions for any income year is no more than the total amount of the payments; and
- (c) those transport expenses qualify as a deduction under some provision of this Act outside this Division;

then you can deduct those transport expenses without getting written evidence or keeping travel records.

To find out whether an expense qualifies as a deduction under this Act, see Division 8 (Deductions).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Increases to amounts payable under industrial instrument must be ignored*

- (2) For each \*award transport payment, you can deduct no more than the amount you could have deducted if the \*industrial instrument the payment is under were still in force as it was on 29 October 1986. If your claim exceeds this amount, you cannot use the exception for the expenses.

### **900-220 Definition of *award transport payment***

*Award transport payment*

- (1) An ***award transport payment*** is a \*transport payment covering particular travel that was paid under an \*industrial instrument that was in force on 29 October 1986.

*Transport payment*

- (2) A ***transport payment*** is an amount your employer pays you, or is to pay you, for travel by you in the course of working for the employer that is:
- (a) an allowance (or part of an allowance) for the sole or main purpose of covering your \*transport expenses; or
  - (b) a reimbursement to which section 15-70 applies that is for the whole or a part of a \*car expense. However, an amount is not a ***transport payment*** if it is, or is part of, a \*travel allowance.

Note: This Division also applies to entities that are *not* employers, but pay (or are liable to pay) withholding payments covered by subsection 900-12(3).

*Transport expense*

- (3) A ***transport expense*** is a loss or outgoing to do with transport, including the decline in value of a \*depreciating asset used in connection with transport, but not including a loss or outgoing for accommodation or for food or drink, or expenditure incidental to transport.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**900-225 Substituted industrial instruments**

An \*industrial instrument that comes into force in substitution for another industrial instrument is taken to be a continuation of the original instrument.

**900-230 Changes to industrial instruments applied for before 29 October 1986**

- (1) Changes made to an \*industrial instrument after 29 October 1986 are taken to have been made on 29 October 1986 if they were made in response to an application made on or before 29 October 1986 that sought increases in \*transport payments.
- (2) If the application was amended after 29 October 1986, the alterations made to the \*industrial instrument count as being made on 29 October 1986 only if they did not result in increases in \*transport payments that were greater than increases in those payments sought by the application as at 29 October 1986.

**900-235 Changes to industrial instruments solely referable to matters in the instrument**

Changes made to an \*industrial instrument after 29 October 1986 are taken to have been made on 29 October 1986 if the whole amount of the change is determined solely by reference to matters that were contained in the industrial instrument on 29 October 1986.

**900-240 Deducting in anticipation of receiving award transport payment**

- (1) If:
  - (a) you have incurred a \*transport expense during an income year; and
  - (b) when you lodge your \*income tax return for the income year, you reasonably believe that you will later receive an \*award transport payment to cover the expense;you may deduct the expense without getting written evidence or keeping travel records.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) However, if the Commissioner becomes satisfied that you will not receive the \*award transport payment after all, then, despite section 170 of the *Income Tax Assessment Act 1936*, he or she may at any time disallow the deduction and amend your assessment accordingly.

### **900-245 Effect of exception in this Subdivision on exception for small total of expenses**

A \*transport expense that section 900-215 lets you deduct without getting written evidence or keeping travel records does not count towards the \$300 limit in section 900-35.

Note: Section 900-35 tells you that if the total of all the work expenses that you want to deduct is \$300 or less, you can deduct them without getting written evidence or keeping travel records.

### **900-250 Effect of exception in this Subdivision on methods of calculating car expense deductions**

- (1) If the exception in this Subdivision lets you deduct, without getting written evidence or keeping travel records, losses or outgoings (*exempt losses or outgoings*) that are or include \*car expenses, or parts of \*car expenses, your use of the 4 methods for calculating deductions for car expenses for the \*car is affected.

*You may elect not to use the exception*

- (2) However, if you do not want your use of the 4 methods to be affected, you may elect not to use the exception in this Subdivision for the \*award transport payments you are paid in the income year. If you so elect, the rest of this section does not affect you.

*“Cents per kilometre” method*

- (3) You can still use the “cents per kilometre” method (see Subdivision 28-C) of deducting \*car expenses you incurred for the \*car in the income year. However, the kilometres the car travelled during the income year in the course of travel covered by the \*award transport payment or payments are not counted as \*business kilometres.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*“12% of original value” and “one-third of actual expenses” methods*

- (4) You cannot use the “12% of original value” method (see Subdivision 28-D) or the “one-third of actual expenses” method (see Subdivision 28-E) of deducting \*car expenses you incurred for the \*car in the income year.

*“Log book” method*

- (5) You can still use the “log book” method (see Subdivision 28-F) of deducting \*car expenses you incurred for the \*car in the income year. If you do:
- (a) the kilometres the car travelled during the income year in the course of travel covered by the \*award transport payment or payments are not counted as \*business kilometres; and
  - (b) in working out the amount (if any) you can deduct for such a car expense that consists partly of an exempt loss or outgoing, Subdivision 28-F is applied to the whole of the car expense, without excluding the part that consists of an exempt loss or outgoing.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Part 5-35—Miscellaneous**

### **Division 905—Offences**

#### **905-5 Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 909—Regulations**

### **909-1 Regulations**

- (1) The Governor-General may make regulations prescribing matters that:
  - (a) this Act requires or permits to be prescribed; or
  - (b) are necessary or convenient to prescribe for carrying out or giving effect to this Act.
- (2) The regulations may prescribe penalties for offences against the regulations. A penalty may not exceed a fine of 5 penalty units.

Note: Section 4AA of the *Crimes Act 1914* deals with penalty units.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Chapter 6—The Dictionary**

### **Part 6-1—Concepts and topics**

#### **Division 950—Rules for interpreting this Act**

##### **Table of sections**

950-100	What forms part of this Act
950-105	What does <i>not</i> form part of this Act
950-150	Guides, and their role in interpreting this Act

##### **950-100 What forms part of this Act**

(1) These all form part of this Act:

- the headings of the Chapters, Parts, Divisions and Subdivisions of this Act;
- \*Guides;
- the headings of the sections and subsections of this Act;
- the headings for groups of sections of this Act (group headings);
- the notes and examples (however described) that follow provisions of this Act.

(2) The asterisks used to identify defined terms form part of this Act. However, if a term is *not* identified by an asterisk, disregard that fact in deciding whether or not to apply to that term a definition or other interpretation provision.

##### **950-105 What does *not* form part of this Act**

These do *not* form part of this Act:

- footnotes and endnotes;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- Tables of Subdivisions;
- Tables of sections.

**950-150 Guides, and their role in interpreting this Act**

- (1) A **Guide** consists of:
  - (a) sections under a heading indicating that what follows is a Guide to a particular Subdivision, Division etc.; or
  - (b) a Subdivision, Division or Part that is identified as a Guide by a provision in the Subdivision, Division or Part.
- (2) Guides form part of this Act, but they are kept separate from the operative provisions. In interpreting an operative provision, a Guide may only be considered:
  - (a) in determining the purpose or object underlying the provision; or
  - (b) to confirm that the provision's meaning is the ordinary meaning conveyed by its text, taking into account its context in the Act and the purpose or object underlying the provision; or
  - (c) in determining the provision's meaning if the provision is ambiguous or obscure; or
  - (d) in determining the provision's meaning if the ordinary meaning conveyed by its text, taking into account its context in the Act and the purpose or object underlying the provision, leads to a result that is manifestly absurd or is unreasonable.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 960—General**

### **Subdivision 960-C—Foreign currency**

#### **Table of sections**

960-49	Objects of this Subdivision
960-50	Translation of amounts into Australian currency
960-55	Application of translation rules

#### **960-49 Objects of this Subdivision**

The objects of this Subdivision are as follows:

- (a) to set out a basic rule requiring an amount in a \*foreign currency to be translated into an Australian dollar amount (the basic rule is subject to the functional currency rules in Subdivision 960-D and to certain specific exclusions);
- (b) to ensure that the rules for identifying the exchange rate for the translation of a foreign currency amount into Australian dollars:
  - (i) reflect an appropriate prevailing exchange rate; and
  - (ii) take into account, as appropriate, commercial practices for the translation of foreign currency amounts into Australian dollars.

#### **960-50 Translation of amounts into Australian currency**

- (1) For the purposes of this Act, an amount in a \*foreign currency is to be translated into Australian currency.

##### *Examples of an amount*

- (2) The following are examples of an amount:
  - (a) an amount of \*ordinary income;
  - (b) an amount of an expense;
  - (c) an amount of an obligation;
  - (d) an amount of a liability;
  - (e) an amount of a receipt;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 960-50

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- (f) an amount of a payment;
  - (g) an amount of consideration;
  - (h) a value.
- (3) The amounts set out in paragraphs (2)(b) to (h) may be amounts on revenue account, capital account or otherwise.

*Amounts that are elements in the calculation of other amounts*

- (4) In applying this section:
- (a) first, translate any amounts that are elements in the calculation of other amounts (except \*special accrual amounts); and
  - (b) then, calculate the other amounts.

*Special accrual amounts*

- (5) In applying this section:
- (a) calculate a \*special accrual amount without translation; and
  - (b) then, translate the special accrual amount.

*Special translation rules*

- (6) The table has effect:

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<b>Special translation rules</b>		
<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
1	forex realisation event 4 happens when you cease to have an obligation, or a part of an obligation, to pay *foreign currency, and neither of subparagraphs 775-55(1)(b)(ii) and (iii) applies	for the purposes of section 775-55, the amount of the obligation, or the part of the obligation, at the tax recognition time (see subsection 775-55(7)) is to be translated to Australian currency at the exchange rate applicable at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Special translation rules**

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<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
2	cost of a *depreciating asset	(a) if you incur an obligation in return for your starting to hold the asset, and the obligation is not satisfied before you begin to hold the asset (worked out under Division 40)—the cost of the asset is to be translated to Australian currency at the exchange rate applicable when you begin to hold the asset; or (b) if you incur an obligation in return for your starting to hold the asset, and the obligation is satisfied before you begin to hold the asset (worked out under Division 40)—the cost of the asset is to be translated to Australian currency at the exchange rate applicable when the obligation is satisfied.
3	value of an item of *trading stock on hand at the end of an income year, where you have elected to use its *cost	the value is to be translated to Australian currency at the exchange rate applicable at the time when the item became on hand.
4	value of an item of *trading stock on hand at the end of an income year, where you have elected to use: (a) its market selling value; or (b) its replacement value	the value is to be translated to Australian currency at the exchange rate applicable at the end of the income year.
5	a transaction or event that: (a) involves an amount of money or the *market value of other property; and (b) is relevant for the purposes of Part 3-1 or 3-3; to the extent to which the amount or value is relevant for the purposes of Part 3-1 or 3-3	the amount or value is to be translated, for the purposes of Part 3-1 or 3-3, to Australian currency at the exchange rate applicable at the time of the transaction or event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



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**Special translation rules**

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Item	In this case...	this is the result...
6	an amount of *ordinary income	(a) if the amount is received at or before the time when it is *derived—the amount is to be translated to Australian currency at the exchange rate applicable at the time of receipt; or (b) in any other case—the amount is to be translated to Australian currency at the exchange rate applicable when it is derived.
7	an amount of *statutory income (other than an amount included in assessable income under Division 102)	(a) if the amount is received at or before the time when the requirement first arose to include it in your assessable income—the amount is to be translated to Australian currency at the exchange rate applicable at the time of receipt; or (b) in any other case—the amount is to be translated to Australian currency at the exchange rate applicable at the time when the requirement first arose to include it in your assessable income.
8	an amount that you deduct (other than under Division 40)	(a) if the amount is paid at or before the time when it became deductible—the amount is to be translated to Australian currency at the exchange rate applicable at the time of payment; or (b) in any other case—the amount is to be translated to Australian currency at the exchange rate applicable at the time when it became deductible.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Special translation rules**

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<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
9	<p>an amount that is relevant for the purposes of quantifying:</p> <p>(a) the total of all of a company's *production expenditure on a *film; or</p> <p>(b) the total of the company's *qualifying Australian production expenditure on a film; or</p> <p>(c) the company's *total film expenditure on a film;</p> <p>to the extent to which the amount is relevant for the purposes of issuing a certificate under section 376-20 or 376-65</p>	<p>the amount is to be translated to Australian currency at the exchange rate applicable at the time when principal photography commences or production of the animated image commences.</p>
9A	<p>an amount that is relevant for the purposes of quantifying:</p> <p>(a) the total of all of a company's *production expenditure on a *film; or</p> <p>(b) the total of the company's *qualifying Australian production expenditure on a film;</p> <p>to the extent to which the amount is relevant for the purposes of issuing a certificate under section 376-45</p>	<p>the amount is to be translated to Australian currency at the exchange rate applicable when *post, digital and visual effects production for the film commences.</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Special translation rules**

<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
9B	an amount that is relevant for the purposes of quantifying: (a) the total of all of a company's *production expenditure on a *film; or (b) the total of the company's *qualifying Australian production expenditure on a film; or (c) the company's *total film expenditure on a film;  to the extent to which the amount is relevant for the purposes of calculating an amount of a *tax offset under section 376-15, 376-40 or 376-60	the amount is to be translated to Australian currency at the average of the exchange rates applicable from time to time during the period that qualifying Australian production expenditure is incurred on the film.
10	an amount that Division 12 of Part 2.5 in Schedule 1 to the <i>Taxation Administration Act 1953</i> requires to be withheld from a payment	the amount is to be translated to Australian currency at the exchange rate applicable at the time when the amount is required to be withheld under that Division.
11	an amount of a receipt or a payment, where none of the above items apply	the amount is to be translated to Australian currency at the exchange rate applicable at the time of the receipt or payment.

(7) Subsection (6) has effect subject to any modifications made by the regulations. For this purpose, *modifications* includes additions, omissions and substitutions.

*Regulations about translation*

(8) An entity must comply with the regulations (if any) in translating an amount into Australian currency.

Note: For example, the regulations could require the use of a particular translation method and require consistency in the use of the translation method.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (9) Regulations made for the purposes of subsection (8) may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any of the \*accounting standards:
- (a) as in force or existing at a particular time; or
  - (b) as in force or existing from time to time.

*Operation of certain provisions unaffected*

- (10) This section does not affect the operation of the following provisions:
- (aa) section 220-110 (\*maximum franking credit);
  - (a) section 775-210 (notional loans under \*facility agreements);
  - (b) Subdivision 960-D (functional currency);
  - (c) subsection 974-35(6) (valuation of financial benefits for the purposes of the debt/equity provisions);
  - (d) Part XI of the *Income Tax Assessment Act 1936* (about foreign investment funds and life assurance).

**960-55 Application of translation rules**

- (1) Section 960-50 applies to:
- (a) a transaction, event or thing that:
    - (i) involves an amount in a \*foreign currency; and
    - (ii) occurs on or after the applicable commencement date (within the meaning of Division 775); or
  - (b) a transaction, event or thing that:
    - (i) involves an amount in a foreign currency; and
    - (ii) occurs before the applicable commencement date (within the meaning of Division 775);to the extent to which the transaction, event or thing is relevant for the purposes of Division 775; or
  - (c) an amount that Division 12 of Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953* requires to be withheld from a payment, if the time when the amount is required to be withheld occurs on or after 1 July 2003; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) a payment that Part 5-30 in Schedule 1 to the *Taxation Administration Act 1953* requires to be reported, if the amount is paid on or after 1 July 2003.

Note: For *applicable commencement date*, see section 775-155.

*Exceptions*

- (2) Despite subsection (1), section 960-50 does not apply to a transaction, event or thing that involves:
- (a) an amount covered by subsection 775-165(1); or
  - (b) a right, or a part of a right, covered by subsection 775-165(2); or
  - (c) an obligation, or a part of an obligation, covered by subsection 775-165(4).

Note: Subsections 775-165(1), (2) and (4) are transitional provisions relating to forex realisation events.

## **Subdivision 960-D—Functional currency**

### **Guide to Subdivision 960-D**

#### **960-56 What this Subdivision is about**

The net income of any of the following entities (or parts of entities) that keeps its accounts solely or predominantly in a particular foreign currency can be worked out in that currency, with the net amount being translated into Australian currency:

- (a) an Australian resident who is required to prepare financial reports under section 292 of the *Corporations Act 2001*;
- (b) a permanent establishment;
- (c) an offshore banking unit;
- (d) a controlled foreign company (CFC);
- (e) a transferor trust.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Table of sections

### Operative provisions

960-59	Object of this Subdivision
960-60	You may choose a functional currency
960-61	Functional currency for calculating capital gains and losses on indirect Australian real property interests
960-65	Backdated startup choice
960-70	What is the <i>applicable functional currency</i> ?
960-75	What is a <i>transferor trust</i> ?
960-80	Translation rules
960-85	Special rule about translation—events that happened before the current choice took effect
960-90	Withdrawal of choice

## Operative provisions

### 960-59 Object of this Subdivision

The object of this Subdivision is, for the purposes of reducing compliance costs and reflecting commercial practice, to allow certain entities (or parts of entities) whose accounts are kept solely or predominantly in a particular \*foreign currency (the *functional currency*) to calculate their net incomes by reference to the functional currency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**960-60 You may choose a functional currency**

(1) The table has effect:

<b>Choosing to use a functional currency</b>			
<b>Item</b>	<b>If you are:</b>	<b>you may choose to use the *applicable functional currency to...</b>	<b>with effect from the start of...</b>
1	an Australian resident who is required to prepare financial reports under section 292 of the <i>Corporations Act 2001</i>	work out so much of your taxable income or tax loss as is not subject to a choice made by you under any of the other items of this table	(a) if the choice you make under this item is a backdated startup choice (see section 960-65)—the income year in which you make the choice; or (b) in any other case—the income year following the one in which you make the choice.
2	(a) an Australian resident carrying on an activity or business at or through an *overseas permanent establishment; or (b) a foreign resident carrying on an activity or business at or through an *Australian permanent establishment	work out the taxable income or tax loss derived from the activity or business carried on at or through the permanent establishment	(a) if the choice you make under this item is a backdated startup choice (see section 960-65)—the income year in which you make the choice; or (b) in any other case—the income year following the one in which you make the choice.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Choosing to use a functional currency**

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<b>Item</b>	<b>If you are:</b>	<b>you may choose to use the *applicable functional currency to...</b>	<b>with effect from the start of...</b>
3	an *offshore banking unit	work out your total assessable OB income (within the meaning of Division 9A of Part III of the <i>Income Act Assessment Act 1936</i> ) and your total allowable OB deductions (within the meaning of that Division)	(a) if the choice you make under this item is a backdated startup choice (see section 960-65)—the income year in which you make the choice; or (b) in any other case—the income year following the one in which you make the choice.
4	an attributable taxpayer (within the meaning of Part X of the <i>Income Tax Assessment Act 1936</i> ) of a *controlled foreign company (CFC)	work out the *attributable income of the CFC	(a) if the choice you make under this item is a backdated startup choice (see section 960-65)—the CFC's *statutory accounting period in which you make the choice; or (b) in any other case—the CFC's statutory accounting period following the one in which you make the choice.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



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**Choosing to use a functional currency**

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Item	If you are:	you may choose to use the *applicable functional currency to...	with effect from the start of...
5	a *transferor trust	work out your attributable income (within the meaning of Division 6AAA of Part III of the <i>Income Tax Assessment Act 1936</i> )	(a) if the choice you make under this item is a backdated startup choice (see section 960-65)—the income year in which you make the choice; or (b) in any other case—the income year following the one in which you make the choice.

Note: The attributable income of a controlled foreign company is calculated separately for each attributable taxpayer—see section 381 of the *Income Tax Assessment Act 1936*.

- (2) A choice must be in writing.
- (3) A choice under item 1 of the table in subsection (1) continues in effect until:
  - (a) a withdrawal of the choice takes effect (see section 960-90); or
  - (b) immediately after the end of the income year in which you cease to be subject to a requirement to prepare financial reports under section 292 of the *Corporations Act 2001*; whichever happens first.
- (4) A choice under item 2, 3, 4 or 5 of the table in subsection (1) continues in effect until a withdrawal of the choice takes effect (see section 960-90).

**960-61 Functional currency for calculating capital gains and losses on indirect Australian real property interests**

- (1) Subsection (2) applies if:
  - (a) you are a foreign resident; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) a \*CGT event happens in relation to a \*CGT asset that is an \*indirect Australian real property interest for you; and
  - (c) the sole or predominant currency in which you keep your accounts at the time of the CGT event is a currency other than Australian currency.
- (2) You must use the \*applicable functional currency to work out the amount of your \*capital gain or \*capital loss (if any).

### 960-65 Backdated startup choice

The table has effect:

<b>Backdated startup choice</b>		
<b>Item</b>	<b>In this case:</b>	<b>the choice is a <i>backdated startup choice</i> if...</b>
1	you make a choice under item 1 of the table in subsection 960-60(1)	(a) both: <ul style="list-style-type: none"> <li>(i) you were in existence at the start of the income year in which you made the choice; and</li> <li>(ii) you make the choice within 90 days after the beginning of that income year or within 30 days after the commencement of this section; or</li> </ul> (b) both: <ul style="list-style-type: none"> <li>(i) you came into existence during the income year in which you made the choice; and</li> <li>(ii) you make the choice within 90 days after you came into existence or within 30 days after the commencement of this section.</li> </ul>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 960-65

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**Backdated startup choice**

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<b>Item</b>	<b>In this case:</b>	<b>the choice is a <i>backdated startup choice</i> if...</b>
2	you make a choice under item 2 of the table in subsection 960-60(1)	(a) both: (i) the permanent establishment was in existence at the start of the income year in which you made the choice; and (ii) you make the choice within 90 days after the beginning of that income year or within 30 days after the commencement of this section; or  (b) both: (i) the permanent establishment came into existence during the income year in which you made the choice; and (ii) you make the choice within 90 days after the permanent establishment came into existence or within 30 days after the commencement of this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Backdated startup choice**

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<b>Item</b>	<b>In this case:</b>	<b>the choice is a <i>backdated startup choice</i> if...</b>
3	you make a choice under item 3 of the table in subsection 960-60(1)	(a) both: (i) the *offshore banking unit was in existence at the start of the income year in which you made the choice; and (ii) you make the choice within 90 days after the beginning of that income year or within 30 days after the commencement of this section; or  (b) both: (i) the offshore banking unit came into existence during the income year in which you made the choice; and (ii) you make the choice within 90 days after the offshore banking unit came into existence or within 30 days after the commencement of this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 960-65

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**Backdated startup choice**

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Item	In this case:	the choice is a <i>backdated startup choice</i> if...
4	you make a choice under item 4 of the table in subsection 960-60(1)	(a) both: <ul style="list-style-type: none"> <li>(i) you are an attributable taxpayer of the CFC at the beginning of the CFC's *statutory accounting period in which you made the choice; and</li> <li>(ii) you make the choice within 90 days after the beginning of the CFC's statutory accounting period or within 30 days after the commencement of this section; or</li> </ul> (b) both: <ul style="list-style-type: none"> <li>(i) you became an attributable taxpayer in relation to the CFC during the CFC's statutory accounting period during which you made the choice; and</li> <li>(ii) you make the choice within 90 days after the beginning of the CFC's statutory accounting period or within 30 days after the commencement of this section.</li> </ul>
5	you make a choice under item 5 of the table in subsection 960-60(1)	you make the choice within 90 days after the beginning of an income year or within 30 days after the commencement of this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**960-70 What is the *applicable functional currency*?**

*Australian resident required to prepare financial reports under section 292 of the Corporations Act 2001*

- (1) If you make a choice under item 1 of the table in subsection 960-60(1) with effect from the start of a particular income year, your ***applicable functional currency*** for:
- (a) that income year; and
  - (b) each later income year for which the choice is in effect;
- is the sole or predominant \*foreign currency in which you kept your accounts at the time when you made the choice.

*Permanent establishment, offshore banking unit or transferor trust*

- (2) If you make a choice under item 2, 3 or 5 of the table in subsection 960-60(1) in relation to a \*permanent establishment, an \*offshore banking unit or a \*transferor trust with effect from the start of a particular income year, the ***applicable functional currency*** of the establishment, unit or trust for:
- (a) that income year; and
  - (b) each later income year for which the choice is in effect;
- is the sole or predominant \*foreign currency in which the establishment, unit or trust kept its accounts at the time when you made the choice.

*Controlled foreign company*

- (3) If you make a choice under item 4 of the table in subsection 960-60(1) in relation to a \*controlled foreign company (CFC) with effect from the start of a particular \*statutory accounting period, the ***applicable functional currency*** of the CFC for:
- (a) that statutory accounting period; and
  - (b) each later statutory accounting period for which the choice is in effect;
- is the sole or predominant \*foreign currency in which the CFC kept its accounts at the time when you made the choice.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 960-75

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Note: The attributable income of a controlled foreign company is calculated separately for each attributable taxpayer—see section 381 of the *Income Tax Assessment Act 1936*.

*Calculating capital gains and losses on indirect Australian real property interests*

- (3A) If subsection 960-61(2) applies, your ***applicable functional currency*** for the purposes of that subsection is the sole or predominant currency in which you keep your accounts at the time of the \*CGT event.

*Accounts*

- (4) For the purposes of this section, ***accounts*** means:
- (a) ledgers; and
  - (b) journals; and
  - (c) statements of financial performance; and
  - (d) profit and loss accounts; and
  - (e) balance-sheets; and
  - (f) statements of financial position;
- and includes statements, reports and notes attached to, or intended to be read with, any of the foregoing.

**960-75 What is a *transferor trust*?**

A ***transferor trust*** is a trust where, having regard to all relevant circumstances, it would be reasonable to conclude that another entity is, or is likely to be, an attributable taxpayer in relation to the trust for the purposes of Division 6AAA of Part III of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**960-80 Translation rules**

(1) The table has effect:

<b>Translation rules</b>		
<b>Item</b>	<b>In this case...</b>	<b>these rules apply...</b>
1	(a) you are an Australian resident required to prepare financial reports under section 292 of the <i>Corporations Act 2001</i> ; and (b) you have made a choice under item 1 of the table in subsection 960-60(1), and that choice is in effect for an income year	(a) first, for the purpose of working out, for the income year, so much of your taxable income or tax loss as is not the subject of a choice made by you under any other item of that table: <ul style="list-style-type: none"> <li>(i) an amount that is not in the *applicable functional currency is to be translated into the applicable functional currency; and</li> <li>(ii) the definition of <i>foreign currency</i> in subsection 995-1(1) does not apply; and</li> <li>(iii) the applicable functional currency is taken not to be a foreign currency; and</li> <li>(iv) Australian currency and any other currency (except the applicable functional currency) are taken to be foreign currencies; and</li> </ul> (b) second, so much of your taxable income as is not the subject of a choice made by you under any other item of that table is to be translated into Australian currency.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 960-80

<b>Translation rules</b>		
<b>Item</b>	<b>In this case...</b>	<b>these rules apply...</b>
2	(a) you are: <ul style="list-style-type: none"> <li>(i) an Australian resident carrying on an activity or business at or through an *overseas permanent establishment; or</li> <li>(ii) a foreign resident carrying on an activity or business at or through an *Australian permanent establishment; and</li> </ul> (b) you have made a choice under item 2 of the table in subsection 960-60(1) in relation to the permanent establishment, and that choice is in effect for an income year	(a) first, for the purpose of working out, for the income year, the taxable income or tax loss derived from the activity or business carried on at or through the permanent establishment: <ul style="list-style-type: none"> <li>(i) an amount that is not in the *applicable functional currency is to be translated into the applicable functional currency; and</li> <li>(ii) the definition of <i>foreign currency</i> in subsection 995-1(1) does not apply; and</li> <li>(iii) the applicable functional currency is taken not to be a foreign currency; and</li> <li>(iv) Australian currency and any other currency (except the applicable functional currency) are taken to be foreign currencies; and</li> </ul> (b) second, the taxable income derived from the activity or business carried on at or through the permanent establishment is to be translated into Australian currency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Translation rules**

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<b>Item</b>	<b>In this case...</b>	<b>these rules apply...</b>
3	(a) you are an * offshore banking unit (OBU); and (b) you have made a choice under item 3 of the table in subsection 960-60(1) in relation to the OBU, and that choice is in effect for an income year	(a) first, for the purpose of working out, for the income year, your total assessable OB income (within the meaning of Division 9A of Part III of the <i>Income Tax Assessment Act 1936</i> ) and your total OB deductions (within the meaning of that Division): <ul style="list-style-type: none"> <li>(i) an amount that is not in the * applicable functional currency is to be translated into the applicable functional currency; and</li> <li>(ii) the definition of <i>foreign currency</i> in subsection 995-1(1) does not apply; and</li> <li>(iii) the applicable functional currency is taken not to be a foreign currency; and</li> <li>(iv) Australian currency and any other currency (except the applicable functional currency) are taken to be foreign currencies; and</li> </ul> (b) second, the total assessable OB income and the total allowable OB deductions are to be translated into Australian currency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Translation rules**

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Item	In this case...	these rules apply...
4	(a) you are an attributable taxpayer (within the meaning of Part X of the <i>Income Tax Assessment Act 1936</i> ) of a *controlled foreign company (CFC); and (b) you have made a choice under item 4 of the table in subsection 960-60(1) in relation to the CFC, and that choice is in effect for a *statutory accounting period of the CFC	(a) first, for the purpose of working out, for the statutory accounting period, the *attributable income of the CFC: <ul style="list-style-type: none"> <li>(i) an amount that is not in the *applicable functional currency is to be translated into the applicable functional currency; and</li> <li>(ii) the definition of <i>foreign currency</i> in subsection 995-1(1) does not apply; and</li> <li>(iii) the applicable functional currency is taken not to be a foreign currency; and</li> <li>(iv) Australian currency and any other currency (except the applicable functional currency) are taken to be foreign currencies; and</li> </ul> (b) second, the attributable income is to be translated into Australian currency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Translation rules**

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<b>Item</b>	<b>In this case...</b>	<b>these rules apply...</b>
5	(a) you are a *transferor trust; and (b) you have made a choice under item 5 of the table in subsection 960-60(1) in relation to the trust, and that choice is in effect for an income year	(a) first, for the purpose of working out, for the income year, your attributable income (within the meaning of Division 6AAA of Part III of the <i>Income Tax Assessment Act 1936</i> ): <ul style="list-style-type: none"> <li>(i) an amount that is not in the *applicable functional currency is to be translated into the applicable functional currency; and</li> <li>(ii) the definition of <i>foreign currency</i> in subsection 995-1(1) does not apply; and</li> <li>(iii) the applicable functional currency is taken not to be a foreign currency; and</li> <li>(iv) Australian currency and any other currency (except the applicable functional currency) are taken to be foreign currencies; and</li> </ul> (b) second, the attributable income is to be translated into Australian currency.
6	(a) you are a *foreign resident who makes a *capital gain or *capital loss from a *CGT event in relation to an asset that is an *indirect Australian real property interest; and (b) you are required by subsection 960-61(2) to work out the amount of your capital gain or capital loss in the *applicable functional currency	(a) first, for the purpose of working out, for the income year, the amount of your capital gain or capital loss from the CGT event, an amount that is not in the applicable functional currency is to be translated into the applicable functional currency; and (b) second, the amount of the capital gain or capital loss is to be translated into Australian currency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 960-80

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Note: The attributable income of a controlled foreign company is calculated separately for each attributable taxpayer—see section 381 of the *Income Tax Assessment Act 1936*.

*Examples of an amount*

- (2) The following are examples of an amount:
- (a) an amount of \*ordinary income;
  - (b) an amount of an expense;
  - (c) an amount of an obligation;
  - (d) an amount of a liability;
  - (e) an amount of a receipt;
  - (f) an amount of a payment;
  - (g) an amount of consideration;
  - (h) a value;
  - (i) a monetary limit or other amount set out in this Act or any other law of the Commonwealth.
- (3) The amounts set out in paragraphs (2)(b) to (i) may be amounts on revenue account, capital account or otherwise.

*Amounts that are elements in the calculation of other amounts*

- (4) In applying this section:
- (a) first, translate any amounts that are elements in the calculation of other amounts (except \*special accrual amounts); and
  - (b) then, calculate the other amounts.

*Special accrual amounts*

- (5) In applying this section:
- (a) calculate a \*special accrual amount without translation and without applying the first rule set out in the relevant item of the table in subsection (1); and
  - (b) then, translate the special accrual amount to Australian currency for the purposes of applying the second rule set out in the relevant item of the table in subsection (1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Special translation rules*

- (6) Subsection 960-50(6) has effect, in relation to the translation of an amount into the \*applicable functional currency, as if each reference in that subsection to Australian currency were a reference to the applicable functional currency.

*Regulations about translation*

- (7) An entity must comply with the regulations (if any) in translating an amount into:
- (a) the \*applicable functional currency; or
  - (b) Australian currency.

Note: For example, the regulations could require the use of a particular translation method and require consistency in the use of the translation method.

- (8) Regulations made for the purposes of subsection (7) may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any of the \*accounting standards:
- (a) as in force or existing at a particular time; or
  - (b) as in force or existing from time to time.

**960-85 Special rule about translation—events that happened before the current choice took effect**

*Australian resident required to prepare financial reports under section 292 of the Corporations Act 2001*

- (1) If:
- (a) as the result of a choice (the **current choice**) made by you under item 1 of the table in subsection 960-60(1), subsection 960-80(1) requires that an amount be translated to the \*applicable functional currency; and
  - (b) the amount is attributable to an event that happened, or a state of affairs that came into existence, at a time (the **event time**) before the current choice took effect;
- the table has effect:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Special rule about translation**

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<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
1	at the event time, no previous choice made by you under item 1 of the table in subsection 960-60(1) was in effect	the amount is to be translated first to Australian currency at the exchange rate applicable at the event time, and then to the *applicable functional currency at the exchange rate applicable when the current choice took effect.
2	at the event time, a previous choice made by you under item 1 of the table in subsection 960-60(1) was in effect	the amount is to be translated first to the previous *applicable functional currency at the exchange rate applicable at the event time, and then to the current applicable functional currency at the exchange rate applicable when the current choice took effect.

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*Permanent establishment, offshore banking unit, CFC or transferor trust*

(2) If:

- (a) as the result of a choice (the **current choice**) made by you under item 2, 3, 4 or 5 of the table in subsection 960-60(1), subsection 960-80(1) requires that an amount be translated to the \*applicable functional currency; and
- (b) the amount is attributable to an event that happened, or a state of affairs that came into existence, at a time (the **event time**) before the current choice took effect;

the table has effect:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Special rule about translation**

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<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
1	at the event time, no previous choice made by you under section 960-60 in relation to the establishment, unit, CFC or trust was in effect	the amount is to be translated first to Australian currency at the exchange rate applicable at the event time, and then to the *applicable functional currency at the exchange rate applicable when the current choice took effect.
2	at the event time, a previous choice made by you under section 960-60 in relation to the establishment, unit, CFC or trust was in effect	the amount is to be translated first to the previous *applicable functional currency at the exchange rate applicable at the event time, and then to the current applicable functional currency at the exchange rate applicable when the current choice took effect.

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**960-90 Withdrawal of choice**

- (1) The table has effect if you have made a choice under section 960-60:

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**Withdrawal**

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<b>Item</b>	<b>In this case:</b>	<b>you may withdraw your choice with effect from immediately after the end of...</b>
1	(a) you are an Australian resident who is required to prepare financial reports under section 292 of the <i>Corporations Act 2001</i> ; and  (b) your *applicable functional currency has ceased to be the sole or predominant currency in which you keep your accounts (within the meaning of section 960-70)	the income year in which you withdraw your choice.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 960-90

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**Withdrawal**

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<b>Item</b>	<b>In this case:</b>	<b>you may withdraw your choice with effect from immediately after the end of...</b>
2	(a) you are an Australian resident carrying on an activity or business at or through an *overseas permanent establishment or a foreign resident carrying on an activity or business at or through an *Australian permanent establishment; and  (b) the *applicable functional currency of the permanent establishment has ceased to be the sole or predominant currency in which the establishment keeps its accounts (within the meaning of section 960-70)	the income year in which you withdraw your choice.
3	(a) you are an *offshore banking unit (OBU); and  (b) the *applicable functional currency of the OBU has ceased to be the sole or predominant currency in which the OBU keeps its accounts (within the meaning of section 960-70)	the income year in which you withdraw your choice.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Withdrawal**

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<b>Item</b>	<b>In this case:</b>	<b>you may withdraw your choice with effect from immediately after the end of...</b>
4	(a) you are an attributable taxpayer (within the meaning of Part X of the <i>Income Tax Assessment Act 1936</i> ) of a *controlled foreign company (CFC); and (b) you have made a choice under item 4 of the table in subsection 960-60(1) in relation to the CFC; and (c) the *applicable functional currency of the CFC has ceased to be the sole or predominant currency in which the CFC keeps its accounts (within the meaning of section 960-70)	the CFC's *statutory accounting period in which you withdraw your choice.
5	(a) you are a *transferor trust; and (b) the *applicable functional currency of the trust has ceased to be the sole or predominant currency in which the trust keeps its accounts (within the meaning of section 960-70)	the income year in which you withdraw your choice.

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- (2) A withdrawal must be in writing.
- (3) Withdrawing a choice does not prevent you from making a fresh choice under section 960-60.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Subdivision 960-E—Entities

### Table of sections

960-100	Entities
960-105	Certain entities treated as agents

### 960-100 Entities

(1) **Entity** means any of the following:

- (a) an individual;
- (b) a body corporate;
- (c) a body politic;
- (d) a partnership;
- (e) any other unincorporated association or body of persons;
- (f) a trust;
- (g) a \*superannuation fund;
- (h) an \*approved deposit fund.

Note: The term **entity** is used in a number of different but related senses. It covers all kinds of legal person. It also covers groups of legal persons, and other things, that in practice are treated as having a separate identity in the same way as a legal person does.

(1A) Paragraph (1)(e) does not include a \*non-entity joint venture.

(2) The trustee of a trust, of a \*superannuation fund or of an \*approved deposit fund is taken to be an **entity** consisting of the person who is the trustee, or the persons who are the trustees, at any given time.

Note: This is because a right or obligation cannot be conferred or imposed on an entity that is not a legal person.

(3) A legal person can have a number of different capacities in which the person does things. In each of those capacities, the person is taken to be a different **entity**.

Example: In addition to his or her personal capacity, an individual may be:

- sole trustee of one or more trusts; and
- one of a number of trustees of a further trust.

In his or her personal capacity, he or she is one entity. As trustee of each trust, he or she is a different entity. The trustees of the further trust are a different entity again, of which the individual is a member.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) If a provision refers to an *entity* of a particular kind, it refers to the entity in its capacity as that kind of entity, not to that entity in any other capacity.

Example: A provision that refers to a company does not cover a company in a capacity as trustee, unless it also refers to a trustee.

Note: Under section 87-35, certain parts of Australian governments and authorities are treated as separate entities for the purposes of ascertaining whether another entity is conducting a personal services business.

### **960-105 Certain entities treated as agents**

- (1) This Act applies to an entity as if the entity were an agent of another entity (the *principal*) if:
- (a) the principal is outside Australia; and
  - (b) the entity is in Australia and, on behalf of the principal, holds money of the principal or has control, receipt or disposal of money of the principal.
- (2) This Act, or a provision of this Act, applies to an entity as if the entity were an agent of another entity if the Commissioner determines in writing that the entity is the agent or sole agent of the other entity for the purposes of this Act or of that provision.
- (3) A determination under subsection (2) is not a legislative instrument.

### **Subdivision 960-F—Distribution by corporate tax entities**

#### **Table of sections**

960-115	Meaning of <i>corporate tax entity</i>
960-120	Meaning of <i>distribution</i>

#### **960-115 Meaning of *corporate tax entity***

An entity is a *corporate tax entity* at a particular time if:

- (a) the entity is a company at that time; or
- (b) the entity is a \*corporate limited partnership in relation to the income year in which that time occurs; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 960-120

- (c) the entity is a \*corporate unit trust in relation to the income year in which that time occurs; or
- (d) the entity is a \*public trading trust in relation to the income year in which that time occurs.

**960-120 Meaning of *distribution***

- (1) What constitutes a *distribution* by various \*corporate tax entities is set out in the following table:

<b>Distribution</b>		
<b>Item</b>	<b>Corporate tax entity</b>	<b>Distribution</b>
1	company	a dividend, or something that is taken to be a dividend, under this Act
2	*corporate limited partnership	(a) a distribution made by the partnership, whether in money or in other property, to a partner in the partnership, other than a distribution, or so much of a distribution, as is attributable to profits or gains arising during an income year in relation to which the partnership was not a corporate limited partnership  (b) something that is taken to be a dividend by the partnership under this Act
3	*corporate unit trust	a unit trust dividend, as defined in subsection 102D(1) of the <i>Income Tax Assessment Act 1936</i>
4	*public trading trust	a unit trust dividend, as defined in section 102M of the <i>Income Tax Assessment Act 1936</i>

- (2) A \*corporate tax entity *makes a distribution* in the form of a dividend on the day on which the dividend is paid, or taken to have been paid.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 960-G—Membership of entities

### Table of sections

960-130	Members of entities
960-135	Membership interest in an entity
960-140	Ordinary membership interest

### 960-130 Members of entities

- (1) The following table sets out who is a *member* of various entities.

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Members		
Item	Entity	Member
1	company	a member of the company or a stockholder in the company
2	partnership	a partner in the partnership
3	trust (except a *corporate unit trust or a *public trading trust)	a beneficiary, unitholder or object of the trust
4	*corporate unit trust	a unitholder of the trust
5	*public trading trust	a unitholder of the trust

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- (2) If 2 or more entities jointly hold interests or rights that give rise to membership of another entity, each of them is a *member* of the other entity.
- (3) An entity is *not* a *member* of another entity just because the entity holds one or more interests or rights relating to the other entity that are \*debt interests. This subsection has effect despite subsections (1) and (2) of this section.

Example: An entity is *not* a member of a company as defined in this section merely because it is a member of the company in the ordinary sense of the term because it holds a finance share in the company, if the finance share is a debt interest. However, if the entity holds other shares in the company that are not debt interests, it will be a member because of those other shares.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 960-135 Membership interest in an entity

If you are a \*member of an entity:

- (a) each interest, or set of interests, in the entity; or
- (b) each right, or set of rights, in relation to the entity;

by virtue of which you are a member of the entity is a **membership interest** of yours in the entity.

Note: In conjunction with subsection 960-130(3), this means that a debt interest is *not* a membership interest.

Example: A member of a company holds a finance share in a company that is a debt interest and some other shares in the company that are not debt interests. Only the other shares are membership interests in the company. The finance share is not, because the member is not a member of the company because of that share (see subsection 960-130(3)).

### 960-140 Ordinary membership interest

A \*membership interest in a \*corporate tax entity is an **ordinary membership interest** if:

- (a) in the case of a membership interest in a company—it is an ordinary share; and
- (b) in the case of a membership interest in a \*corporate limited partnership—it is an interest in the income of the partnership; and
- (c) in the case of a membership interest in a \*corporate unit trust or \*public trading trust—it is a unit in the trust.

### Subdivision 960-GP—Participation interests in entities

#### Table of sections

960-180	Total participation interest
960-185	Indirect participation interest
960-190	Direct participation interest
960-195	Non-portfolio interest test

### 960-180 Total participation interest

An entity's **total participation interest** at a particular time in another entity is the sum of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the entity's \*direct participation interest in the other entity at that time; and
- (b) the entity's \*indirect participation interest in the other entity at that time.

### **960-185 Indirect participation interest**

- (1) Work out the *indirect participation interest* that an entity (the *holding entity*) holds at a particular time in another entity (the *test entity*) by multiplying:
  - (a) the holding entity's \*direct participation interest (if any) in another entity (the *intermediate entity*) at that time;by:
  - (b) the sum of:
    - (i) the intermediate entity's direct participation interest (if any) in the test entity at that time; and
    - (ii) the intermediate entity's indirect participation interest (if any) in the test entity at that time (as worked out under one or more other applications of this section).
- (2) If there is more than one intermediate entity to which paragraph (1)(a) applies at that time, the holding entity's *indirect participation interest* is the sum of the percentages worked out under subsection (1) in relation to each of those intermediate entities.

### **960-190 Direct participation interest**

- (1) Use the following table to work out the *direct participation interest* that one entity holds in another entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Direct participation interest**

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	<b>If the other entity is this kind of entity:</b>	<b>the direct participation interest that the first entity holds in the other entity is:</b>
1	A company (within the meaning of Part X of the <i>Income Tax Assessment Act 1936</i> )	the direct control interest (within the meaning of section 350 of the <i>Income Tax Assessment Act 1936</i> ) that the first entity holds in the other entity
2	A trust (within the meaning of Part X of the <i>Income Tax Assessment Act 1936</i> )	the direct control interest (within the meaning of section 351 of the <i>Income Tax Assessment Act 1936</i> ) that the first entity holds in the other entity
3	A *partnership	the direct control interest (within the meaning of section 350 of the <i>Income Tax Assessment Act 1936</i> ) that the first entity would hold in the other entity, if the assumptions in subsection (3) of this section were made

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(2) For the purposes of subsection (1):

- (a) apply sections 350 and 351 of the *Income Tax Assessment Act 1936* as if those sections apply for the purposes of this Division rather than only for the purposes of Part X of that Act; and
- (b) do not apply subsections 350(6) and (7) and 351(3) and (4) of that Act.

(3) For the purposes of item 3 of the table in subsection (1), assume that:

- (a) the \*partnership is a company; and
- (b) the partners in the partnership are shareholders in the company; and
- (c) the total amount of assets or capital contributed to the partnership is the total paid-up share capital of the company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) a partner's right of distribution of capital, assets or profits on the dissolution of the partnership is a shareholder's right to distribution of capital or profits of the company on winding-up; and
- (e) a partner's right of distribution of capital, assets or profits otherwise than on the dissolution of the partnership is a shareholder's right to distribution of capital or profits of the company otherwise than on winding-up.

### **960-195 Non-portfolio interest test**

An interest held by an entity (the *holding entity*) in another entity (the *test entity*) passes the non-portfolio interest test at a time if the sum of the \*direct participation interests held by the holding entity and its \*associates in the test entity at that time is 10% or more.

### **Subdivision 960-H—Abnormal trading in shares or units**

#### **Table of sections**

960-220	Meaning of <i>trading</i>
960-225	Abnormal trading
960-230	Abnormal trading—5% of shares or units in one transaction
960-235	Abnormal trading—suspected 5% of shares or units in a series of transactions
960-240	Abnormal trading—suspected acquisition or merger
960-245	Abnormal trading—20% of shares or units traded over 60 day period

### **960-220 Meaning of *trading***

#### *Shares in a listed public company*

- (1) There is a *trading* in \*shares in a company if there is an issue, redemption or transfer of those shares, or any other dealing in those shares, but only if it changes the respective proportions in which all the registered holders of shares in the company:
  - (a) can exercise the voting power in the company; or
  - (b) have the right to receive, as registered holders (whether or not for their own benefit) any dividends that the company may pay; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) have the right to receive, as registered holders (whether or not for their own benefit) any distribution of capital of the company.

Note: A special rule applies in working out whether an asset has stopped being a pre-CGT asset: see section 149-10.

*Units in a unit trust*

- (2) There is a **trading** in units in a unit trust if there is an issue, redemption or transfer of those units, or any other dealing in those units, but only if it changes the respective proportions in which all the registered holders of units in the trust hold (whether beneficially or not) interests in the trust income or trust capital.

Note: A special rule applies in working out whether an asset has stopped being a pre-CGT asset: see section 149-10.

**960-225 Abnormal trading**

- (1) There is an **abnormal trading** in \*shares in a company, or in units in a unit trust, if a \*trading in the shares or units is abnormal having regard to all relevant factors, including these:
  - (a) the timing of the trading, when compared with the normal timing for trading in the company's shares or in the trust's units;
  - (b) the number of shares or units traded, when compared with the normal number of the company's shares, or the trust's units, traded;
  - (c) any connection between the trading and any other trading in the company's shares or in the trust's units;
  - (d) any connection between the trading and a \*tax loss or other deduction of the company or trust.
- (2) There may also be an abnormal trading under any of the following provisions.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**960-230 Abnormal trading—5% of shares or units in one transaction**

There is an *abnormal trading* in \*shares in a company, or in units in a unit trust, if 5% or more of the shares or units are \*traded in one transaction.

**960-235 Abnormal trading—suspected 5% of shares or units in a series of transactions**

- (1) There is an *abnormal trading* in \*shares in a company, or in units in a unit trust, if the company or trustee knows or reasonably suspects that an entity (or an entity and one or more of the entity's \*associates) has acquired (or redeemed) 5% or more of the shares or units in 2 or more transactions and would not have done so if the company or trust did not have a \*tax loss or other deduction.

*Time when abnormal trading happens*

- (2) The \*abnormal trading happens at the time of the particular transaction that causes the 5% figure to be exceeded.

**960-240 Abnormal trading—suspected acquisition or merger**

There is an *abnormal trading* in \*shares in a company, or in units in a unit trust, if a \*trading in those shares or units happens which the company or trustee knows or reasonably suspects is part of an acquisition or merger of the company with another company, or of the trust with another trust.

**960-245 Abnormal trading—20% of shares or units traded over 60 day period**

- (1) There is an *abnormal trading* in \*shares in a company or units in a unit trust if more than 20% of the shares or units are \*traded during a 60 day period.

*Time when abnormal trading happens*

- (2) The \*abnormal trading happens at the end of the 60 day period concerned.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 960-J—Family relationships**

### **Guide to Subdivision 960-J**

#### **960-250 What this Subdivision is about**

This Subdivision has 2 principles for defining family relationships.

The first principle is to treat an unmarried couple (whether of the same sex or different sexes) in the same way as a married couple if:

- (a) their relationship is registered under particular State or Territory laws; or
- (b) they live together on a genuine domestic basis.

The second principle is to treat anyone who is defined to be an individual's child in the same way as the individual's natural child would be treated.

Both principles extend to tracing other family relationships, including beyond couples and children and their parents.

#### **Table of sections**

##### **Operative provisions**

960-252	Object of this Subdivision
960-255	Family relationships

#### **Operative provisions**

##### **960-252 Object of this Subdivision**

- (1) The first object of this Subdivision is to ensure that the same consequences flow under this Act and the other Acts to which this Subdivision applies from the relationship between 2 people who

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

are an unmarried couple (whether of the same sex or different sexes) as from a marriage, if:

- (a) the relationship is registered under a \*State law or \*Territory law (as mentioned in paragraph (a) of the definition of *spouse* in subsection 995-1(1)); or
  - (b) they live together on a genuine domestic basis.
- (2) The second object of this Subdivision is to ensure that under this Act and the other Acts to which this Subdivision applies, anyone who is defined to be an individual's \*child is treated in the same way as if he or she were the individual's natural child.

### **960-255 Family relationships**

#### *Relationships between couples*

- (1) If one individual is the \*spouse of another individual because of the definition of *spouse* in subsection 995-1(1), relationships traced to, from or through the individual, and family groups of which either individual is a member, are to be determined in the same way as if the individual were legally married to the other individual.

Example: George and Angelika are not legally married but live together on a genuine domestic basis in a relationship as a couple. This Act treats them as part of each other's family.

#### *Relationships involving children*

- (2) If one individual is the \*child of another individual because of the definition of *child* in subsection 995-1(1), relationships traced to, from or through the individual, and family groups of which either individual is a member, are to be determined in the same way as if the individual were the natural child of the other individual.

Example: Clare's stepfather Frank has a sister Angela. This Act applies as if Angela were Clare's aunt because Clare is defined to be Frank's child. That is, Clare's relationship to Angela is determined on the basis that Clare is Frank's natural child.

#### *Application*

- (3) Subsections (1) and (2) apply for the purposes of this Act. They also apply for the purposes of a provision of another Act if one or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 960-260

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more of the following applies for the purposes of that provision (or would apply if it were used in the provision):

- (a) the definition of *child* in subsection 995-1(1);
- (b) the definition of *parent* in subsection 995-1(1);
- (c) the definition of *relative* in subsection 995-1(1);
- (d) the definition of *spouse* in subsection 995-1(1).

## Subdivision 960-M—Indexation

### Guide to Subdivision 960-M

#### 960-260 What this Subdivision is about

There are a number of provisions in this Act that require amounts to be indexed. This Subdivision shows you:

- how to index those amounts; and
- how to calculate the indexation factor.

#### Table of sections

960-265 The provisions for which indexation is relevant

##### Operative provisions

960-270 Indexing amounts

960-275 *Indexation factor*

960-280 *Index number*

960-285 Indexation—superannuation and employment termination

#### 960-265 The provisions for which indexation is relevant

This table sets out the provisions for which indexation is relevant.

Provisions for which indexation is relevant		
Item	Topic of provision:	See:
1	Car limit	section 40-230
2	Capital gains—cost base	Parts 3-1 and 3-3

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Provisions for which indexation is relevant**

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<b>Item</b>	<b>Topic of provision:</b>	<b>See:</b>
3	Capital gains—Improvements as separate assets	Subdivision 108-D
4	child care offset limit	section 61-495
4A	Education expenses tax offset limit	section 61-660
5	*Genuine redundancy payments and *early retirement scheme payments—base amount	subsection 83-170(3)
6	*Genuine redundancy payments and *early retirement scheme payments—service amount	subsection 83-170(3)
7	Reduction of superannuation contributions—pre-1 July 88 funding credits (unused amount at end of previous income year)	subsection 295-265(2)
8	*Employment termination payments—*ETP cap amount	section 82-160
9	*Excess contributions tax on superannuation contributions—*concessional contributions cap	subsection 292-20(2)
10	*Excess contributions tax on superannuation contributions—index amount (*CGT cap amount)	subsection 292-105(4)
11	*Superannuation benefits—index amount (*low rate cap amount)	subsection 307-345(4)
12	*Superannuation benefits—index amount (*untaxed plan cap amount)	subsection 307-350(4)
13	Thresholds for application of Division 250	sections 250-25 and 250-30

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Note: There are provisions of the *Income Tax Assessment Act 1936* dealing with indexation that have not yet been rewritten.

## Operative provisions

### 960-270 Indexing amounts

- (1) Some provisions of this Act require amounts to be indexed. You index an amount by multiplying it by its \*indexation factor.
- (2) You do not index the amount if its \*indexation factor is 1 or less.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 960-275

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- (3) This section does not apply in relation to amounts mentioned in the provisions listed at items 8 to 12 in section 960-265.

Note: For the indexation of those amounts, see section 960-285.

**960-275 Indexation factor**

- (1) For indexation of amounts on an annual basis, the *indexation factor* is:

$$\frac{\text{Sum of the index numbers for the quarters in the year ending on 31 March just before the start of the relevant financial year}}{\text{Sum of the index numbers for the quarters in the year ending on the previous 31 March}}$$

- (1A) However, for indexation of the amounts mentioned in the provisions listed at items 5, 6 and 7 in section 960-265, the *indexation factor* is:

$$\frac{\text{*Index number for the quarter ending on 31 March just before the start of the relevant income year}}{\text{*Index number for the quarter ending on the previous 31 March}}$$

- (2) For indexation of the \*cost base of a \*CGT asset (except the first element of the cost base of an asset covered by subsection (3)), the *indexation factor* for expenditure in an element of the cost base is:

$$\frac{\text{*Index number for the quarter ending on 30 September 1999}}{\text{*Index number for the quarter in which the expenditure was incurred}}$$

The expenditure can include giving property: see section 103-5.

Note 1: This rule does not apply to expenditure incurred after 11.45 am on 21 September 1999 or any expenditure relating to a CGT asset acquired after that time: see section 114-1.

Note 2: This rule applies even if you do not actually pay some of the expenditure until a later time (for example, under a contract to purchase an asset by instalments).

Note 3: There are rules affecting when the expenditure was incurred: see sections 114-15 and 114-20.

- (3) For indexation of the first element of the \*cost base of a \*CGT asset that is:

- (a) a \*share in a company; or  
(b) a unit in a unit trust;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the ***indexation factor*** for an amount in the first element of the \*cost base of the asset that was paid to the company or trust at a time after it was \*acquired is:

\*Index number for the quarter ending on 30 September 1999

\*Index number for the quarter in which the amount was paid

The payment can include giving property: see section 103-5.

Example: Peter acquires shares in a company. The shares are partly-paid, and the company makes a call on the shares. Peter sells the shares to Narina before he is liable to pay the call.

The amount Narina paid to Peter for the shares is indexed under subsection 960-275(2) from the quarter in which she incurred the expenditure to acquire the shares.

The amount Narina later pays for the call on the shares is indexed in accordance with subsection 960-275(3) from the quarter in which she made that later payment.

Note 1: This subsection does not apply to shares or units you acquired before 16 August 1989: see section 960-275 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 2: This subsection does not apply to an amount paid after 11.45 am on 21 September 1999 or an amount paid in relation to a CGT asset acquired after that time: see section 114-1.

- (4) However, you cannot index expenditure in the third element of the \*cost base of a CGT asset (costs of ownership).
- (5) You work out the \*indexation factor to 3 decimal places (rounding up if the fourth decimal place is 5 or more).

Example: If the factor is 1.102795, it would be rounded up to 1.103.

- (6) This section does not apply in relation to amounts mentioned in the provisions listed at items 8 to 12 in section 960-265.

Note: For the indexation of those amounts, see section 960-285.

### **960-280 *Index number***

- (1) In most cases, the ***index number*** for a quarter is the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) first published by the Australian Statistician for the quarter.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Car limit*

- (2) For calculating the \*car limit, the ***index number*** for a quarter is the index number for the motor vehicle purchase sub-group of the Consumer Price Index, being the weighted average of the 8 capital cities, first published by the Australian Statistician for the quarter.
- (3) If the Australian Statistician changes the reference base for an \*index number, only index numbers published in terms of the new base are to be used after the change.

*Genuine redundancy, early retirement schemes, pre-1 July 88 funding credits*

- (4) For calculating the amounts mentioned in the provisions listed at items 5, 6 and 7 in section 960-265, the ***index number*** for a quarter is the estimate of full-time adult average weekly ordinary time earnings for the middle month of the quarter first published by the Australian Statistician in respect of that month.
- (5) Subsection (3) does not apply to the index numbers mentioned in subsection (4).

*Exception—superannuation and employment termination*

- (6) This section does not apply in relation to amounts mentioned in the provisions listed at items 8 to 12 in section 960-265.

Note: For the indexation of those amounts, see section 960-285.

**960-285 Indexation—superannuation and employment termination**

- (1) This section applies in relation to an amount mentioned in a provision listed at items 8 to 12 in section 960-265.

*Indexing amounts*

- (2) You index the amount by:
  - (a) firstly:
    - (i) if the amount is mentioned in item 9 in section 960-265 (concessional contributions cap)—multiplying the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- amount for the 2009-2010 financial year by its  
\*indexation factor mentioned in subsection (3A); or
- (ii) otherwise—multiplying the amount for the 2007-2008  
income year or financial year by its indexation factor  
mentioned in subsection (4); and
- (b) next, rounding the result in paragraph (a) down to the nearest  
multiple of \$5,000.

Example 1: If the amount to be indexed is \$140,000 and the indexation factor  
increases this to an indexed amount of \$143,000, the indexed amount  
is rounded back down to \$140,000.

Example 2: If the amount to be indexed is \$140,000 and the indexation factor  
increases this to an indexed amount of \$146,000, the indexed amount  
is rounded down to \$145,000.

- (3) You do not index the amount if its indexation factor mentioned in  
subsection (3A) or (4) is 1 or less.

*Indexation factor*

- (3A) For indexation of the amount on an annual basis in accordance  
with subparagraph (2)(a)(i), the ***indexation factor*** is:

\*Index number mentioned in subsection (6) for the quarter ending  
on 31 December just before the start of the relevant income year or financial year

\*Index number mentioned in subsection (6)  
for the quarter ending on 31 December 2008

- (4) For indexation of the amount on an annual basis in accordance  
with subparagraph (2)(a)(ii), the ***indexation factor*** is:

\*Index number mentioned in subsection (6) for the quarter ending  
on 31 December just before the start of the relevant income year or financial year

\*Index number mentioned in subsection (6)  
for the quarter ending on 31 December 2006

- (5) You work out the \*indexation factor mentioned in subsection (3A)  
or (4) to 3 decimal places (rounding up if the fourth decimal place  
is 5 or more).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Index number*

- (6) For calculating the amounts, the *index number* for a quarter is the estimate of full-time adult average weekly ordinary time earnings for the middle month of the quarter first published by the Australian Statistician in respect of that month.

**Subdivision 960-S—Market value**

**Guide to Subdivision 960-S**

**960-400 What this Subdivision is about**

The expression “market value” is often used in this Act with its ordinary meaning.

However, in some cases that expression has a meaning affected by this Subdivision.

**Table of sections**

**Operative provisions**

- 960-405 Effect of GST on market value of an asset  
960-410 Market value of non-cash benefits

**Operative provisions**

**960-405 Effect of GST on market value of an asset**

- (1) The *market value* of an asset at a particular time is reduced by the amount of the \*input tax credit (if any) to which you would be entitled assuming that:
- (a) you had \*acquired the asset at that time; and
  - (b) the acquisition had been solely for a \*creditable purpose.
- (2) Subsection (1) does not apply:
- (a) to an asset the \*supply of which cannot be a \*taxable supply;
  - or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) in working out the \*market value of economic benefits, or of \*equity or loan interests, for the purposes of Part 3-95 (about value shifting).

Note: Some assets, such as shares, cannot be the subject of a taxable supply.

#### **960-410 Market value of non-cash benefits**

In working out the *market value* of a \*non-cash benefit, disregard anything that would prevent or restrict conversion of the benefit to money.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 974—Debt and equity interests**

### **Table of Subdivisions**

974-A	General
974-B	Debt interests
974-C	Equity interests
974-D	Common provisions
974-E	Non-share distributions by a company
974-F	Related concepts

### **Subdivision 974-A—General**

#### **Guide to Division 974**

##### **974-1 What this Division is about**

This Division tells you whether an interest is a debt interest, or an equity interest, for tax purposes. An interest that could be characterised as both a debt interest and an equity interest will be treated as a debt interest for tax purposes (except for certain interests that fund returns on equity interests).

Whether an interest is a debt interest or an equity interest matters because returns on debt interests are not frankable but may be deductible while returns on equity interests are not deductible but may be frankable.

This Division extends beyond shares the range of interests that are recognised as equity in a company. An interest that is an equity interest in a company but is not a share will be treated in the same way as a share for some tax purposes (particularly in relation to the determination of the tax treatment of returns on the interest).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

This Division also tells you how to work out which distributions made in respect of a non-share equity interest in a company will be non-share dividends and which will be non-share capital returns. Those that are non-share dividends will be treated, for most tax purposes, in the same way as dividends.

### Table of sections

974-5 Overview of Division

#### Operative provisions

974-10 Object

### 974-5 Overview of Division

#### *Test for distinguishing debt and equity interests*

- (1) The test for distinguishing between debt interests and equity interests focuses on economic substance rather than mere legal form (see subsection 974-10(2)). The test is designed to assess the economic substance of an interest in terms of its impact on the issuer's position.

#### *Debt interests*

- (2) Subdivision 974-B tells you when an interest is a debt interest in an entity. The basic test is in section 974-20.

#### *Equity interests*

- (3) Subdivision 974-C tells you when an interest is an equity interest in a company. The basic test is in section 974-75.

#### *Tie breaker between debt and equity*

- (4) If an interest satisfies both the debt test and the equity test, it is treated as a debt interest and not an equity interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



*Distributions in relation to equity interests that are not shares*

- (5) If you have an equity interest in a company that is not a share, Subdivision 974-E tells you what will count as a non-share distribution, a non-share dividend and a non-share capital return in relation to the interest.

*Concepts used in the debt and equity tests*

- (6) Subdivision 974-F defines a number of concepts that are used in the debt and equity tests (financing arrangement, effectively non-contingent obligation, benchmark rate of return and converting interest).

## **Operative provisions**

### **974-10 Object**

- (1) An object of this Division is to establish a test for determining for particular tax purposes whether a \*scheme, or the combined operation of a number of schemes:
- (a) gives rise to a \*debt interest; or
  - (b) gives rise to an \*equity interest.

Note: The test is used, for example, for:

- (a) identifying distributions that may be frankable and which may be subject to dividend withholding tax; and
  - (b) identifying returns that may be deductible to the company making the return; and
  - (c) resolving uncertainty as to the proper tax treatment for debt/equity hybrid interests (interests that have some debt qualities and some equity qualities); and
  - (d) identifying debt capital for the purposes of Division 820 (thin capitalisation rules).
- (2) Another object of this Division is that the test referred to in subsection (1) is to operate on the basis of the economic substance of the rights and obligations arising under the \*scheme or schemes rather than merely on the basis of the legal form of the scheme or schemes.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 1: The basic indicator of the economic character of a debt interest is the non-contingent nature of the returns. The basic indicator of the economic character of an equity interest, on the other hand, is the contingent nature of the returns (or convertibility into an interest of that nature).

Note 2: The test is intended to operate, for example, to:

- (a) deny deductibility (but allow franking) for “interest” in relation to a scheme that has the legal form of a loan if the economic substance of the rights and obligations arising under the relevant scheme gives the interest characteristics that are the same as or similar to those of a dividend on an ordinary share (and thereby prevent deductible returns on equity); and
- (b) allow a deduction (but not franking) for a “dividend” in relation to a scheme that has the legal form of an ordinary share if the economic substance of the rights and obligations arising under the relevant scheme gives the dividend characteristics that are the same as or similar to those of deductible interest on an ordinary loan (and thereby prevent frankable returns on debt).

This will not happen if a provision in this Act specifically provides for a different treatment for the interest or dividend.

- (3) Another object of this Division is that the combined effect of \*related schemes be taken into account in appropriate cases:
  - (a) to ensure that the test operates effectively on the basis of the economic substance of the rights and obligations arising under the schemes rather than merely on the basis of the legal form of the schemes; and
  - (b) to prevent the test being circumvented by entities merely entering into a number of separate schemes instead of a single scheme.
- (4) Another object of this Division is to identify the distributions and credits made in respect of \*non-share equity interests in a company that are to be treated as \*dividends (***non-share dividends***) and those that are to be treated as returns of capital (***non-share capital returns***).

Note: Non-share dividends will generally be included in the recipient’s assessable income and may be frankable.

- (5) The Commissioner must have regard to the objects stated in subsections (1) to (3) in exercising the power to make a determination under any of the following provisions:
  - (a) subsection 974-15(4);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 974-10

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- (b) subsection 974-60(3), (4) or (5);
- (c) section 974-65;
- (d) subsection 974-70(4);
- (e) subsection 974-150(1).

Note: An entity can apply to the Commissioner to have a determination made and can object under Part IVC of the *Taxation Administration Act 1953* if it is dissatisfied with a determination (see section 974-112).

- (6) Regulations may also be made under the provisions of this Division:
- (a) to clarify the meaning of certain words and phrases in the light of emerging commercial practices, conditions and products; and
  - (b) to give guidance on the detailed operation of particular provisions.

The regulations must be consistent with the objects stated in subsections (1) to (3).

- (7) Without limiting subsection 13(3) of the *Legislative Instruments Act 2003*, the regulations made for the purposes of this Division may specify different rules for different classes of circumstances.

### **Subdivision 974-B—Debt interests**

#### **Table of sections**

974-15	Meaning of <i>debt interest</i>
974-20	The test for a debt interest
974-25	Exceptions to the debt test
974-30	Providing a financial benefit
974-35	Valuation of financial benefit—general rules
974-40	Valuation of financial benefits—rights and options to terminate early
974-45	Valuation of financial benefits—convertible interests
974-50	Valuation of financial benefits—value in present value terms
974-55	The debt interest and its issue
974-60	Debt interest arising out of obligations owed by a number of entities
974-65	Commissioner’s power

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **974-15 Meaning of *debt interest***

#### *Single scheme giving rise to debt interest*

- (1) A \*scheme gives rise to a ***debt interest*** in an entity if the scheme, when it comes into existence, satisfies the debt test in subsection 974-20(1) in relation to the entity.

Note 1: A debt interest can also arise under subsection (2) (related schemes) or section 974-65 (Commissioner's discretion).

Note 2: Section 974-55 defines various aspects of the debt interest that arises.

#### *Related schemes giving rise to debt interest*

- (2) Two or more \*related schemes (the ***constituent schemes***) together give rise to a ***debt interest*** in an entity if:
- (a) the entity enters into, participates in or causes another entity to enter into or participate in the constituent schemes; and
  - (b) a scheme with the combined effect or operation of the constituent schemes (the ***notional scheme***) would satisfy the debt test in subsection 974-20(1) in relation to the entity if the notional scheme came into existence when the last of the constituent schemes came into existence; and
  - (c) it is reasonable to conclude that the entity intended, or knew that a party to the scheme or one of the schemes intended, the combined economic effects of the constituent schemes to be the same as, or similar to, the economic effects of a debt interest.

This is so whether or not the constituent schemes come into existence at the same time and even if none of the constituent schemes would individually give rise to that or any other \*debt interest.

Note: Section 974-105 explains the effect, for tax purposes, of actions taken under the schemes.

- (3) Subsection (2) does not apply if each of the \*schemes individually gives rise to a \*debt interest in the entity.
- (4) Two or more \*related schemes do not give rise to a ***debt interest*** in an entity under subsection (2) if the Commissioner determines that it would be unreasonable to apply that subsection to those schemes.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 974-15

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- (5) Without limiting subsection 974-10(5), the Commissioner must, in exercising the power to make a determination under subsection (4), have regard to the following:
- (a) the purpose of the \*schemes (considered both individually and in combination);
  - (b) the effects of the schemes (considered both individually and in combination);
  - (c) the rights and obligations of the parties to the schemes (considered both individually and in combination);
  - (d) whether the schemes (when considered either individually or in combination) provide the basis for, or underpin, an interest issued to investors with the expectation that the interest can be assigned to other investors;
  - (e) whether the schemes (when considered either individually or in combination) comprise a set of rights and obligations issued to investors with the expectation that it can be assigned to other investors;
  - (f) any other relevant circumstances.
- (6) If:
- (a) 2 or more \*related schemes give rise to a \*debt interest in an entity; and
  - (b) one or more of those schemes (the *hedging scheme or schemes*) are schemes for hedging or managing financial risk; and
  - (c) the other scheme or schemes give rise to a debt interest in the entity even if the hedging scheme or schemes are disregarded;

the debt interest that arises from the schemes is taken, for the purposes of Division 820 (the thin capitalisation rules), not to include the hedging scheme or schemes.

Note: This means that in these circumstances the losses associated with the hedging scheme or schemes are not debt deductions under section 820-40.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## 974-20 The test for a debt interest

### *Satisfying the debt test*

- (1) A \*scheme satisfies the debt test in this subsection in relation to an entity if:
- (a) the scheme is a \*financing arrangement for the entity; and
  - (b) the entity, or a \*connected entity of the entity, receives, or will receive, a \*financial benefit or benefits under the scheme; and
  - (c) the entity has, or the entity and a connected entity of the entity each has, an \*effectively non-contingent obligation under the scheme to provide a financial benefit or benefits to one or more entities after the time when:
    - (i) the financial benefit referred to in paragraph (b) is received if there is only one; or
    - (ii) the first of the financial benefits referred to in paragraph (b) is received if there are more than one; and
  - (d) it is substantially more likely than not that the value provided (worked out under subsection (2)) will be at least equal to the value received (worked out under subsection (3)); and
  - (e) the value provided (worked out under subsection (2)) and the value received (worked out under subsection (3)) are not both nil.

The scheme does not need to satisfy paragraph (a) if the entity is a company and the interest arising from the scheme is an interest covered by item 1 of the table in subsection 974-75(1) (interest as a member or stockholder of the company).

Note: Section 974-30 tells you when a financial benefit is taken to be provided to an entity.

- (2) The *value provided* is:
- (a) the value of the \*financial benefit to be provided under the \*scheme by the entity or a \*connected entity if there is only one; or
  - (b) the sum of the values of all the financial benefits provided or to be provided under the scheme by the entity or a connected entity of the entity if there are 2 or more.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 974-25

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Note: Section 974-35 tells you how to value financial benefits.

- (3) The *value received* is:
- (a) the value of the \*financial benefit received, or to be received, under the \*scheme by the entity or a \*connected entity of the entity if there is only one; or
  - (b) the sum of the values of all the financial benefits received, or to be received, under the scheme by the entity or a connected entity if there are 2 or more.
- (4) For the purposes of paragraph (1)(b) and subsections (2) and (3):
- (a) a \*financial benefit to be provided under the \*scheme by the entity or a \*connected entity is taken into account only if it is one that the entity or connected entity has an \*effectively non-contingent obligation to provide; and
  - (b) a financial benefit to be received under the scheme by the entity or a connected entity is taken into account only if it is one that another entity has an effectively non-contingent obligation to provide.

*Multiple financial benefits*

- (5) Paragraphs (1)(b) and (c) apply to 2 or more \*financial benefits whether they are provided at the same time or over a period of time.

*Regulations*

- (6) The regulations:
- (a) may specify circumstances in which paragraph (1)(d) is satisfied or not satisfied; and
  - (b) may otherwise specify rules to be applied in determining whether or not paragraph (1)(d) is satisfied.

**974-25 Exceptions to the debt test**

*Short term schemes*

- (1) A \*scheme does not satisfy the debt test in subsection 974-20(1) in relation to an entity if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) at least a substantial part of a \*financial benefit mentioned in that subsection does not consist of either of the following or a combination of either of the following:
  - (i) a liquid or monetary asset;
  - (ii) an amount of money; and
- (b) the scheme requires the financial benefit mentioned in paragraph 974-20(1)(c) to be provided within a period of no more than 100 days of the receipt of the first financial benefit mentioned in paragraph 974-20(1)(b); and
- (c) the financial benefit mentioned in paragraph 974-20(1)(c):
  - (i) is in fact provided within that period; or
  - (ii) is not provided within that period because the entity required to provide the benefit neglects to provide the benefit within that period (although willing to do so); or
  - (iii) is not provided within that period because the entity required to provide the benefit is unable to provide the benefit within that period (although willing to do so); and
- (d) the scheme is not one of a number of \*related schemes that together are taken to give rise to a \*debt interest under subsection 974-15(2).

#### *Regulations*

- (2) The regulations may make provision in relation to the application or operation of subsection (1). Without limiting this, the regulations may:
  - (a) specify what constitutes a substantial part of a \*financial benefit for the purposes of paragraph (1)(a); or
  - (b) specify a period to be substituted for the period referred to in paragraph (1)(b).

### **974-30 Providing a financial benefit**

#### *Issue of equity interest*

- (1) The following do not constitute the provision of a \*financial benefit by an entity or a \*connected entity of the entity:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the issue of an \*equity interest in the entity or a connected entity of the entity; or
- (b) an amount that is to be applied in respect of the issue of an equity interest in the entity or a connected entity of the entity.

*Providing a financial benefit to an entity*

- (2) A \*financial benefit is taken to be provided to an entity if it is provided:
  - (a) to the entity; or
  - (b) on the entity's behalf; or
  - (c) for the entity's benefit.

*Obligation to provide future financial benefit*

- (3) For the avoidance of doubt, if you have a present obligation to provide a \*financial benefit to an entity at some time in the future:
  - (a) the financial benefit is taken to be a financial benefit to be provided in the future; and
  - (b) the obligation to provide the financial benefit is taken not to be a financial benefit being provided at the present.

**974-35 Valuation of financial benefits—general rules**

*Value in nominal terms or present value terms*

- (1) For the purposes of this Subdivision:
  - (a) the value of a \*financial benefit received or provided under a \*scheme is its value calculated:
    - (i) in nominal terms if the performance period (see subsection (3)) must end no later than 10 years after the interest arising from the scheme is issued; or
    - (ii) in present value terms (see section 974-50) if the performance period must or may end more than 10 years after the interest arising from the scheme is issued; and
  - (b) the regulations may make provisions relating to the valuation of a financial benefit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Assume scheme runs its full term*

- (2) The value of a \*financial benefit received or provided under a \*scheme is calculated assuming that the interest arising from the scheme will continue to be held for the rest of its life.

Note 1: Section 974-40 makes specific provision for cases in which there is a right or option to terminate the interest early.

Note 2: Section 974-45 makes specific provision for cases involving convertible interests.

*Performance period*

- (3) The **performance period** is the period within which, under the terms on which the interest is issued, the \*effectively non-contingent obligations of the issuer, and any \*connected entity of the issuer, to provide a \*financial benefit in relation to the interest have to be met.

- (4) An obligation is treated as having to be met within 10 years after the interest is issued if:

- (a) the issuer; or
- (b) the \*connected entity of the issuer;

has an \*effectively non-contingent obligation to terminate the interest within that 10 year period even if the terms on which the interest is issued formally allow the obligation to continue after the end of that 10 year period.

*Benefit dependent on variable factor*

- (5) If:
- (a) a \*financial benefit received or provided in respect of an interest depends on a factor that may vary over time (such as a variable interest rate); and
  - (b) that factor is one commonly used in commercial arrangements; and
  - (c) it would be unreasonable to expect any of the parties to the \*scheme to know, or to anticipate accurately, the future value of that factor; and
  - (d) that factor has a particular value (the **starting value**) when the scheme is entered into;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 974-40

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the value of the financial benefit is calculated assuming that the factor's value will retain the starting value for the whole of the life of the scheme.

Note: For example, the value of a return based on a floating interest rate is calculated on the basis that the interest rate remains the interest rate that is applicable when the scheme is entered into.

*Scheme wholly in foreign currency etc.*

- (6) If all the \*financial benefits provided and received under a \*scheme are denominated in a particular foreign currency or in terms of quantities of a particular commodity or other unit of account, they are not to be converted into Australian currency for the purpose of comparing their relative values for the purposes of this Subdivision.

**974-40 Valuation of financial benefits—rights and options to terminate early**

- (1) This section deals with the situation in which a party to a \*scheme has a right or option to terminate the scheme early (whether by discharging an obligation early, converting the interest arising from the scheme into another interest or otherwise).

Note 1: An example of terminating a scheme early by discharging an obligation early is terminating a loan by discharging the obligation to repay the principal (and any outstanding interest) early.

Note 2: In certain circumstances, conversion of an interest into another interest can terminate its life (see section 974-45).

- (2) The existence of the right or option is to be disregarded in working out the length of the life of the interest arising from the \*scheme for the purposes of this Subdivision if the party does not have an \*effectively non-contingent obligation to exercise the right or option.
- (3) If the party does have an \*effectively non-contingent obligation to exercise the right or option, the life of the interest ends at the earliest time at which the party will have to exercise the right or option.
- (4) This section does not limit subsection 974-35(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**974-45 Valuation of financial benefits—convertible interests**

- (1) This section deals with the situation in which a \*scheme gives rise to an \*interest that will or may convert into an \*equity interest in a company.
- (2) The life of the interest ends no later than the time when it converts into that \*equity interest.
- (3) The possibility of the conversion is to be disregarded in working out the length of the life of the interest arising from the \*scheme for the purposes of section 974-35 if it is uncertain:
  - (a) whether the interest will ever convert; or
  - (b) when the interest will convert.

Note: Section 974-40 deals with the situation in which a party to the scheme may exercise a right or option to convert the interest.

- (4) This section does not limit subsection 974-35(2).

**974-50 Valuation of financial benefits—value in present value terms**

- (1) Subject to the regulations made for the purposes of subsection (5), the value in present value terms of a \*financial benefit to be provided or received in respect of an interest (the *test interest*) is calculated under subsection (4).
- (2) If you need to calculate the values in present value terms of a number of \*financial benefits, the value of each financial benefit is to be calculated separately.
- (3) The value of a \*financial benefit is to be calculated assuming that all amounts to be paid by an entity in respect of the test interest are paid at the earliest time when the entity becomes liable to pay them.
- (4) The value of a \*financial benefit in present value terms is:

$$\frac{\text{Amount or value of *financial benefit in nominal terms}}{[1 + \text{Adjusted benchmark rate of return}]^n}$$

where:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*adjusted benchmark rate of return* is 75% of the \*benchmark rate of return on the test interest.

*n* is the number of years in the period starting on the day on which the test interest is issued and ending on the day on which the \*financial benefit is to be provided. If the period includes a part of a year, that part is to be expressed as the fraction:

$$\frac{\text{Number of days in that period}}{\text{Number of days in the year}}$$

*year* means a period of 12 calendar months.

- (5) The regulations may provide for the method of calculating the value in present value terms of a \*financial benefit.
- (6) Without limiting subsection (5), the regulations may:
  - (a) provide for an entirely different method of calculating the present value of the \*financial benefit; or
  - (b) specify the adjusted \*benchmark rate of return; or
  - (c) provide for a different method of determining the adjusted benchmark rate of return; or
  - (d) specify rules for determining whether a \*debt interest is an \*ordinary debt interest.

### **974-55 The debt interest and its issue**

- (1) If a \*scheme, or 2 or more \*related schemes, give rise to a \*debt interest in an entity, the debt interest:
  - (a) consists of the interest that carries the right to receive a \*financial benefit that the entity or a \*connected entity has an \*effectively non-contingent obligation to provide under the scheme or any of the schemes; and
  - (b) is taken, subject to section 974-60, to be a debt interest in the entity; and
  - (c) is taken to be issued by the entity; and
  - (d) is *issued* when the entity (or a connected entity of the entity) first receives a \*financial benefit under the scheme or any of the schemes; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (e) is *on issue* while an effectively non-contingent obligation of the entity (or a connected entity of the entity) to provide a financial benefit under the scheme or any of the schemes remains unfulfilled.
- (2) The interest referred to in paragraph (1)(a) may take the form of a proprietary right, a chose in action or any other form.

**974-60 Debt interest arising out of obligations owed by a number of entities**

- (1) This section deals with the situation in which a \*scheme, or a number of \*related schemes together, would, apart from this section, give rise to the same \*debt interest in 2 or more entities.

Note: A scheme may give rise to the same debt interest in 2 or more entities if each of those entities has non-contingent obligations to provide financial benefits under the scheme.

- (2) The \*debt interest:
- (a) is a debt interest in the entity identified under subsection (3) or (4); and
- (b) is not a debt interest in the other entity or entities.
- (3) The \*debt interest is a debt interest in the entity identified using the following method statement:

*Method statement*

- Step 1. Work out, for each of the entities, the total value of the \*financial benefits that the entity is under an \*effectively non-contingent obligation to provide under the \*scheme or schemes: this is the entity's *obligation value*.
- Step 2. The \*debt interest is taken to be a debt interest in the entity with the greatest obligation value.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Step 3. If it is not possible to determine which entity has the greatest obligation value (whether because of an equality of, or uncertainty as to, obligation values or otherwise), the \*debt interest is taken to be a debt interest in the entity agreed on by all the entities.
- Step 4. If the entities do not agree, the interest is taken to be a \*debt interest in the entity determined by the Commissioner.

- (4) Despite subsection (3), the Commissioner may determine that the \*debt interest is a debt interest in the entity specified in the determination.
- (5) The Commissioner may make the determination only if satisfied, having regard to the economic substance of the relevant transactions, that the \*debt interest is properly considered from a commercial point of view to be an interest in the entity specified in the determination.

#### 974-65 Commissioner's power

- (1) Despite subsection 974-20(1) (the debt test), the Commissioner may determine that a \*scheme gives rise to a **debt interest** in an entity if the Commissioner considers that:
- (a) the scheme would satisfy paragraphs 974-20(1)(a), (b), (c) and (e); but
  - (b) instead of satisfying paragraph 974-20(1)(d), the scheme would satisfy all the following subparagraphs:
    - (i) it is substantially more likely than not that the value of the \*financial benefit to be provided by the entity (or a \*connected entity of the entity) under the \*effectively non-contingent obligation will be at least equal to the substantial part of the value of the financial benefit received or to be received by the entity (or its connected entity) under the scheme;
    - (ii) it is substantially more likely than not that other financial benefits will be provided by the entity (or its

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- connected entity) to one or more entities under the scheme;
- (iii) it is substantially more likely than not that the sum of the values of the financial benefits mentioned in subparagraphs (i) and (ii) will be at least equal to the value of the financial benefit received by the entity (or its connected entity) under the scheme.
- (2) In making the determination, the Commissioner must have regard to the following:
- (a) the difference between the value of the \*financial benefit received and the value of the financial benefit to be provided under the \*effectively non-contingent obligation;
  - (b) the degree of likelihood of other financial benefits being provided under the \*scheme;
  - (c) the degree of likelihood of the sum of the value of the financial benefits mentioned in subparagraphs (1)(b)(i) and (ii) being equal to or greater than the value of the financial benefit received under the scheme;
  - (d) the particular circumstances surrounding the scheme (including circumstances of the parties to the scheme and their purposes for entering into the scheme).
- (3) If the Commissioner determines under this section that a \*scheme gives rise to a \*debt interest, the scheme has that effect for all purposes of this Division.

### **Subdivision 974-C—Equity interests in companies**

#### **Table of sections**

974-70	Meaning of <i>equity interest</i> in a company
974-75	The test for an equity interest
974-80	Equity interest arising from arrangement funding return through connected entities
974-85	Right or return contingent on economic performance
974-90	Right or return at discretion of company or connected entity
974-95	The equity interest

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 974-70 Meaning of *equity interest* in a company

#### *Scheme giving rise to equity interest*

- (1) A \*scheme gives rise to an **equity interest** in a company if, when the scheme comes into existence:
- (a) the scheme satisfies the equity test in subsection 974-75(1) in relation to the company because of the existence of an interest; and
  - (b) the interest is not characterised as, and does not form part of a larger interest that is characterised as, a \*debt interest in the company, or a \*connected entity of the company, under Subdivision 974-B.

Note 1: An equity interest can also arise under subsection (2) if a notional scheme with the combined effect of a number of related schemes would give rise to an equity interest under this subsection. To do this, the notional scheme would need to satisfy paragraph (b). This means that the related schemes will not give rise to an equity interest if the notional scheme would be characterised as (or form part of a larger interest that would be characterised as) a debt interest in the company or a connected entity.

Note 2: An equity interest can also arise under section 974-80 (arrangements for funding return through connected entities).

Note 3: Section 974-95 defines various aspects of the equity interest that arises.

#### *Related schemes giving rise to equity interest*

- (2) Two or more \*related schemes (the **constituent schemes**) are taken together to give rise to an **equity interest** in a company if:
- (a) the company enters into, participates in or causes another entity to enter into or participate in the constituent schemes; and
  - (b) a scheme with the combined effect or operation of the constituent schemes (the **notional scheme**) would give rise to an \*equity interest in the company under subsection (1) if the notional scheme came into existence when the last of the constituent schemes came into existence; and
  - (c) it is reasonable to conclude that the company intended, or knew that a party to the scheme or one of the schemes intended, the combined economic effects of the constituent

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

schemes to be the same as, or similar to, the economic effects of an equity interest.

This is so whether or not the constituent schemes come into existence at the same time and even if none of the constituent schemes would individually give rise to that or any other equity interest.

Note: Section 974-105 explains the effect, for tax purposes, of actions taken under the schemes.

- (3) Subsection (2) does not apply if each of the constituent \*schemes individually gives rise to an \*equity interest in the company.
- (4) Two or more related \*schemes do not give rise to an \*equity interest in a company under subsection (2) if the Commissioner determines that it would be unreasonable to apply that subsection to those schemes.
- (5) Without limiting subsection 974-10(5), the Commissioner must, in exercising the power to make a determination under subsection (4), have regard to the following:
  - (a) the purpose of the \*schemes (considered both individually and in combination);
  - (b) the effects of the schemes (considered both individually and in combination);
  - (c) the rights and obligations of the parties to the schemes (considered both individually and in combination);
  - (d) whether the schemes (when considered either individually or in combination) provide the basis for, or underpin, an interest issued to investors with the expectation that the interest can be assigned to other investors;
  - (e) whether the schemes (when considered either individually or in combination) comprise a set of rights and obligations issued to investors with the expectation that it can be assigned to other investors;
  - (f) any other relevant circumstances.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 974-75 The test for an equity interest

*Basic test for equity interest*

- (1) A \*scheme satisfies the equity test in this subsection in relation to a company if it gives rise to an interest set out in the following table:

<b>Equity interests</b>	
<b>Item</b>	<b>Interest</b>
1	An interest in the company as a member or stockholder of the company.
2	An interest that carries a right to a variable or fixed return from the company if either the right itself, or the amount of the return, is in substance or effect *contingent on the economic performance (whether past, current or future) of: (a) the company; or (b) a part of the company's activities; or (c) a *connected entity of the company or a part of the activities of a connected entity of the company. The return may be a return of an amount invested in the interest.
3	An interest that carries a right to a variable or fixed return from the company if either the right itself, or the amount of the return, is at the discretion of: (a) the company; or (b) a *connected entity of the company. The return may be a return of an amount invested in the interest.
4	An interest issued by the company that: (a) gives its holder (or a *connected entity of the holder) a right to be issued with an *equity interest in the company or a *connected entity of the company; or (b) is an *interest that will, or may, convert into an equity interest in the company or a connected entity of the company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

This subsection has effect subject to subsection (2) (requirement for financing arrangement).

Note: Section 974-90 allows regulations to be made clarifying when a right or return is taken to be at discretion of a company or connected entity.

*Financing arrangement*

- (2) A \*scheme that would otherwise give rise to an \*equity interest in a company because of an item in the table in subsection (1) (other than item 1) does not give rise to an equity interest in the company unless the scheme is a \*financing arrangement for the company.

*Form interest may take*

- (3) The interest referred to in item 2, 3 or 4 in the table in subsection (1) may take the form of a proprietary right, a chose in action or any other form.

*Exception for certain at call loans—until 30 June 2005*

- (4) If:
- (a) a \*financing arrangement takes the form of a loan to a company by a \*connected entity; and
  - (b) the loan does not have a fixed term; and
  - (c) either:
    - (i) the loan is repayable on demand made by the connected entity, and repayment is required immediately on the making of the demand, or is required at the end of a particular period after the demand is made (being a period that is not longer than is reasonably necessary to arrange repayment); or
    - (ii) the loan is repayable on the death of the connected entity (if the connected entity is an individual); and
  - (d) the arrangement was entered into on or before 30 June 2005; the arrangement does not give rise to an *equity interest* in the company. Instead, the arrangement is taken, despite anything in Subdivision 974-B, to give rise to a *debt interest* in the company. This subsection ceases to have effect on 1 July 2005.

Note: If this subsection ceases to have effect in relation to an interest that is, according to the other provisions of this Division, an equity interest

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 974-75

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immediately after the cessation, an adjustment to the company's non-share capital account will occur at that time (see subsection 164-15(2)).

- (5) If, while subsection (4) applies to a \*financing arrangement, a circumstance occurs that would otherwise have attracted the operation of subsection 974-110(1) or (2) in relation to the arrangement:
- (a) that subsection of section 974-110 does not apply to change the result that subsection (4) of this section produces in relation to the arrangement; but
  - (b) for the purpose of applying this Division in relation to the arrangement after subsection (4) of this section has ceased to have effect, that subsection of section 974-110 is taken to have produced the result that it would have produced if subsection (4) of this section had not applied to the arrangement.

*Further exception for certain related party at call loans*

- (6) In applying this Division in relation to a particular \*scheme and a particular income year (which may be the income year in which the scheme is entered into or a later income year), the scheme is taken not to give rise to an *equity interest* in a company, and instead to give rise to a *debt interest* in the company, if:
- (a) the scheme takes the form of a loan to the company that satisfies paragraphs (4)(a), (b) and (c); and
  - (b) the company's \*GST turnover (worked out at the end of the income year) is less than \$20,000,000.

Note: If this subsection does not apply in relation to the previous income year or the next income year, and the scheme gives rise to an equity interest according to the other provisions of this Division, an adjustment to the company's non-share capital account will occur at the end of the previous income year or the start of the next income year (see subsections 164-15(2) and 164-20(3)).

- (7) For the purpose of paragraph (6)(b), the question whether a company's \*GST turnover (worked out at the end of an income year) is less than \$20,000,000 is to be determined in accordance with subsection 188-10(2) of the \*GST Act, as if that amount of \$20,000,000 were a turnover threshold for the purposes of that subsection of the GST Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**974-80 Equity interest arising from arrangement funding return through connected entities**

- (1) This section deals with the situation in which:
- (a) an interest carries a right to a variable or fixed return from a company; and
  - (b) the interest is held by a \*connected entity of the company; and
  - (c) apart from this section, the interest would not be an \*equity interest in the company; and
  - (ca) the \*scheme that gives rise to the interest is a \*financing arrangement for the company; and
  - (d) there is a scheme, or a series of schemes, designed to operate so that the return to the connected entity is to be used to fund (directly or indirectly) a return to another person (the *ultimate recipient*).
- (2) The interest is an *equity interest* in the company if:
- (a) the amount of the return to the ultimate recipient is in substance or effect \*contingent on the economic performance (whether past, current or future) of:
    - (i) the company; or
    - (ii) a part of the company's activities; or
    - (iii) a \*connected entity of the company or a part of the activities of a connected entity of the company; or
  - (b) either the right itself, or the amount of the return to the ultimate recipient, is at the discretion of:
    - (i) the company; or
    - (ii) a connected entity of the company; or
  - (c) the interest in respect of which the return to the ultimate recipient is made or another interest that arises from the scheme, or any of the schemes, referred to in paragraph (1)(d):
    - (i) gives the ultimate recipient (or a connected entity of the ultimate recipient) a right to be issued with an \*equity interest in the company or a connected entity of the company; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 974-80

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- (ii) is an \*interest that will, or may, convert into an equity interest in the company or a connected entity of the company;

and if the interest does not form part of a larger interest that is characterised as a \*debt interest in the entity in which it is held, or a \*connected entity, under Subdivision 974-B. The return may be a return of an amount invested in the interest.

Note 1: Section 974-90 allows regulations to be made clarifying when a right or return is taken to be at the discretion of a company or connected entity.

Note 2: Paragraphs (a), (b) and (c) parallel items 2, 3 and 4 of the table in subsection 974-75(1).

Example: Company A, Company B1, Company B2 and Company B3 are connected entities.

Company B1 operates Trust Fund C. An interest in Trust Fund C is issued to person H and the return on that interest is contingent on the economic performance of Company A.

Trust Fund C lends the money paid by H for the purchase of the interest to Company B1 which lends the money to Company B2 which lends the money to Company B3 which lends the money to Company A.

Under the arrangements under which the interest is issued and the loans made, payments of interest by Company A on the loan that Company B3 makes to Company A are intended to pass back through Company B2 and Company B1 to fund the return on H's interest in Trust Fund C.

Under subsection (2), Company B3 will have an equity interest in Company A. If the return to Company B3 were itself contingent on Company A's performance, Company B3's interest would be an equity interest in Company A under item 2 of the table in subsection 974-75(1) (and not under subsection (2) of this section).

Company B2 has an equity interest in Company B3 and Company B1 has an equity interest in Company B2. This is because the returns they get are intended to fund the return on H's interest in Trust Fund C and that return is contingent on the economic performance of Company A (which is related to both Company B3 and Company B2).

- (3) The interest referred to in paragraph (1)(a) or (2)(c) may take the form of a proprietary right, a chose in action or any other form.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **974-85 Right or return contingent on economic performance**

- (1) A right, or the amount of a return, is not *contingent on the economic performance* of an entity, or a part of the entity's activities, merely because the right or return is contingent on:
  - (a) the ability or willingness of an entity to meet the obligation to satisfy the right to the return; or
  - (b) the receipts or turnover of the entity or the turnover generated by those activities.
- (2) The regulations may specify circumstances in which a right or return is to be taken to be contingent, or not contingent, on the economic performance of an entity or a part of an entity's activities.
- (3) The regulations may provide that paragraph (1)(b) does not apply in the circumstances specified in the regulations.
- (4) The regulations may provide that an interest that:
  - (a) is covered by item 2 in the table in subsection 974-75(1) or paragraph 974-80(2)(a); and
  - (b) arises in the circumstances specified in the regulations;is not an *equity interest* because of:
  - (c) the limited extent to which the right or return that the interest carries is \*contingent on the economic performance of an entity or a part of the entity's activities; or
  - (d) the practical insignificance of the right or return that the interest carries being contingent on that performance.

### **974-90 Right or return at discretion of company or connected entity**

The regulations may specify circumstances in which a right, or the amount of a return, is to be taken to be *at the discretion* of a company or a \*connected entity of the company.

### **974-95 The equity interest**

- (1) If a \*scheme gives rise to an \*equity interest in a company because of an item of the table in subsection 974-75(1), the equity interest consists of the interest referred to in that item.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 974-100

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- (2) If 2 or more \*related schemes give rise to an \*equity interest in a company because of an item of the table in subsection 974-75(1), the equity interest consists of the combination of interests under the schemes that satisfy the requirements of that item.
- (3) Subsection 974-80(2) also provides that certain interests are \*equity interests in a company.
- (4) If the returns on a \*non-share equity interest in a company are payable to 2 or more entities:
  - (a) each entity is taken to be the holder of a non-share equity interest in the company; and
  - (b) each entity's non-share equity interest consists of the interests that:
    - (i) constitute the non-share equity interest; and
    - (ii) are held by that entity.
- (5) The company in which an \*equity interest exists is taken to be the issuer of the interest.

**Subdivision 974-D—Common provisions**

**Table of sections**

974-100	Treatment of convertible and converting interests
974-105	Effect of action taken in relation to interest arising from related schemes
974-110	Effect of material change
974-112	Determinations by Commissioner

**974-100 Treatment of convertible and converting interests**

- (1) If a \*debt interest is an \*interest that will or may convert into an \*equity interest, the conversion is taken, for the purposes of this Division to give rise to a new interest (and is not treated merely as a continuation of the debt interest).
- (2) If an \*equity interest is an \*interest that will or may convert into a \*debt interest, the conversion is taken, for the purposes of this Division to give rise to a new interest (and is not treated merely as a continuation of the equity interest).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **974-105 Effect of action taken in relation to interest arising from related schemes**

- (1) If:
- (a) a \*scheme, or schemes, give rise to a \*debt interest in an entity or an \*equity interest in a company; and
  - (b) the entity or company pays a return, or undertakes any other transaction, in respect of any of the following (the *component element*):
    - (i) the scheme; or
    - (ii) a part of the scheme; or
    - (iii) one of those schemes; or
    - (iv) a part of one of those schemes;

then, for the purposes of the provisions that subsection (2) covers, the return is taken to be paid, or the transaction to have been undertaken, in respect of the debt interest or equity interest and not in respect of the component element.

Example: Company A issues a convertible note to Company B. Company C, a connected entity of Company B, provides a binding collateral undertaking to Company A that Company B will exercise the option to convert the note into shares in Company A. The convertible note and the undertaking are related schemes that may give rise to an equity interest in Company A if their combined effect satisfies section 974-70. If so, the returns on the note are taken to be returns in respect of the equity interest.

- (2) This subsection covers:
- (a) the provisions of this Division (other than this section); and
  - (b) any other provision of this Act whose operation depends on an expression whose meaning is given by this Division.

### **974-110 Effect of material change**

*Change to existing scheme—general rule*

- (1) If:
- (a) a \*scheme or schemes give rise to a \*debt interest (or an \*equity interest) in a company; and
  - (b) the scheme, or one or more of the schemes, are subsequently changed; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(c) the scheme or schemes as they exist immediately after the change would give rise to an equity interest (or a debt interest) in the company if they came into existence when the change occurred; and

(d) subsection (1A) does not apply to the change;

this Division applies after the change as if the scheme or schemes as they exist immediately after the change came into existence when the change occurred.

Note 1: This will mean that the characterisation of the interest will change at that time.

Note 2: This section can apply to an interest a number of times so that, for example, an interest that is equity when issued may change to debt because of one subsequent change and then back to equity because of a later change.

Note 3: There will be an adjustment to the company's non-share capital account when the change occurs (see subsections 164-15(2) and 164-20(3)).

*Change to existing scheme—special rule for changing a related party at call etc. loan to a private company from equity to debt*

(1A) If:

- (a) a \*scheme takes the form of a loan that satisfies paragraphs 974-75(4)(a), (b) and (c); and
- (b) the scheme gives rise to an \*equity interest (disregarding the effect this subsection has on the characterisation of the interest because of the change referred to in paragraph (c) of this subsection); and
- (c) the scheme is subsequently changed; and
- (d) the change occurs in the period starting immediately after the end of a particular income year (the *year of effect*) and ending at the end of the earlier of the following days:
  - (i) the due date for lodgment of the company's \*income tax return for the year of effect;
  - (ii) the date of lodgment of the company's income tax return for the year of effect; and
- (e) the scheme, as it exists immediately after the change, would give rise to a \*debt interest in the company if the interest came into existence when the change occurred; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (f) the company is a \*private company in relation to the year of effect; and
- (g) subsection 974-75(6) does not apply in relation to the loan and the year of effect; and
- (h) the company elects that this subsection is to apply to the change;

this Division applies as if the scheme, as it exists immediately after the change, had come into existence at the start of the year of effect, and as if no other change of a kind referred to in subsection (1) had occurred in relation to the interest in the period commencing at the start of the year of effect and ending when the first-mentioned change was made.

Note 1: This will mean that:

- (a) the characterisation of the interest will change, with effect back to the start of the year of effect; and
- (b) that characterisation will not be affected by other changes that occurred after the start of the year of effect and before the change to which this subsection applies.

Note 2: This section can apply to an interest a number of times so that, for example, an interest that is an equity interest when issued may change to debt because of one subsequent change and then back to equity because of a later change.

Note 3: An adjustment to the company's non-share capital account will be taken to have occurred at the start of the year of effect (see subsection 164-20(3)).

(1B) An election for the purposes of paragraph (1A)(h):

- (a) must be in writing; and
- (b) can only be made in the period referred to in paragraph (1A)(d); and
- (c) cannot be revoked.

*Entering into a new related scheme*

(2) If:

- (a) a \*scheme or schemes give rise to a \*debt interest (or an \*equity interest) in a company; and
- (b) the company subsequently enters into, participates in or causes another entity to enter into or participate in a new \*related scheme; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the scheme or schemes, together with:
  - (i) the new related scheme; and
  - (ii) any other related scheme that the entity (or company) enters into, participates in or causes another entity to enter into or participate in before the new related scheme is entered into;would give rise to an equity interest (or a debt interest) in the company if they all came into existence when the new related scheme is entered into;

this Division applies after the new related scheme is entered into as if all the schemes referred to in paragraph (c) had come into existence when the new related scheme is entered into.

- Note 1: This will mean that the characterisation of the interest will change at that time.
- Note 2: This section can apply to an interest a number of times so that, for example, an interest that is equity when issued may change to debt because of one subsequent change and then back to equity because of a later change.
- Note 3: There will be an adjustment to the company's non-share capital account when the change occurs (see subsections 164-15(2) and 164-20(3)).

*All prior changes to be taken into account*

- (3) In applying paragraphs (1)(c), (1A)(e) and (2)(c) to the \*scheme or schemes, take into account:
  - (a) all changes to the scheme or schemes that occur before the change or before the new related scheme is entered into; and
  - (b) all \*related schemes entered into before the change or before the new related scheme is entered into; and
  - (c) all changes to related schemes referred to in paragraph (b) that occur before the change or before the new related scheme is entered into.

### **974-112 Determinations by Commissioner**

*Determinations covered by this section*

- (1) This section covers a determination by the Commissioner under any of the following provisions:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) subsection 974-15(4);
- (b) subsection 974-60(3), (4) or (5);
- (c) section 974-65;
- (d) subsection 974-70(4);
- (e) subsection 974-150(1).

*Determination on own initiative or on application*

- (2) The Commissioner may make a determination covered by this section:
  - (a) on his or her own initiative; or
  - (b) on an application made under subsection (3).

*Application for determination*

- (3) An entity may apply to the Commissioner for a determination covered by this section in relation to:
  - (a) an interest of which the entity is the issuer; or
  - (b) an interest of which the entity would be the issuer:
    - (i) if the determination were made; or
    - (ii) if the determination were not made.

Note: Paragraph (b) may apply, for example, if the effect of the determination applied for would be to allow, or to prevent, a number of related schemes giving rise to a debt interest or an equity interest.

- (4) The application:
  - (a) must be in writing; and
  - (b) must set out the grounds on which the applicant thinks the determination should be made; and
  - (c) must set out any information relevant to deciding whether to make the determination.

*Review of determinations*

- (5) A taxpayer who is dissatisfied with a determination covered by this section may object against the determination in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 974-E—Non-share distributions by a company

### Table of sections

974-115	Meaning of <i>non-share distribution</i>
974-120	Meaning of <i>non-share dividend</i>
974-125	Meaning of <i>non-share capital return</i>

### 974-115 Meaning of *non-share distribution*

A company makes a *non-share distribution* to you if:

- (a) you hold a \*non-share equity interest in the company; and
- (b) the company:
  - (i) distributes money to you; or
  - (ii) distributes other property to you; or
  - (iii) credits an amount to you;as the holder of that interest.

### 974-120 Meaning of *non-share dividend*

- (1) Subject to subsection (2), all \*non-share distributions are *non-share dividends*.
- (2) A \*non-share distribution is not a *non-share dividend* to the extent to which the company debits the distribution against:
  - (a) the company's \*non-share capital account; or
  - (b) the company's \*share capital account.

### 974-125 Meaning of *non-share capital return*

A *non-share capital return* is a \*non-share distribution to the extent to which it is not a \*non-share dividend.

## Subdivision 974-F—Related concepts

### Table of sections

974-130	Financing arrangement
974-135	Effectively non-contingent obligation
974-140	Ordinary debt interest

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- 974-145 Benchmark rate of return
- 974-150 Schemes
- 974-155 Related schemes
- 974-160 Financial benefit
- 974-165 Convertible and converting interests

### **974-130 Financing arrangement**

- (1) A \*scheme is a ***financing arrangement*** for an entity if it is entered into or undertaken:
  - (a) to raise finance for the entity (or a \*connected entity of the entity); or
  - (b) to fund another scheme, or a part of another scheme, that is a \*financing arrangement under paragraph (a); or
  - (c) to fund a return, or a part of a return, payable under or provided by or under another scheme, or a part of another scheme, that is a financing arrangement under paragraph (a).
- (2) The following are examples of \*schemes that are generally entered into or undertaken to raise finance:
  - (a) a bill of exchange;
  - (b) income securities;
  - (c) a \*convertible interest that will convert into an \*equity interest.

Note: Paragraph (a) is likely to be relevant for debt interests, paragraph (b) for equity interests and paragraph (c) for both.
- (3) The following are examples of \*schemes that are generally not entered into or undertaken to raise finance:
  - (a) a derivative that is used solely for managing financial risk;
  - (b) a contract for personal services entered into in the ordinary course of a business.

Note: These may be relevant for both debt interests and equity interests.
- (4) For the purposes of subsection (1), the following \*schemes are taken not to be entered into or undertaken to raise finance:
  - (a) a lease or bailment that satisfies all of the following:
    - (i) the property leased or bailed is not property to which Division 16D of Part III of the *Income Tax Assessment*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



*Act 1936* (arrangements relating to the use of property) applies;

- (ii) the lease or bailment is not a relevant agreement for the purposes of section 128AC of that Act (deemed interest in respect of hire-purchase and certain other arrangements);
  - (iii) the lease or bailment is not an arrangement to which Division 42A in Schedule 2E to that Act (leasing of luxury cars) applies;
  - (iv) the lease or bailment is not an arrangement to which Division 240 of Part 3-10 of this Act (hire-purchase arrangements treated as a sale and loan) applies;
  - (v) the lessee or bailee, or a \*connected entity of the lessee or bailee, is not to, and does not have an obligation (whether contingent or not) or a right to, acquire the leased or bailed property;
  - (vi) Division 250 of this Act does not apply to a person and the property leased or bailed;
- (b) a securities lending arrangement under section 26BC of the *Income Tax Assessment Act 1936*;
  - (c) a life insurance or general insurance contract undertaken as part of the issuer's ordinary course of business;
  - (d) a scheme for the payment of royalties (within the meaning of the *Income Tax Assessment Act 1936*) other than:
    - (i) a qualifying arrangement for the purposes of Division 16D of Part III of the *Income Tax Assessment Act 1936*; or
    - (ii) a relevant agreement for the purposes of section 128AC of that Act; or
    - (iii) a scheme or arrangement for the payment of royalties in relation to an asset if Division 250 of this Act applies to a person and the asset.

(5) The regulations may:

- (a) specify that particular \*schemes are not ***financing arrangements***; and
- (b) specify circumstances in which a scheme will not be a ***financing arrangement***.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **974-135 Effectively non-contingent obligation**

- (1) There is an *effectively non-contingent obligation* to take an action under a \*scheme if, having regard to the pricing, terms and conditions of the scheme, there is in substance or effect a non-contingent obligation (see subsections (3), (4) and (6)) to take that action.
- (2) Without limiting subsection (1), that subsection applies to:
  - (a) providing a \*financial benefit under the \*scheme; or
  - (b) terminating the scheme.
- (3) An obligation is *non-contingent* if it is not contingent on any event, condition or situation (including the economic performance of the entity having the obligation or a \*connected entity of that entity), other than the ability or willingness of that entity or connected entity to meet the obligation.
- (4) The existence of the right of the holder of an \*interest that will or may convert into an \*equity interest in a company to convert the interest does not of itself make the issuer's obligation to repay the investment not non-contingent.
- (5) An obligation to redeem a preference share is not contingent merely because there is a legislative requirement for the redemption amount to be met out of profits or a fresh issue of \*equity interests.
- (6) In determining whether there is in substance or effect a non-contingent obligation to take the action, have regard to the artificiality, or the contrived nature, of any contingency on which the obligation to take the action depends.

Note: The artificiality, or the contrived nature, of a contingency would tend to indicate that there is, in substance or effect, a non-contingent obligation to take that action.

- (7) An obligation of yours is not *effectively non-contingent* merely because you will suffer some detrimental practical or commercial consequences if you do not fulfil the obligation.

Note: For example, a contingent obligation to make payments in respect of an income security issued by an approved deposit-taking institution

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 974-140

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(ADI) is not effectively non-contingent merely because of the detrimental effect non-payment would have on the ADI's business.

- (8) The regulations may make further provisions relating to the following:
- (a) what constitutes a non-contingent obligation;
  - (b) what does not constitute a non-contingent obligation;
  - (c) what constitutes an \*effectively non-contingent obligation;
  - (d) what does not constitute an effectively non-contingent obligation.

**974-140 Ordinary debt interest**

- (1) A \*debt interest arising from a scheme is an *ordinary debt interest* if none of the obligations under the scheme is in substance or effect \*contingent on the economic performance of:
- (a) the issuer of the interest; or
  - (b) a \*connected entity; or
  - (c) a part of the operations of the issuer or a connected entity.
- (2) The regulations may specify rules for determining whether a \*debt interest is an \*ordinary debt interest.

**974-145 Benchmark rate of return**

- (1) The *benchmark rate of return* for an interest (the *test interest*) in an entity is the annually compounded internal rate of return on an \*ordinary debt interest that:
- (a) is issued, immediately before the test interest is issued, by the entity, or an equivalent entity, to an entity that is not a \*connected entity; and
  - (b) has a comparable maturity date; and
  - (c) is in the same currency; and
  - (d) is issued in the same market; and
  - (e) has the same credit status; and
  - (f) has the same degree of subordination to debts owed to the ordinary creditors of the issuer.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) If there is no interest that satisfies subsection (1), the **benchmark rate of return** for the test interest is the annually compounded internal rate of return on an interest that is closest to the test interest in the respects referred to in that subsection (adjusted appropriately to take account of the differences between that interest and the test interest).
- (3) The regulations may:
  - (a) specify the meaning to be given to an expression used in this section; or
  - (b) provide for a different method of determining the \*benchmark rate of return.

### **974-150 Schemes**

- (1) The Commissioner:
  - (a) may determine that what would otherwise be a single \*scheme is to be treated for the purposes of this Division as 2 or more separate schemes; and
  - (b) may determine that the schemes are to be taken for the purposes of this Division to not be \*related schemes.
- (2) Without limiting subsection 974-10(5), the Commissioner must, in exercising the power to make a determination under subsection (2), have regard to the following:
  - (a) the purpose of the \*scheme (considered both as a whole and in terms of its individual components);
  - (b) the effects of the scheme and each of its components (considered both as a whole and in terms of its individual components);
  - (c) the rights and obligations of the parties to the scheme (considered both as a whole and in relation to its individual components);
  - (d) whether the scheme (when considered as a whole or in terms of its individual components) provides the basis for, or underpins, an interest issued to investors with the expectation that the interest can be assigned to other investors;
  - (e) whether the scheme (when considered as a whole or in terms of its individual components) comprises a set of rights and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- obligations issued to investors with the expectation that it can be assigned to other investors;
- (f) any other relevant circumstances.
- (3) The regulations:
- (a) may provide that, in the circumstances specified in the regulations, what would otherwise be a single \*scheme is to be treated for the purposes of this Division as 2 or more separate schemes; and
- (b) may provide that the schemes are to be taken for the purposes of this Division to not be \*related schemes.

### **974-155 Related schemes**

- (1) Subject to subsection (3), 2 \*schemes are **related** to one another if they are related to one another in any way.
- (2) Without limiting subsection (1), 2 \*schemes are **related** to each other if:
- (a) the schemes are based on stapled instruments; or
- (b) one of the schemes would, from a commercial point of view, be unlikely to be entered into unless the other scheme was entered into; or
- (c) one of the schemes depends for its effect on the operation of the other scheme; or
- (d) one scheme complements or supplements the other; or
- (e) there is another scheme to which both the schemes are related because of a previous application or applications of this subsection.
- (3) Two \*schemes are not **related** to one another merely because:
- (a) one refers to the other; or
- (b) they have a common party.
- (4) The regulations may specify circumstances in which 2 \*schemes:
- (a) are taken to be related to one another; or
- (b) are taken not to be related to one another.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **974-160 Financial benefit**

(1) In this Act:

***financial benefit***:

- (a) means anything of economic value; and
  - (b) includes property and services; and
  - (c) includes anything that regulations made for the purposes of subsection (3) provide is a financial benefit; even if the transaction that confers the benefit on an entity also imposes an obligation on the entity.
- (2) In applying subsection (1), benefits and obligations are to be looked at separately and not set off against each other.
- (3) The regulations may provide that a thing specified in the regulations is a ***financial benefit*** for the purposes of this Act.

### **974-165 Convertible and converting interests**

An interest (the ***first interest***) is an ***interest that will or may convert into another interest*** (the ***second interest***) if:

- (a) the first interest, or a part of the first interest, must be or may be converted into the second interest; or
- (b) the first interest, or a part of the first interest, must be or may be redeemed, repaid or satisfied by:
  - (i) the issue or transfer of the second interest (whether to the holder of the first interest or to some other person); or
  - (ii) the acquisition of the second interest (whether by the holder of the first interest or by some other person); or
  - (iii) the application in or towards paying-up (in whole or in part) the balance unpaid on the second interest (whether the second interest is to be issued to the holder of the first interest or to some other person); or
- (c) the holder of the first interest has, or is to have, a right or option to have allotted or transferred to the holder or to some other person, or for the holder or some other person otherwise to acquire:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) the second interest; or
- (ii) a right or option to acquire the second interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 975—Concepts about companies**

### **Table of Subdivisions**

- 975-A General
- 975-G What is a company's share capital account?
- 975-W Wholly-owned groups of companies

### **Subdivision 975-A—General**

#### **Table of sections**

- 975-150 *Position to affect rights* in relation to a company
- 975-155 When is an entity a *controller* (for *CGT purposes*) of a company?
- 975-160 When an entity has an *associate-inclusive control interest*

### **975-150 *Position to affect rights in relation to a company***

- (1) A person is ***in a position to affect rights*** of a company in relation to another company if the person has a right, power or option:
  - (a) to acquire those rights from one or other of those companies;  
or
  - (b) to do something that would prevent one or other of those companies from exercising its rights for its own benefit, or from receiving any benefit arising from having those rights.
- (2) It does not matter whether the person has the right, power or option because of the \*constitution of one or other of those companies, any agreement or otherwise.
- (3) However, the right, power or option of an owner of \*ownership interests in the \*head entity of a \*demerger group to \*acquire, under a \*demerger, ownership interests in the \*demerged entity is not a right, power or option covered by subsection (1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**975-155 When is an entity a controller (for CGT purposes) of a company?**

An entity (the *first entity*) is a *controller (for CGT purposes)* of a company if:

- (a) the first entity has an \*associate-inclusive control interest in the company of at least 50%; or
- (b) the first entity has an associate-inclusive control interest in the company of at least 40% and entities other than the first entity or associates of the first entity do not control the company; or
- (c) the first entity controls the company (alone or with an \*associate).

**975-160 When an entity has an associate-inclusive control interest**

- (1) An entity has an *associate-inclusive control interest* in a company in the circumstances set out in Subdivision A of Division 3 of Part X of the *Income Tax Assessment Act 1936*.
- (2) However, in working out whether an entity has an associate-inclusive control interest of a particular percentage for the purposes of section 975-155, there are these modifications to the way Part X of that Act operates:
  - (a) that Part is applied to any company, including one acting as a trustee; and
  - (b) subsection 349(4) applies in all cases in working out which entity holds a direct control interest or a control tracing interest equal to 100%; and
  - (c) subsections 350(6) and (7) and 355(1) are ignored; and
  - (d) despite subsection 352(2), an interposed entity may be taken into account in calculating an indirect control interest if the interposed entity is:
    - (i) a company of which the first entity or an \*associate is a controller; or
    - (ii) a partnership or a trust; and
  - (e) section 354 applies as if it referred to partnerships rather than CFP's; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(f) section 355 applies as if it referred to trusts rather than CFT's.

- Note 1: Part X of the *Income Tax Assessment Act 1936* defines company to exclude a company in the capacity of a trustee.
- Note 2: The terms direct control interest and control tracing interest are relevant to working out associate-inclusive control interests in a company: see sections 350, 351, 353, 354 and 355 of that Act.
- Note 3: Under subsection 349(4) of that Act, if 2 or more entities would have a direct control interest or a control tracing interest in a company or trust equal to 100%, only one of them holds the interest.
- Note 4: Subsections 350(6) and (7) of that Act deal with direct control interests in a company. They deal with interests held by Australian entities. Under subsection 355(1), certain entities are taken to hold a control tracing interest in a trust equal to 100%.
- Note 5: Paragraphs (2)(d), (e) and (f) of this section are necessary because Part X of the *Income Tax Assessment Act 1936* applies only to CFE's (which comprise CFC's, CFP's and CFT's).

### **Subdivision 975-G—What is a company's share capital account?**

#### **Table of sections**

975-300 Meaning of *share capital account*

#### **975-300 Meaning of *share capital account***

- (1) A company's *share capital account* is:
- (a) an account that the company keeps of its share capital; or
  - (b) any other account (whether or not called a share capital account) that satisfies the following conditions:
    - (i) the account was created on or after 1 July 1998;
    - (ii) the first amount credited to the account was an amount of share capital.
- (2) If a company has more than one account covered by subsection (1), the accounts are taken, for the purposes of this Act, to be a single account.

Note: Because the accounts are taken to be a single account (the *combined share capital account*), tainting of any of the accounts has the effect of tainting the combined share capital account.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) However, if a company's \*share capital account is \*tainted, that account is taken not to be a share capital account for the purposes this Act, other than:
- (a) subsection 118-20(6); and
  - (b) Division 197; and
  - (ba) paragraph 202-45(e); and
  - (c) the definition of *paid-up share capital* in subsection 6(1) of the *Income Tax Assessment Act 1936*; and
  - (d) subsection 44(1B) of the *Income Tax Assessment Act 1936*; and
  - (f) subsection 159GZZZQ(5) of the *Income Tax Assessment Act 1936*.

### **Subdivision 975-W—Wholly-owned groups of companies**

#### **Table of sections**

975-500	Wholly-owned groups
975-505	What is a 100% subsidiary?

#### **975-500 Wholly-owned groups**

Two companies are members of the same *wholly-owned group* if:

- (a) one of the companies is a \*100% subsidiary of the other company; or
- (b) each of the companies is a \*100% subsidiary of the same third company.

#### **975-505 What is a 100% subsidiary?**

- (1) A company (the *subsidiary company*) is a *100% subsidiary* of another company (the *holding company*) if all the \*shares in the subsidiary company are beneficially owned by:
- (a) the holding company; or
  - (b) one or more 100% subsidiaries of the holding company; or
  - (c) the holding company and one or more 100% subsidiaries of the holding company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) However, the subsidiary company is *not* a **100% subsidiary** of the holding company if a person is <sup>\*</sup>in a position to affect rights, in relation to the subsidiary company, of:
- (a) the holding company; or
  - (b) a 100% subsidiary of the holding company.
- (3) The subsidiary company is also not a **100% subsidiary** of the holding company if at some future time a person will be <sup>\*</sup>in a position to affect rights as described in subsection (2).
- (4) A company (other than the subsidiary company) is a **100% subsidiary** of the holding company if, and only if:
- (a) it is a 100% subsidiary of the holding company; or
  - (b) it is a 100% subsidiary of a 100% subsidiary of the holding company;
- because of any other application or applications of this section.

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<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 977—Realisation events, and the gains and losses they realise for income tax purposes

### Table of sections

#### CGT assets

977-5	Realisation event
977-10	Loss realised for income tax purposes
977-15	Gain realised for income tax purposes

#### Trading stock

977-20	Realisation event
977-25	Disposal of trading stock: loss realised for income tax purposes
977-30	Ending of an income year: loss realised for income tax purposes
977-35	Disposal of trading stock: gain realised for income tax purposes
977-40	Ending of an income year: gain realised for income tax purposes

#### Revenue assets

977-50	Meaning of <i>revenue asset</i>
977-55	Loss or gain realised for income tax purposes

### CGT assets

#### 977-5 Realisation event

For a \*CGT asset, a *realisation event* is a \*CGT event (except CGT event E4 and CGT event G1).

#### 977-10 Loss realised for income tax purposes

- (1) A loss is *realised for income tax purposes* by a \*realisation event that happens to a \*CGT asset if, and only if, an entity makes a \*capital loss from the event. That capital loss is the loss realised by the event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) If a provision of this Act reduces the loss that would, apart from that provision, be \*realised for income tax purposes by the event, the \*capital loss is reduced by the same amount.

### **977-15 Gain realised for income tax purposes**

- (1) A gain is *realised for income tax purposes* by a \*realisation event that happens to a \*CGT asset if, and only if, an entity makes a \*capital gain from the event. That capital gain is the gain that is realised by the event.
- (2) If a provision of this Act reduces the gain that would, apart from that provision, be \*realised for income tax purposes by the event, the \*capital gain is reduced by the same amount.

## **Trading stock**

### **977-20 Realisation event**

For an item of \*trading stock, a *realisation event* is a disposal of the item or the ending of an income year.

### **977-25 Disposal of trading stock: loss realised for income tax purposes**

- (1) A loss is *realised for income tax purposes* by a \*realisation event consisting of disposal of an item of \*trading stock if, and only if:
- (a) the item is disposed of, for less than its \*cost, in the same income year in which it became part of the trading stock on hand of the entity disposing of it; or
  - (b) the item is disposed of in a later income year for less than its \*value as trading stock of the entity on hand at the start of the later income year.
- (2) The loss that is realised for income tax purposes by the event is the difference between the amount included in the entity's assessable income because of the disposal and:
- (a) the amount that the entity can deduct for the item's \*cost; or
  - (b) the item's \*value as \*trading stock on hand at the start of the later income year;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 977-30

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as appropriate.

- (3) If a provision of this Act reduces the loss that would, apart from that provision, be \*realised for income tax purposes by the event:
- (a) the amount that the entity can deduct for the item's \*cost; or
  - (b) the item's \*value as trading stock on hand at the start of the later income year;
- as appropriate, is reduced by the same amount.

**977-30 Ending of an income year: loss realised for income tax purposes**

- (1) A loss is *realised for income tax purposes* by a \*realisation event that happens to an item of \*trading stock and consists of the ending of an income year if, and only if, the \*value of the item, as trading stock of an entity on hand at the end of that income year, is less than:
- (a) its \*cost, if it became part of the trading stock on hand of the entity during that income year; or
  - (b) otherwise, its value as trading stock of the entity on hand at the start of that income year.
- (2) The loss that is realised for income tax purposes by the event is the difference between the \*value of the item, as \*trading stock of the entity on hand at the end of that income year and:
- (a) the amount that the entity can deduct for the item's \*cost; or
  - (b) the item's \*value as trading stock on hand at the start of the income year;
- as appropriate.
- (3) If a provision of this Act reduces the loss that would, apart from that provision, be \*realised for income tax purposes by the event:
- (a) the amount that the entity can deduct for the item's \*cost; or
  - (b) the item's \*value as \*trading stock on hand at the start of the income year;
- as appropriate, is reduced by the same amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**977-35 Disposal of trading stock: gain realised for income tax purposes**

- (1) A gain is *realised for income tax purposes* by a \*realisation event consisting of disposal of an item of \*trading stock if, and only if:
  - (a) the item is disposed of, for more than its \*cost, in the same income year in which it became part of the trading stock on hand of the entity disposing of it; or
  - (b) the item is disposed of in a later income year for more than its \*value as trading stock of the entity on hand at the start of the later income year.
- (2) The gain that is realised for income tax purposes by the event is the difference between the amount included in the entity's assessable income because of the disposal and:
  - (a) the amount that the entity can deduct for the item's \*cost; or
  - (b) the item's \*value as trading stock on hand at the start of the later income year;as appropriate.
- (3) If a provision of this Act reduces the gain that would, apart from that provision, be \*realised for income tax purposes by the event, the amount that is included in the assessable income of the entity because of the disposal is reduced by the same amount.

**977-40 Ending of an income year: gain realised for income tax purposes**

- (1) A gain is *realised for income tax purposes* by a \*realisation event that happens to an item of \*trading stock and consists of the ending of an income year if, and only if, the \*value of the item, as trading stock of an entity on hand at the end of that income year, is greater than:
  - (a) its \*cost, if it became part of the trading stock on hand of the entity during that income year; or
  - (b) otherwise, its value as trading stock of the entity on hand at the start of that income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 977-50

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- (2) The gain that is realised for income tax purposes by the event is the difference between the \*value of the item, as \*trading stock of the entity on hand at the end of that income year and:
- (a) the amount that the entity can deduct for the item's \*cost; or
  - (b) the item's \*value as trading stock on hand at the start of the income year;
- as appropriate.
- (3) If a provision of this Act reduces the gain that would, apart from that provision, be \*realised for income tax purposes by the event:
- (a) the amount that the entity can deduct for the item's \*cost; or
  - (b) the item's \*value as \*trading stock on hand at the start of the income year;
- as appropriate, is increased by the same amount.

## Revenue assets

### 977-50 Meaning of *revenue asset*

A \*CGT asset is a *revenue asset* if, and only if:

- (a) the profit or loss on your disposing of the asset, ceasing to own it, or otherwise realising it, would be taken into account, in calculating your assessable income or \*tax loss, otherwise than as a \*capital gain or \*capital loss; and
- (b) the asset is neither \*trading stock nor a \*depreciating asset.

### 977-55 Loss or gain realised for income tax purposes

For a \*revenue asset:

- (a) disposing of, ceasing to own, or otherwise realising, the asset is a *realisation event*; and
- (b) a loss is *realised for income tax purposes* by the \*realisation event if, and only if, there is a loss on the event; and
- (c) a gain is *realised for income tax purposes* by the realisation event if, and only if, there is a profit on the event; and
- (d) the loss or profit on the event is the loss or gain realised for income tax purposes; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (e) if a provision of this Act reduces the loss or gain that would, apart from that provision, be realised for income tax purposes by the event, the loss or profit to be taken into account in calculating your assessable income or \*tax loss is reduced by the same amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 976—Imputation

### Table of sections

976-1	Franked part of a distribution
976-5	Unfranked part of a distribution
976-10	The part of a distribution that is franked with an exempting credit
976-15	The part of a distribution that is franked with a venture capital credit

### 976-1 Franked part of a distribution

The *franked part* of a \*distribution is an amount worked out using the formula:

$$\text{*Franking credit on the distribution} \times \frac{1 - \text{*Corporate tax rate}}{\text{Corporate tax rate}}$$

### 976-5 Unfranked part of a distribution

The *unfranked part* of a \*distribution is the amount that is left after deducting the \*franked part of the distribution from the total distribution.

### 976-10 The part of a distribution that is franked with an exempting credit

The part of a distribution that is franked with an exempting credit is worked out using the formula:

$$\text{*Exempting credit on the distribution} \times \frac{1 - \text{*Corporate tax rate}}{\text{Corporate tax rate}}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**976-15 The part of a distribution that is franked with a venture capital credit**

The part of a distribution that is franked with a venture capital credit is worked out using the formula:

$$\text{*Venture capital credit on the distribution} \times \frac{1 - \text{*Corporate tax rate}}{\text{Corporate tax rate}}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Part 6-5—Dictionary definitions

### Division 995—Definitions

#### 995-1 Definitions [see Notes 2 and 3]

- (1) In this Act, except so far as the contrary intention appears:

**4% manner** has the meaning given by section 43-145.

**70% DFE rule** has the meaning given by section 394-35.

**95% services indirect value shift** has the meaning given by section 727-700.

**100% subsidiary** has the meaning given by section 975-505.

**165-CC tagged asset** has the meaning given by section 715-30.

**170-D deferred loss** has the meaning given by section 715-310.

**AAT** means the Administrative Appeals Tribunal.

**ABN** has the meaning given by the *A New Tax System (Australian Business Number) Act 1999*.

**abnormal trading** has the meaning given by Subdivision 960-H.

**Aboriginal** has the meaning given by section 128U of the *Income Tax Assessment Act 1936*.

**above-average special professional income** has the meaning given by section 405-15.

**acceptable amount** of an instalment for an \*instalment quarter has the meaning given by section 45-232 in Schedule 1 to the *Taxation Administration Act 1953*.

**accountable membership interest** has the meaning given by section 208-30.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***accountable partial interest*** has the meaning given by section 208-35.

***accounting standards*** has the same meaning as in the *Corporations Act 2001*.

***accrued leave transfer payment*** has the meaning given by subsection 26-10(2).

***accumulated HELP debt*** has the meaning given by section 140-25 of the *Higher Education Support Act 2003*.

***acquire:***

- (a) a \*CGT asset: you ***acquire*** a CGT asset (in its capacity as a CGT asset) in the circumstances and at the time worked out under Division 109 (including under a provision listed in Subdivision 109-B); and

Note: A CGT asset acquired before 20 September 1985 may be treated as having been acquired on or after that day: see, for example, Division 149.

- (b) an item of \*intellectual property: an entity does not ***acquire*** an item of intellectual property merely because a licence relating to a patent, design or copyright is surrendered to the entity.

***acquisition time*** has the meaning given by section 58-5.

***acquisition year*** has the meaning given by section 58-5.

***active asset*** has the meaning given by section 152-40.

***active foreign business asset*** of a company that is a foreign resident has the meaning given by section 768-540.

***active foreign business asset percentage*** of a company has the meaning given by section 768-510.

***active participant:***

- (a) in a \*scheme under which there is a \*direct value shift, has the meaning given by subsection 725-65(2); and
- (b) in a \*scheme under which there is an \*indirect value shift, has the meaning given by subsection 727-530(3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**actuary** means a Fellow or Accredited Member of the Institute of Actuaries of Australia.

**additional investment requirements for ESVCLPs** has the meaning given by subsection 118-428(1).

**ADI** (authorised deposit-taking institution) means a body corporate that is an ADI for the purposes of the *Banking Act 1959*.

**ADI equity capital** of an entity at a particular time means the total of the following:

- (a) all the entity's \*equity capital at that time; and
- (b) the total value of all the \*debt interests \*issued by the entity that satisfy all of the following:
  - (i) at that time, the interests are \*on issue and have been on issue for 90 days or more;
  - (ii) none of the interests gives rise to any cost, at any time, that is covered by paragraph 820-40(1)(a).

A debt interest is treated as having satisfied subparagraph (b)(i) at that time if it was on issue at that time, and the total period for which it remains on issue is 90 days or more.

**adjustable value:**

- (a) of a \*depreciating asset, has the meaning given by section 40-85; and
- (ba) of an asset, for the purposes of determining the consequences of a choice under any of sections 715-100, 715-105, 715-125, 715-130 and 715-185, has the meaning given by section 715-145; and
- (b) of an \*equity or loan interest:
  - (i) for the purposes of determining the consequences of a \*direct value shift—has the meaning given by sections 725-240, 725-315 and 725-325; and
  - (ii) for the purposes of determining the consequences of an \*indirect value shift—has the meaning given by sections 727-830, 727-835 and 727-840.

**adjustable value method** means the method (for determining the effect of \*indirect value shifts) for which Subdivision 727-H provides.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**adjusted assessed tax** has the meaning given by section 45-375 in Schedule 1 to the *Taxation Administration Act 1953*.

**adjusted assessed taxable income** has the meaning given by section 45-370 in Schedule 1 to the *Taxation Administration Act 1953*.

**adjusted available frankable profits** has the meaning given by subsection 215-25(2).

**adjusted average debt** has the meaning given by sections 820-85, 820-120, 820-185 and 820-225.

**adjusted average equity capital** has the meaning given by sections 820-300, 820-330, 820-589 and 820-613.

**adjusted on-lent amount** has the meaning given by sections 820-100, 820-200 and 820-210.

**adjusted tax** on \*adjusted taxable income or on \*adjusted withholding income has the meaning given by section 45-340 in Schedule 1 to the *Taxation Administration Act 1953*.

**adjusted taxable income** has the meaning given by sections 45-330 and 45-480 in Schedule 1 to the *Taxation Administration Act 1953*.

**adjusted unrealised loss** at an \*alteration time for a company has the meaning given by section 165-115U.

**adjusted withholding income** has the meaning given by sections 45-335 and 45-485 in Schedule 1 to the *Taxation Administration Act 1953*.

**adopted child** of a person means someone the person has adopted:

- (a) under a \*State law or \*Territory law about adoption of children; or
- (b) under a \*foreign law about adoption of children, if the adoption would be recognised as valid under a State law or Territory law.

**affected interest:**

- (a) in the \*losing entity for an \*indirect value shift, has the meaning given by section 727-460; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 995-1

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- (b) in the \*gaining entity for an indirect value shift, has the meaning given by section 727-465.

***affected owner:***

- (a) of \*down interests, has the meaning given by section 725-80;  
and  
(b) of \*up interests, has the meaning given by section 725-85;  
and  
(c) for an \*indirect value shift, has the meaning given by section 727-530.

***affiliate*** has the meaning given by section 328-130.

***AFOF*** means an \*Australian venture capital fund of funds.

***agent:*** this Act applies to some entities that are not agents in the same way as it applies to agents: see section 960-105.

***aggregated turnover*** has the meaning given by section 328-115.

***alienated personal services payment*** has the meaning given by section 13-10 in Schedule 1 to the *Taxation Administration Act 1953*.

***All Groups Consumer Price Index number*** means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician.

***allocable cost amount*** has the meaning given by section 705-60 and subsection 711-20(1).

***allocated annuity*** means an \*immediate annuity that satisfies the requirements of subregulation 1.05(4) of the Superannuation Industry (Supervision) Regulations.

***allocated pension*** means a \*current pension that satisfies the requirements of subregulation 1.06(4) of the Superannuation Industry (Supervision) Regulations.

***allowable OB deduction*** has the meaning given by subsection 121EF(2) of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***alteration time:***

- (a) for a company has the meaning given by sections 165-115L, 165-115M, 165-115N, 165-115P, 165-115Q, 715-245, 715-250 and 719-725; and
- (b) for a trust, has the meaning given by section 715-270.

***amount*** includes a nil amount.

***amount required to be withheld*** by an entity from a \*withholding payment means:

- (a) the amount that the entity must withhold from the payment under Division 12 in Schedule 1 to the *Taxation Administration Act 1953*; or
- (aa) the amount that Division 13 in that Schedule requires the entity to pay to the Commissioner in respect of the \*alienated personal services payment to which the withholding payment relates; or
- (b) the amount that Division 14 in that Schedule requires the entity to pay to the Commissioner in respect of the \*non-cash benefit of which the withholding payment consists;

or that amount as varied by the Commissioner under section 15-15 in the Schedule.

***amount withheld*** by an entity from a \*withholding payment means:

- (a) an amount that the entity withheld from the payment under Division 12 in Schedule 1 to the *Taxation Administration Act 1953*; or
- (aa) an amount that the entity paid to the Commissioner under Division 13 in that Schedule in respect of the \*alienated personal services payment to which the withholding payment relates; or
- (b) an amount that the entity paid to the Commissioner under Division 14 in that Schedule in respect of the \*non-cash benefit of which the withholding payment consists.

***ancillary mining activities*** has the meaning given by section 40-740.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**annual instalment component** of your \*tax position has the meaning given by section 45-610 in Schedule 1 to the *Taxation Administration Act 1953*.

**annual payer** means an entity that has become an annual payer under section 45-140 in Schedule 1 to the *Taxation Administration Act 1953*, and has not since ceased to be an annual payer under section 45-150 or 45-155 or former section 45-180 in that Schedule.

**annual tax period election** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

**annual turnover** has the meaning given by section 328-120.

**annuity** includes:

- (a) an annuity, within the meaning of the *Superannuation Industry (Supervision) Act 1993*; or
- (b) a pension, within the meaning of the *Retirement Savings Accounts Act 1997*.

**annuity instrument** means an instrument that secures the grant of an annuity (whether dependent on the life of an individual or not).

**apartment building** has the meaning given by section 43-95.

**applicable functional currency** has the meaning given by section 960-70.

**applicable fund earnings** has the meaning given by section 305-75.

**apportionable deductions** are:

- (a) amounts deducted or deductible under section 25-75 (which provides a deduction for rates and land tax); or
- (b) amounts deducted or deductible under section 30-15 because of item 1, 2, 7 or 8 in the table in that section, except amounts deducted or deductible for gifts of trading stock in cases where:
  - (i) the gifts are covered by section 70-90 (which has the effect that the giver's assessable income includes the market value of the gift); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) no election has been made, or is made, under Subdivision 385-E (which allows the giver to choose to spread the market value of a gift of live stock over the giver's assessable income for 5 income years or to reduce the amount included in the giver's assessable income by the cost of replacement live stock).

***approved child care*** has the meaning given by section 61-475.

***approved child care fees*** has the meaning given by section 61-490.

***approved deposit fund*** has the meaning given by section 10 of the *Superannuation Industry (Supervision) Act 1993*.

***approved deposit fund payment*** has the meaning given by section 307-5.

***approved form*** has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

***approved investment plan***, of an \*ESVCLP, has the meaning given by subsection 13-15(2) of the *Venture Capital Act 2002*.

***approved management plan*** for land has the meaning given by section 40-640.

***approved occupational clothing guidelines*** has the meaning given by subsection 34-55(1).

***approved stock exchange*** has the meaning given by section 470 of the *Income Tax Assessment Act 1936*.

**APRA** means the Australian Prudential Regulation Authority.

***arm's length***: in determining whether parties deal at ***arm's length***, consider any connection between them and any other relevant circumstance.

***arm's length capital amount***:

- (a) for an \*outward investing entity (ADI)—has the meaning given by section 820-315; and
- (b) for an \*inward investing entity (ADI)—has the meaning given by section 820-410.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***arm's length debt amount:***

- (a) for an \*outward investing entity (non-ADI)—has the meaning given by section 820-105; and
- (b) for an \*inward investing entity (non-ADI)—has the meaning given by section 820-215.

***arrangement*** means any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings.

***arrangement payment*** has the meaning given by section 240-65.

***arrangement payment period*** has the meaning given by section 240-70.

***arrangement period*** for a \*tax preferred use of an asset has the meaning given by section 250-65.

***artistic support*** has the meaning given by subsection 405-25(5).

***Arts Minister*** means the Minister administering the *Film Licensed Investment Company Act 2005*.

***Arts Secretary*** means the Secretary of the Department that administers the *National Gallery Act 1975*.

***artwork*** means:

- (a) a painting, sculpture, drawing, engraving or photograph; or
- (b) a reproduction of such a thing; or
- (c) property of a similar description or use.

***assessable film income*** has the meaning given by section 375-805.

***assessable income*** has the meaning given by sections 6-5, 6-10, 6-15, 17-10 and 17-30.

For the effect of GST-related amounts on assessable income, see Division 17.

Note: For income years before 1997-98, ***assessable income*** has the meaning given by section 6-3 of the *Income Tax (Transitional Provisions) Act 1997*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**assessable non-primary production income** has the meaning given by subsection 392-85(2).

**assessable primary production income** has the meaning given by subsection 392-80(2).

**assessable professional income** has the meaning given by subsection 405-20(1).

**assessable recoupment** has the meaning given by section 20-20.

**assessment**, in relation to a \*tax-related liability, has the meaning given by a \*taxation law that provides for the assessment of the amount of the liability.

Note: The table lists provisions of taxation laws that define **assessment**.

<b>Taxation laws that define assessment</b>		
<b>Item</b>	<b>Taxation law</b>	<b>Provision</b>
1	<i>Income Tax Assessment Act 1936</i>	subsection 6(1)
5	<i>Fringe Benefits Tax Assessment Act 1986</i>	subsection 136(1)
10	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	section 2
15	<i>Superannuation Guarantee (Administration) Act 1992</i>	section 6
20	<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>	section 43
25	<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997</i>	section 38
30	<i>Termination Payments Tax (Assessment and Collection) Act 1997</i>	section 31

**assessment day** for an income year of a \*life insurance company has the meaning given by section 219-45.

**asset-based income tax regime** has the meaning given by section 830-105.

**asset included in the total assets** of a company that is a foreign resident has the meaning given by section 768-545.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**associate** has the meaning given by section 318 of the *Income Tax Assessment Act 1936*.

Note: Under section 87-35, Australian government agencies, and certain parts of Australian governments and authorities, are not treated as associates for the purposes of ascertaining whether an entity is conducting a personal services business.

**associated government entity** means:

- (a) for the Commonwealth—each authority of the Commonwealth; or
- (b) for an authority of the Commonwealth—each other authority of the Commonwealth; or
- (c) for a State—each authority of the State; or
- (d) for an authority of a State—each other authority of the State; or
- (e) for a Territory—each authority of the Territory; or
- (f) for an authority of a Territory—each other authority of the Territory.

**associate entity** has the meaning given by section 820-905.

**associate entity debt** has the meaning given by section 820-910.

**associate entity equity** has the meaning given by section 820-915.

**associate entity excess amount** has the meaning given by section 820-920.

**associate-inclusive control interest** in a company has the meaning given by section 975-160.

**associate interest** has the meaning given by section 820-905.

**at risk** has the meaning given by section 118-430.

**attributable income** has the meaning given by Division 7 of Part X of the *Income Tax Assessment Act 1936*.

**attributable taxpayer** has the meaning given by Part X of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**attribution percentage:**

- (a) in relation to a \*CFC or a \*CFT—has the meaning given by Part X of the *Income Tax Assessment Act 1936*; and
- (b) in relation to a \*FIF that is a company—has the meaning given by section 581 of that Act.

**auditing standard** has the same meaning as in the *Corporations Act 2001*.

**Australian Business Register** means the Australian Business Register established and maintained under the *A New Tax System (Australian Business Number) Act 1999*.

**Australian Business Registrar** means the Registrar of the \*Australian Business Register.

**Australian controlled foreign entity** has the meaning given by section 820-745.

**Australian controller:**

- (a) of a \*controlled foreign company mentioned in paragraph 820-745(a)—has the meaning given by section 820-750; and
- (b) of a \*controlled foreign trust—has the meaning given by section 820-755; and
- (c) of a \*controlled foreign corporate limited partnership—has the meaning given by section 820-760.

**Australian corporate tax entity:** an entity is an **Australian corporate tax entity** at a particular time if the entity is:

- (a) a \*corporate tax entity at that time; and
- (b) for a company or a \*corporate limited partnership—an Australian resident at that time; and
- (c) for a \*corporate unit trust or a \*public trading trust—a \*resident unit trust for the income year in which that time occurs.

**Australian entity** has the same meaning as in Part X of the *Income Tax Assessment Act 1936*.

**Australian financial services licence** has the meaning given by section 761A of the *Corporations Act 2001*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 995-1

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**Australian fund** has the meaning given by section 74 of the *Life Insurance Act 1995*.

**Australian government agency** means:

- (a) the Commonwealth, a State or a Territory; or
- (b) an authority of the Commonwealth or of a State or a Territory.

**Australian law** means a \*Commonwealth law, a \*State law or a \*Territory law.

**Australian legislature** means:

- (a) the Parliament of the Commonwealth of Australia; or
- (b) the Parliament of a State; or
- (c) the Legislative Assembly for the Australian Capital Territory; or
- (d) the Legislative Assembly of the Northern Territory of Australia.

**Australian/overseas fund** has the meaning given by section 74 of the *Life Insurance Act 1995*.

**Australian permanent establishment**, of an entity, means a \*permanent establishment of the entity that is in Australia.

**Australian resident** means a person who is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*.

**Australian source**: \*ordinary income or \*statutory income has an Australian source if, and only if, it is \*derived from a source in Australia for the purposes of the *Income Tax Assessment Act 1936*.

**Australian superannuation fund** has the meaning given by section 295-95.

**Australian trust** has the same meaning as in Part X of the *Income Tax Assessment Act 1936*.

**Australian venture capital fund of funds** has the meaning given by subsection 118-410(3).

**available expense** has the meaning given by section 175-30.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**available fraction** for a \*bundle of losses has the meaning given by sections 707-320, 719-310 and 719-315.

**available frankable profits** has the meaning give by section 215-20 and affected by subsection 215-25(1).

**available income** has the meaning given by section 175-30.

**available loss exposure amount** has the meaning given by paragraph 830-50(1)(a).

**average equity capital** has the meaning given by sections 820-395, 820-420 and 820-615.

**average income** has the meaning given in subsection 392-45(1).

**average taxable professional income** has the meaning given by subsections 405-50(1) and (2).

**averaging adjustment** has the meaning given in section 392-75.

**averaging component** has the meaning given in subsection 392-90(1).

**award transport payment** has the meaning given by section 900-220.

**balancing adjustment event** has the meaning given by section 40-295.

**BAS amounts** means any debts or credits that arise directly under the \*BAS provisions.

Note: BAS stands for Business Activity Statement.

**base assessment** has the meaning given by sections 45-320 and 45-470 in Schedule 1 to the *Taxation Administration Act 1953*.

**base interest rate** has the meaning given by section 8AAD of the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 995-1

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**base penalty amount:** the base penalty amount for calculating the amount of an administrative penalty is worked out under the relevant provision in this table:

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<b>Base penalty amount</b>		
<b>Item</b>	<b>For a penalty for this:</b>	<b>See:</b>
1	False or misleading statement Position not reasonably arguable	Section 284-90 in Schedule 1 to the <i>Taxation Administration Act 1953</i>
2	*Schemes	Section 284-160 in that Schedule
3	Failure to lodge returns etc.	Section 286-80 in that Schedule

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**base year:**

- (a) for an entitlement to a \*tax offset under Subdivision 61-I—has the meaning given by sections 61-430 and 61-450; and
- (b) otherwise—has the meaning given by sections 45-320 and 45-470 in Schedule 1 to the *Taxation Administration Act 1953*.

**basic assessable income** has the meaning given by subsection 392-45(2).

**basic rates** has the meaning given by subsection 392-35(4).

**basic taxable income** has the meaning given by section 392-15.

**BAS provisions** means:

- (a) Part VII of the *Fringe Benefits Tax Assessment Act 1986*; and
- (b) the \*indirect tax law; and
- (c) Parts 2-5 and 2-10 in Schedule 1 to the *Taxation Administration Act 1953* (which are about the PAYG system).

Note: BAS stands for Business Activity Statement.

**behaviour that is harmful or abusive** means one or more of the following:

- (a) emotional abuse;
- (b) sexual abuse;
- (c) physical abuse;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) suicide;
- (e) self-harm;
- (f) substance abuse;
- (g) harmful gambling.

**benchmark franking percentage** has the meaning given by section 203-30.

**benchmark instalment rate** has the meaning given by sections 45-360 and 45-530 in Schedule 1 to the *Taxation Administration Act 1953*.

**benchmark rate of return** for an interest has the meaning given by section 974-145.

**benchmark rule** is the rule in section 203-25.

**benchmark tax** has the meaning given by sections 45-365 and 45-535 in Schedule 1 to the *Taxation Administration Act 1953*.

**bereavement Subdivision** has the meaning given by section 52-20.

**bid period** has the meaning given by section 9 of the *Corporations Act 2001*.

**borrowed securities amount** of an entity at a particular time means the total of the liabilities of the entity, to the extent that they meet these conditions:

- (a) the value of the liability at that time is worked out by reference to the value at that time of securities that the entity has short sold;
- (b) as at that time, the entity has settled the sale using securities it acquired under one or more of these \*arrangements:
  - (i) a reciprocal purchase agreement (otherwise known as a repurchase agreement);
  - (ii) a sell-buyback arrangement;
  - (iii) a securities loan arrangement.

**borrowing** means any form of borrowing, whether secured or unsecured, and includes the raising of funds by the issue of a bond,

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

debenture, discounted security or other document evidencing indebtedness.

*bribe to a foreign public official* has the meaning given by section 26-52.

*bribe to a public official* has the meaning given by section 26-53.

*bundle* of losses has the meaning given by section 707-315.

*business* includes any profession, trade, employment, vocation or calling, but does not include occupation as an employee.

*business day* means a day other than:

- (a) a Saturday or a Sunday; or
- (b) a day which is a public holiday for the whole of:
  - (i) any State; or
  - (ii) the Australian Capital Territory; or
  - (iii) the Northern Territory.

*business kilometres* has the meaning given by sections 28-25, 28-50, 28-75 and 28-90.

*business meeting* has the meaning given by subsections 32-65(3) and (4).

*business travel expense* has the meaning given by section 900-95.

*business use percentage* has the meaning given by section 28-90.

*capital allowance* means a deduction under:

- (a) Division 40 (capital allowances) of this Act; or
- (ab) Division 43 (capital works) of this Act; or
- (ac) Subdivision 328-D (capital allowances for small business entities) of this Act; or
- (d) Division 10BA of Part III of that Act (Australian films); or
- (e) Division 10B of Part III of that Act (copyright in Australian films); or
- (f) section 73B of that Act (research and development).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**capital gain:** for each \*CGT event a **capital gain** is worked out in the way described in that event.

Note 1: There are some CGT events for which there is no capital gain.

Note 2: For income years before 1998-99, **capital gain** has the meaning given by section 102-20 of the *Income Tax (Transitional Provisions) Act 1997*.

**capital loss:** for each \*CGT event a **capital loss** is worked out in the way described in that event.

Note 1: There are some CGT events for which there is no capital loss.

Note 2: For income years before 1998-99, **capital loss** has the meaning given by section 102-20 of the *Income Tax (Transitional Provisions) Act 1997*.

**capital proceeds** has the meaning given by Division 116.

**capital protected borrowing** has the meaning given by section 247-10.

**capital protection** has the meaning given by section 247-10.

**capital stake** has the meaning given by section 166-235.

**capped life** of a \*depreciating asset has the meaning given by section 40-102.

**car** means a \*motor vehicle (except a motor cycle or similar vehicle) designed to carry a load of less than 1 tonne and fewer than 9 passengers.

**carbon sequestration** has the meaning given by section 40-1015.

**car expense** has the meaning given by section 28-13.

**car fringe benefit** has the meaning given by subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*.

**car-less day** has the meaning given by section 28-45.

**car limit** has the meaning given by section 40-230.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 995-1

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***carried interest:***

- (a) of a \*general partner in a \*VCLP, an \*ESVCLP or an \*AFOF—has the meaning given by subsections 104-255(4) and (6); and
- (b) of a \*limited partner in a \*VCMP—has the meaning given by subsections 104-255(5) and (6).

***carrying on*** an \*enterprise includes doing anything in the course of the commencement or termination of the enterprise.

***cash settlable*** has the meaning given by subsection 230-45(2).

***cessation event***, in relation to a \*provisional head company of a \*MEC group, has the meaning given by subsection 719-60(6).

***cessation time*** has the meaning given by sections 139CA, 139CB and 139DSH of the *Income Tax Assessment Act 1936*.

***CFC*** has the meaning given by Part X of the *Income Tax Assessment Act 1936*.

***CFT*** has the meaning given by section 342 of the *Income Tax Assessment Act 1936*.

***CGT asset*** has the meaning given by section 108-5.

***CGT cap amount*** has the meaning given by section 292-105.

***CGT concession stakeholder*** has the meaning given by subsection 152-60.

***CGT event*** means any of the CGT events described in Division 104. A CGT event described by number (for example: ***CGT event AI***) refers to the relevant event in that Division.

***CGT exempt amount*** has the meaning given by section 152-315.

***CGT retirement exemption limit*** has the meaning given by section 152-320.

***chain of trusts*** has the meaning given by section 104-71.

***changeover time*** for a company has the meaning given by sections 165-115C, 165-115D and 719-705.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**child:** without limiting who is a child of an individual, each of the following is the **child** of an individual:

- (a) the individual's \*adopted child, stepchild or exnuptial child;
- (b) a child of the individual's \*spouse;
- (c) someone who is a child of the individual within the meaning of the *Family Law Act 1975*.

**child care base week** has the meaning given by section 61-470.

**child care offset limit** has the meaning given by section 61-495.

**child event** has the meaning given by section 61-360.

**class** of a taxable income or a \*tax loss of a \*life insurance company has the meaning given by section 320-133.

**class:** \*membership interests in a company form a **class** if the interests have the same, or substantially the same, rights.

**Climate Change Minister** means the Minister administering the *National Greenhouse and Energy Reporting Act 2007*.

**Climate Change Secretary** means the Secretary of the Department that administers the *National Greenhouse and Energy Reporting Act 2007*.

**closing pool balance** has the meaning given by:

- (a) for a low-value pool—section 40-440; or
- (b) for a \*general small business pool or a \*long life small business pool—section 328-200.

**closing pool value** has the meaning given by section 40-830.

**collectable** has the meaning given by section 108-10.

**commencing day** of a \*CFC has the meaning given by section 406 of the *Income Tax Assessment Act 1936*.

**commencing day asset** of a \*CFC has the meaning given by section 406 of the *Income Tax Assessment Act 1936*.

**commercial horticulture** has the meaning given by 40-535.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Commissioner** means the Commissioner of Taxation.

Note: The office of Commissioner of Taxation is created by section 4 of the *Taxation Administration Act 1953*.

**Commissioner's instalment rate** has the meaning given by section 45-115 in Schedule 1 to the *Taxation Administration Act 1953*.

**committed capital** of a partnership has the meaning given by section 118-445.

**common ownership**: see *under common ownership*.

**common-ownership nexus**: see section 727-400.

**Commonwealth education or training payment** has the meaning given by subsection 52-145(1).

**Commonwealth labour market program** has the meaning given by subsection 52-145(2).

**Commonwealth law** means a law of the Commonwealth.

**Commonwealth of Nations country** means:

- (a) a foreign country that is a member of the Commonwealth of Nations; or
- (b) a colony, overseas territory or protectorate of such a member; or
- (c) a territory for whose international relations such a member is responsible;

other than one declared by the regulations not to be a Commonwealth of Nations country.

**company** means:

- (a) a body corporate; or
- (b) any other unincorporated association or body of persons; but does not include a partnership or a \*non-entity joint venture.

Note: Division 830 treats foreign hybrid companies as partnerships.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***company's share:***

- (a) of a partnership's \*notional loss or \*notional net income—has the meaning given by sections 165-80 and 165-85; and
- (b) of a partnership's \*full year deductions—has the meaning given by sections 165-90.

***comparison rate*** has the meaning given by section 392-55.

***compensable work-related trauma*** has the meaning given by subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*.

***completed***, in relation to a \*film, has the meaning given by subsection 376-55(2).

***complying approved deposit fund*** means a complying approved deposit fund within the meaning of section 47 of the *Superannuation Industry (Supervision) Act 1993*.

***complying superannuation entity*** means:

- (a) a \*complying superannuation fund; or
- (b) a \*complying approved deposit fund; or
- (c) a \*pooled superannuation trust.

***complying superannuation/FHSA asset*** has the meaning given by subsection 320-170(6).

***complying superannuation/FHSA asset pool*** has the meaning given by subsection 320-170(6).

***complying superannuation/FHSA class:***

- (a) for a taxable income of a \*life insurance company—has the meaning given by section 320-137; or
- (b) for a \*tax loss of a \*life insurance company—has the meaning given by section 320-141.

***complying superannuation/FHSA liabilities*** of a \*life insurance company means liabilities of the company under \*life insurance policies referred to in subsection 320-190(1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***complying superannuation/FHSA life insurance policy*** means a \*life insurance policy that:

- (a) is held by:
  - (i) the trustee of a fund that is a \*complying superannuation fund or a \*complying approved deposit fund; or
  - (ii) the trustee of a \*pooled superannuation trust; or
- (b) is held by an individual and:
  - (i) provides for an \*annuity that is not presently payable, if the annuity was purchased out of a \*superannuation lump sum or an \*employment termination payment; or
  - (ii) is so held in the benefit fund of a \*friendly society, being a fund that is a regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993*; or
- (c) is held by another \*life insurance company and is a \*complying superannuation/FHSA asset of that company; or
- (d) is an \*FHSA;

and is not an \*excluded complying superannuation/FHSA life insurance policy.

***complying superannuation fund*** means a complying superannuation fund within the meaning of section 45 of the *Superannuation Industry (Supervision) Act 1993*.

***complying superannuation plan*** means:

- (a) a \*complying superannuation fund; or
- (b) a \*public sector superannuation scheme that is:
  - (i) a regulated superannuation fund (within the meaning of section 10 of the *Superannuation Industry (Supervision) Act 1993*); or
  - (ii) an exempt public sector superannuation scheme (within the meaning of section 10 of that Act); or
- (c) a \*complying approved deposit fund; or
- (d) an \*RSA.

***component*** of your \*tax position has the meaning given by section 45-610 in Schedule 1 to the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**concessional contributions** has the meaning given by sections 292-25 and 292-165.

**concessional contributions cap** has the meaning given by section 292-20.

**conduit foreign income** has the meaning given by Subdivision 802-A.

**connected entity** of an entity means:

- (a) an \* associate of the entity; or
- (b) another member of the same \* wholly owned group if the entity is a company and is a member of such a group.

**connected with:** an entity is **connected with** you in the circumstances described in section 328-125.

Note: This meaning is affected by section 152-42.

**connecting power to land or upgrading the connection** has the meaning given by section 40-655.

**conservation covenant** has the meaning given by section 31-5.

**consideration receivable:**

- (a) **consideration receivable** on the disposal of a leased \* car has the meaning given by section 20-115; and
- (b) **consideration receivable** for trading stock changing hands has the meaning given by subsection 70-100(11).

**consolidatable group** has the meaning given by section 703-10.

**consolidated group** has the meaning given by section 703-5.

Note 1: Part 3-90 contains rules relating to the tax treatment of consolidated groups. Division 719 (of that Part) applies those rules to MEC groups with modifications (see section 719-2).

Note 2: Provisions in the *Income Tax Assessment Act 1936* and in the *Income Tax Assessment Act 1997* (other than in Part 3-90) referring only to consolidated groups do *not* apply to MEC groups.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**consolidation transitional year** for a \*member of a \*consolidated group or a member of a \*MEC group, is an income year for that member that satisfies both of the following conditions:

- (a) the group is in existence during all or any part of that year;
- (b) Subdivision 45-Q in Schedule 1 to the *Taxation Administration Act 1953* (including that Subdivision as applied under Subdivision 45-S in that Schedule):
  - (i) does not apply at all to the \*head company or the \*provisional head company of the group during that year; or
  - (ii) starts to apply at any time during that year to the head company or the provisional head company of the group because of subsection 45-705(2) or subparagraph 45-705(3)(c)(ii), (4)(d)(ii) or (iv), or subsection 45-915(2) or subparagraph 45-915(3)(c)(ii), (4)(b)(ii) or (iv), in that Schedule.

**constitution** of a company means the memorandum and articles of association of the company, or any other rules or document constituting the company or governing its activities.

**constitutionally protected fund** means a fund that is declared by the regulations to be a constitutionally protected fund.

**construction expenditure** has the meaning given by section 43-70.

**construction expenditure area** has the meaning given by section 43-75.

**contingent on the economic performance** has the meaning given by section 974-85.

**continuing shareholders** has the meaning given by sections 175-10, 175-20, 175-25, 175-45, 175-60, 175-65 and 175-85.

**continuous disability policy** has the meaning given by section 9A of the *Life Insurance Act 1995*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**contract of reinsurance** means a contract of reinsurance in respect of \*life insurance policies other than:

- (a) the parts of \*complying superannuation/FHSA life insurance policies in respect of which the liabilities of the company that issued the policies are to be discharged out of a \*complying superannuation/FHSA asset pool; and
- (b) policies that are \*exempt life insurance policies.

**contributions segment** has the meaning given by section 307-220.

**contributions-splitting superannuation benefit** has the meaning given by the regulations.

**control (for value shifting purposes)** has the meaning given by sections 727-355, 727-360, 727-365 and 727-375.

**controlled foreign company** has the same meaning as in Part X of the *Income Tax Assessment Act 1936*.

**controlled foreign corporate limited partnership** has the meaning given by section 820-760.

**controlled foreign entity debt** has the meaning given by section 820-885.

**controlled foreign entity equity** has the meaning given by section 820-890.

**controlled foreign trust** has the same meaning as in Part X of the *Income Tax Assessment Act 1936*.

**controller (for CGT purposes)**: an entity is a **controller (for CGT purposes)** of a company in the circumstances mentioned in section 975-155.

**controller (for imputation purposes)** has the meaning given by subsections 207-130(5) and (6).

**convertible interest** means a convertible interest in a company or in a trust or unit trust and:

- (a) a **convertible interest** in a company is an interest of the kind referred to in item 4 of the table in subsection 974-75(1); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) a ***convertible interest*** in a trust or unit trust is an interest that has the same or a similar effect in relation to the trust or unit trust.

***convertible note:***

- (a) a ***convertible note*** of a company has the meaning given by section 82L of the *Income Tax Assessment Act 1936*; and
- (b) a ***convertible note*** of a trust or unit trust means a note that has the same or a similar effect in relation to the trust or unit trust.

***co-operative company*** has the same meaning as in Division 9 of Part III of the *Income Tax Assessment Act 1936*.

***copyright collecting society*** means either of the following bodies:

- (a) a body that satisfies all of the following conditions:
- (i) a declaration under the *Copyright Act 1968* is in force in respect of the body;
  - (ii) the body is a company whose \*constitution contains provisions about the distribution of amounts collected or \*derived by it, including a requirement that a \*member of the society cannot direct the body to pay an amount at a particular time;
  - (iii) other conditions prescribed by the regulations (if any) for the purposes of this subparagraph are met;
- (b) a company that satisfies all of the following conditions:
- (i) the company is incorporated under an \*Australian law relating to companies;
  - (ii) the company has and maintains the purpose of collective administration of copyrights;
  - (iii) if the company has other purposes—these purposes are incidental to the purpose described in subparagraph (ii);
  - (iv) the company collects or derives, and distributes, \*copyright income;
  - (v) the company's constitution allows any copyright owner, or his or her \*agent, to be a member of the society, or allows all copyright owners of a particular type to be members;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (vi) the company's constitution prohibits the payment of \*dividends;
- (vii) the company's constitution contains provisions about the payment, out of amounts collected or derived by it, of the administrative costs of collecting those amounts;
- (viii) the company's constitution contains provisions about the distribution of amounts collected or derived by it, including a requirement that an amount must be paid to a member as soon as is reasonably possible after the allocation of the amount to the member, as well as a requirement that a member cannot direct the company to pay an amount at a particular time;
- (ix) the company's constitution, or contracts with members, contains such other provisions as are prescribed by the regulations (if any), being provisions necessary to ensure that the interests of members or their agents are protected adequately;
- (x) the company's constitution requires the company to hold amounts on trust for copyright owners who are not members, or for members pending the payment of amounts to them;
- (xi) the company's constitution, or contracts with members, allows all members to access the company's records;
- (xii) other conditions prescribed by the regulations (if any) for the purposes of this subparagraph are met.

**copyright income** of a \*copyright collecting society means \*ordinary income, or \*statutory income, of the following kinds:

- (a) \*royalties, and interest on royalties, collected or \*derived by the society;
- (b) such other amounts relating to copyright that are derived by the society as are prescribed by the regulations for the purposes of this paragraph.

**corporate change** has the meaning given by section 166-175.

**corporate limited partnership** has the meaning given by section 94D of the *Income Tax Assessment Act 1936*.

**corporate tax entity** has the meaning given by section 960-115.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 995-1

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**corporate tax rate** means the rate of tax in respect of the taxable income of a company covered by subsection 23(2) of the *Income Tax Rates Act 1986*.

**corporate unit trust** has the meaning given by section 102J of the *Income Tax Assessment Act 1936*.

**cost:**

- (a) **cost** of a \*depreciating asset has the meaning given by Subdivision 40-C; and
- (b) **cost** of an item of \*trading stock, in the case of an animal that you acquired by natural increase, has the meaning given by section 70-55.

Note: The cost of an animal acquired by natural increase before the 1997-98 income year is the cost price of the animal under former section 34 of the *Income Tax Assessment Act 1936*. See subsection 70-55(2) of the *Income Tax (Transitional Provisions) Act 1997*.

**cost base** of a \*CGT asset has the meaning given by Subdivision 110-A.

**cost-free debt capital** has the meaning given by section 820-946.

**COT transfer** of a loss has the meaning given by section 707-210.

**created:**

- (a) a \*consolidated group is **created** from a \*MEC group if the consolidated group comes into existence under section 703-55 at the time the MEC group ceases to exist (as mentioned in that section); and
- (b) a MEC group is **created** from a consolidated group if:
  - (i) the MEC group comes into existence under section 719-40 when a \*special conversion event happens to a \*potential MEC group derived from an \*eligible tier-1 company of a \*top company; and
  - (ii) the eligible tier-1 company was the \*head company of the consolidated group (as mentioned in paragraph 719-40(1)(b)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**creditable acquisition** has the meaning given by section 195-1 of the \*GST Act.

**creditable importation** has the meaning given by section 195-1 of the \*GST Act.

**creditable purpose** has the meaning given by section 195-1 of the \*GST Act.

**credit absorption tax** has the meaning given by section 770-15.

**Crown lease** has the meaning given by section 124-580.

**crystallised pre-July 83 amount**, in relation to a \*superannuation interest, means the amount mentioned in paragraph 307-225(2)(e) in relation to the interest.

**crystallised segment** has the meaning given by section 307-225.

**cultural organisation** has the meaning given by section 30-300.

**currency exchange rate effect** has the meaning given by section 775-105.

**current GST turnover** has the meaning given by section 195-1 of the \*GST Act.

**current pension** means a pension that has begun to be paid.

**current termination value** of a \*life insurance policy, or of the \*net risk component of a life insurance policy, has the meaning given in prudential standards made under section 230A of the *Life Insurance Act 1995*.

**current year** means the income year for which you are working out your assessable income and deductions.

**custodian** has the meaning given by section 12-390 in Schedule 1 to the *Taxation Administration Act 1953*.

**datacasting transmitter licence** has the meaning given by section 5 of the *Radiocommunications Act 1992*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 995-1

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***date of the settlement or order***, for a \*structured settlement or a \*structured order, has the meaning given by section 54-5.

***death benefits dependant*** has the meaning given by section 302-195.

***death benefit termination payment*** has the meaning given by subsection 82-130(3).

***debenture*** of a company or unit trust includes debenture stock, bonds, notes and any other securities of the company or trust, whether or not constituting a charge on its assets.

***debt capital***, of an entity and at a particular time, means any \*debt interests issued by the entity that are still \*on issue at that time.

***debt deduction*** has the meaning given by section 820-40.

***debt interest*** in an entity has the meaning given by Subdivision 974-B.

***debt property*** has the meaning given by section 243-30.

***decrease time*** for a \*direct value shift has the meaning given by section 725-155.

***decreasing adjustment*** has the meaning given by section 195-1 of the \*GST Act.

***deduct*** has the meaning given by sections 8-1 and 8-5.

***deductible gift recipient*** has the meaning given by section 30-227.

***deduction*** means an amount that you can deduct.

Note: For income years before 1997-98, ***deduction*** has the meaning given by section 8-3 of the *Income Tax (Transitional Provisions) Act 1997*.

***deduction year*** has the meaning given by section 170-20.

***Defence Minister*** means the Minister administering the *Defence Act 1903*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***deferred BAS payer***, at a particular time, means an entity that has an obligation to notify the Commissioner of a \*BAS amount at that time, other than:

- (a) an entity that has an obligation at that time to give the Commissioner a \*GST return for a monthly \*tax period; or
- (b) an entity whose obligation to notify a BAS amount at that time relates only to one or more of the following:
  - (i) an \*amount withheld by a \*medium withholder or a \*large withholder;
  - (ii) the \*PAYG instalment of an \*annual payer.

Note: You are therefore a deferred BAS payer if you have an obligation to give the Commissioner a GST return for a quarterly tax period or if you are a GST instalment payer within the meaning of the GST Act.

***deficit***:

- (a) section 205-40 sets out when a \*franking account is in deficit; and
- (b) section 208-125 sets out when an \*exempting account is in deficit; and
- (c) section 210-130 sets out when a \*venture capital sub-account is in deficit.

***defined benefit interest*** has the meaning given by section 292-175.

***demerged entity*** has the meaning given by section 125-70.

***demerger*** has the meaning given by section 125-70.

***demerger dividend*** has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

***demerger group*** has the meaning given by section 125-65.

***demerger subsidiary*** has the meaning given by section 125-65.

***demerging entity*** has the meaning given by section 125-70.

***departing Australia superannuation payment*** has the meaning given by section 301-170.

***depository entity*** has the meaning given by section 166-260.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*depreciating asset* has the meaning given by section 40-30.

*depreciating asset lease*: a *depreciating asset lease* is an agreement (including a renewal of an agreement) under which the entity that \*holds the \*depreciating asset grants a right to use the asset to another entity. However, a *depreciating asset lease* does not include a \*hire purchase agreement or a \*short-term hire agreement.

*derivative financial arrangement* has the meaning given by subsection 230-350(1).

*derive* has a meaning affected by subsection 6-5(4).

*design* of a uniform has the meaning given by subsection 34-25(2).

*development assistance* for a \*film has the meaning given by section 376-55.

*development expenditure* for a \*film means expenditure to the extent to which it is incurred in meeting the development costs for the film and includes expenditure to the extent to which it is incurred on any of the following:

- (a) location surveys and other activities undertaken to assess locations for possible use in the film;
- (b) storyboarding for the film;
- (c) scriptwriting for the film;
- (d) research for the film;
- (e) casting actors for the film;
- (f) developing a budget for the film;
- (g) developing a shooting schedule for the film.

*died in the line of duty* has the meaning given by subsection 302-195(3).

*diminishing value method* has the meaning given by sections 40-70 and 40-72.

*dining facility* has the meaning given by section 32-60.

*direct equity interests* in a company are \*shares in the company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**direct forestry expenditure** has the meaning given by section 394-45.

**direct participation interest** has the meaning given by section 960-190.

**direct roll-over replacement** has the meaning given by section 723-110.

**direct small business participation percentage** has the meaning given by section 152-70.

**direct value shift** has the meaning given by section 725-145.

**direct voting percentage** in a company has the meaning given by section 768-550.

**disability policy** means a \*life insurance policy under which a benefit is payable in the event of:

- (a) the death, by accident or by some other cause stated in the contract, of the person whose life is insured (the *insured*); or
- (b) injury to, or disability of, the insured as a result of accident or sickness; or
- (c) the insured being found to have a stated condition or disease; but does not include a contract of consumer credit insurance within the meaning of the *Insurance Contracts Act 1984*.

**disability superannuation benefit** means a \*superannuation benefit if:

- (a) the benefit is paid to a person because he or she suffers from ill-health (whether physical or mental); and
- (b) 2 legally qualified medical practitioners have certified that, because of the ill-health, it is unlikely that the person can ever be \*gainfully employed in a capacity for which he or she is reasonably qualified because of education, experience or training.

**disaggregated attributable decrease**: section 727-775 sets out how to determine whether an \*indirect value shift has produced a **disaggregated attributable decrease** in the \*market value of an \*equity or loan interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 995-1

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***disaggregated attributable increase***: section 727-805 sets out how to determine whether an \*indirect value shift has produced a ***disaggregated attributable increase*** in the \*market value of an \*equity or loan interest.

***disallow***:

- (a) a \*net capital loss—has the meaning given by section 175-40;  
or
- (b) a \*capital loss—has the meaning given by section 175-55.

***disallowed capital allowance percentage*** has the meaning given by subsection 250-150(4).

***discount***: an \*equity or loan interest is issued at a ***discount*** as provided in section 725-150.

***discount capital gain*** has the meaning given by Subdivision 115-A.

***discount percentage*** has the meaning given by Subdivision 115-B.

***discretionary benefits*** means investment account benefits (as defined by section 14 of the *Life Insurance Act 1995*) that are regarded as non-participating benefits for the purposes of that Act solely because of the operation of Prudential Rules No. 22 in force under section 252 of that Act.

***disease*** has the meaning given by subsection 34-20(3).

***disentitling event*** has the meaning given by section 385-163.

***disposal year*** has the meaning given by subsection 385-105(2).

***dispose of*** a \*CGT asset: you ***dispose of*** a CGT asset (in its capacity as a CGT asset) in the circumstances specified in section 104-10.

***distributable profits*** of a company has the meaning given by section 317 of the *Income Tax Assessment Act 1936*.

***distributing body*** has the meaning given by section 128U of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**distribution**, by a \*corporate tax entity, has the meaning given by section 960-120.

**distribution event** has the meaning given by subsection 207-120(5).

**distribution statement** has the meaning given by section 202-80.

**divestiture registration requirement**, in relation to an \*ESVCLP, has the meaning given by subsection 9-3(3) of the *Venture Capital Act 2002*.

**dividend** has the meaning given by subsections 6(1) and (4) and 6BA(5) and section 94L of the *Income Tax Assessment Act 1936* and section 375-872 of this Act.

**dividend stake** has the meaning given by section 166-235.

**dividend stripping operation** has the meaning given by section 207-155.

**Division 230 financial arrangement**: a \*financial arrangement is a **Division 230 financial arrangement** if Division 230 applies in relation to your gains and losses from the arrangement.

**Division 230 starting value**:

- (a) the **Division 230 starting value** of an asset or liability that is or is part of a \*Division 230 financial arrangement to which Subdivision 230-C (fair value method) applies is the amount of the asset or the amount of the liability according to the relevant standards mentioned in section 230-230 that apply in relation to the arrangement; and
- (b) the **Division 230 starting value** of an asset or liability that is or is part of a Division 230 financial arrangement to which Subdivision 230-D (foreign exchange retranslation method) applies is the value of the asset or the amount of the liability according to the relevant standards mentioned in section 230-280 that apply in relation to the arrangement; and
- (c) the **Division 230 starting value** of an asset or liability that is or is part of a Division 230 financial arrangement to which Subdivision 230-F (reliance on financial reports method) applies is the value of the asset or the amount of the liability

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



according to the relevant standards mentioned in section 230-420 that apply in relation to the arrangement.

**Division 405 payment** has the meaning given by section 405-5 in Schedule 1 to the *Taxation Administration Act 1953*.

**Division 405 report** has the meaning given by section 405-10 in Schedule 1 to the *Taxation Administration Act 1953*.

**Division 410 payment** has the meaning given by section 410-5 in Schedule 1 to the *Taxation Administration Act 1953*.

**Division 410 report** has the meaning given by section 410-10 in Schedule 1 to the *Taxation Administration Act 1953*.

**Division 415 payment** has the meaning given by section 415-5 in Schedule 1 to the *Taxation Administration Act 1953*.

**Division 417 payment** has the meaning given by section 417-5 in Schedule 1 to the *Taxation Administration Act 1953*.

**down interest** has the meaning given by section 725-155.

**dual listed company arrangement** has the meaning given by section 125-60.

**dual listed company voting share** has the meaning given by section 125-60.

**dual resident investment company** has the meaning given by section 6F of the *Income Tax Assessment Act 1936*.

**dwelling** has the meaning given by section 118-115.

**early retirement scheme** has the meaning given by section 83-180.

**early retirement scheme payment** has the meaning given by section 83-180.

**early stage venture capital limited partnership** has the meaning given by subsection 118-407(4).

**effective life**: the *effective life* of a \*depreciating asset is worked out under sections 40-95, 40-100, 40-102, 40-105 and 40-110.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***effectively non-cancellable*** has the meaning given by section 250-130.

***effectively non-contingent obligation*** has the meaning given by section 974-135.

***election to rely on financial reports*** has the meaning given by section 230-395.

***electronic payment*** means a payment by way of electronic transmission, in an electronic format approved by the Commissioner.

***electronic signature*** of an entity means a unique identification of the entity in electronic form that is approved by the Commissioner.

***element taxed in the fund*** has the meaning given by section 307-275.

***element untaxed in the fund*** has the meaning given by section 307-275.

***eligible continuing substantial member*** of a \*former exempting entity has the meaning given by section 208-155.

***eligible Division 166 company*** means a company:

- (a) that is *not* a \*widely held company; and
- (b) in which:
  - (i) \*voting stakes that carry rights to more than 50% of the voting power in the company; or
  - (ii) \*dividend stakes that carry rights to receive more than 50% of any dividends that the company may pay; or
  - (iii) \*capital stakes that carry rights to receive more than 50% of any distribution of capital of the company; are beneficially owned (whether directly, or \*indirectly through one or more interposed entities) by:
    - (iv) a widely held company; or
    - (v) an entity mentioned in subsection 166-245(2) that satisfies the condition in subsection 166-245(3); or
    - (vi) a \*non-profit company; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 995-1

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- (vii) a charitable institution, a charitable fund or any other kind of charitable body; or
- (viii) 2 or more entities mentioned in subparagraphs (iv) to (vii).

*eligible security* has the meaning given by section 775-190.

*eligible tier-1 company* has the meaning given by section 719-15.

*eligible venture capital investment* has the meaning given by sections 118-425 and 118-427.

Note: This meaning is also affected by subsection 118-435(2).

*eligible venture capital investor* has the meaning given by subsection 118-415(2).

*eligible venture capital partner* has the meaning given by section 118-420.

*employee share scheme*: a \*share or right, including a right to \*acquire a stapled security that is treated because of Subdivision DB of Division 13A of Part III of the *Income Tax Assessment Act 1936* as a qualifying right for the purposes of that Division, is acquired under an *employee share scheme* if it is acquired (within the meaning of section 139G of that Act) in the way described in section 139C of that Act.

*employee share trust* means a trust of the kind mentioned in subsection 139C(5) of the *Income Tax Assessment Act 1936*.

*employment termination payment* has the meaning given by section 82-130.

*endowment policy* has the meaning given by section 295-480.

*ends*, in relation to a \*corporate change, has the meaning given by section 166-175.

*end user* of an asset has the meaning given by section 250-50.

*end value* of an asset has the meaning given by section 250-180.

*enterprise* has the meaning given by section 9-20 of the \*GST Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**entertainment** has the meaning given by section 32-10.

**entitled to child care benefit** has the meaning given by section 61-480.

**entitlement to child care benefit** has the meaning given by section 61-480.

**entity** has the meaning given by section 960-100.

**entity maintenance deduction** has the meaning given by subsection 86-65(2).

**environmental organisation** has the meaning given by sections 30-260 and 30-275.

**environmental protection activities** has the meaning given by section 40-755.

**Environment Minister** means the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999*.

**Environment Secretary** means the Secretary of the Department that administers the *Environment Protection and Biodiversity Conservation Act 1999*.

**equity capital** of an entity at a particular time means the total of the following as at that time:

- (a) the issue price (however described) of each \*equity interest in the entity that is still \*on issue, reduced by so much (if any) of the issue price as remains unpaid;
- (b) the entity's general reserves and asset revaluation reserves;
- (c) the entity's retained earnings;
- (d) the entity's net earnings (if any) for the current year, reduced by:
  - (i) the \*tax the entity expects to pay in respect of those net earnings; and
  - (ii) so much of each distribution to the entity's \*members that has been made or declared as at that time as is attributable to the entity's earnings for the current year;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 995-1

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- (e) if the entity is a \*corporate tax entity—provisions for \*distributions of profit;
  - (f) if paragraph (e) does not apply—provisions for distributions to the entity's \*members;
- reduced by the total of the following as at that time:
- (g) the entity's negative retained earnings (if any);
  - (h) the entity's net loss (if any) for the current year.

**equity holder** in a company means an entity that holds an \*equity interest in the company.

**equity interest** in an entity has the meaning given by:

- (a) in the case of a company—Subdivision 974-C; and
- (b) in the case of a trust or partnership—section 820-930.

**equity or loan interest** has the meaning given by section 727-520.

**ESVCLP** means an \*early stage venture capital limited partnership.

**ETP cap amount** has the meaning given by section 82-160.

**excess concessional contributions** has the meaning given by section 292-20.

**excess concessional contributions tax** means tax imposed under the *Superannuation (Excess Concessional Contributions Tax) Act 2007*.

**excess contributions tax** means:

- (a) \*excess concessional contributions tax; or
- (b) \*excess non-concessional contributions tax.

**excess contributions tax assessment** has the meaning given by section 292-230.

**excess franking offsets** has the meaning given by section 36-55.

**excess non-concessional contributions** has the meaning given by section 292-85.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**excess non-concessional contributions tax** means tax imposed under the *Superannuation (Excess Non-concessional Contributions Tax) Act 2007*.

**excess untaxed roll-over amount** has the meaning given by section 306-15.

**exchangeable interest** has the meaning given by section 130-100.

**excluded complying superannuation/FHSA life insurance policy** means a \*life insurance policy that:

- (a) provides only for \*superannuation death benefits, \*disability superannuation benefits or temporary disability benefits of a kind referred to in paragraph 295-460(c), that are not \*participating benefits; or
- (b) is an \*exempt life insurance policy.

**excluded equity interest** has the meaning given by section 820-946.

**excluded loss** has the meaning given by sections 175-5 and 175-40.

**excluded STB** has the same meaning as in section 24AT of the *Income Tax Assessment Act 1936*.

**exempt Australian government agency** means:

- (a) the Commonwealth, a State or a Territory; or
- (b) an authority of the Commonwealth or of a State or a Territory whose \*ordinary income and \*statutory income is exempt from income tax because of Division 50; or
- (c) an STB (within the meaning of Division 1AB of Part III of the *Income Tax Assessment Act 1936*) whose \*ordinary income and \*statutory income is exempt from income tax under that Division of that Part.

**exempt entity** means:

- (a) an entity all of whose \*ordinary income and \*statutory income is exempt from income tax because of this Act or because of another \*Commonwealth law, no matter what kind of ordinary income or statutory income the entity might have; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 995-1

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(b) an \*untaxable Commonwealth entity.

Note: See section 11-5 for a list of entities of the kind referred to in paragraph (a).

***exempt film income*** has the meaning given by section 375-805.

***exempt foreign employment income*** means amounts that are exempt from tax under section 23AF or 23AG of the *Income Tax Assessment Act 1936*.

***exempt foreign government agency*** means:

- (a) the government of a foreign country, or of part of a foreign country; or
- (b) an authority of the government of a foreign country, if the authority is of a similar nature to an authority that is an \*exempt Australian government agency; or
- (c) an authority of the government of part of a foreign country, if the authority is of a similar nature to an authority that is an \*exempt Australian government agency.

***exempt income*** has the meaning given by section 6-20.

Note: For income years before 1997-98, ***exempt income*** has the meaning given by section 6-20 of the *Income Tax (Transitional Provisions) Act 1997*.

***exempting account*** means an account that arises under section 208-110.

***exempting credit*** has the meaning given by section 208-115.

***exempting debit*** has the meaning given by section 208-120.

***exempting deficit*** has the meaning given by subsection 208-125(2).

***exempting entity*** has the meaning given by section 208-20 and affected by section 220-500 if relevant.

***exempting percentage*** has the meaning given by section 208-95.

***exempting surplus*** has the meaning given by subsection 208-125(1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***exempt institution that is eligible for a refund*** has the meaning given in section 207-115.

Note: This definition is affected by sections 207-119 to 207-136.

***exempt life insurance policy*** has the meaning given by section 320-246.

Note: This definition is affected by section 320-247.

***exempt life insurance policy liabilities*** of a \*life insurance company means liabilities of the company under the \*life insurance policies referred to in subsection 320-245(1).

***expected financial benefits*** has the meaning given by section 250-95.

***exploration or prospecting*** has the meaning given by section 40-730.

***external indirect equity or loan interest*** in a \*subsidiary member of a \*consolidated group or \*MEC group has the meaning given by section 715-610 or 719-775.

***facility agreement*** has the meaning given by section 775-185.

***failure to notify penalty*** means the penalty worked out under Division 2 of Part IIA of the *Taxation Administration Act 1953*.

***fair value election*** has the meaning given by subsection 230-210(1).

***family law superannuation payment*** has the meaning given by section 307-5.

***family trust*** has the same meaning as in section 272-75 of Schedule 2F to the *Income Tax Assessment Act 1936*.

***farm management deposit*** has the same meaning as in Schedule 2G to the *Income Tax Assessment Act 1936*.

***feature film*** includes a \*film that is an animated feature film.

***FHSA*** has the meaning given by the *First Home Saver Accounts Act 2008*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***FHSA component*** has the meaning given by section 345-20.

***FHSA holder*** has the meaning given by the *First Home Saver Accounts Act 2008*.

***FHSA home acquisition payment*** has the meaning given by the *First Home Saver Accounts Act 2008*.

***FHSA ineligibility payment*** has the meaning given by the *First Home Saver Accounts Act 2008*.

***FHSA misuse tax*** means tax imposed under the *Income Tax (First Home Saver Accounts Misuse Tax) Act 2008*.

***FHSA payment conditions*** has the meaning given by the *First Home Saver Accounts Act 2008*.

***FHSA provider*** has the meaning given by the *First Home Saver Accounts Act 2008*.

***FHSA trust*** has the meaning given by the *First Home Saver Accounts Act 2008*.

***FIF*** has the meaning given by section 481 of the *Income Tax Assessment Act 1936*.

***film*** means an aggregate of images, or of images and sounds, embodied in any material.

***film authority*** has the meaning given by section 376-55.

***film component*** of a \*tax loss has the meaning given by:

- (a) section 375-805 of this Act; and
- (b) section 375-105 (Film component of tax loss for 1989-90 to 1996-97 income years) of the *Income Tax (Transitional Provisions) Act 1997*.

***film deductions*** has the meaning given by section 375-805.

***film licensed investment company*** has the meaning given by section 375-855.

***film loss*** has the meaning given by section 375-810 and affected by section 701-30.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***final RUNL*** has the meaning given by section 715-35.

***finance charge*** has the meaning given by section 240-25.

***financed property*** has the meaning given by section 243-30.

***financial arrangement*** has the meaning given by sections 230-45 to 230-55.

***financial benefit*** has the meaning given by section 974-160.

***financial entity***, at a particular time, means an entity other than an \*ADI that is any of the following at that time:

- (a) a registered corporation under the *Financial Sector (Collection of Data) Act 2001*;
- (b) a \*securitisation vehicle;
- (c) an entity that:
  - (i) is a financial services licensee within the meaning of the *Corporations Act 2001* whose licence covers dealings in at least one of the financial products mentioned in paragraphs 764A(1)(a), (b) and (j) of that Act; or
  - (ii) under paragraph 911A(2)(h) or (l) of the *Corporations Act 2001*, is exempt from the requirement to hold an Australian financial services licence for dealings in at least one of those financial products;

and carries on a \*business of dealing in securities, but not predominantly for the purposes of dealing in securities with, or on behalf of, the entity's \*associates;

Note 1: Paragraphs 764A(1)(a), (b) and (j) of the *Corporations Act 2001* deal respectively with securities, managed investment products and government debentures, stocks and bonds.

Note 2: Paragraph 911A(2)(h) of that Act exempts financial services provided to wholesale clients by a person who is regulated by an overseas regulatory authority if the provision of the service is covered by an exemption from the Australian Securities and Investments Commission (ASIC).

Note 3: Paragraph 911A(2)(l) of that Act empowers ASIC to exempt financial services.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 995-1

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- (d) an entity that:
- (i) is a financial services licensee within the meaning of the *Corporations Act 2001* whose licence covers dealings in derivatives within the meaning of that Act; or
  - (ii) under paragraph 911A(2)(h) or (l) of the *Corporations Act 2001*, is exempt from the requirement to hold an Australian financial services licence for dealings in such derivatives;
- and carries on a business of dealing in such derivatives, but not predominantly for the purposes of dealing in such derivatives with, or on behalf of, the entity's associates.

***financial institution*** has the meaning given by section 202A of the *Income Tax Assessment Act 1936*.

***financial investment*** includes the following:

- (a) a \*share in a company;
- (b) an interest in a managed investment scheme (within the meaning of the *Corporations Act 2001*);
- (c) a \*forestry interest in a \*forestry managed investment scheme;
- (d) a right or option in respect of an investment referred to in paragraph (a), (b) or (c);
- (e) an investment of a like nature to any of those referred to in paragraphs (a) to (d).

***financial year*** means a period of 12 months beginning on 1 July.

***financing arrangement*** has the meaning given by section 974-130.

***financing cost*** has the meaning given by section 26-80.

***firearms surrender arrangements*** means:

- (a) an \*Australian law; or
- (b) administrative arrangements of a State or Territory; implementing the agreement arising from the meeting of the Police Ministers held on 10 May 1996 concerning the surrender of prohibited firearms.

***first continuity period*** has the meaning given by section 165-120.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**first use time** has the meaning given by section 41-30.

**fixed entitlement:** an entity has a **fixed entitlement** to a share of the income or capital of a trust if the entity has a fixed entitlement to that share within the meaning of Division 272 in Schedule 2F to the *Income Tax Assessment Act 1936*.

**fixed trust:** a trust is a **fixed trust** if entities have \*fixed entitlements to all of the income and capital of the trust.

**flexible care** has the same meaning as in the *Aged Care Act 1997*.

**FLIC** (film licensed investment company) has the meaning given by section 375-855.

**FLIC concessional capital** has the meaning given by section 375-880.

**flows indirectly:**

- (a) subsections 207-50(2), (3) and (4) set out the circumstances in which a \*franked distribution flows indirectly to an entity; and
- (b) subsection 207-50(5) sets out the circumstances in which a franked distribution flows indirectly through an entity; and
- (c) section 208-175 sets out the circumstances in which a \*distribution \*franked with an exempting credit flows indirectly to an entity; and
- (d) section 220-405 sets out the circumstances in which a supplementary dividend (as defined in section OB1 of the *Income Tax Act 1994* of New Zealand) flows indirectly to an entity; and
- (e) subsections 380-25(2), (3) and (4) set out the circumstances in which \*NRAS rent flows indirectly to an entity; and
- (f) subsection 380-25(5) sets out the circumstances in which NRAS rent flows indirectly through an entity.

**FLP** has the same meaning as in Part XI of the *Income Tax Assessment Act 1936*.

**foreign bank** means an \*ADI that is a \*foreign entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***foreign controlled Australian company*** has the meaning given by section 820-785.

***foreign controlled Australian entity*** has the meaning given by section 820-780.

***foreign controlled Australian partnership*** has the meaning given by section 820-795.

***foreign controlled Australian trust*** has the meaning given by section 820-790.

***foreign currency*** means a currency other than Australian currency.

***foreign currency hedge*** has the meaning given by subsection 230-350(2).

***foreign entity*** means an entity that is not an \*Australian entity.

***foreign exchange retranslation election*** has the meaning given by subsections 230-255(1) and (3).

***foreign general insurance company*** means a company that is a foreign resident, and whose sole or principal business is \*insurance business.

***foreign government agency*** means:

- (a) the government of a foreign country or of part of a foreign country; or
- (b) an authority of the government of a foreign country; or
- (c) an authority of the government of part of a foreign country.

***foreign hybrid*** has the meaning given by section 830-5.

***foreign hybrid company*** has the meaning given by section 830-15.

***foreign hybrid limited partnership*** has the meaning given by section 830-10.

***foreign hybrid net capital loss amount*** has the meaning given by section 830-55.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**foreign hybrid revenue loss amount** has the meaning given by paragraph 830-45(1)(a).

**foreign hybrid tax provisions** means:

- (a) the *Income Tax Assessment Act 1936* (other than Division 5A of Part III); and
- (b) this Act (other than Subdivision 830-A and 830-B); and
- (c) an Act that imposes any tax payable under the *Income Tax Assessment Act 1936* or this Act; and
- (d) the *Income Tax Rates Act 1986*; and
- (e) the *Taxation Administration Act 1953*, so far as it relates to an Act covered by paragraph (a), (b) or (c); and
- (f) any other Act, so far as it relates to an Act covered by paragraph (a), (b), (c), (d) or (e); and
- (g) regulations under an Act covered by any of the preceding paragraphs.

**foreign income tax** has the meaning given by section 770-15.

**foreign investment fund** means a FIF as defined by section 481 of the *Income Tax Assessment Act 1936*.

**foreign law** means a law of a foreign country.

Note: **Foreign country** is defined in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*.

**foreign life insurance company** means a company that is a foreign resident, and whose sole or principal business is life insurance.

**foreign public official** has the same meaning as in section 70.1 of the *Criminal Code*.

**foreign resident** means a person who is not a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*.

Note: **Foreign resident** is not asterisked in this Act.

**foreign resident life insurance policy** means a \*life insurance policy that:

- (a) was issued by a company in the course of \*carrying on a \*business at or through the \*permanent establishment of the company in a foreign country; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 995-1

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- (b) is held by an entity that is neither an \*associate of the company nor a Part X Australian resident (within the meaning of Part X of the *Income Tax Assessment Act 1936*).

**foreign revenue claim** has the meaning given by section 263-10 in Schedule 1 to the *Taxation Administration Act 1953*.

**foreign superannuation fund:**

- (a) a \*superannuation fund is a **foreign superannuation fund** at a time if the fund is not an \*Australian superannuation fund at that time; and
- (b) a superannuation fund is a **foreign superannuation fund** for an income year if the fund is not an Australian superannuation fund for the income year.

**foreign trust for CGT purposes** means a trust that is not a \*resident trust for CGT purposes.

**foreign venture capital fund of funds** has the meaning given by subsections 118-420(4) and (5).

**forestry interest** in a \*forestry managed investment scheme has the meaning given by subsection 394-15(3).

**forestry managed investment scheme** has the meaning given by subsection 394-15(1).

**forestry manager** of a \*forestry managed investment scheme has the meaning given by subsection 394-15(2).

**forestry road** has the meaning given by subsection section 43-72.

**forex cost base** has the meaning given by section 775-85.

**forex entitlement base** has the meaning given by section 775-90.

**forex realisation event** means any of the forex realisation events described in Division 775.

**forex realisation gain:** for each \*forex realisation event a **forex realisation gain** is worked out in the way described in the event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**forex realisation loss**: for each \*forex realisation event a **forex realisation loss** is worked out in the way described in the event.

**form approved by Innovation Australia** has the same meaning as in section 33-5 of the *Venture Capital Act 2002*.

**former exempting entity** has the meaning given by section 208-50.

**fourth element expenditure** has the meaning given by section 104-185.

**frankable distribution** has the meaning given by section 202-40.

**frankable with a venture capital credit** has the meaning given by section 210-50.

**franked distribution**: a \*distribution is franked if an entity \*franks it in accordance with section 202-5.

**franked part** of a \*distribution has the meaning given by section 976-1.

**franking account** means an account that arises under section 205-10.

Note 1: Section 205-15 sets out when a credit arises in that account.

Note 2: Section 205-30 sets out when a debit arises in that account.

**franking account balance** has the meaning given by section 214-30.

**franking assessment** has the meaning given by subsection 214-60(1) and affected by section 214-100.

**franking credit** has the meaning given by section 205-15.

**franking debit** has the meaning given by section 205-30.

**franking deficit** has the meaning given by subsection 205-40(2).

**franking deficit tax** means tax imposed under the *New Business Tax System (Franking Deficit Tax) Act 2002*.

Note: That Act imposes tax where it is payable under section 205-45 of this Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***franking entity*** has the meaning given by section 202-15.

***franking percentage*** has the meaning given by section 203-35.

***franking period*** has the meaning given by sections 203-40 and 203-45.

***franking return*** means a return required under Subdivision 214-A.

***franking surplus*** has the meaning given by subsection 205-40(1).

***franking tax*** has the meaning given by section 214-40.

***franks with an exempting credit*** has the meaning given by section 208-60.

***frank with a venture capital credit*** has the meaning given by section 210-30.

***friendly society*** means:

- (a) a body that is a friendly society for the purposes of the *Life Insurance Act 1995*; or
- (b) a body that is registered or incorporated as a friendly society under a \*State law or a \*Territory law; or
- (c) a body that is permitted, by a \*State law or a \*Territory law, to assume or use the expression ***friendly society***; or
- (d) a body that, immediately before the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, was registered or incorporated as a friendly society under a \*State law or a \*Territory law.

***friendly society dispensary*** means an approved pharmacist (within the meaning of Part VII of the *National Health Act 1953*) that is:

- (a) a \*friendly society; or
- (b) a body carrying on \*business for the benefit of members of a \*friendly society.

***fringe benefit*** means:

- (a) a fringe benefit as defined by subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) a benefit that would be a fringe benefit (as defined by subsection 136(1) of that Act) if paragraphs (d) and (e) of the definition of **employer** in that subsection of that Act were omitted.

**fringe benefits taxable amount** has the meaning given by section 5B of the *Fringe Benefits Tax Assessment Act 1986*.

**fringe benefits tax law** means a provision of an Act or regulations under which the extent of liability for tax imposed by the *Fringe Benefits Tax Act 1986* is worked out.

**FS assessment debt** means an FS assessment debt under:

- (a) subsection 19AB(2) of the *Social Security Act 1991*; or
- (b) the *Student Assistance Act 1973* as in force at a time on or after 1 July 1998.

**FTB amount** for an income year means an amount of family tax benefit (within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999*) to which an individual is entitled in respect of the income year.

**fuel tax credit** has the meaning given by section 110-5 of the *Fuel Tax Act 2006*.

**fuel tax law** has the meaning given by section 110-5 of the *Fuel Tax Act 2006*.

**fuel tax return period** has the meaning given by section 61-20 of the *Fuel Tax Act 2006*.

**full self-assessment taxpayer** has the same meaning as in subsection 6(1) of the *Income Tax Assessment Act 1936*.

**full year amounts** has the meaning given by section 165-60.

**full year car deduction** has the meaning given by section 28-45.

**full year deductions** has the meaning given by subsections 165-55(5) and (6).

**fund payment** has the meaning given by 12-405 in Schedule 1 to the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 995-1

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***fund-raising event*** has the meaning given by section 40-165 of the *A New Tax System (Goods and Services Tax) Act 1999*, as modified by the omission of subparagraph 40-165(1)(b)(i) of that Act.

***funeral policy*** means a \*life insurance policy issued by a \*friendly society for the sole purpose of providing benefits to pay for the funeral of the insured person.

***gainfully employed*** means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

***gaining entity*** for an \*indirect value shift has the meaning given by section 727-150.

***GDP-adjusted notional tax*** has the meaning given by section 45-405 in Schedule 1 to the *Taxation Administration Act 1953*.

***GDP amount*** for a \*quarter has the meaning given by section 45-405 in Schedule 1 to the *Taxation Administration Act 1953*.

***general deduction*** has the meaning given by section 8-1.

***general insurance company*** means a body corporate that carries on \*insurance business.

***general insurance policy*** means a policy of insurance that is not a \*life insurance policy or an \*annuity instrument.

***general interest charge*** means the charge worked out under Part IIA of the *Taxation Administration Act 1953*.

***general partner*** means a partner of a \*limited partnership whose liability in relation to the partnership is not limited.

***general small business pool*** has the meaning given by section 328-185.

***genuine redundancy payment*** has the meaning given by section 83-175.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**global GST amount** has the meaning given by section 195-1 of the \*GST Act.

**global method:**

- (a) of working out whether a company has an unrealised net loss at a particular time, has the meaning given by section 165-115E; and
- (b) of working out whether a company has an adjusted unrealised loss at a particular time, has the meaning given by section 165-115U.

**goes for at least 4 hours**, in relation to a \*seminar, has the meaning given by subsection 32-65(2).

**government entity** has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

**Government FHSA contribution** has the meaning given by the *First Home Saver Accounts Act 2008*.

**greater benefit from franking credits** has a meaning affected by subsections 204-30(7) and (8).

**greater benefits:**

- (a) under an \*indirect value shift, has the meaning given by subsection 727-150(3); and
- (b) under a \*presumed indirect value shift, has the meaning given by subsection 727-855(1).

**gross averaging amount** has the meaning given by section 392-70.

**gross vehicle mass** of a vehicle means:

- (a) the road weight specified by the manufacturer of the vehicle as the maximum design weight capacity of the vehicle; or
- (b) in the absence of such a specification, the sum of:
  - (i) the weight of the vehicle; and
  - (ii) the weight of the maximum load for which the vehicle was designed (including the weight of the driver and a full tank of fuel, if applicable).

**group heading** has the meaning given by section 950-100.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 995-1

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***GST*** has the meaning given by section 195-1 of the \*GST Act.

***GST Act*** means the *A New Tax System (Goods and Services Tax) Act 1999*.

***GST-free*** has the meaning given by section 195-1 of the \*GST Act.

***GST group*** has the meaning given by section 195-1 of the \*GST Act.

***GST inclusive market value*** has the meaning given by section 195-1 of the \*GST Act.

***GST joint venture*** has the meaning given by section 51-5 of the \*GST Act.

***GST law*** has the meaning given by section 195-1 of the \*GST Act.

***GST return*** has the same meaning as in section 195-1 of the \*GST Act.

***GST turnover*** has the meaning given by section 195-1 of the \*GST Act.

***guaranteed residual value*** for an asset that is put to a tax preferred use has the meaning given by subsection 250-85(3).

***guarantee period***, for an annuity provided under a \*structured settlement or a \*structured order, has the meaning given by subsection 54-35(2).

***Guide*** has the meaning given by section 950-150.

***harm prevention charity*** has the meaning given by section 30-288.

***head company***:

- (a) in relation to a \*consolidated group or \*consolidatable group—has the meaning given by section 703-15; and
- (b) of a \*MEC group—has the meaning given by section 719-75.

***head entity*** of a demerger group has the meaning given by section 125-65.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**hedged item** has the meaning given by subsections 230-335(10) and (11).

**hedging financial arrangement** has the meaning given by subsections 230-335(1) to (9) and sections 230-340 and 230-345.

**hedging financial arrangement election** has the meaning given by section 230-315.

**held:** see **hold**.

**Heritage Secretary** means the Secretary of the Department that administers the *Environment Protection and Biodiversity Conservation Act 1999*.

**HIH company** has the meaning given by section 322-5.

**HIH Trust** has the meaning given by section 322-5.

**hire purchase agreement** means:

- (a) a contract for the hire of goods where:
  - (i) the hirer has the right, obligation or contingent obligation to buy the goods; and

Note: An example of a contingent obligation is a put option.

- (ii) the charge that is or may be made for the hire, together with any other amount payable under the contract (including an amount to buy the goods or to exercise an option to do so), exceeds the price of the goods; and
  - (iii) title in the goods does not pass to the hirer until the option referred to in subparagraph (a)(i) is exercised; or
- (b) an agreement for the purchase of goods by instalments where title in the goods does not pass until the final instalment is paid.

**hold:**

- (a) **hold** a car for the purposes of Division 28 has the meaning given by section 28-90; and
- (b) **hold** a \*depreciating asset has the meaning given by section 40-40.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**horse opening value** has the meaning given by subsection 70-65(1).

**horse reduction amount** has the meaning given by subsection 70-65(2).

**horticultural plant** has the meaning given by section 40-520.

**horticulture** has the meaning given by section 40-535.

**hotel building** has the meaning given by section 43-95.

**housing and welfare** means:

- (a) residential accommodation; or
- (b) health, education, recreation or similar facilities, or facilities for meals; or
- (c) works carried out directly in connection with such accommodation or facilities, including works for providing water, light, power, access or communications.

**Housing Secretary** means the Secretary of the Department that administers the *National Rental Affordability Scheme Act 2008*.

**hypothetical tax position** has the meaning given by section 45-615 in Schedule 1 to the *Taxation Administration Act 1953*.

**immediate annuity** means an \*annuity that is presently payable.

**import** has the meaning given by section 195-1 of the \*GST Act.

**improvement threshold** has the meaning given by section 108-85.

**imputation benefit** has the meaning given by subsection 204-30(6).

**imputation system** means the rules in Part 3-6.

**in a position to affect rights** has the meaning given by section 975-150.

**incapacitated entity** has the meaning given by section 195-1 of the \*GST Act.

**incentive amount** has the meaning given by section 61-220.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**incidental costs** has the meaning given by section 110-35.

**incidental forestry scheme receipts** has the meaning given by subsection 394-30(4).

**income bond** means a \*life insurance policy issued by a \*friendly society under which bonuses are regularly distributed.

**income company** has the meaning given by section 170-10.

**income for surcharge purposes**, for a person and an income year, means the sum of the following:

- (a) the person's taxable income for the income year (disregarding subsection 271-105(1) of Schedule 2F to the *Income Tax Assessment Act 1936*);
- (b) the person's \*reportable fringe benefits total (if any) for the income year;
- (c) the person's \*reportable superannuation contributions for the income year;
- (d) the person's \*total net investment loss for the income year; less the amount mentioned in subsection 301-20(3) for the person for the income year if the person is entitled to a tax offset under subsection 301-20(2) for the income year.

**income tax** means income tax imposed by any of these:

- (a) the *Income Tax Act 1986*;
- (b) the *Income Tax (Diverted Income) Act 1981*;
- (c) the *Income Tax (Former Complying Superannuation Funds) Act 1994*;
- (d) the *Income Tax (Former Non-resident Superannuation Funds) Act 1994*;
- (e) the *Income Tax (Fund Contributions) Act 1989*.

**income tax law** means a provision of an Act or regulations under which is worked out the extent of liability for:

- (a) \*tax; or
- (b) Medicare levy; or
- (c) \*franking tax; or
- (d) \*withholding tax; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 995-1

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(e) \*mining withholding tax.

**income tax return** means a return under section 161, 162 or 163 of the *Income Tax Assessment Act 1936*.

**income year**: the basic meaning is given by subsections 4-10(2) and 9-5(2). Some provisions refer to a particular income year. (They may describe it in different ways: for example, as the income year ending on 30 June 1998, or the 1997-98 income year.) For an entity that adopts an accounting period in place of the particular income year, the reference includes:

- (a) the adopted accounting period; or
- (b) if the adopted accounting period ends under section 18A of the *Income Tax Assessment Act 1936*:
  - (i) in relation to the commencing of the income year—the adopted accounting period (as ending under that section); or
  - (ii) in relation to the ending of the income year—the accounting period ending under that section on the day on which the adopted accounting period would (but for that section) have ended.

Note 1: The Commissioner can allow you to adopt an accounting period ending on a day other than 30 June. See section 18 of the *Income Tax Assessment Act 1936*.

Note 2: An accounting period ends, and a new accounting period starts, when a partnership becomes, or ceases to be, a VCLP, an ESVCLP, an AFOF or a VCMP. See section 18A of the *Income Tax Assessment Act 1936*.

**in connection with**: an economic benefit is \*provided **in connection with** a \*scheme if at least one of the tests in section 727-160 is satisfied.

**increase time** for a \*direct value shift has the meaning given by section 725-155.

**increasing adjustment** has the meaning given by section 195-1 of the \*GST Act.

**independent candidate** has the meaning given by section 30-244.

**independent member** has the meaning given by section 30-245.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***indexation factor:***

- (a) for an amount mentioned in a provision listed at items 8 to 12 in section 960-265—***indexation factor*** has the meaning given by section 960-285; or
- (b) for an amount mentioned in a provision listed at another item in section 960-265—***indexation factor*** has the meaning given by section 960-275.

***index number:***

- (a) for an amount mentioned in a provision listed at items 8 to 12 in section 960-265—***index number*** has the meaning given by section 960-285; or
- (b) for an amount mentioned in a provision listed at another item in section 960-265—***index number*** has the meaning given by section 960-280.

***indirect Australian real property interest*** has the meaning given by section 855-25.

***indirect equity interests:*** an entity has ***indirect equity interests*** in a company if it has \*shares or other interests in entities interposed between the entity and the company.

***indirect equity or loan interest*** has the meaning given by section 727-525.

***indirectly:*** entities have the right to receive \*dividends or capital of a company ***indirectly*** for their own benefit if they would receive the dividends or capital for their own benefit if:

- (a) the company were to pay or distribute the dividends or capital; and
- (b) the dividends or capital were then successively paid or distributed by each entity interposed between the company and those entities.

An \*ultimate owner ***indirectly*** has a beneficial interest in a \*CGT asset of an entity, or in \*ordinary income that may be \*derived from a \*CGT asset of an entity, as described in section 149-15.

***indirect participation interest*** has the meaning given by section 960-185.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***indirect primary equity interest*** has the meaning given by section 727-220.

***indirect roll-over replacement*** has the meaning given by section 723-110.

***indirect small business participation percentage*** has the meaning given by section 152-75.

***indirect tax*** means any of the following:

- (a) \*GST;
- (b) \*wine tax;
- (c) \*luxury car tax.

***indirect tax document*** means a document that:

- (a) was obtained by you in the course of:
  - (i) your appointment or employment by the Commonwealth; or
  - (ii) the performance of services by you for the Commonwealth; or
  - (iii) the exercise of powers, or the performance of functions, by you under a delegation by the Commissioner; and
- (b) was made or given under, or for the purposes of, an \*indirect tax law.

Example: A GST return is a document made for the purposes of an indirect tax law.

***indirect tax information*** means information that:

- (a) was obtained by you in the course of:
  - (i) your appointment or employment by the Commonwealth; or
  - (ii) the performance of services by you for the Commonwealth; or
  - (iii) the exercise of powers, or the performance of functions, by you under a delegation by the Commissioner; and
- (b) was disclosed or obtained under an \*indirect tax law; and
- (c) relates to the affairs of an entity other than you.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***indirect tax law*** means any of the following:

- (a) the \*GST law;
- (b) the \*wine tax law;
- (c) the \*luxury car tax law;
- (d) the \*fuel tax law.

***indirect tax ruling*** means any ruling or advice given or published by the Commissioner in relation to an \*indirect tax law (other than the \*fuel tax law), including one that has been previously altered, but not including:

- (a) one given orally; or
- (b) an assessment.

***indirect value shift*** has the meaning given by Subdivision 727-B.

***indirect voting percentage*** in a company has the meaning given by section 768-555.

***individual*** means a natural person.

***individual asset method***:

- (a) of working out whether a company has an unrealised net loss at a particular time, has the meaning given by section 165-115E; and
- (b) of working out whether a company has an adjusted unrealised loss at a particular time, has the meaning given by section 165-115U.

***individual superannuation guarantee shortfall*** has the meaning given by section 19 of the *Superannuation Guarantee (Administration) Act 1992*.

***industrial activities*** has the meaning given by section 43-150.

***industrial instrument*** means:

- (a) an \*Australian law; or
- (b) an award, order, determination or industrial agreement in force under an \*Australian law.

***Industry Secretary*** has the meaning given by subsection 34-25(1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**information exchange country** has the meaning given by section 12-385 in Schedule 1 to the *Taxation Administration Act 1953*.

**in-house dining facility** has the meaning given by section 32-55.

**in-house software** is computer software, or a right to use computer software, that you acquire, develop or have another entity develop:

- (a) that is mainly for you to use in performing the functions for which the software was developed; and
- (b) for which you cannot deduct amounts under a provision of this Act outside Divisions 40 and 328.

**initial head company instalment rate**, for a \*head company of a \*consolidated group, or a \*provisional head company of a \*MEC group, is an \*instalment rate worked out on the basis of:

- (a) for a group that comes into existence in an income year under section 703-50 or 719-50—the first \*base assessment of a company as the head company of that group for which the \*base year is that income year; and
- (b) for a group (the **later group**) for which either of the following conditions is satisfied:
  - (i) the later group is \*created from a group (the **first group**) that comes into existence under section 703-50 or 719-50;
  - (ii) starting from the first group, consolidated groups or MEC groups are successively created, ending in the creation of the later group;

the first base assessment of a company as the head company of the first group, the later group or any other group covered by subparagraph (ii), for which the base year is the income year in which the first group comes into existence.

Note: For example, subparagraph (b)(ii) covers a consolidated group that is created from a MEC group, which was in turn created from a consolidated group that came into existence under section 703-50.

**initial participant** in a \*forestry managed investment scheme has the meaning given by subsection 394-15(5).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**injected amount** has the meaning given by sections 175-10, 175-20 and 175-85.

**injured person:**

- (a) in relation to a \*structured settlement, has the meaning given by subparagraph 54-10(1)(a)(i); and
- (b) in relation to a \*structured order, has the meaning given by subparagraph 54-10(1A)(a)(i).

**Innovation Australia** means the board established by section 6 of the *Industry Research and Development Act 1986*.

**input tax credit** has the meaning given by section 195-1 of the \*GST Act.

**input taxed** has the meaning given by section 195-1 of the \*GST Act.

**installed ready for use** means installed ready for use and held in reserve.

**instalment group** has the meaning given by section 45-145 in Schedule 1 to the *Taxation Administration Act 1953*.

**instalment income** has the meaning given by sections 45-120, 45-260, 45-280, 45-285 and 45-465 in Schedule 1 to the *Taxation Administration Act 1953*.

**instalment of petroleum resource rent tax** is an instalment of tax payable under Division 2 of Part VIII of the *Petroleum Resource Rent Tax Assessment Act 1987*.

**instalment quarter** has the meaning given by section 45-60 in Schedule 1 to the *Taxation Administration Act 1953*.

**insurance business** has the same meaning as in the *Insurance Act 1973*.

**intellectual property:** an item of **intellectual property** consists of the rights (including equitable rights) that an entity has under a \*Commonwealth law as:

- (a) the patentee, or a licensee, of a patent; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) the owner, or a licensee, of a registered design; or  
(c) the owner, or a licensee, of a copyright;  
or of equivalent rights under a \*foreign law.

***interest that will or may convert into another interest*** has the meaning given by section 974-165.

***intermediate controller*** has the meaning given by subsection 727-530(2).

***invalidity segment***, of an \*employment termination payment, has the meaning given by section 82-150.

***investment body*** for a \*Part VA investment has the meaning given by section 202D of the *Income Tax Assessment Act 1936*.

***investment commitment time*** has the meaning given by section 41-25.

***investment registration requirement:***

- (a) in relation to a \*VCLP—has the meaning given by subsection 9-1(2) of the *Venture Capital Act 2002*; and
- (ab) in relation to an \*ESVCLP—has the meaning given by subsection 9-3(2) of the *Venture Capital Act 2002*; and
- (b) in relation to an \*AFOF—has the meaning given by subsection 9-5(2) of the *Venture Capital Act 2002*.

***investor*** for a \*Part VA investment has the meaning given by section 202D of the *Income Tax Assessment Act 1936*.

***invoice*** means a document notifying an obligation to make a payment.

***inward investing entity (ADI)*** has the meaning given by sections 820-395 and 820-609.

Note: Section 820-430 allows an inward investor (financial) to be treated as an inward investing entity (ADI) in certain cases.

***inward investing entity (non-ADI)*** has the meaning given by sections 820-185, 820-583, 820-609 and 820-610.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***inward investment vehicle (financial)*** has the meaning given by sections 820-185, 820-583, 820-609 and 820-610.

Note: Section 820-430 allows an inward investment vehicle (financial) to be treated as an outward investing entity (ADI) in certain cases.

***inward investment vehicle (general)*** has the meaning given by sections 820-185 and 820-583.

***inward investor (financial)*** has the meaning given by section 820-185.

Note: Section 820-430 allows an inward investor (financial) to be treated as an inward investing entity (ADI) in certain cases.

***inward investor (general)*** has the meaning given by section 820-185.

***irrigation water provider*** has the meaning given by section 40-515.

***IRU*** is an indefeasible right to use a telecommunications cable system.

***issued***, in relation to a \*debt interest, has the meaning given by paragraph 974-55(1)(d).

***IVS period*** has the meaning given by section 727-150.

***IVS time*** has the meaning given by section 727-150.

***joint venture operator*** for a \*GST joint venture has the meaning given by section 195-1 of the \*GST Act.

***labour hire notional withheld amount*** has the meaning given by section 16-125 in Schedule 1 to the *Taxation Administration Act 1953*.

***landcare operation*** has the meaning given by section 40-635.

***land transport facilities borrowings agreement*** has the meaning given by section 396-80.

***land transport facility*** has the meaning given by section 396-45.

***large withholder*** has the meaning given by section 16-95 in Schedule 1 to the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***last retirement day*** means:

- (a) if an individual's employment or office would have terminated when he or she reached a particular age or completed a particular period of service—the day he or she would reach the age or complete the period of service (as the case may be); or
- (b) in any other case—the day on which he or she would turn 65.

***laundry expense*** has the meaning given by section 900-40.

***legally responsible*** for a child means legally responsible (whether alone or jointly with someone else) for the day-to-day care, welfare and development of the child.

***legal personal representative*** means:

- (a) an executor or administrator of an estate of a person who has died; or
- (b) a trustee of an estate of a person who is under a legal disability; or
- (c) a person who holds a general power of attorney that was granted by another person.

***legal practitioner*** means a person who is enrolled as a barrister, a solicitor or a barrister and solicitor of:

- (a) a federal court; or
- (b) a court of a State or Territory.

***leisure facility*** has the meaning given by subsection 26-50(2).

***lesser benefits***:

- (a) under an \*indirect value shift, has the meaning given by paragraph 727-150(3)(a); and
- (b) under a \*presumed indirect value shift, has the meaning given by paragraph 727-855(1)(c).

***LIC capital gain*** has the meaning given by section 115-285.

***life benefit termination payment*** has the meaning given by subsection 82-130(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**life insurance business** means:

- (a) a business to the extent that it consists of issuing \*life insurance policies; and
- (b) any business that relates to a business to which paragraph (a) applies.

**life insurance company** means a company registered under the *Life Insurance Act 1995*.

**life insurance policy** has the meaning given to the expression **life policy** in the *Life Insurance Act 1995* but includes:

- (a) a contract made in the course of carrying on business that is \*life insurance business because of a declaration in force under section 12A or 12B of that Act; and
- (b) a sinking fund policy within the meaning of that Act.

**life insurance premium** includes consideration received or receivable in respect of the grant of, or the undertaking of liabilities in respect of, an \*annuity or a \*personal injury lump sum.

Note: Certain other amounts are treated as life insurance premiums when the life insurance business of a life insurance company is transferred to another life insurance company: see section 320-320.

**limited partner** means a partner of a \*limited partnership whose liability in relation to the partnership is limited.

**limited partnership** means:

- (a) an association of persons (other than a company) carrying on business as partners or in receipt of \*ordinary income or \*statutory income jointly, where the liability of at least one of those persons is limited; or
- (b) an association of persons (other than one referred to in paragraph (a)) with legal personality separate from those persons that was formed solely for the purpose of becoming a \*VCLP, an \*ESVCLP, an \*AFOF or a \*VCMP and to carry on activities that are carried on by a body of that kind.

**limited recourse debt** has the meaning given by section 243-20.

**linked assets and liabilities** has the meaning given by subsection 705-59(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**linked group** has the meaning given by section 170-260.

**listed country** has the meaning given by section 320 of the *Income Tax Assessment Act 1936*.

**listed investment company** has the meaning given by section 115-290.

**listed public company** means a company \*shares in which (except shares that carry a right to a fixed rate of \*dividend) are listed for quotation in the official list of an \*approved stock exchange.

However, a company is *not* a **listed public company** if:

- (a) a person (who is not a company) controls, or is able to control, or up to 20 persons (none of them companies) between them control, or are able to control, 75% or more of the voting power in the company (whether directly, or indirectly through one or more interposed entities); or
- (b) a person (who is not a company) has, or up to 20 persons (none of them companies) have between them, the right to receive for their own benefit (whether directly, or \*indirectly through one or more interposed entities) 75% or more of any \*dividends that the company may pay; or
- (c) a person (who is not a company) has, or up to 20 persons (none of them companies) have between them, the right to receive for their own benefit (whether directly, or \*indirectly through one or more interposed entities) 75% or more of any distribution of capital of the company.

**listed widely held trust** has the meaning given by section 272-115 in Schedule 2F to the *Income Tax Assessment Act 1936*.

**live stock** does *not* include animals used as beasts of burden or working beasts in a \*business other than a \*primary production business.

**local governing body** means a local governing body established by or under a \*State law or \*Territory law.

**lodge electronically**: a document is lodged electronically if it is transmitted to the Commissioner in an electronic format approved by the Commissioner.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***long life small business pool*** has the meaning given by section 328-185.

***long service leave employment period*** has the meaning given by subsection 83-90(4).

***losing entity*** for an \*indirect value shift has the meaning given by section 727-150.

***loss company:***

- (a) at a particular time, has the meaning given by section 165-115R or 165-115S; and
- (b) in relation to a transfer of a \*tax loss or a \*net capital loss has the meaning given by section 170-10 or 170-110.

***loss denial balance*** of a \*loss denial pool of an entity has the meaning given by sections 715-60, 715-70, 715-110, 715-135, 715-355 and 715-360.

***loss denial pool*** of an entity has the meaning given by sections 715-60, 715-70, 715-110, 715-135, 715-355 and 715-360.

***loss exposure amount*** has the meaning given by section 830-60.

***loss-focussed basis*** has the meaning given by section 727-780.

***loss year*** has the meaning given by sections 36-10, 165-70 and 175-35.

Note: The meaning of ***loss year*** in sections 36-10, 165-70 and 175-35 is modified by section 36-55 for a corporate tax entity that has an amount of excess franking offsets.

***low-cost asset*** has the meaning given by section 40-425.

***low rate cap amount*** has the meaning given by section 307-345.

***low tax component*** has the meaning given by section 295-545.

***low-value asset*** has the meaning given by section 40-425.

***LTF interest*** has the meaning given by sections 396-30 and 396-35.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**luxury car** has the same meaning as in Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936*.

**luxury car tax** has the meaning given by section 27-1 of the \*Luxury Car Tax Act.

**Luxury Car Tax Act** means the *A New Tax System (Luxury Car Tax) Act 1999*.

**luxury car tax law** has the meaning given by section 27-1 of the \*Luxury Car Tax Act.

**majority control** has the meaning given by section 45-145 in Schedule 1 to the *Taxation Administration Act 1953*.

**majority underlying interests** in a \*CGT asset has the meaning given by section 149-15.

**make**, in relation to a \*film, has the meaning given by section 376-125.

**managed investment scheme** means an entity, with more than 20 members, that is:

- (a) a managed investment scheme for the purposes of the *Corporations Act 2001*; or
- (b) an entity with a similar status to a managed investment scheme under a \*foreign law relating to corporate regulation.

**managed investment trust** has the meaning given by section 12-400 in Schedule 1 to the *Taxation Administration Act 1953*.

**managed investment trust withholding tax** means income tax payable under:

- (a) Subdivision 840-M of this Act; or
- (b) Subdivision 840-M of the *Income Tax (Transitional Provisions) Act 1997*.

**market value** has a meaning affected by Subdivision 960-S.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***maximum allowable debt:***

- (a) for an \*outward investing entity (non-ADI)—has the meaning given by section 820-90 (or that section as applied by section 820-120); and
- (b) for an \*inward investing entity (non-ADI) covered by paragraph 820-185(1)(a) (or 820-225(1)(a))—has the meaning given by section 820-190 (or that section as applied by section 820-225).

***maximum franking credit*** for a distribution has the meaning given by subsection 202-60(2).

***MDO*** has the meaning given by section 5 of the *Medical Indemnity Act 2002*.

***meal allowance*** has the meaning given by section 900-30.

***meal allowance expense*** has the meaning given by section 900-30.

***MEC group*** has the meaning given by section 719-5.

Note 1: Part 3-90 contains rules relating to the tax treatment of consolidated groups. Division 719 (of that Part) applies those rules to MEC groups with modifications (see section 719-2).

Note 2: Provisions in the *Income Tax Assessment Act 1936* and in the *Income Tax Assessment Act 1997* (other than in Part 3-90) referring only to consolidated groups do *not* apply to MEC groups.

***Medicare levy surcharge*** means:

- (a) an amount (other than a nil amount) of Medicare levy (within the meaning of Part VIIB of the *Income Tax Assessment Act 1936*) that is payable by you only because of section 8B, 8C, 8D, 8E, 8F or 8G of the *Medicare Levy Act 1986*; or
- (b) surcharge within the meaning of the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*.

***medium withholder*** has the meaning given by section 16-100 in Schedule 1 to the *Taxation Administration Act 1953*.

***member:***

- (a) in relation to a \*GST group—has the meaning given by section 195-1 of the \*GST Act; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 995-1

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- (b) in relation to a \*consolidated group or \*consolidatable group—has the meaning given by section 703-15; and
- (c) in relation to an entity—has the meaning given by section 960-130; and
- (d) in relation to a \*copyright collecting society, means:
  - (i) any entity that has been admitted as a member under the society's \*constitution; or
  - (ii) any entity that has authorised the society to license the use of his or her copyright material.

*member of the Forces* has the meaning given by section 52-105.

*member of the tax preferred end user group* has the meaning given by paragraph 250-60(4)(a).

*member of the tax preferred sector* has the meaning given by paragraph 250-60(4)(b).

*membership interest* in an entity has the meaning given by section 960-135.

*metering point* on land has the meaning given by section 40-655.

*minerals* has the meaning given by section 40-730.

*minerals treatment* has the meaning given by section 40-875.

*minimum capital amount:*

- (a) for an \*outward investing entity (ADI)—has the meaning given by section 820-305 (or that section as applied by section 820-330); and
- (b) for an \*inward investing entity (ADI)—has the meaning given by section 820-400 (or that section as applied by section 820-420).

*mining building site* has the meaning given by section 40-740.

*mining capital expenditure* has the meaning given by section 40-860.

*mining entitlement* has the meaning given by subsection 124-710(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**mining operations** has the meaning given by section 40-730.

**mining payment** has the meaning given by section 128U of the *Income Tax Assessment Act 1936*.

**mining, quarrying or prospecting information** has the meaning given by section 40-730.

**mining, quarrying or prospecting right** is:

- (a) an authority, licence, permit or right under an \*Australian law to mine, quarry or prospect for minerals, \*petroleum or quarry materials; or
- (b) a lease of land that allows the lessee to mine, quarry or prospect for minerals, petroleum or quarry materials on the land; or
- (c) an interest in such an authority, licence, permit, right or lease; or
- (d) any rights that:
  - (i) are in respect of buildings or other improvements (including anything covered by the definition of **housing and welfare**) that are on the land concerned or are used in connection with operations on it; and
  - (ii) are acquired with such an authority, licence, permit, right, lease or interest.

However, a right in respect of anything covered by the definition of **housing and welfare** in relation to a quarrying site is not a **mining, quarrying or prospecting right**.

**mining site rehabilitation** has the meaning given by section 40-735.

**mining withholding tax** means income tax payable under section 128V of the *Income Tax Assessment Act 1936*.

**MLS lump sums** has the meaning given by section 61-590.

**modified market value** of an entity has the meaning given by section 707-325.

**money equivalent** means:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 995-1

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- (a) a right to receive money or something that is a \*money equivalent under this definition; or
- (b) a \*financial arrangement (within the meaning of section 230-45).

**more than a 50% stake** has the meaning given by section 165-37.

**more than 50% of the company's capital distributions** has the meaning given by section 165-160.

**more than 50% of the company's dividends** has the meaning given by section 165-155.

**more than 50% of the voting power** has the meaning given by section 165-150.

**motor vehicle** means any motor-powered road vehicle (including a 4 wheel drive vehicle).

**multi-rate trustee** has the meaning given by section 45-455 in Schedule 1 to the *Taxation Administration Act 1953*.

**mutual affiliate company** has the meaning given by section 121AC of the *Income Tax Assessment Act 1936*.

**mutual insurance company** has the meaning given by section 121AB of the *Income Tax Assessment Act 1936*.

**National Rental Affordability Scheme** has the same meaning as in the *National Rental Affordability Scheme Act 2008*.

**natural resource** has the meaning given by section 6 of the *Income Tax Assessment Act 1936*.

**natural resource** means minerals or any other non-living resource of the land, sea-bed or sea.

**net amount** has the same meaning as in section 195-1 of the \*GST Act.

**net assessable film income** has the meaning given by section 375-815.

**net asset amount** has the meaning given by section 104-95.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**net capital gain** has the meaning given by sections 102-5 and 165-111.

Note: For income years before 1998-99, **net capital gain** has the meaning given by section 102-20 of the *Income Tax (Transitional Provisions) Act 1997*.

**net capital loss** has the meaning given by sections 102-10 and 165-114 and affected by section 701-30.

**net current termination value** of a \*life insurance policy means so much of the \*current termination value of the policy as relates to the part of the policy that is not reinsured under a \*contract of reinsurance.

**net exempt film income** has the meaning given by section 375-805.

**net exempt income** has the meaning given by section 36-20.

**net fuel amount** has the meaning given by section 60-5 of the *Fuel Tax Act 2006*.

**net GST:** Your **net GST** for a \*supply, is:

- (a) the \*GST payable by you on the supply; plus
- (b) the sum of any \*increasing adjustments that you have relating to the supply; minus
- (c) the sum of any \*decreasing adjustments that you have relating to the supply.

**net income:**

- (a) of a partnership—has the same meaning as in Division 5 of Part III of the *Income Tax Assessment Act 1936*; and
- (b) of a trust—has the same meaning as in Division 6 of Part III of that Act.

**net income from working** has the meaning given by section 61-570.

**net input tax credit:** Your **net input tax credit** for an \*acquisition or \*importation is:

- (a) the amount of any \*input tax credit to which you are entitled for the acquisition or \*importation; minus

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 995-1

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- (b) the sum of any \*increasing adjustments that you have relating to the acquisition or \*importation; plus
- (c) the sum of any \*decreasing adjustments that you have relating to the acquisition or \*importation.

***net investment component of ordinary life insurance policies*** has the meaning given by subsection 713-515(4).

***net overstated amount*** has the meaning given by subsection 104-525(3).

***net premium*** for a \*life insurance policy means the amount of the \*life insurance premium for the policy less the part (if any) of that premium that is reinsured under a \*contract of reinsurance.

***net risk component*** of a \*life insurance policy means so much of the policy's risk component as:

- (a) is not reinsured under a \*contract of reinsurance; or
- (b) is reinsured under a contract of reinsurance to which subsection 148(1) of the *Income Tax Assessment Act 1936* applies.

***net small business income*** has the meaning given by section 61-525.

***net understated amount*** has the meaning given by subsection 104-525(3).

***net value*** of an entity means the amount by which the sum of the \*market values of the assets of the entity exceeds the sum of its liabilities.

***net value of the CGT assets*** of an entity has the meaning given by section 152-20.

***new investment threshold*** has the meaning given by section 41-35.

***non-ADI financial institution*** has the meaning given by subsection 128A(1) of the *Income Tax Assessment Act 1936*.

***non-arm's length component*** has the meaning given by section 295-545.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***non-arm's length income*** has the meaning given by section 295-550.

***non-arm's length limited recourse debt*** has the meaning given by subsection 243-20(6).

***non-assessable non-exempt income*** has the meaning given by section 6-23.

***non-cash benefit*** is property or services in any form except money. If a non-cash benefit is dealt with on behalf of an entity, or is provided or dealt with as an entity directs, the benefit is taken to be provided to the entity.

***non-complying approved deposit fund*** means an \*approved deposit fund that is not a \*complying approved deposit fund.

***non-complying superannuation fund*** means a \*superannuation fund that:

- (a) is a fund; and
- (b) is not a \*complying superannuation fund.

***non-compulsory***, in relation to a \*uniform, has the meaning given by subsection 34-15(2).

***non-concessional contributions*** has the meaning given by section 292-90.

***non-concessional contributions cap*** has the meaning given by section 292-85.

***non-copyright income*** of a \*copyright collecting society means \*ordinary income and \*statutory income \*derived by the society, but does not include \*copyright income.

***non-debt liabilities***, of an entity and at a particular time, means liabilities that the entity has at that time, other than:

- (a) any \*debt capital of the entity; or
- (b) any \*equity interest in the entity; or
- (c) if the entity is a \*corporate tax entity—a provision for a \*distribution of profit; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 995-1

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- (ca) if paragraph (c) does not apply—a provision for a distribution to the entity's \*members; or
- (d) any liability of the entity under a securities loan arrangement if, as at that time, the entity:
  - (i) has received amounts for the sale of securities (other than any fees associated with the sale) under the arrangement; and
  - (ii) has not repurchased the securities under the arrangement; or
- (e) a liability of the entity, to the extent that it meets the conditions for being taken into account in working out the \*borrowed securities amount of the entity as at that time.

***non-entity joint venture*** means an arrangement that the Commissioner is satisfied is a contractual arrangement:

- (a) under which 2 or more parties undertake an economic activity that is subject to the joint control of the parties; and
- (b) that is entered into to obtain individual benefits for the parties, in the form of a share of the output of the arrangement rather than joint or collective profits for all the parties.

***non-equity share*** means a \*share that is not an \*equity interest in the company.

Note: A share will not be an equity interest if it is characterised as, or forms part of a larger interest that is characterised as, a debt interest under Subdivision 974-B.

***non-fixed trust*** means a trust that is not a \*fixed trust.

***non-member spouse*** has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

***non-portfolio interest test***: an interest held by an entity in another entity passes the ***non-portfolio interest test*** in the circumstances set out in section 960-195.

***non-primary production deductions*** has the meaning given by subsection 392-85(3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***non-primary production shade-out amount*** has the meaning given by subsections 392-90(2) and (3).

***non-profit company*** has the meaning given by section 3 of the *Income Tax Act 1986*.

***non-profit sub-entity*** has the meaning given by section 195-1 of the \*GST Act.

***non-quotation withholding payment*** means a \*withholding payment covered by Subdivision 12-E in Schedule 1 to the *Taxation Administration Act 1953*.

Note: Subdivision 12-E and Division 14 in that Schedule deal with collecting amounts on account of income tax payable by recipients of certain payments or non-cash benefits who have not quoted their tax file number or ABN, as appropriate.

***non-share capital account*** means the account provided for by section 164-10.

***non-share capital return*** has the meaning given by section 974-125.

***non-share equity interest*** in a company means an \*equity interest in the company that is not solely a \*share.

***non-share distribution*** has the meaning given by section 974-115.

***non-share dividend*** has the meaning given by section 974-120.

***no-TFN contributions income*** has the meaning given by section 295-610.

***notional accounting period*** has the meaning given by section 470 of the *Income Tax Assessment Act 1936*.

***notional buyer*** has the meaning given by section 240-17.

***notional depreciation*** for a lease period has the meaning given by section 20-120.

***notional employer*** has the meaning given by section 28-185.

***notional interest*** has the meaning given by section 240-60.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**notional loan** has the meaning given by section 240-25.

**notional loan principal** has the meaning given by section 240-25.

**notional loss:**

- (a) of a company—has the meaning given by sections 165-50 and 165-75; and
- (b) of a partnership—has the meaning given by sections 165-80 and 165-85.

**notional net capital gain** has the meaning given by section 165-108.

**notional net capital loss** has the meaning given by section 165-108.

**notional net income** of a partnership has the meaning given by sections 165-80 and 165-85.

**notional seller** has the meaning given by section 240-17.

**notional tax** has the meaning given by sections 45-325 and 45-475 in Schedule 1 to the *Taxation Administration Act 1953*.

**notional taxable income** has the meaning given by sections 165-50 and 165-75.

**notional taxed contributions** has the meaning given by section 292-170.

**notional written down value** of a \*depreciating asset has the meaning given by section 58-75.

**NRAS rent** (short for National Rental Affordability Scheme rent) means rent \*derived from a rental dwelling under the National Rental Affordability Scheme for an income year.

**NRAS year** has the same meaning as in the *National Rental Affordability Scheme Act 2008*.

**NZ franking choice** has the meaning given by section 220-35.

**NZ franking company** has the meaning given by section 220-30.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**NZ resident** has the meaning given by section 220-20.

**OB activity** has the meaning given by section 121D of the *Income Tax Assessment Act 1936*.

**occupation specific clothing** has the meaning given by subsection 34-20(1).

**officially quoted price** has the meaning given by subsections 124-784A(6) and (7).

**off-market buy-back** means a purchase that is a buy-back and an off-market purchase for the purposes of Division 16K of Part III of the *Income Tax Assessment Act 1936*.

**off-market purchase** has the meaning given by section 159GZZZZJ of the *Income Tax Assessment Act 1936*.

**offshore banking unit** has the meaning given by section 128AE of the *Income Tax Assessment Act 1936*.

**on issue:**

- (a) a \*debt interest is **on issue** as provided in paragraph 974-55(1)(e); and
- (b) an \*equity interest in an entity:
  - (i) is **on issue** from when it is issued until it stops being on issue because of subparagraph (ii); and
  - (ii) stops being **on issue** when, for reasons other than the economic performance of the entity (or of a \*connected entity of the entity), there is no longer a reasonable likelihood that a substantial \*financial benefit will be provided in respect of the interest under the \*scheme, or under any of the schemes, that give rise to the interest.

**on-lent amount**, of an entity and at a particular time, means the value, as at that time, of:

- (a) all the assets of the entity that are comprised by \*debt interests issued by other entities; and
- (b) all the assets of the entity that are comprised by leases for the hire of goods that are not covered by paragraph (a) and in relation to which the following subparagraphs are satisfied:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 995-1

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- (i) each of the leases is for a term of 6 months or more;
  - (ii) the leases are part of the \*business of hiring goods that the entity carries on;
  - (iii) the entity's business of hiring goods is not carried on predominantly for the purposes of hiring goods to the entity's \*associates; and
- (c) all the securities that were held by the entity that:
- (i) have been sold by the entity under a reciprocal purchase agreement (otherwise known as a repurchase agreement), sell-buyback arrangement or securities loan arrangement; but
  - (ii) have not yet been repurchased by the entity under the agreement or arrangement; and
- (d) if the entity:
- (i) carries on a \*business of dealing in securities; and
  - (ii) does not carry on that business predominantly for the purposes of dealing in securities with, or on behalf of, the entity's \*associates;
- all \*shares that:
- (iii) the entity holds at that time; and
  - (iv) are listed at that time for quotation in the official list of an \*approved stock exchange; and
  - (v) are not shares in an \*associate entity at that time of the entity.

***on-market buy-back*** means a purchase that is a buy-back and an on-market purchase for the purposes of Division 16K of Part III of the *Income Tax Assessment Act 1936*.

***opening adjustable value*** of a \*depreciating asset has the meaning given by section 40-85.

***opening pool balance*** has the meaning given by section 328-195.

***oral ruling*** has the meaning given by section 360-5 in Schedule 1 to the *Taxation Administration Act 1953*.

***ordinary capital gain*** has the meaning given by section 124ZW of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**ordinary class** for a taxable income of a \*life insurance company has the meaning given by section 320-139.

**ordinary class** for a \*tax loss of a \*life insurance company has the meaning given by section 320-143.

**ordinary debt interest** has the meaning given by section 974-140.

**ordinary income** has the meaning given by section 6-5.

**ordinary investment policy** means a \*life insurance policy that is not:

- (a) a \*complying superannuation/FHSA life insurance policy; or
- (b) an \*exempt life insurance policy; or
- (c) a policy that provides for \*participating benefits or \*discretionary benefits; or
- (d) a policy (other than a \*funeral policy) under which amounts are to be paid only on the death or disability of a person.

**ordinary payment** is defined as set out in this table:

<b>Ordinary payment</b>		
<b>Item</b>	<b>Ordinary payment, in relation to this kind of a payment:</b>	<b>has the meaning given by:</b>
1	Payment under the ABSTUDY scheme	subsection 52-131(8)
2	Payment under the <i>Military Rehabilitation and Compensation Act 2004</i>	subsection 52-114(3)
3	Social security payment	subsection 52-10(3)
4	Veterans' affairs payment	subsection 52-65(4)

**original excess contributions tax assessment day** has the meaning given by section 292-305.

**original franking assessment day** has the meaning given by subsection 214-95(2).

**outstanding**, within the context of \*franking returns, has the meaning given by subsection 214-45(3).

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 995-1

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***outstanding claims*** at the end of an income year (the ***current income year***) under \*general insurance policies means claims under the policies that:

- (a) the \*general insurance company concerned is liable to pay; and
- (b) arose from insured events that occurred in the current income year or an earlier income year; and
- (c) were not paid in full before the end of the current income year.

***outstanding foreign hybrid net capital loss amount*** has the meaning given by section 830-70.

***outstanding foreign hybrid revenue loss amount*** has the meaning given by section 830-65.

***outstanding tax-related liability*** of an entity at a particular time means a \*tax-related liability of the entity:

- (a) that has arisen at or before that time (whether or not it is due and payable at that time); and
- (b) an amount of which has not been paid before that time.

***outward investing entity (ADI)*** has the meaning given by sections 820-300, 820-583 and 820-609.

Note: Section 820-430:

- allows an outward investor (financial) to be treated as an outward investing entity (ADI) in certain cases; and
- allows an inward investment vehicle (financial) to be treated as an outward investing entity (ADI) in certain cases.

***outward investing entity (non-ADI)*** has the meaning given by sections 820-85, 820-583, 820-609 and 820-610.

***outward investor (financial)*** has the meaning given by sections 820-85, 820-583, 820-609 and 820-610.

Note: Section 820-430 allows an outward investor (financial) to be treated as an outward investing entity (ADI) in certain cases.

***outward investor (general)*** has the meaning given by sections 820-85 and 820-583.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**over-depreciated** has the meaning given by subsection 705-50(6).

**over-depreciation** has the meaning given by subsection 705-50(6).

**over-franking tax** means tax imposed under the *New Business Tax System (Over-franking Tax) Act 2002*.

Note: The Act imposes tax where it is payable under section 203-50 of this Act.

**overseas fund** has the meaning given by section 74 of the *Life Insurance Act 1995*.

**overseas permanent establishment**, of an entity, means a \*permanent establishment of the entity that is in a country other than Australia.

**ownership interest**: an **ownership interest**:

- (a) in land or a \*dwelling—has the meaning given by section 118-130; and
- (b) in a company or trust—has the meaning given by section 125-60.

**ownership period** of a \*dwelling has the meaning given by section 118-125.

**ownership test period** has the meaning given by sections 165-12, 165-37 and 165-123.

**ownership test time** has the meaning given by section 166-145.

**paid-up share capital** of a company means the amount standing to the credit of the company's \*share capital account reduced by the amount (if any) that represents amounts unpaid on shares.

**parent**: an individual is the **parent** of anyone who is the individual's \*child.

**part** of the \*spectrum specified in a \*spectrum licence has the meaning given by section 5 of the *Radiocommunications Act 1992*.

**partial interest** in a \*corporate tax entity has the meaning given by subsection 208-25(3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***participant:***

- (a) ***participant***, in relation to a \*GST joint venture, has the meaning given by section 195-1 of the \*GST Act; and
- (a) ***participant*** in a \*forestry managed investment scheme has the meaning given by subsection 394-15(4).

***participating benefit*** has the meaning given by section 15 of the *Life Insurance Act 1995*.

***participating PDF*** has the meaning given by section 210-40.

***partnership*** means:

- (a) an association of persons (other than a company or a \*limited partnership) carrying on business as partners or in receipt of \*ordinary income or \*statutory income jointly; or
- (b) a limited partnership.

Note: Division 830 treats foreign hybrid companies as partnerships.

***partnership cost setting interest***, in a partnership, has the meaning given by section 713-210.

***partnership loss*** has the same meaning as in Division 5 of Part III of the *Income Tax Assessment Act 1936*.

***part of a distribution that is franked with an exempting credit*** has the meaning given by section 976-10.

***part of a distribution that is franked with a venture capital credit*** has the meaning given by section 976-15.

***Part VA investment*** means an investment of a kind mentioned in section 202D of the *Income Tax Assessment Act 1936*.

***passes:*** a \*CGT asset ***passes*** to a beneficiary in an individual's estate in the way described in section 128-20.

***PAYG instalment*** means an instalment payable under Division 45 in Schedule 1 to the *Taxation Administration Act 1953*.

***PAYG instalment period*** means:

- (a) for a \*quarterly payer—an \*instalment quarter in relation to which a \*PAYG instalment is paid; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) for an \*annual payer—an income year in relation to which a PAYG instalment is paid.

**PAYG instalment variation credit** means a credit under section 45-215 or 45-420 in Schedule 1 to the *Taxation Administration Act 1953*.

**PAYG payment period** means:

- (a) for a \*personal services entity that is a \*small withholder—any \*quarter; or  
(b) for any other personal services entity—any month.

**PAYG withholding branch** has the meaning given by section 16-142 in Schedule 1 to the *Taxation Administration Act 1953*.

**payment**, of a \*carried interest, includes the meanings given in subsection 104-255(7).

**payment split** means a payment split under Part VIIIB of the *Family Law Act 1975*.

**payment summary** has the meaning given by section 16-170 in Schedule 1 to the *Taxation Administration Act 1953*.

**pays a PAYG instalment** has the meaning given by subsection 205-20(1).

**pays income tax** has the meaning given by subsection 205-20(3).

**PDF** (pooled development fund) means a company that is a PDF within the meaning of the *Pooled Development Funds Act 1992*.

**pension age** has the meaning given by sections 52-65 and 52-105.

**performing artist** has the meaning given by subsections 405-25(2) and (3).

**period of the loan** has the meaning given by subsection 25-25(5).

**permanent establishment** has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

**permitted entity value** has the meaning given by section 118-440.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***permitted loan*** has the same meaning as in section 9-10 of the *Venture Capital Act 2002*.

***person*** includes a company.

***personal injury annuity*** has the meaning given by section 54-5.

***personal injury lump sum*** has the meaning given by section 54-5.

***personal services business*** has the meanings given by subsection 87-15(1) and section 87-55.

***personal services business determination*** means a determination under section 87-60 or 87-65.

***personal services business test*** has the meaning given by subsection 87-15(2).

***personal services entity*** has the meaning given by subsection 86-15(2).

***personal services income*** has the meaning given by section 84-5.

***personal services payment remitter*** has the meaning given by section 13-15 in Schedule 1 to the *Taxation Administration Act 1953*.

***personal use asset*** has the meaning given by section 108-20.

***petroleum*** has the meaning given by section 40-730.

***petroleum resource rent tax*** means tax imposed by the *Petroleum Resource Rent Tax Act 1987*, as assessed under the *Petroleum Resource Rent Tax Assessment Act 1987*.

***plant*** has the meaning given by section 45-40.

***policy owners' retained profits*** for \*life insurance policies means Australian policy owners' retained profits, or overseas policy owners' retained profits, as defined by section 61 of the *Life Insurance Act 1995*, in relation to the statutory fund (within the meaning of section 29 of that Act) to which the business of issuing the policies relates.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***policy termination value***, in relation to a \*life insurance policy at a particular time, means the amount that is, within the meaning of prudential standards made under section 230A of the *Life Insurance Act 1995*, the termination value of that policy at that time.

***pool of construction expenditure*** has the meaning given by section 43-85.

***pooled development fund*** means a \*PDF.

***pooled interest*** in an \*eligible tier-1 company that is a member of a \*MEC group has the meaning given by section 719-560.

***pooled superannuation trust*** means a pooled superannuation trust within the meaning of section 48 of the *Superannuation Industry (Supervision) Act 1993*.

***position to affect rights*** has the meaning given by section 975-150.

***post-17/8/93 period*** has the meaning given by subsection 83-90(3).

***post-CGT asset*** means a \*CGT asset that is not a \*pre-CGT asset.

***post-choice NZ franking company*** has the meaning given by section 220-300.

***post, digital and visual effects production*** for a \*film has the meaning given by section 376-35.

***potential MEC group*** has the meaning given by section 719-10.

***pre-16/8/78 period*** has the meaning given by subsection 83-90(1).

***pre-18/8/93 period*** has the meaning given by subsection 83-90(2).

***pre-CGT asset*** has the meaning given by section 149-10.

***pre-CGT factor*** has the meaning given by subsection 705-125(2).

***precious metal*** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

***precluded asset*** has the meaning given by subsection 122-25(3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***predominant economic interest*** in an asset has the meaning given by sections 250-110 to 250-140.

***predominantly-services indirect value shift*** has the meaning given by section 727-725.

***pre-existing audited book value*** of a \*depreciating asset has the meaning given by section 58-85.

***pre-July 83 segment***, of an \*employment termination payment, has the meaning given by section 82-155.

***pre-owned*** has the meaning given by subsection 118-428(2).

***pre-school course*** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

***prescribed dual resident*** has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

***prescribed excluded STB*** means an \*excluded STB that is prescribed by the regulations for the purposes of Division 1AB of Part III of the *Income Tax Assessment Act 1936*.

***prescribed private fund*** means a fund that is prescribed by the regulations for the purposes of this definition other than such a fund declared by the Treasurer, in writing, not to be a prescribed private fund.

***present value*** of a \*financial benefit has a meaning affected by section 250-100.

***preservation age*** has the meaning given by Part 6 of the Superannuation Industry (Supervision) Regulations 1994.

***pre-shift gain*** has the meaning given by section 725-210.

***pre-shift loss*** has the meaning given by section 725-210.

***presumed indirect value shift*** has the meaning given by section 727-855.

***previous recoupment law*** has the meaning given by section 20-55.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**primary course** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

**primary entitlement** to a \* tax offset under Subdivision 61-I has the meaning given by subsections 61-355(2) and 61-440(2).

**primary equity interest** in an entity has the meaning given by section 727-520.

**primary interest** in an entity has the meaning given by section 727-520.

**primary loan interest** in an entity has the meaning given by section 727-520.

**primary production business**: you carry on a **primary production business** if you carry on a \*business of:

- (a) cultivating or propagating plants, fungi or their products or parts (including seeds, spores, bulbs and similar things), in any physical environment; or
- (b) maintaining animals for the purpose of selling them or their bodily produce (including natural increase); or
- (c) manufacturing dairy produce from raw material that you produced; or
- (d) conducting operations relating directly to taking or catching fish, turtles, dugong, bêche-de-mer, crustaceans or aquatic molluscs; or
- (e) conducting operations relating directly to taking or culturing pearls or pearl shell; or
- (f) planting or tending trees in a plantation or forest that are intended to be felled; or
- (g) felling trees in a plantation or forest; or
- (h) transporting trees, or parts of trees, that you felled in a plantation or forest to the place:
  - (i) where they are first to be milled or processed; or
  - (ii) from which they are to be transported to the place where they are first to be milled or processed.

**primary production deductions** has the meaning given by subsection 392-80(3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***prime cost method*** has the meaning given by section 40-75.

***principal class of shares*** in a company means:

- (a) those ordinary or common shares of the company that represent the majority of the voting power and value of the company; or
- (b) if no single class of ordinary or common shares represents the majority of the voting power and value of the company—those classes of ordinary or common shares that represent the majority of the voting power and value of the company.

***private company*** means a company that is not a \*public company for the income year.

***private indirect tax ruling*** means an \*indirect tax ruling given to a particular entity.

***private ruling*** has the meaning given by section 359-5 in Schedule 1 to the *Taxation Administration Act 1953*.

***private use***, of a \*car, has the meaning given by subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*.

***privatised asset*** has the meaning given by section 58-5.

***proceeds of the disposal or death*** has the meaning given by subsection 385-100(2).

***proceeds of the sale of 2 wool clips*** has the meaning given by subsection 385-135(3).

***processed minerals*** has the meaning given by section 40-875.

***production associate*** has the meaning given by subsection 405-25(4).

***production expenditure*** has the meaning given by Subdivision 376-C.

***product ruling*** means a public ruling under the *Taxation Administration Act 1953* that states that it is a product ruling.

***professional arts business*** has the meaning given by section 35-10.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**professional year 1** has the meaning given by subsection 405-50(3).

**professional year 2** has the meaning given by subsection 405-50(4).

**professional year 3** has the meaning given by subsection 405-50(4).

**professional year 4** has the meaning given by subsection 405-50(4).

**profit** on the disposal of a leased \*car has the meaning given by section 20-115.

**project amount** has the meaning given by section 40-840.

**project life** has the meaning given by section 40-845.

**promoter** has the meaning given by section 290-60 in Schedule 1 to the *Taxation Administration Act 1953*.

**prospecting entitlement** has the meaning given by subsection 124-710(1).

**prospective gaining entity** for a \*scheme has the meaning given by section 727-860.

**prospective losing entity** for a \*scheme has the meaning given by section 727-850.

**protective clothing** has the meaning given by subsection 34-20(2).

**provide** a \*fringe benefit or economic benefit includes allow, confer, give, grant or perform the benefit.

Note: This is based on the definition of **provide** in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*.

**provided in relation to a tax preferred use of an asset**, in relation to a \*financial benefit, has a meaning affected by section 250-85.

**provides medical indemnity cover** has the meaning given by section 5 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***provisional head company*** of a \*MEC group means the company that holds an appointment in force under section 719-60 as the provisional head company of the group.

***prudential capital deduction***, for an entity and at a particular time, means the total amounts that must be deducted in calculating the following in accordance with the \*prudential standards as in force at that time:

- (a) the eligible tier 1 capital of the entity at that time (within the meaning of those standards);
- (b) the sum of the eligible tier 1 and tier 2 capital of the entity at that time (within the meaning of those standards).

***prudential standards*** means the prudential standards determined by \*APRA and in force under section 11AF of the *Banking Act 1959*.

***public company*** means a company that is a public company (as defined by section 103A of the *Income Tax Assessment Act 1936*) for the income year.

***public indirect tax ruling*** means an \*indirect tax ruling other than a \*private indirect tax ruling.

***publicly traded unit trust*** has the meaning given by section 149-50.

***public official*** means an employee or official of an \*Australian Government Agency or of a \*local governing body.

***public ruling*** has the meaning given by section 358-5 in Schedule 1 to the *Taxation Administration Act 1953*.

***public sector superannuation scheme*** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

***public trading trust*** has the meaning given by section 102R of the *Income Tax Assessment Act 1936*.

***\*purpose of producing assessable income***: something is done for the ***\*purpose of producing assessable income*** if it is done:

- (a) for the purpose of gaining or producing assessable income; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) in carrying on a \*business for the purpose of gaining or producing assessable income.

Note: Section 32-15 (about using property in providing entertainment) treats use of property as not being for the purpose of producing assessable income.

***put to a tax preferred use***, in relation to an asset, has the meaning given by section 250-60.

***qualifying Australian production expenditure*** has the meaning given by Subdivision 376-C.

***qualifying forex account*** means an account that:

- (a) is denominated in a particular \*foreign currency; and
- (c) either:
  - (i) has the primary purpose of facilitating transactions; or
  - (ii) is a credit card account.

***qualifying investor*** has the meaning given by section 43-220.

***qualifying right*** has the meaning given by section 139CD of the *Income Tax Assessment Act 1936*, and includes a right to \*acquire a stapled security that is treated because of Subdivision DB of Division 13A of Part III of that Act as a qualifying right for the purposes of that Division.

***qualifying security*** has the same meaning as in Division 16E of Part III of the *Income Tax Assessment Act 1936*.

***qualifying share*** has the meaning given by section 139CD of the *Income Tax Assessment Act 1936*.

***qualifying SME investment*** means an \*SME investment that is made in accordance with Division 1 of Part 4 of the *Pooled Development Funds Act 1997*.

***quarter*** means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

***quarterly instalment component*** has the meaning given by section 45-610 in Schedule 1 to the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**quarterly payer** means an entity that is liable to pay \*PAYG instalments and is not an \*annual payer.

**quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax** has the meaning given by section 45-134 in Schedule 1 to the *Taxation Administration Act 1953*.

**quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax** has the meaning given by section 45-132 in Schedule 1 to the *Taxation Administration Act 1953*.

**quarterly payer who pays on the basis of GDP-adjusted notional tax** has the meaning given by section 45-130 in Schedule 1 to the *Taxation Administration Act 1953*.

**quarterly payer who pays on the basis of instalment income** has the meaning given by section 45-125 in Schedule 1 to the *Taxation Administration Act 1953*.

**quasi-ownership right** over land means:

- (a) a lease of the land; or
- (b) an easement in connection with the land; or
- (c) any other right, power or privilege over the land, or in connection with the land.

**quote** an entity's \*ABN means quote in a form and manner approved by the Commissioner.

**quoted:** an entity has **quoted** its \*tax file number in connection with a \*Part VA investment if the entity is taken, for the purposes of Part VA of the *Income Tax Assessment Act 1936*, to have quoted its tax file number in connection with the investment.

**quoted (for superannuation purposes)** has the meaning given by section 295-615.

**RBA** has the same meaning as in Part IIB of the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**RBA surplus** has the same meaning as in Part IIB of the *Taxation Administration Act 1953*.

**realisation event** has the meaning given by sections 977-5, 977-20 and 977-55.

**realisation-time method** means the method (for determining the effect of \*indirect value shifts) for which Subdivision 727-G provides.

**realised for income tax purposes:**

- (a) a gain is **realised for income tax purposes** as provided in sections 977-15, 977-35, 977-40 and 977-55; and
- (b) a loss is **realised for income tax purposes** as provided in sections 977-10, 977-25, 977-30 and 977-55.

**reasonably arguable** has the meaning given by section 284-15 in Schedule 1 to the *Taxation Administration Act 1953*.

**receives a refund of income tax** has the meaning given by section 205-35.

**recognised company accounts**, for a period, of a company that is a foreign resident means:

- (a) accounts that are prepared in relation to the company for the period in accordance with standards covered by subsection 820-960(1C) or (1D); or
- (b) if there are no such accounts for the period—accounts that:
  - (i) are prepared in relation to the company for the period in accordance with commercially accepted accounting principles; and
  - (ii) give a true and fair view of the financial position of the company.

**recognised consolidated accounts**, for a period, of 2 or more companies that are foreign residents means:

- (a) consolidated accounts that are prepared in relation to those companies for the period in accordance with standards covered by subsection 820-960(1C) or (1D); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 995-1

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- (b) if there are no such accounts for the period—consolidated accounts that:
  - (i) are prepared in relation to those companies for the period in accordance with commercially accepted accounting principles; and
  - (ii) give a true and fair view of the financial position of the companies on a consolidated basis.

**recognised new investment amount** has the meaning given by section 41-20.

**recognised tax adviser** means:

- (a) a \*registered tax agent; or
- (b) a legal practitioner.

**recoupment** has the meaning given by section 20-25.

**recreation** includes amusement, sport or similar leisure-time pursuits.

**recreational club** has the meaning given by subsection 26-45(2).

**redeemable shares** means:

- (a) \*shares that are liable to be redeemed; or
- (b) shares that, at the option of the company that issued them, are liable to be redeemed.

**reduce a franking assessment** has the meaning given by subsection 214-125(2).

**reduced beneficiary's share** of a trust's net income for an income year has the meaning given by section 45-483 in Schedule 1 to the *Taxation Administration Act 1953*.

**reduced cost base** of a \*CGT asset has the meaning given by Subdivision 110-B.

**reduced net asset amount** has the meaning given by section 104-100.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**reduced no beneficiary's share** of a trust's net income for an income year has the meaning given by section 45-483 in Schedule 1 to the *Taxation Administration Act 1953*.

**reduction amount** has the meaning given by subsections 385-120(2) and (3).

**registered scheme** has the same meaning as in the *Corporations Act 2001*.

**registered tax agent** means an entity which is registered as a tax agent under Part VIIA (Registration of tax agents) of the *Income Tax Assessment Act 1936*.

**registration requirements of an AFOF** has the meaning given by subsection 9-5(1) of the *Venture Capital Act 2002*.

**registration requirements of an ESVCLP** has the meaning given by subsection 9-3(1) of the *Venture Capital Act 2002*.

**registration requirements of a VCLP** has the meaning given by subsection 9-1(1) of the *Venture Capital Act 2002*.

**related entity** has the meaning given by subsections 26-35(2) and (3).

**related facility** in relation to a \*land transport facility has the meaning given by section 396-45.

**related scheme** has the meaning given by section 974-155.

**relative** of a person means:

- (a) the person's \*spouse; or
- (b) the \*parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendent or \*adopted child of that person, or of that person's spouse; or
- (c) the spouse of a person referred to in paragraph (b).

Note: Section 960-255 may be relevant to determining relationships for the purposes of paragraph (b) of the definition of **relative**.

**relevant interest** has the same meaning as in the *Corporations Act 2001*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**religious practitioner** means:

- (a) a minister of religion; or
- (b) a student at an institution who is undertaking a course of instruction in the duties of a minister of religion; or
- (c) a full-time member of a religious order; or
- (d) a student at a college conducted solely for training persons to become members of religious orders.

**remaining effective life** of a \*depreciating asset has the meaning given by section 40-75.

**replacement-asset roll-over**: a **replacement-asset roll-over** allows you to defer the making of a \*capital gain or a \*capital loss from one \*CGT event until a later CGT event happens where your ownership of one CGT asset ends and you \*acquire another one. The **replacement-asset roll-overs** are listed in section 112-115.

**reportable employer superannuation contribution** has the meaning given by section 16-182 in Schedule 1 to the *Taxation Administration Act 1953*.

**reportable fringe benefits amount** for an income year in respect of an employee's employment by an employer has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986* (as it applies of its own force or because of the *Fringe Benefits Tax (Application to the Commonwealth) Act 1986*).

**reportable fringe benefits total** has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

**reportable superannuation contributions**, for an individual and an income year, means the sum of:

- (a) the individual's \*reportable employer superannuation contributions (if any) for the income year; and
- (b) the individual's deductions (if any) under Subdivision 290-C for the income year.

**representative** of an \*incapacitated entity has the meaning given by section 195-1 of the \*GST Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**representative member** for a \*GST group has the meaning given by section 195-1 of the \*GST Act.

**required to be registered** has the meaning given by the \*GST Act.

**research and development activities** has the meaning given by section 73B of the *Income Tax Assessment Act 1936*.

**resident investment vehicle** has the meaning given by section 118-510.

**residency requirement:**

- (a) for an entity making a \*distribution—has the meaning given by section 202-20 (as affected by section 220-100, if relevant); and
- (b) for an income year that is one in which, or in relation to which, an event specified in a table in one of the following sections occurs:
  - (i) section 205-15 (general table of \*franking credits);
  - (ii) section 205-30 (general table of \*franking debits);
  - (iii) section 208-115 (table of \*exempting credits);
  - (iv) section 208-120 (table of \*exempting debits);
  - (v) section 208-130 (table of franking credits that arise because of an entity's status as a \*former exempting entity or \*exempting entity);
  - (vi) section 208-145 (table of franking debits that arise because of an entity's status as a former exempting entity or exempting entity);or an income year that is described in section 205-70 or 220-205—has the meaning given by section 205-25; and
- (c) for an entity receiving a distribution—has the meaning given by section 207-75; and
- (d) for the purposes of determining whether an entity is an exempt institution that is eligible for a refund at the time a \*franked distribution is made—has the meaning given by section 207-117.

**residential care** has the same meaning as in the *Aged Care Act 1997*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 995-1

**residential premises** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

**resident trust for CGT purposes**: a trust is a **resident trust for CGT purposes** for an income year if, at any time during the income year:

- (a) for a trust that is not a unit trust, a trustee is an Australian resident or the central management and control of the trust is in Australia; or
- (b) for a unit trust, one of the requirements in column 2 and one of the requirements in column 3 of this table are satisfied.

Requirements for unit trust		
Item	One of these requirements is satisfied	And also one of these
1	Any property of the trust is situated in Australia	The central management and control of the trust is in Australia
2	The trust carries on a *business in Australia	Australian residents held more than 50% of the beneficial interests in the income or property of the trust

**resident unit trust**:

- (a) for a \*corporate unit trust—has the meaning given by section 102H of the *Income Tax Assessment Act 1936*; and
- (b) for a \*public trading trust—has the meaning given by section 102Q of the *Income Tax Assessment Act 1936*.

**residual unrealised net loss** for a \*changeover time has the meaning given by section 165-115BB.

**responsible entity**, of a \*registered scheme, has the same meaning as in the *Corporations Act 2001*.

**retail fuel** means taxable fuel, within the meaning of the *Fuel Tax Act 2006*, that is sold by retail.

**retained cost base asset** has the meaning given by subsections 705-25(5), 713-515(1) and 713-705(2).

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**retention period** has the meaning given by sections 28-150, 900-25, 900-75 and 900-90.

**retirement village** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

**retirement village residence contract** has the meaning given by paragraph 230-475(4)(a).

**retirement village services contract** has the meaning given by paragraph 230-475(4)(b).

**return** on a \*debt interest or \*equity interest does not include a return of an amount invested in the interest.

**revenue asset** has the meaning given by section 977-50.

**reviewable fuel tax decision** has the meaning given by subsection 112-50(2) in Schedule 1 to the *Taxation Administration Act 1953*.

**reviewable GST decision** has the meaning given by subsection 110-50(2) in Schedule 1 to the *Taxation Administration Act 1953*.

**reviewable GST transitional decision** has the meaning given by subsection 110-50(3) in Schedule 1 to the *Taxation Administration Act 1953*.

**reviewable indirect tax decision** has the meaning given by subsection 105-40(2) in Schedule 1 to the *Taxation Administration Act 1953*.

**reviewable wine tax decision** has the meaning given by subsection 111-50(2) in Schedule 1 to the *Taxation Administration Act 1953*.

**revive**: a \*170-D deferred loss **revives** as mentioned in section 715-310.

**right to use** includes the right to possess.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***risk component:***

- (a) the ***risk component*** of a premium for a \*life insurance policy has the meaning given by subsection 26-85(2); and
- (b) the ***risk component*** of a claim paid under a life insurance policy has the meaning given by section 320-80.

***risk-weighted assets***, of an entity and at a particular time, means the sum of the entity's risk exposures that the entity has at that time, as is determined in accordance with:

- (a) if the entity is an \*Australian entity that is not a \*foreign controlled Australian entity—the \*prudential standards; or
- (b) in any other case—either of the following:
  - (i) the prudential standards;
  - (ii) the prudential standards determined by the prudential regulator in the country of which the entity, or the \*foreign bank that has \*TC control interests of at least 40% in the entity, is a resident.

***roll-over superannuation benefit*** has the meaning given by section 306-10.

***royalty*** has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

***RSA*** has the meaning given by the *Retirement Savings Accounts Act 1997*.

***RSA component*** has the meaning given by section 295-555.

***RSA payment*** has the meaning given by section 307-5.

***RSA provider*** has the same meaning as in the *Retirement Savings Accounts Act 1997*.

***rural land irrigation water provider*** has the meaning given by section 40-630.

***safe harbour capital amount:***

- (a) for an \*outward investing entity (ADI)—has the meaning given by section 820-310; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) for an \*inward investing entity (ADI)—has the meaning given by section 820-405 or 820-615.

***safe harbour debt amount:***

- (a) for an \*outward investor (general)—has the meaning given by section 820-95; and
- (b) for an \*outward investor (financial)—has the meaning given by section 820-100; and
- (c) for an \*inward investment vehicle (general)—has the meaning given by section 820-195; and
- (d) for an \*inward investment vehicle (financial)—has the meaning given by section 820-200; and
- (e) for an \*inward investor (general)—has the meaning given by section 820-205; and
- (f) for an \*inward investor (financial)—has the meaning given by section 820-210.

***same-asset roll-over:*** a *same asset roll-over* allows you to disregard a \*capital gain or \*capital loss you make from:

- (a) \*disposing of a \*CGT asset to another entity; or
- (b) entering into an agreement with another entity that constitutes CGT event B1; or
- (c) creating a CGT asset in another entity.

The *same-asset roll-overs* are listed in section 112-150.

***same business test*** has the meaning given by Subdivision 165-E.

***same business test period*** has the meaning given by sections 165-13, 165-15, 165-35, 165-40, 165-45, 165-126, 165-129, 165-132, 166-5, 166-20, 166-40, 707-125, 707-135, 715-50, 715-55, 715-60, 715-70, 715-95, 715-355 and 715-360, and affected by section 707-400.

***scheme*** means:

- (a) any \*arrangement; or
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

Note: The Commissioner may determine that, for the purposes of the debt and equity interest rules in Division 974, what would otherwise be a

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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single scheme is to be treated as 2 or more separate schemes, and that the schemes are not related: see section 974-150.

***scheme benefit*** has the meaning given by section 284-150 in Schedule 1 to the *Taxation Administration Act 1953*.

***scheme period*** for a \*direct value shift has the meaning given by section 725-55.

***scheme shortfall amount*** has the meaning given by section 284-150 in Schedule 1 to the *Taxation Administration Act 1953*.

***scholarship plan*** means a \*life insurance policy that:

- (a) is issued by a \*friendly society for the sole purpose of providing benefits to help in the education of nominated beneficiaries; and
- (b) is not being used, and has never been used, as security for borrowing or raising money; and
- (c) if it is issued on or after 1 January 2003—contains a provision prohibiting use of the policy as security for borrowing or raising money.

***secondary course*** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

***secondary equity interest*** has the meaning given by section 727-520.

***secondary interest*** has the meaning given by section 727-520.

***secondary loan interest*** has the meaning given by section 727-520.

***second continuity period*** has the meaning given by section 165-120.

***section 124ZZB SME assessable income*** for a \*PDF for an income year is the assessable income allocated to the PDF's SME assessable income for the income year under section 124ZZB of the *Income Tax Assessment Act 1936*.

***securitisation vehicle*** has the meaning given by section 820-942.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*securitised asset* has the meaning given by section 820-942.

*segregated current pension assets* has the meaning given by section 295-385.

*segregated exempt assets* of a \*life insurance company means assets from time to time segregated by the company under Subdivision 320-H, whether segregated at the time of the initial segregation or included at a later time.

*segregated non-current assets* has the meaning given by section 295-395.

*self assessment* means an assessment:

- (a) for the making of which the Commissioner wholly accepts statements of the taxpayer; or
- (b) that, under section 166A of the *Income Tax Assessment Act 1936* or a provision of another law, is taken to have been made by the Commissioner.

*self managed superannuation fund* has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

*seminar* has the meaning given by subsection 32-65(1).

*Senior Executive Service office* means a position occupied by an SES employee or acting SES employee.

*service period* has the meaning given by section 307-400.

*share*:

- (a) in a company means a share in the capital of the company, and includes stock; and
- (b) of an \*exempting credit has the meaning given by section 208-180; and
- (c) of a \*franked distribution has the meaning given by section 207-55; and
- (d) of a \*franking credit has the meaning given by section 207-57; and
- (e) of \*NRAS rent has the meaning given by section 380-30.

*share capital account* has the meaning given by section 975-300.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*shareholders' ratio* for an income year of a \*life insurance company has the meaning given by section 219-50.

*shareholders' share* of the income tax liability of a \*life insurance company for an income year has the meaning given by section 219-50.

*shareholding interest* has the meaning given by section 175-95.

*shift proceeds* has the meaning given by sections 140-55 and 140-90.

*shortfall amount* has the meaning give by section 284-80 in Schedule 1 to the *Taxation Administration Act 1953*.

*shortfall interest charge* means the charge worked out under Division 280 in Schedule 1 to the *Taxation Administration Act 1953*.

*short-term hire agreement*: a *short-term hire agreement* is an agreement for the intermittent hire of an asset on an hourly, daily, weekly or monthly basis. However, an agreement for the hire of an asset is not a *short-term hire agreement* if, having regard to any other agreements for the hire of the same asset to the same entity or an \*associate of that entity, there is a substantial continuity of hiring so that the agreements together are for longer than a short-term basis.

*sickness policy* means a \*life insurance policy issued by a \*friendly society for the sole purpose of providing:

- (a) benefits in respect of a sickness of the insured person; or
- (b) benefits covered by paragraph (a) and benefits to pay for the funeral of the insured person.

*significant individual* has the meaning given by section 152-55.

*single-rate trustee* has the meaning given by section 45-450 in Schedule 1 to the *Taxation Administration Act 1953*.

*SIS dependant* means a dependant within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

*small business entity* has the meaning given by section 328-110.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**small business entity turnover** has the meaning given by section 61-525.

**small business participation percentage** has the meaning given by section 152-65.

**small superannuation account** means an account within the meaning of the *Small Superannuation Accounts Act 1995*.

**small superannuation account payment** has the meaning given by section 307-5.

**small superannuation fund** means a \*complying superannuation fund with 4 or fewer members.

**small withholder** has the meaning given by section 16-105 in Schedule 1 to the *Taxation Administration Act 1953*.

**SME income component** has the same meaning as in section 124ZU of the *Income Tax Assessment Act 1936*.

**SME investment** has the meaning given by section 124ZW of the *Income Tax Assessment Act 1936*.

**sort of loss** has the meaning given by section 701-1.

**special accrual amount** means an amount that is included in assessable income, or an amount that is a deduction from assessable income, under any of the following:

- (a) Division 42A in Schedule 2E of the *Income Tax Assessment Act 1936*;
- (aa) Subdivision 230-A of this Act (which deals with gains and losses from financial arrangements) if:
  - (i) the accruals method provided for in Subdivision 230-B of this Act is applied to take account of the gain or loss concerned; and
  - (ii) all the \*financial benefits provided and received under the \*financial arrangement concerned are denominated in a particular foreign currency;
- (b) Division 240 of this Act;
- (ba) Division 230 (other than Subdivision 230-B) of this Act;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 995-1

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(c) Division 16D of Part III of the *Income Tax Assessment Act 1936*;

(d) Division 16E of Part III of the *Income Tax Assessment Act 1936*.

**special company** means:

- (a) a \*mutual affiliate company; or
- (b) a \*mutual insurance company; or
- (c) a trade union registered under an \*Australian law; or
- (d) a \*sporting club; or
- (e) a company that is prescribed by the regulations.

**special conversion event**, in relation to a \*potential MEC group, has the meaning given by section 719-40.

**specialist credit card institution** has the meaning given by section 820-588.

**special professional** has the meaning given by subsection 405-25(1).

**specific deduction** has the meaning given by section 8-5.

**specified roll-over amount** of a \*life insurance company means so much of an amount paid to the company as constitutes the \*element untaxed in the fund of a \*superannuation benefit that is a \*roll-over superannuation benefit because of subparagraph 306-10(d)(ii).

**spectrum** has the meaning given by section 5 of the *Radiocommunications Act 1992*.

**spectrum licence** has the meaning given by section 5 of the *Radiocommunications Act 1992*.

**splittable payment** has the same meaning as in Part VIII B of the *Family Law Act 1975*.

**sporting club** means a society, association or club that:

- (a) is established for the encouragement of sport or a game; and
- (b) is *not* carried on for profit to its members.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**sporting competition** has the meaning given by subsection 405-25(7).

**sportsperson** has the meaning given by subsection 405-25(6).

**spouse** of an individual includes:

- (a) another individual (whether of the same sex or a different sex) with whom the individual is in a relationship that is registered under a \*State law or \*Territory law prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; and
- (b) another individual who, although not legally married to the individual, lives with the individual on a genuine domestic basis in a relationship as a couple.

**spreading period** for an amount has the meaning given by sections 716-15, 716-25, 716-70 and 716-100.

Note: Those sections deal with assessable income and deductions spread over several periods of membership or non-membership of a consolidated group or MEC group.

**standard component:**

- (a) in respect of an \*RSA provider—has the meaning given by section 295-555; or
- (b) in respect of an \*FHSA provider that is not an RSA provider—has the meaning given by section 345-15.

**stapled entity** has the meaning given by section 124-1045.

**starting day** has the meaning given by section 149-60.

**starting instalment quarter** has the meaning given by subsection 45-125(2) in Schedule 1 to the *Taxation Administration Act 1953*.

**start time** of a \*depreciating asset has the meaning given by section 40-60.

**State law** means a law of a State.

**statutory accounting period** has the meaning given by Part X of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*statutory income* has the meaning given by section 6-10.

*statutory licence* has the meaning given by section 124-140.

*stratum unit* has the meaning given by section 124-190.

*structured order* has the meaning given by section 54-10.

*structured settlement* has the meaning given by section 54-10.

*Subdivision 230-G assessable gain* from a \*financial arrangement means an amount that is taken, as a balancing adjustment under Subdivision 230-G, to be a gain you make from the arrangement for the purposes of Division 230.

*Subdivision 230-G loss* from a \*financial arrangement means an amount that is taken, as a balancing adjustment under Subdivision 230-G, to be a loss you make from the arrangement for the purposes of Division 230.

*subject to deemed loan treatment*, in relation to a \*financial benefit, has the meaning given by section 250-160.

*subject to tax* has the meaning given by Part X of the *Income Tax Assessment Act 1936*.

*subordinated debt interest* means a \*debt interest issued to:

- (a) an unsecured creditor; or
- (b) a secured creditor who, in the event of the liquidation of the entity issuing the interest, can only make a claim regarding that interest after the claims of other secured creditors regarding other debt interests issued by that entity have been met.

*subsidiary*: the expression *100% subsidiary* has the meaning given by section 975-505.

*subsidiary member*:

- (a) of a \*consolidated group or a \*consolidatable group—has the meaning given by section 703-15; and
- (b) of a \*MEC group—has the meaning given by section 719-25.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**substantial continuity of ownership** has the meaning given by section 166-145.

**substantial shareholding**: see *part of a substantial shareholding*.

**superannuation annuity** has the meaning given by the regulations.

**superannuation annuity payment** has the meaning given by section 307-5.

**superannuation benefit** has the meaning given by section 307-5.

Note: Sections 307-10 and 307-15 affect the meaning of **superannuation benefit**.

**superannuation co-contribution benefit payment** has the meaning given by section 307-5.

**superannuation death benefit** has the meaning given by section 307-5.

**superannuation fund** has the meaning given by section 10 of the *Superannuation Industry (Supervision) Act 1993*.

**superannuation fund for foreign residents** has the meaning given by section 118-520.

**superannuation fund payment** has the meaning given by section 307-5.

**superannuation guarantee payment** has the meaning given by section 307-5.

**superannuation income stream** has the meaning given by section 307-70.

**superannuation income stream benefit** has the meaning given by section 307-70.

**superannuation interest** means:

- (a) an interest in a \*superannuation fund; or
- (b) an interest in an \*approved deposit fund; or
- (c) an \*RSA; or
- (d) an interest in a \*superannuation annuity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 995-1

Note: The meaning of *superannuation interest* may be affected by regulations made for the purposes of section 307-200.

*superannuation lump sum* has the meaning given by section 307-65.

*superannuation member benefit* has the meaning given by section 307-5.

*superannuation plan* means:

- (a) a \*superannuation fund; or
- (b) an \*approved deposit fund; or
- (c) an \*RSA.

*superannuation provider*, in relation to a \*superannuation plan, means:

- (a) for a \*superannuation fund—the trustee of the fund; or
- (b) for an \*approved deposit fund—the trustee of the fund; or
- (c) for an \*RSA—the \*RSA provider.

*supplementary amount* of a payment is defined as set out in this table:

<b>Supplementary amount of a payment</b>		
<b>Item</b>	<b>Supplementary amount of this kind of payment:</b>	<b>has the meaning given by:</b>
1	Commonwealth education or training payment	section 52-140
2	Exceptional circumstances relief payment, or payment of farm help income support	section 53-15
2A	Payment under the ABSTUDY scheme	section 52-132
3	Payment made because of the <i>Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986</i>	section 52-105
4	Social security payment	section 52-15
5	Veterans' affairs payment	section 52-70

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**supply** has the meaning given by section 9-10 of the \*GST Act.

**tainted**: for when a company's \*share capital account is **tainted**, see subsections 197-50(1) and (2).

**tainting amount** has the meaning given by subsection 197-50(3).

**takeover bid** means a takeover bid under Chapter 6 of the *Corporations Act 2001*, or under a \*foreign law relating to corporate regulation.

**tax** means:

- (a) income tax imposed by the *Income Tax Act 1986*, as assessed under this Act; or
- (b) income tax imposed as such by any other Act, as assessed under this Act.

**taxable Australian property** has the meaning given by section 855-15.

**taxable Australian real property** has the meaning given by section 855-20.

**taxable component**:

- (a) the **taxable component** of an \*employment termination payment has the meaning given by section 82-145; and
- (b) the **taxable component** of a \*superannuation benefit has the meaning given by section 307-120; and
- (c) the **taxable component** of a \*superannuation interest has the meaning given by section 307-215.

**taxable fuel** has the meaning given by section 110-5 of the *Fuel Tax Act 2006*.

**taxable importation** has the meaning given by section 195-1 of the \*GST Act.

**taxable importation of a luxury car** has the meaning given by section 27-1 of the \*Luxury Car Tax Act.

**taxable income** has the meaning given by section 4-15.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 995-1

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Note: For a list of cases where taxable income is worked out in a special way, see subsection 4-15(2).

**taxable non-primary production income** has the meaning given by subsection 392-85(1).

**taxable primary production income** has the meaning given by subsection 392-80(1).

**taxable professional income** has the meaning given by subsection 405-45(1).

**taxable purpose** has the meaning given by section 40-25.

**taxable purpose proportion** has the meaning given by section 328-205.

**taxable supply** has the meaning given by section 195-1 of the \*GST Act.

**taxable supply of a luxury car** has the meaning given by section 27-1 of the \*Luxury Car Tax Act.

**tax accounting period** has the meaning given by Part X of the *Income Tax Assessment Act 1936*.

**tax affairs** means affairs relating to \*tax.

**taxation law** means:

- (a) an Act of which the Commissioner has the general administration (including a part of an Act to the extent to which the Commissioner has the general administration of the Act); or
- (b) regulations under such an Act (including such a part of an Act).

**tax audit** means an examination by the Commissioner of an entity's financial affairs for the purposes of a \*taxation law.

**tax benefit** has the meaning given by section 45-605 in Schedule 1 to the *Taxation Administration Act 1953*.

**tax cost** has the meaning given by section 830-100.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**tax cost is set** has the meaning given by section 701-55 or 830-90.

**tax cost setting amount** has the meaning given by section 701-60 or 830-95.

**tax debt** has the same meaning as in section 8AAZA of the *Taxation Administration Act 1953*.

**tax detriment** has the meaning given by section 45-624 in Schedule 1 to the *Taxation Administration Act 1953*.

**tax-exempt bonus share** has the meaning given by subsections 204-25(4) and (5).

**tax-exempt foreign resident** has the meaning given by subsection 118-420(3).

**tax exempt vendor** has the meaning given by section 58-5.

**tax exploitation scheme** has the meaning given by section 290-65 in Schedule 1 to the *Taxation Administration Act 1953*.

**tax file number** means a tax file number as defined in section 202A of the *Income Tax Assessment Act 1936*.

**tax-free amount** of a payment is defined as set out in this table:

<b>Tax-free amount of a payment</b>		
<b>Tax-free amount of this kind of payment:</b>		<b>has the meaning given by:</b>
1	Social security payment	sections 52-20, 52-25, 52-30 and 52-35
2	Payment under the ABSTUDY scheme	sections 52-133 and 52-134

**tax free component:**

- (a) the **tax free component** of an \*employment termination payment has the meaning given by section 82-140; and
- (b) the **tax free component** of a \*superannuation benefit has the meaning given by section 307-120; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 995-1

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- (c) the **tax free component** of a \*superannuation interest has the meaning given by section 307-210.

**taxing event generating a gain** has the meaning given by sections 725-245 and 725-335.

**tax loss** means:

- (a) a tax loss worked out under section 36-10, 165-70, 175-35 or 701-30 of this Act; or

Note 1: The meaning of **tax loss** in section 36-10 is affected by section 268-60 of Schedule 2F to the *Income Tax Assessment Act 1936*.

Note 2: The meaning of **tax loss** in sections 36-10, 165-70, 175-35 and 701-30 is modified by section 36-55 for a corporate tax entity that has an amount of excess franking offsets.

Note 3: A life insurance company can have a tax loss of the complying superannuation/FHSA class and/or a tax loss of the ordinary class for the purposes of working out its income tax for an income year: see Subdivision 320-D.

- (b) a tax loss as defined by section 36-105 (Tax losses for 1989-90 to 1996-97 income years) of the *Income Tax (Transitional Provisions) Act 1997*; or
- (c) a tax loss as defined by section 36-110 (Tax losses for 1957-58 to 1988-89 income years) of the *Income Tax (Transitional Provisions) Act 1997*; or
- (d) a tax loss determined under section 24 of the *International Tax Agreements Act 1953* (about relief from double taxation where profits are adjusted).

Note: A film loss is a special type of tax loss: see section 375-810.

**tax offset** has the meaning given by section 4-10.

**tax period** has the meaning given by section 195-1 of the \*GST Act.

**tax position** has the meaning given by section 45-610 in Schedule 1 to the *Taxation Administration Act 1953*.

**tax preferred end user** has the meaning given by section 250-55.

**tax preferred entity** means:

- (a) an \*exempt entity; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) an \*exempt Australian government agency; or
- (c) an \*associated government entity of an exempt Australian government agency; or
- (d) a \*prescribed excluded STB; or
- (e) an \*exempt foreign government agency.

**tax preferred use** of an asset has the meaning given by sections 250-60(1) and (2).

**tax profit on the disposal or death** has the meaning given by subsection 385-105(3).

**tax-related liability** has the meaning given by section 255-1 in Schedule 1 to the *Taxation Administration Act 1953*.

**TC control interest** has the meaning given by section 820-815 (which is affected by sections 820-820 to 820-835).

**TC control tracing interest** has the meaning given by section 820-875.

**TC direct control interest:**

- (a) for a company—has the meaning given by section 820-855; and
- (b) for a trust—has the meaning given by section 820-860; and
- (c) for a partnership—has the meaning given by section 820-865.

**TC indirect control interest** has the meaning given by section 820-870.

**telecommunications site access right** means a right (except an \*IRU) of a carrier (as defined in the *Telecommunications Act 1997*):

- (a) to share a facility (as defined in section 7 of that Act); or
- (b) to install such a facility at a particular location or on a particular structure; or
- (c) to enter or cross premises for the purposes of installing or maintaining such a facility that is on the premises, or is at a location, or on a structure, that is accessible by way of the premises.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**telephone signature** of an entity is a unique identification of the entity that can be given by telephone and that is approved by the Commissioner.

**temporary resident**: you are a **temporary resident** if:

- (a) you hold a temporary visa granted under the *Migration Act 1958*; and
- (b) you are not an Australian resident within the meaning of the *Social Security Act 1991*; and
- (c) your \*spouse is not an Australian resident within the meaning of the *Social Security Act 1991*.

However, you are not a **temporary resident** if you have been an Australian resident (within the meaning of this Act), and any of paragraphs (a), (b) and (c) are not satisfied, at any time after the commencement of this definition.

Note: The tests in paragraphs (b) and (c) are applied to ensure that holders of temporary visas who nonetheless have a significant connection with Australia are not treated as temporary residents for the purposes of this Act.

**terminal medical condition** has the meaning given by the regulations.

**terminating value** has the meaning given by sections 705-30, 711-30 and 713-575.

**termination amount** has the meaning given by section 240-78.

**termination value** has the meaning given by section 40-300.

**Territory law** means a law of a Territory.

**tertiary course** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

**test day** has the meaning given by section 149-55.

**test period** has the meaning given by sections 165-165, 166-5, 166-20, 166-40 and 166-80.

**test time** for the purposes of applying the \*same business test has the meaning given by sections 165-13, 165-15, 165-35, 165-40,

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

165-45, 165-115B, 165-115BA, 165-126, 165-129, 166-5, 166-20, 166-40, 166-80, 707-125, 707-135, 709-215, 715-50, 715-55, 715-60, 715-70, 715-90, 715-95, 715-355 and 715-360.

**TFN declaration** means a declaration made for the purposes of section 202C of the *Income Tax Assessment Act 1936* on or after 1 July 2000.

**TFN withholding tax** means tax payable in accordance with section 14-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: The tax is imposed by the *Income Tax (Deferred Interest Securities) (Tax File Number Withholding Tax) Act 1991*.

**this Act** includes:

- (a) the *Income Tax Assessment Act 1936*; and
  - (b) Part IVC of the *Taxation Administration Act 1953*, so far as that Part relates to:
    - (i) this Act or the *Income Tax Assessment Act 1936*; or
    - (ii) Schedule 1 to the *Taxation Administration Act 1953*; and
  - (c) Schedule 1 to the *Taxation Administration Act 1953*;
- except in Division 950 (Rules for interpreting this Act).

Note: Subsection (2) of this section prevents definitions in the *Income Tax Assessment Act 1997* from affecting the interpretation of the *Income Tax Assessment Act 1936*.

**tier-1 company** has the meaning given by section 719-20.

**tier 1 prudential capital deduction**, for an entity and at a particular time, means the amounts that must be deducted in the calculation of the eligible tier 1 capital (within the meaning of the \*prudential standards) of the entity at that time in accordance with the prudential standards as in force at that time.

**timber mill building** has the meaning given by section 43-72.

**timber operation** has the meaning given by section 43-72.

**top company** has the meaning given by section 719-20.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



***total debt amount*** has the meaning given by sections 820-100, 820-200 and 820-210.

***total film expenditure*** has the meaning given by section 376-170.

***total forestry scheme deductions*** has the meaning given by subsection 394-30(3).

***total net investment loss*** of an individual for an income year means the sum of:

- (a) the amount (if any) by which the individual's deductions for the income year that are attributable to \*financial investments exceed the individual's gross income for that year from those investments; and
- (b) the amount (if any) by which the individual's deductions for the income year that are attributable to rental property exceed the individual's gross income for that year from rental property.

***total participation interest*** has the meaning given by section 960-180.

***total voting percentage*** in a company has the meaning given by section 768-560.

***tracing rule*** means a rule in one of the following sections:

- (a) section 166-225;
- (b) section 166-230;
- (c) section 166-240;
- (d) section 166-245;
- (e) section 166-255;
- (f) section 166-260.

***trading*** in \*shares in a \*listed public company, or in units in a unit trust, has the meaning given by section 960-220.

***trading stock*** has the meaning given by section 70-10, as modified by sections 124ZO and 124ZQ of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**trading stock loss** has the meaning given by subsection 165-115A(1B).

**traditional security** has the meaning given by section 26BB of the *Income Tax Assessment Act 1936*.

**transferor trust** has the meaning given by section 960-75.

**transfer value** of an asset means the amount that could be expected to be received from the disposal of the asset in an open market after deducting any costs expected to be incurred in respect of the disposal.

**transition entity** has the meaning given by section 58-5.

**transition time** has the meaning given by section 58-5.

**transition year** has the meaning given by section 58-5.

**transport capital expenditure** has the meaning given by section 40-865.

**transport expense** has the meaning given by section 900-220.

**transport facility** has the meaning given by section 40-870.

**transport payment** has the meaning given by section 900-220.

**travel allowance** has the meaning given by section 900-30.

**travel allowance expense** has the meaning given by section 900-30.

**travel between workplaces** has the meaning given by section 25-100.

**travel expense** has the meaning given by section 900-95.

**trial year** has the meaning given by section 707-120.

**trustee:**

- (a) of a \*superannuation fund, an \*approved deposit fund or a \*pooled superannuation trust—means:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 995-1

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- (i) if there is a trustee (within the ordinary meaning of that expression) of the fund or trust—the trustee; or
  - (ii) in any other case—the person who manages the fund or trust; and
- (b) otherwise—has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

***trust restructuring period*** has the meaning given by section 124-860.

***trust share amount*** has the meaning given by subsection 207-120(4).

***trust voting interest*** has the meaning given by section 124-781.

***ultimate controller*** has the meaning given by section 727-350.

***ultimate holding company*** of a \*wholly-owned group has the meaning given by section 124-780.

***ultimate owner*** has the meaning given by section 149-15.

***ultimate stake*** of a particular percentage has the meaning given by sections 727-405, 727-410 and 727-415.

***unclaimed money payment*** has the meaning given by section 307-5.

***unconditionally registered***: a \*VCLP, \*ESVCLP or \*AFOF is unconditionally registered if:

- (a) its registration under the *Venture Capital Act 2002* is not based, or is no longer based, on its conditional registration under section 13-5 of that Act; or
- (b) it is taken to be unconditionally registered under subsection 13-10(2) of that Act.

***undeducted construction expenditure*** has the meaning given by section 43-235 and 43-240.

***undeducted pre-existing audited book value*** of a \*depreciating asset has the meaning given by section 58-80.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***under-assessment***, in the context of a \*franking assessment, has the meaning given by subsection 214-115(2).

***under common ownership***: 2 companies are ***under common ownership*** if, and only if:

- (a) they are members of the same \*wholly-owned group; or
- (b) after tracing the direct and indirect ownership of the \*shares in each of the companies (through any interposed companies and trusts) to the individuals who ultimately hold it, that ownership is held by the same individuals in the same proportions.

In doing the tracing, ignore \*shares whose \*dividends can reasonably be regarded as being equivalent to the payment of interest on a loan having regard to:

- (c) how the dividends are calculated; and
- (d) the conditions applying to the payment of the dividends; and
- (e) any other relevant matters.

***unfrankable*** has the meaning given by section 202-45.

***unfranked part*** of a \*distribution has the meaning given by section 976-5.

***uniform*** has the meaning given by subsection 34-15(1).

***unitary tax*** has the meaning given by section 770-15.

***United Medical Protection Limited support payment*** has the meaning given by section 25-105.

***unlisted country*** has the meaning given by section 320 of the *Income Tax Assessment Act 1936*.

***untainting tax*** has the meaning given by subsection 197-60(2).

***untaxable Commonwealth entity*** means an untaxable Commonwealth entity as defined by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

***untaxed plan cap amount*** has the meaning given in section 307-350.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 995-1

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**unused annual leave payment** has the meaning given by section 83-10.

**unused long service leave payment** has the meaning given by section 83-75.

**unused tax profit on the disposal or death** has the meaning given by subsection 385-110(3).

**up interest** has the meaning given by section 725-155.

**utilise** a loss has the meaning given by section 707-110.

**valuation days**, in relation to the calculation of the average value of a matter for an entity under Division 820, means the particular days at which the value of that matter is measured under Subdivision 820-G for the purposes of that calculation.

**Valuation Standard** means any prudential standard made under section 230A of the *Life Insurance Act 1995* that:

- (a) provides for a valuation of the policy liabilities mentioned in subsection 114(2) of the *Life Insurance Act 1995*; and
- (b) is in force under that Act.

**valuation time** for a \*life insurance company has the meaning given by sections 320-175 and 320-230.

Note: This definition is affected by section 713-525.

**value:**

- (a) the **value** of the liabilities of a \*life insurance company under the \*risk components of \*life insurance policies means the value worked out under section 320-85; and
- (b) the **value** of an item of \*trading stock has the meaning given by Subdivision 70-C.
- (d) the **value** of a \*superannuation interest has the meaning given by section 307-205.

**variation credit component** has the meaning given by section 45-610 in Schedule 1 to the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**variation GIC component** has the meaning given by section 45-610 in Schedule 1 to the *Taxation Administration Act 1953*.

**VCLP** means a \*venture capital limited partnership.

**VCMP** means a venture capital management partnership within the meaning of subsection 94D(3) of the *Income Tax Assessment Act 1936*.

**venture capital credit** has the meaning given by section 210-105.

**venture capital debit** has the meaning given by section 210-120.

**venture capital deficit** has the meaning given by section 210-130.

**venture capital deficit tax** means tax imposed under the *New Business Tax System (Venture Capital Deficit Tax) Act 2003*.

**venture capital entity** has the meaning given by section 118-515.

**venture capital equity** has the meaning given by section 118-525.

**venture capital limited partnership** has the meaning given by subsection 118-405(2).

**venture capital sub-account** means a sub-account that arises under section 210-100.

**venture capital sub-account balance** has the meaning given by section 214-35.

**venture capital surplus** has the meaning given by section 210-130.

**visiting force** has the meaning given by section 5 of the *Defence (Visiting Forces) Act 1963*.

**voting share** in a company means:

- (a) if the company is a body corporate—a voting share as defined by section 9 of the *Corporations Act 2001*; and
- (b) otherwise—a share that would be a voting share as defined by that section if the company were a body corporate.

**voting stake** has the meaning given by section 166-235.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 995-1

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**Water Department** means the Department that:

- (a) deals with matters arising under section 1 of the *Water Act 2007*; and
- (b) is administered by the \*Water Minister.

**water facility** has the meaning given by section 40-520.

**Water Minister** means the Minister administering section 1 of the *Water Act 2007*.

**whole of life policy** has the meaning given by section 295-480.

**wholly-owned group** has the meaning given by section 975-500.

**wholly-owned subsidiary** of an entity has the meaning given by section 703-30.

**widely held company** means:

- (a) a company, \*shares in which (except shares that carry a right to a fixed rate of \*dividend) are listed for quotation in the official list of an \*approved stock exchange; or
- (b) a company with more than 50 members, other than a company where at least one of the following conditions is met during an income year:
  - (i) no more than 20 persons held, or had the right to acquire or become the holders of, shares representing at least 75% of the value of the shares in the company (other than shares that only carry a right to a fixed rate of dividend);
  - (ii) at least 75% of the voting power in the company was capable of being exercised by no more than 20 persons;
  - (iii) at least 75% of the amount of any dividend paid by the company during the year was paid to no more than 20 persons;
  - (iv) if no dividend was paid by the company during the year—the Commissioner is of the opinion that, if a dividend had been paid by the company during the year, at least 75% of the amount of the dividend would have been paid to no more than 20 persons.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**wine tax** has the meaning given by section 33-1 of the \*Wine Tax Act.

**wine taxable dealing** means a taxable dealing (within the meaning of section 33-1 of the \*Wine Tax Act).

**Wine Tax Act** means the *A New Tax System (Wine Equalisation Tax) Act 1999*.

**wine tax credit** has the meaning given by section 33-1 of the \*Wine Tax Act.

**wine tax law** has the meaning given by section 33-1 of the \*Wine Tax Act.

**withholder** means a \*large withholder, a \*medium withholder or a \*small withholder.

**withholding payment** means:

- (a) a payment from which an amount must be withheld under Division 12 in Schedule 1 to the *Taxation Administration Act 1953* (even if the amount is not withheld); or
- (b) an \*alienated personal services payment in respect of which Division 13 in that Schedule requires an amount to be paid to the Commissioner; or
- (c) a \*non-cash benefit in respect of which Division 14 in that Schedule requires an amount to be paid to the Commissioner.

Note 1: A withholding payment that consists of a non-cash benefit is made when the benefit is provided. The amount of the withholding payment is taken to be the market value of the benefit at that time.

Note 2: Divisions 12, 13 and 14 in Schedule 1 to the *Taxation Administration Act 1953* deal with collecting amounts on account of income tax payable by the recipient of the payment, alienated personal services payment or non-cash benefit.

**withholding payment** covered by a particular provision in Schedule 1 to the *Taxation Administration Act 1953* means a \*withholding payment consisting of:

- (a) a payment from which an amount must be withheld under that provision (even if the amount is not withheld); or
- (b) a \*non-cash benefit provided by an entity if that provision would have required the entity to withhold an amount if,

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 995-1

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instead of providing the benefit, the entity had paid the \*market value of the benefit; or

- (c) a non-cash benefit provided to an entity if that provision would have required the entity to withhold an amount if the benefit had been a payment of an amount equal to the market value of the benefit.

**withholding tax** means income tax payable under:

- (a) section 301-175 (departing Australia superannuation payments); or  
(b) section 306-15 (excess untaxed roll-over amounts); or  
(c) Division 840 (withholding taxes); or  
(d) Subdivision 840-M of the *Income Tax (Transitional Provisions) Act 1997* (managed investment trust amounts); or  
(e) section 128B of the *Income Tax Assessment Act 1936* (dividends, interest and royalties).

**workers' compensation law** has the meaning given by subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*.

**work expense** has the meaning given by section 900-30.

**work in progress amount** has the meaning given by section 25-95.

**worldwide capital amount**, for an \*outward investing entity (ADI), has the meaning given by section 820-320.

**worldwide debt**, of an entity and at a particular time, means the total of the following amounts:

- (a) all the \*debt interests issued by the entity:
- (i) to entities other than any \*Australian controlled foreign entities (the **controlled entities**) of which the entity is an \*Australian controller at that time; and  
(ii) that are still \*on issue at that time;
- (b) all the debt interests issued by the controlled entities:
- (i) to entities other than the entity or other controlled entities; and  
(ii) that are still \*on issue at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**worldwide equity**, of an entity and at a particular time, means the total of the following amounts:

- (a) all the \*equity capital of the entity as at that time, but worked out disregarding \*equity interests in the entity held at that time by \*Australian controlled foreign entities (the **controlled entities**) of which the entity is an \*Australian controller at that time;
- (b) all the equity capital of the controlled entities as at that time, but worked out disregarding equity interests in the controlled entities held at that time by:
  - (i) the entity; or
  - (ii) other controlled entities.

**worldwide gearing debt amount**, for an \*outward investing entity (non-ADI), has the meaning given by section 820-110.

**written down value** of a \*depreciating asset has the meaning given by section 45-40.

**you** has the meaning given by section 4-5.

**your area** has the meaning given by sections 43-115 and 43-120.

**your construction expenditure** has the meaning given by sections 43-115 and 43-120.

**your earning activity** has the meaning given by section 40-755.

**zero-capital amount** has the meaning given by section 820-942.

- (2) So far as a provision of the *Income Tax Assessment Act 1997* gives an expression a particular meaning, the provision:
  - (a) does *not* also have effect for the purposes of the *Income Tax Assessment Act 1936* (the **1936 Act**), except as provided in the 1936 Act; and
  - (b) does *not* also have effect for the purposes of Part IVC of the *Taxation Administration Act 1953*, except as provided in that Part.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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# **Income Tax Assessment Act 1997**

## **Act No. 38 of 1997 as amended**

This compilation was prepared on 2 July 2009  
taking into account amendments up to Act No. 62 of 2009

**Volume 9** includes: Note 1  
Table of Acts  
Act Notes  
Table of Amendments  
Notes 2 – 11  
Table A

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section



**Table of Acts****Notes to the *Income Tax Assessment Act 1997*****Note 1**

The *Income Tax Assessment Act 1997* as shown in this compilation comprises Act No. 38, 1997 amended as indicated in the Tables below.

The *Income Tax Assessment Act 1997* was amended by the *Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1)* (SLI 2006 No. 50). The amendments are incorporated in this compilation.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, see Act No. 55, 2001.

For application, saving or transitional provisions made by the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*, see Act No. 45, 2005.

For all other relevant information pertaining to application, saving or transitional provisions see Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Income Tax Assessment Act 1997</i>	38, 1997	17 Apr 1997	1 July 1997	
<i>Taxation Laws Amendment (Private Health Insurance Incentives) Act 1997</i>	56, 1997	30 Apr 1997	Schedule 2 (items 7–9): 1 July 1997 (a)	Sch. 2 (item 10)
<i>Taxation Laws Amendment Act (No. 2) 1997</i>	95, 1997	30 June 1997	S. 4 and Schedule 3 (items 15–18): Royal Assent (b)	S. 4, Sch. 3 (item 18) (rs. by 41, 1998, Sch. 6 [item 24])
<b>as amended by</b>				
<i>Taxation Laws (Technical Amendments) Act 1998</i>	41, 1998	4 June 1998	Schedule 6 (items 23, 24): (ba)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Law Improvement Act 1997</i>	121, 1997	8 July 1997	S. 4: Royal Assent (c) Schedule 1: (c) Schedule 2 (items 3–17): (c) Schedule 3 (items 3–30): (c) Schedule 4 (items 5–62): (c) Schedule 5 (items 3–42): (c) Schedule 6 (items 3–67): (c) Schedule 7 (items 2–4): (c) Schedule 8 (items 2–31): (c) Schedule 9 (items 3–15): (c) Schedule 10 (items 2–11): (c) Schedule 11 (items 2–36): (c) and Schedule 12 (items 1–14): (c)	S. 4 and Sch. 5 (item 24)
<b>as amended by</b>				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 83, 86): Royal Assent	Sch. 12 (item 86)
<i>Franchise Fees Windfall Tax (Consequential Amendments) Act 1997</i>	134, 1997	19 Sept 1997	19 Sept 1997	S. 4(2)
<i>Taxation Laws Amendment Act (No. 3) 1997</i>	147, 1997	14 Oct 1997	S. 4 and Schedule 2 (items 2–7): Royal Assent (d) Schedule 6 (items 10–12): (d) Schedule 14 (items 43–60): (d) Schedule 15 (items 7–12): (d)	S. 4, Sch. 6 (item 13) and Sch. 15 (item 13)
<i>Taxation Laws Amendment Act (No. 4) 1997</i>	174, 1997	21 Nov 1997	Schedule 8: 1 July 1997 Remainder: Royal Assent	S. 4, Sch. 6 (item 23(1)) and Sch. 9 (item 30(1))
<i>Farm Household Support Amendment (Restart and Exceptional Circumstances) Act 1997</i>	179, 1997	25 Nov 1997	25 Nov 1997	Sch. 3 (item 4)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997</i>	191, 1997	7 Dec 1997	Schedule 2: Royal Assent (e)	—
<i>Child Care Payments (Consequential Amendments and Transitional Provisions) Act 1997</i>	196, 1997	8 Dec 1997	Schedule 1 (items 19, 20): 8 Dec 1997 (f)	—
<i>Social Security Legislation Amendment (Parenting and Other Measures) Act 1997</i>	197, 1997	11 Dec 1997	Schedule 1 (items 338–343): 20 Mar 1998 (g) Schedule 1 (items 369–381): 1 July 1998 (g)	Sch. 1 (item 343)
<i>Social Security and Veterans' Affairs Legislation Amendment (Family and Other Measures) Act 1997</i>	202, 1997	16 Dec 1997	Schedule 1 (items 44, 45) (h)	—
<i>Taxation Laws Amendment Act (No. 1) 1998</i>	16, 1998	16 Apr 1998	S. 4, Schedules 3–5, Schedule 10 (items 1–19) and Schedule 11: Royal Assent (i)	S. 4, Sch. 3 (items 20–22), Sch. 4 (item 2), Sch. 5 (item 44), Sch. 10 (item 19) and Sch. 11 (item 123)
<b>as amended by</b>				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 74, 75, 86): Royal Assent	Sch. 12 (item 86)
<i>Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998</i>	17, 1998	16 Apr 1998	16 Apr 1998	S. 4
<i>Commonwealth Places (Consequential Amendments) Act 1998</i>	23, 1998	17 Apr 1998	17 Apr 1998	S. 4(2)
<i>Taxation Laws (Technical Amendments) Act 1998</i>	41, 1998	4 June 1998	S. 4, Schedule 3 (items 4–7), Schedule 4 (items 1–3, 5): Royal Assent (j)	S. 4, Sch. 3 (item 7) and Sch. 4 (item 5)
<i>Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998</i>	45, 1998	17 June 1998	Schedule 12 (items 25–46): 1 July 1998 (k)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Law Improvement Act (No. 1) 1998</i>	46, 1998	22 June 1998	S. 4, Schedule 1, Schedule 9 (items 2–6, 8) and Schedule 10: Royal Assent <i>(l)</i> Schedule 2 (items 4–48): <i>(l)</i> Schedule 3 (items 3–12): <i>(l)</i> Schedule 4 (items 2–11): <i>(l)</i> Schedule 5 (items 3–5): <i>(l)</i> Schedule 6 (items 2–7): <i>(l)</i> Schedule 7 (items 2–11): <i>(l)</i>	S. 4 and Sch. 9 (item 8)
<b>as amended by</b>				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 85, 86): Royal Assent	Sch. 12 (item 86)
<i>Taxation Laws Amendment Act (No. 3) 1998</i>	47, 1998	23 June 1998	Schedule 1 (items 2, 4): 1 July 1998 Remainder: Royal Assent	S. 4, Sch. 1 (item 5), Sch. 3 (item 16), Sch. 5 (item 4) and Sch. 9 (items 14–16)
<i>Taxation Laws Amendment (Company Law Review) Act 1998</i>	63, 1998	29 June 1998	Schedule 6: <i>(m)</i>	Sch. 6 (item 18)
<b>as amended by</b>				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 60, 61): <i>(zzb)</i>	—
<i>Social Security and Veterans' Affairs Legislation Amendment (Pension Bonus Scheme) Act 1998</i>	67, 1998	30 June 1998	30 June 1998	—
<b>as amended by</b>				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 73, 86): Royal Assent	Sch. 12 (item 86)
<i>Taxation Laws Amendment (Farm Management Deposits) Act 1998</i>	85, 1998	2 July 1998	2 Jan 1999	—
<i>Taxation Laws Amendment (Landcare and Water Facility Tax Offset) Act 1998</i>	91, 1998	14 July 1998	Schedule 1 (items 1–13, 19): Royal Assent <i>(n)</i>	Sch. 1 (item 19)



**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<b>as amended by</b>				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 80, 86): Royal Assent	Sch. 12 (item 86)
<i>Social Security and Veterans' Affairs Legislation Amendment (Budget and Other Measures) Act 1998</i>	93, 1998	15 July 1998	Schedule 7 (items 40–45): 1 Apr 1998 (o)	Sch. 7 (item 45)
<i>Primary Industries and Energy Legislation Amendment Act (No. 1) 1998</i>	102, 1998	30 July 1998	30 July 1998	Sch. 2 (item 11)
<i>Taxation Laws Amendment (Film Licensed Investment Company) Act 1998</i>	108, 1998	7 Dec 1998	7 Dec 1998 (see s. 2)	—
<i>Taxation Laws Amendment (Private Health Insurance) Act 1998</i>	128, 1998	21 Dec 1998	21 Dec 1998	Sch. 2 (item 16)
<b>as amended by</b>				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (item 62): (zzb)	—
<i>Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998</i>	132, 1998	24 Dec 1998	Schedule 5 (items 2–9): 1 July 1999 (p)	—
<i>Taxation Laws Amendment Act (No. 3) 1999</i>	11, 1999	31 Mar 1999	Schedule 1 (items 277–280, 404): 1 July 1999 (q)	Sch. 1 (item 404)
<i>Assistance for Carers Legislation Amendment Act 1999</i>	13, 1999	9 Apr 1999	Schedule 1 (items 122–125, 128): (r) Schedule 1 (items 129–133) 1 July 1998 (r) Schedule 1 (items 134–137): (r) Schedule 2 (items 50–55, 63, 64(1), (3)): (r)	Sch. 1 (items 128, 133, 137) and Sch. 2 (items 63, 64(1), (3))
<i>Taxation Laws Amendment Act (No. 1) 1999</i>	16, 1999	9 Apr 1999	S. 4, Schedule 3 (items 11, 12(3)), Schedule 4 and Schedule 7 (items 9–14): Royal Assent (s)	S. 4, Sch. 3 (item 12(3)), Sch. 4 (item 2) and Sch. 7 (item 14)
<i>Taxation Laws Amendment (Software Depreciation) Act 1999</i>	39, 1999	31 May 1999	31 May 1999	S. 4 and Sch. 1 (items 21–24)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i>	44, 1999	17 June 1999	Schedule 7 (item 105): 1 July 1999 (see <i>Gazette</i> 1999, No. S283) (t)	—
<i>Taxation Laws Amendment Act (No. 6) 1999</i>	54, 1999	5 July 1999	Schedule 7 (item 2): (u) Remainder: Royal Assent	Sch. 1 (item 36), Sch. 2 (item 16), Sch. 5 (item 10) and Sch. 7 (item 3)
<i>A New Tax System (Income Tax Laws Amendment) Act 1999</i>	60, 1999	8 July 1999	9 July 1999 (see s. 2)	Sch. 2 (item 7)
<i>A New Tax System (Personal Income Tax Cuts) Act 1999</i>	69, 1999	8 July 1999	9 July 1999 (see s. 2)	Sch. 3 (item 1(1))
<i>A New Tax System (Closely Held Trusts) Act 1999</i>	70, 1999	8 July 1999	8 July 1999	Sch. 2 (item 14)
<i>A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999</i>	83, 1999	8 July 1999	Schedule 10 (items 24–54, 68(1), 69): 1 July 2000 (v)	Sch. 10 (items 68(1), 69)
<i>Taxation Laws Amendment Act (No. 2) 1999</i>	93, 1999	16 July 1999	Schedule 4 (item 24): 16 Apr 1998 Remainder: Royal Assent	S. 4, Sch. 1 (item 39(1)) and Sch. 3 (item 33)
<b>as amended by</b>				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (item 53): (zzb)	—
<i>Taxation Laws Amendment Act (No. 4) 1999</i>	94, 1999	16 July 1999	Schedule 2 and Schedule 3 (Part 2): (w) Remainder: Royal Assent	S. 4, Sch. 1 (item 30), Sch. 2 (items 3, 4, 6), Sch. 3 (items 6, 32, 42), Sch. 5 (items 35–37) and Sch. 6 (item 73)
<i>Taxation Laws Amendment (Demutualisation of Non-insurance Mutual Entities) Act 1999</i>	103, 1999	16 July 1999	16 July 1999	—
<i>Taxation Laws Amendment Act (No. 7) 1999</i>	117, 1999	22 Sept 1999	Schedule 2 (item 2): Royal Assent (x)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 532–534): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) ( <i>y</i> )	—
<i>Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999</i>	152, 1999	11 Nov 1999	Schedule 4 (items 17–19): Royal Assent ( <i>z</i> )	Sch. 4 (item 19)
<i>Corporate Law Economic Reform Program Act 1999</i>	156, 1999	24 Nov 1999	Schedule 5 (items 17–21): 13 Mar 2000 (see <i>Gazette</i> , 2000 No. S114) ( <i>za</i> )	—
<i>New Business Tax System (Capital Allowances) Act 1999</i>	164, 1999	10 Dec 1999	Schedule 2 (items 17, 18): ( <i>zaa</i> ) Remainder: Royal Assent	Sch. 1 (item 15), Sch. 2 (item 23), Sch. 3 (item 14), Sch. 4 (item 12) and Sch. 5 (item 6)
<i>New Business Tax System (Capital Gains Tax) Act 1999</i>	165, 1999	10 Dec 1999	Schedule 1: ( <i>zb</i> ) Remainder: Royal Assent	S. 4, Sch. 1 (item 62), Sch. 2 (item 7) and Sch. 3 (item 18) Sch. 1 (item 61) (am. by 173, 2000, Sch. 3 [item 16])
<b>as amended by</b> <i>Taxation Laws Amendment Act (No. 7) 2000</i>	173, 2000	21 Dec 2000	Schedule 3 (item 16): Royal Assent ( <i>zba</i> )	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>New Business Tax System (Integrity and Other Measures) Act 1999</i>	169, 1999	10 Dec 1999	Schedule 5 (items 1–12): 22 Feb 1999 (zc) Schedule 1 (items 1–13, 18), Schedule 2 (items 1–3, 5), Schedule 3 (items 1–4, 7), Schedule 4 (items 1–15, 19), Schedule 6, Schedule 7 (item 11), Schedule 8, Schedule 9 (items 1–14, 23–33) and Schedule 10: Royal Assent (zc)	Sch. 1 (item 18), Sch. 2 (item 5), Sch. 3 (item 7), Sch. 4 (item 19), Sch. 6 (item 16), Sch. 7 (item 12(1)), Sch. 8 (item 10) and Sch. 9 (items 14, 31, 33)
<i>A New Tax System (Indirect Tax and Consequential Amendments) Act 1999</i>	176, 1999	22 Dec 1999	Schedule 3: (zd)	—
<b>as amended by</b> <i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 69, 70, 86): Royal Assent	Sch. 12 (item 86)
<i>A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999</i>	177, 1999	22 Dec 1999	Schedule 5: Royal Assent (ze) Schedule 8 (items 1–6): (ze)	—
<i>A New Tax System (Pay As You Go) Act 1999</i>	178, 1999	22 Dec 1999	Schedule 1 (items 6, 8, 70–78): 1 July 2000 Remainder: Royal Assent	S. 4 and Sch. 2 (items 92, 93) S. 2(1A) (ad. by 179, 1999, Sch. 10 [item 19])
<b>as amended by</b> <i>A New Tax System (Tax Administration) Act 1999</i>	179, 1999	22 Dec 1999	Schedule 10 (item 19): 22 Dec 1999 (zf)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>A New Tax System (Tax Administration) Act 1999</i>	179, 1999	22 Dec 1999	Schedule 7, Schedule 8, and Schedule 18 (items 16, 20): Royal Assent ( <i>zg</i> ) Schedule 11 (items 80–105): 1 July 2000 ( <i>zg</i> ) Schedule 16 (items 18, 19, 37) and Schedule 18 (items 1–3, 6–15, 18, 19, 22–31, 33–37): ( <i>zg</i> ) Schedule 18 (items 4, 5, 17, 21, 32): 1 July 2000 ( <i>zg</i> )	Sch. 7 (item 18), Sch. 8 (item 16) and Sch. 16 (item 37)
<b>as amended by</b>				
<i>A New Tax System (Tax Administration) Act (No. 2) 2000</i>	91, 2000	30 June 2000	Schedule 3 (items 17, 18): ( <i>zga</i> )	Sch. 3 (item 18)
<i>Dairy Industry Adjustment Act 2000</i>	22, 2000	3 Apr 2000	3 Apr 2000	—
<i>A New Tax System (Tax Administration) Act (No. 1) 2000</i>	44, 2000	3 May 2000	Schedule 3 (item 38), Schedule 4 (items 13–16) and Schedule 5: ( <i>zh</i> )	—
<i>Taxation Laws Amendment Act (No. 2) 2000</i>	58, 2000	31 May 2000	S. 4, Schedule 2 (items 2–4(2)), Schedule 5, Schedule 6 (items 1–13, 17, 18, 20–32, 34), Schedule 9 and Schedule 10 (items 12–17(3)–(6), 31–38(3)–(7)): Royal Assent Schedule 4, Schedule 6 (item 19) and Schedule 8 (item 19): ( <i>zi</i> ) Schedule 6 (items 14–16): ( <i>zi</i> )	S. 4, Sch. 2 (item 4(2)), Sch. 4 (item 6), Sch. 5 (item 6), Sch. 6 (item 34) and Sch. 10 (items 17(3)–(6), 38(3)–(7))
<b>as amended by</b>				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 76, 86): Royal Assent	Sch. 12 (item 86)
<i>Tax Laws Amendment (2006 Measures No. 2) Act 2006</i>	58, 2006	22 June 2006	Schedule 7 (item 170): Royal Assent	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 3) 2000</i>	66, 2000	22 June 2000	Schedule 2 (items 3, 4): 7 Dec 1998 (zj) Schedules 3–5: Royal Assent (zj)	Sch. 3 (item 5), Sch. 4 and Sch. 5 (item 2)
<i>Taxation Laws Amendment Act (No. 6) 2000</i>	76, 2000	28 June 2000	28 June 2000	S. 4
<i>New Business Tax System (Miscellaneous) Act (No. 1) 2000</i>	79, 2000	30 June 2000	S. 4, Schedule 1 (items 3, 4(2)), Schedule 2 (items 1–7) and Schedule 6 (items 1–11, 15): 1 July 2000 (zk)	S. 4, Sch. 1 (item 4(2)), Sch. 2 (item 7) and Sch. 6 (item 15)
<i>New Business Tax System (Alienation of Personal Services Income) Act 2000</i>	86, 2000	30 June 2000	Schedule 1 (items 1–26): Royal Assent (zl)	Sch. 1 (item 26)
<i>New Business Tax System (Miscellaneous) Act (No. 2) 2000</i>	89, 2000	30 June 2000	S. 4, Schedule 1 (items 1–17, 19–25, 30–32, 34–65, 65A, 68), Schedule 2 (items 63–66, 69, 71–79, 79A, 79B, 80–83, 83A, 84), Schedule 4, Schedule 5 (items 1–31, 34), Schedule 6 and Schedule 9 (items 5, 9, 26, 43, 55–57, 62, 63, 66, 67): Royal Assent (zm) Schedule 1 (item 18): 11 Nov 1999 (zm) Schedule 1 (items 26–29, 33): (zm) Schedule 2 (items 67, 68, 70): 1 July 2001 (zm) Schedule 9 (items 1–4, 6–8, 10–25, 27–42, 44–54, 58–61, 64, 65, 68–73): 1 July 2000 (zm)	S. 4, Sch. 1 (item 68), Sch. 4 (item 6), Sch. 5 (items 31, 34) and Sch. 6 (item 2)
<b>as amended by</b> <i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 47–49): (zzb)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>New Business Tax System (Integrity Measures) Act 2000</i>	90, 2000	30 June 2000	30 June 2000	Sch. 1 (item 4)
<i>A New Tax System (Tax Administration) Act (No. 2) 2000</i>	91, 2000	30 June 2000	Schedule 2 (items 49–53), Schedule 4A and Schedule 5 (items 1–7, 10–16): (zn) Schedule 5 (items 8, 9): 1 July 2000 (zn)	—
<i>Indirect Tax Legislation Amendment Act 2000</i>	92, 2000	30 June 2000	Schedule 7 (items 28–30): (zo)	—
<i>Taxation Laws Amendment Act (No. 4) 2000</i>	114, 2000	5 Sept 2000	Schedule 4 (items 43, 44): 1 July 1998 Remainder: Royal Assent	S. 4 and Sch. 4 (item 82)
<b>as amended by</b>				
<i>Taxation Laws Amendment Act (No. 3) 2003</i>	101, 2003	14 Oct 2003	Schedule 6 (items 41, 42): (zzk)	—
<i>Patents Amendment (Innovation Patents) Act 2000</i>	140, 2000	24 Nov 2000	24 May 2001	—
<i>Farm Household Support Amendment Act 2000</i>	144, 2000	7 Dec 2000	Ss. 1 and 2: Royal Assent Remainder: 18 Dec 2000 (see <i>Gazette</i> 2000, S634)	Sch. 3 (item 7(3), 8)
<i>Taxation Laws Amendment Act (No. 8) 2000</i>	156, 2000	21 Dec 2000	Schedule 6 (items 47, 48, 49(3)) and Schedule 7 (item 15): Royal Assent (zp)	Sch. 6 (item 49(3))
<i>Taxation Laws Amendment Act (No. 7) 2000</i>	173, 2000	21 Dec 2000	S. 4, Schedule 1, Schedule 3 (items 1–15, 17), Schedule 4 (items 6–45, 47–49, 51–59, 65(1), (3)) and Schedule 6: Royal Assent (zq) Schedule 4 (items 46, 50): 1 July 1998 (zq) Schedule 5: (zq)	S. 4, Sch. 3 (item 17), Sch. 4 (item 65(1), (3)) and Sch. 6 (item 6)
<b>as amended by</b>				
<i>Taxation Laws Amendment Act (No. 3) 2003</i>	101, 2003	14 Oct 2003	Schedule 6 (item 43): (zzk)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 5) 2003</i>	142, 2003	17 Dec 2003	Schedule 2 (items 50, 51): Royal Assent	Sch. 2 (item 51)
<i>Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001</i>	10, 2001	22 Mar 2001	Schedule 2 (items 62, 94, 95): 19 Apr 2001 (zr)	Sch. 2 (items 94, 95)
<i>Family and Community Services Legislation Amendment (One-off Payment to the Aged) Act 2001</i>	43, 2001	25 May 2001	25 May 2001	—
<i>Taxation Laws Amendment (Changes for Senior Australians) Act 2001</i>	44, 2001	25 May 2001	25 May 2001	Sch. 3 (item 2)
<i>Corporations (Repeals, Consequential and Transitional) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (items 264–275): 15 July 2001 (see <i>Gazette</i> 2001, No. S285 (zs))	Ss. 4–14 [see Note 1]
<i>Governor-General Legislation Amendment Act 2001</i>	57, 2001	28 June 2001	28 June 2001	Sch. 2 (item 4)
<i>Taxation Laws Amendment Act (No. 1) 2001</i>	72, 2001	30 June 2001	30 June 2001	Sch. 2 (items 108–110)
<b>as amended by</b>				
<i>New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001</i>	77, 2001	30 June 2001	(see 77, 2001 below)	Sch. 3 (item 6)
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 51, 52): (zzb)	—
<i>Taxation Laws Amendment Act (No. 3) 2001</i>	73, 2001	30 June 2001	Schedule 1 (items 69–78): 23 May 2001 Schedule 2 (items 48–52): 1 Jan 2001 Schedule 3 (items 34–36): 1 Apr 2001 Remainder: Royal Assent	Sch. 1 (item 62(2)), Sch. 2 (items 47, 48) and Sch. 3 (item 19)



**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>New Business Tax System (Capital Allowances) Act 2001</i>	76, 2001	30 June 2001	Schedule 2: 1 July 2000 Schedule 3: 9 May 2001 Remainder: Royal Assent	Sch. 1 (item 2), Sch. 2 (item 4) and Sch. 3 (item 3)
<i>New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001</i>	77, 2001	30 June 2001	Schedule 3: (zt) Remainder: Royal Assent	Sch. 2 (item 488) (am. by 119, 2002, Sch. 3 [items 97–99])
<b>as amended by</b>				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 44, 45): (zzb)	—
<i>Taxation Laws Amendment Act (No. 5) 2002</i>	119, 2002	2 Dec 2002	Schedule 3 (items 97–99): (zta)	—
<i>New Business Tax System (Simplified Tax System) Act 2001</i>	78, 2001	30 June 2001	Schedules 1 and 2: Royal Assent (zu)	Sch. 1 (item 2) and Sch. 2 (item 24)
<i>Taxation Laws Amendment (Superannuation Contributions) Act 2001</i>	89, 2001	18 July 2001	18 July 2001	Sch. 1 (item 11(1))
<i>Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001</i>	114, 2001	18 Sept 2001	(zv)	—
<i>Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001</i>	146, 2001	1 Oct 2001	Schedule 4 (items 92–101): 15 Dec 2001 (zw)	—
<i>New Business Tax System (Thin Capitalisation) Act 2001</i>	162, 2001	1 Oct 2001	Schedule 1 (items 17, 19): 15 July 2001 (see s. 2(2)(b) and <i>Gazette</i> 2001, No. S285) Schedule 1 (item 18): 1 July 2002 (see s. 2(3)(b) and <i>Gazette</i> 2002, No. GN24) Remainder: 1 July 2001 (zx)	—
<i>New Business Tax System (Debt and Equity) Act 2001</i>	163, 2001	1 Oct 2001	1 July 2001	Sch. 1 (item 118)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 2) 2001</i>	167, 2001	1 Oct 2001	Schedule 4 (items 8–10) and Schedules 7 and 8: Royal Assent (zy)	Sch. 4 (item 10), Sch. 7 (item 15) and Sch. 8 (item 4)
<i>Taxation Laws Amendment Act (No. 5) 2001</i>	168, 2001	1 Oct 2001	Schedule 2: 1 July 2000 Remainder: Royal Assent	S. 4, Sch. 1 (item 17), Sch. 3 (items 4, 5), Sch. 4 (items 7, 9, 16) and Sch. 5 (item 5)
<i>Taxation Laws Amendment Act (No. 6) 2001</i>	169, 2001	1 Oct 2001	Schedule 4 (items 1–3, 6–15), Schedule 5 (items 1–9) and Schedule 6 (items 1–4, 5A, 6–16, 16L–16N, 17, 19): Royal Assent Schedule 4 (items 4, 5): (zz) Schedule 6 (items 4A, 4B): (zz) Schedule 6 (items 4C, 5): (zz)	Sch. 4 (item 15), Sch. 5 (item 9) and Sch. 6 (item 19(1)–(2A))
<b>as amended by</b>				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 58, 59): (zzb)	—
<i>Taxation Laws Amendment (Research and Development) Act 2001</i>	170, 2001	1 Oct 2001	Schedule 2 (items 28–44, 51): 29 Jan 2001 (zza) Schedule 2 (items 69–84, 92): (zza) Schedule 3 (items 11–13, 19(1)): Royal Assent	Sch. 2 (items 51, 92) and Sch. 3 (item 19(1)) S. 2(3) (am. by 57, 2002, Sch. 12 [item 63])
<b>as amended by</b>				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (item 63): (zzb)	—
<i>Taxation Laws Amendment (Superannuation Act (No. 1) 2002</i>	15, 2002	4 Apr 2002	4 Apr 2002	Sch. 1 (item 21)
<i>Taxation Laws Amendment Act (No. 1) 2002</i>	26, 2002	4 Apr 2002	4 Apr 2002	Sch. 1 (items 4, 9(1), (2))

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment (Film Incentives) Act 2002</i>	27, 2002	4 Apr 2002	4 Apr 2002	Sch. 1 (item 12)
<i>Taxation Laws Amendment (Baby Bonus) Act 2002</i>	32, 2002	30 May 2002	30 May 2002	S. 4
<i>New Business Tax System (Imputation) Act 2002</i>	48, 2002	29 June 2002	29 June 2002	—
<i>Taxation Laws Amendment (Superannuation) Act (No. 2) 2002</i>	51, 2002	29 June 2002	S. 4, Schedule 1 (item 202(2)) and Schedule 3 (items 3, 4): Royal Assent Schedule 1 (items 185, 186): 1 July 2003	S. 4, Sch. 1 (item 202(2)) and Sch. 3 (item 4)
<i>Taxation Laws Amendment Act (No. 4) 2002</i>	53, 2002	29 June 2002	Schedules 3 and 4: 1 July 2002 Remainder: Royal Assent	S. 4, Sch. 1 (item 46), Sch. 2 (items 16, 17) and Sch. 4 (item 15)
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 2: 1 July 2002 Schedule 4 (items 3, 4): 1 July 2000 Schedule 4 (items 5–8), Schedule 7, Schedule 9 (items 9, 11, 12, 15–20, 22–40, 45), Schedule 11 (items 2–5), Schedule 12 (items 16–18, 20, 25, 26): Royal Assent Schedule 9 (items 10, 13, 14, 21) and Schedule 12 (items 19, 21–24, 27, 28): (zzb) Schedule 12 (item 29): 19 Sept 1997 (see s. 2(1))	Sch. 4 (items 4(2), 8), Sch. 7 (item 3), Sch. 9 (item 45), Sch. 11 (item 5) and Sch. 12 (items 22, 24)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>New Business Tax System (Consolidation) Act (No. 1) 2002</i>	68, 2002	22 Aug 2002	24 Oct 2002 (see s. 2)	S. 4 and Sch. 3 (items 2, 19, 37, 38) Sch. 3 (item 23) (am. by 41, 2005, Sch. 10 [item 265]) Sch. 3 (item 39) (am. by 90, 2002, Sch. 11; 16, 2003, Sch. 19 [item 6])
<b>as amended by</b>				
<i>New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002</i>	90, 2002	24 Oct 2002	(see 90, 2002 below)	—
<i>New Business Tax System (Consolidation and Other Measures) Act 2003</i>	16, 2003	11 Apr 2003	Schedule 19 (items 6, 7): (zzc)	—
<i>Tax Laws Amendment (2004 Measures No. 7) Act 2005</i>	41, 2005	1 Apr 2005	Schedule 10 (item 265): (zzca)	—
<i>New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002</i>	90, 2002	24 Oct 2002	Schedules 1–15: (zzd) Remainder: Royal Assent	S. 4, Sch. 14 (item 19), Sch. 15 (items 13–15) and Sch. 16 (items 54, 55)
<b>as amended by</b>				
<i>Taxation Laws Amendment Act (No. 6) 2003</i>	67, 2003	30 June 2003	Schedule 8 (items 1, 3): Royal Assent	Sch. 8 (item 3)
<i>Taxation Laws Amendment Act (No. 3) 2002</i>	97, 2002	10 Nov 2002	S. 4, Schedule 1 (item 8) and Schedule 2 (items 9A, 9B, 10–12): Royal Assent	S. 4

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i>	117, 2002	2 Dec 2002	S. 4: Royal Assent Schedules 1, 2 and 3 (items 1–7), Schedule 4, Schedule 5 (items 1–12), Schedules 6–8, Schedule 11 (items 8–11), Schedule 12 (items 1–23), Schedule 13 (items 1–14) and Schedule 14 (items 8–13): (zze) Schedule 17: (zze)	S. 4, Sch. 2 (item 11), Sch. 8 (item 6), Sch. 12 (items 12, 22) and Sch. 17 (item 6)
<i>Taxation Laws Amendment Act (No. 5) 2002</i>	119, 2002	2 Dec 2002	S. 4, Schedule 1 (items 2–8), Schedule 2 and Schedule 3 (item 100): Royal Assent Schedule 3 (items 4–12, 50–71, 76): (zzf) Schedule 3 (items 13–49): (zzf) Schedule 3 (items 72–75, 77, 78): (zzf)	S. 4, Sch. 1 (item 8), Sch. 2 (item 7) and Sch. 3 (item 100)
<b>as amended by</b>				
<i>Tax Laws Amendment (2004 Measures No. 7) Act 2005</i>	41, 2005	1 Apr 2005	Schedule 10 (item 242): Royal Assent	—
<i>Taxation Laws Amendment (Venture Capital) Act 2002</i>	136, 2002	19 Dec 2002	Schedule 1 (items 1, 5): (zzg) Remainder: Royal Assent	Sch. 1 (item 27) Sch. 2 (item 28) and Sch. 3 (item 18)
<i>Taxation Laws Amendment (Structured Settlements and Structured Orders) Act 2002</i>	139, 2002	19 Dec 2002	19 Dec 2002	S. 4 and Sch. 1 (item 16A)
<i>Taxation Laws Amendment Act (No. 1) 2003</i>	12, 2003	2 Apr 2003	Schedule 1: 29 Aug 2001 Remainder: Royal Assent	Sch. 2 (item 2) and Sch. 3 (items 2, 6, 11, 13)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>New Business Tax System (Consolidation and Other Measures) Act 2003</i>	16, 2003	11 Apr 2003	S. 4: Royal Assent Schedule 1 (items 1–6, 9–26), Schedules 2, 3, Schedule 5 (items 2–5), Schedule 6 (items 1–9), Schedules 7, 8, Schedule 11 (items 1–3), Schedules 12, 13, Schedule 14 (items 2–7), Schedule 16 (items 1–3), Schedule 19 (items 1–3), Schedules 21, 22 and Schedule 23 (items 10–13): (zzh) Schedule 4 (items 1–7): (zzh) Schedule 9 (items 1, 2, 13–21): (zzh) Schedule 10 (item 2): (zzh) Schedule 14 (item 1): (zzh) Schedule 24 (items 20–23): (zzh) Schedule 25 (items 1–10), Schedule 26 (items 1–4, 8), Schedule 27 (items 1–19, 21) and Schedule 30 (items 1, 2): (zzh) Schedule 28 (items 1, 19(1)): (zzh) Schedule 28 (items 2–12, 19(2), (3)) and Schedule 29 (items 12, 13): (zzh)	S. 4, Sch. 9 (item 21), Sch. 13 (item 5), Sch. 24 (item 23), Sch. 26 (item 8), Sch. 27 (item 21), Sch. 28 (item 19) and Sch. 30 (item 2)
<b>as amended by</b>				
<i>Tax Laws Amendment (2004 Measures No. 7) Act 2005</i>	41, 2005	1 Apr 2005	Schedule 10 (item 224): Royal Assent Schedule 10 (item 266): (zzha)	—
<i>Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003</i>	35, 2003	24 Apr 2003	Schedules 1, 1A, 2, 4, 5 and 6: 20 Sept 2003 Schedule 3: 22 May 2003 Remainder: Royal Assent	Sch. 2 (item 7)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 2) 2003</i>	65, 2003	30 June 2003	S. 4, Schedule 2, Schedule 3 (items 3–5) and Schedule 5 (item 3): Royal Assent	S. 4 and Sch. 2 (item 5)
<i>Taxation Laws Amendment Act (No. 4) 2003</i>	66, 2003	30 June 2003	S. 4, Schedule 2 (items 1–5, 17), Schedule 3 (items 49–57, 59–70, 71, 74–89, 91–128, 129–131, 140, 141), Schedule 4, Schedule 6 (items 1, 3) and Schedule 7 (items 6–9): Royal Assent Schedule 3 (items 58, 72, 73, 90): (zzi) Schedule 3 (items 70A, 128A): (zzi)	S. 4, Sch. 2 (item 17), Sch. 3 (items 140(1)–(6), (8), 141), Sch. 4 (item 5), Sch. 6 (item 3) and Sch. 7 (item 9)
<i>Taxation Laws Amendment Act (No. 6) 2003</i>	67, 2003	30 June 2003	S. 4 and Schedule 10 (items 1–11): Royal Assent Schedules 3, 4 and Schedule 5 (items 1–3): (zzj) Schedule 9 (items 16, 17): 1 Sept 2003 Schedule 10 (items 17–23): (zzj) Schedule 12: 30 June 2003	S. 4 and Sch. 10 (item 23)
<i>Australian Heritage Council (Consequential and Transitional Provisions) Act 2003</i>	86, 2003	23 Sept 2003	Ss. 1–3: Royal Assent Remainder: 1 Jan 2004 (see s. 2 and <i>Gazette</i> 2003, No. GN47)	Sch. 1 (item 5)
<i>Taxation Laws Amendment Act (No. 3) 2003</i>	101, 2003	14 Oct 2003	S. 4, Schedule 1 (items 2–20, 22), Schedule 2 (items 1–12), Schedule 3 (items 2–6) and Schedule 6 (items 16, 22–25, 27, 30): Royal Assent S. 5: 11 Oct 2002 Schedule 6 (items 17–21, 26, 28, 29): (zzk)	Ss. 4, 5, Sch. 1 (item 22) and Sch. 3 (item 6) Sch. 2 (item 12) (am. by 147, 2005, Sch. 5 [item 19]) S. 2(1) (am. by 67, 2003, Sch. 10 [item 13])

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<b>as amended by</b>				
<i>Taxation Laws Amendment Act (No. 6) 2003</i>	67, 2003	30 June 2003	Schedule 10 (items 13–16): 14 Oct 2003 (see s. 2(1))	—
<i>Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005</i>	147, 2005	14 Dec 2005	Schedule 5 (items 19, 20): Royal Assent	Sch. 5 (item 20)
<i>Taxation Laws Amendment Act (No. 8) 2003</i>	107, 2003	21 Oct 2003	Schedule 6: 1 July 2003 Schedule 7 (items 6–8): (zzl) Schedule 7 (item 15): (zzl) Remainder: Royal Assent	S. 4, Sch. 1 (item 9(1)), Sch. 2 (item 40), Sch. 3 (item 2), Sch. 5 (item 3) and Sch. 7 (items 9, 18) S. 2(1) (am. by 23, 2005, Sch. 11 [item 1])
<b>as amended by</b>				
<i>Tax Laws Amendment (2004 Measures No. 6) Act 2005</i>	23, 2005	21 Mar 2005	Schedule 11: (zzla)	—
<i>Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Act 2003</i>	111, 2003	12 Nov 2003	12 Nov 2003	Sch. 1 (item 25)
<i>New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003</i>	133, 2003	17 Dec 2003	17 Dec 2003	S. 4, Sch. 1 (item 17(2)), Sch. 2 (item 9), Sch. 3 (item 2) and Sch. 4 (items 77(2), 78)
<i>Financial Services Reform Amendment Act 2003</i>	141, 2003	17 Dec 2003	Schedule 3 (item 1): 18 Dec 2003	—



**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 5) 2003</i>	142, 2003	17 Dec 2003	S. 4, Schedule 1 (items 1–15, 18–40), Schedule 2 (items 1, 2, 4–29, 33–49, 52, 53), Schedule 3 (items 16–18), Schedule 7 (items 1–23) and Schedule 8 (items 4–17, 17A, 17B, 18–21, 24(2), (3)): Royal Assent Schedule 3 (items 1–15): (zzm)	S. 4, Sch. 1 (item 1), Sch. 2 (items 1, 49), Sch. 3 (items 15, 18), Sch. 7 (items 15, 23) and Sch. 8 (items 24(2), (3))
<i>Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003</i>	150, 2003	19 Dec 2003	Schedule 2 (items 136–143): (zzn)	—
<i>Taxation Laws Amendment Act (No. 2) 2004</i>	20, 2004	23 Mar 2004	Schedule 6: 1 July 2000 Remainder: Royal Assent	S. 4, Sch. 3 (item 6), Sch. 4 (item 9), Sch. 7 (item 9) and Sch. 8 (item 14)
<i>Family Assistance Legislation Amendment (Extension of Time Limits) Act 2004</i>	33, 2004	20 Apr 2004	20 Apr 2004	Sch. 1 (item 9)
<i>Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004</i>	52, 2004	27 Apr 2004	Schedule 4 (items 10–13, 14(2), (3), 15): 1 July 2004 (see s. 2)	Sch. 4 (items 14(2), (3), 15)
<i>Family Assistance Legislation Amendment (More Help for Families—Increased Payments) Act 2004</i>	59, 2004	26 May 2004	Schedule 2 (items 36–42): 1 July 2004	Sch. 2 (items 38, 42)
<i>Family Assistance Legislation Amendment (More Help for Families—One-off Payments) Act 2004</i>	60, 2004	26 May 2004	26 May 2004	—
<i>Bankruptcy Legislation Amendment Act 2004</i>	80, 2004	23 June 2004	Schedule 1 (items 197, 212, 213, 215): 1 Dec 2004 (see <i>Gazette</i> 2004, No. GN34)	Sch. 1 (items 212, 213, 215)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Laws Amendment (2004 Measures No. 2) Act 2004</i>	83, 2004	25 June 2004	S. 4, Schedule 1 (items 116–124), Schedule 2 (items 1, 2, 5–8, 10–18, 20–33, 36–50, 52–64, 67–74), Schedule 3 (items 4–7), Schedule 5 (items 1, 2), Schedule 6, Schedule 8 (items 9–11), Schedule 10 (items 43, 44) and Schedule 12 (items 1–9): Royal Assent Schedule 1 (items 2–79): (zzo) Schedule 1 (items 85–89, 93, 94): (zzo) Schedule 1 (items 90–92): (zzo) Schedule 1 (items 95–99): (zzo) Schedule 1 (item 100): (zzo) Schedule 1 (items 101–103): (zzo) Schedule 1 (item 104): (zzo) Schedule 1 (items 105, 106): (zzo) Schedule 10 (items 3–22): (zzo) Schedule 10 (items 23–29): 30 June 2003 Schedule 10 (items 30–40): (zzo) Schedule 10 (items 41, 42): 30 June 2003 (zzo) Schedule 12 (items 10–16): (zzo)	S. 4, Sch. 1 (items 126(2)–(5), (8)–(10)), Sch. 2 (items 1, 6, 37, 53, 64), Sch. 3 (items 6, 7), Sch. 5 (item 2), Sch. 6 (item 4), Sch. 8 (item 11), Sch. 10 (items 43(2)–(4), 44) and Sch. 12 (items 9, 16) S. 2(1) (am. by 41, 2005, Sch. 10 [item 269])
<b>as amended by</b>				
<i>Tax Laws Amendment (2004 Measures No. 7) Act 2005</i>	41, 2005	1 Apr 2005	Schedule 10 (item 269): (zzoa)	—
<i>Superannuation Laws Amendment (2004 Measures No. 1) Act 2004</i>	92, 2004	29 June 2004	29 June 2004	Sch. 1 (item 3)
<i>Superannuation Laws Amendment (2004 Measures No. 2) Act 2004</i>	93, 2004	29 June 2004	S. 4(1) and Schedule 1 (item 3): Royal Assent	S. 4(1)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Laws Amendment (2004 Measures No. 1) Act 2004</i>	95, 2004	29 June 2004	S. 4, Schedules 2, 3, 5 and 11: Royal Assent Schedule 7 (items 1–10, 13): 1 July 2004 Schedule 10 (items 28–39, 44, 45): 1 July 2005	S. 4, Sch. 2 (item 11), Sch. 3 (items 7–9), Sch. 5 (item 9), Sch. 7 (item 13) and Sch. 10 (items 44, 45)
<b>as amended by</b>				
<i>Tax Laws Amendment (2006 Measures No. 2) Act 2006</i>	58, 2006	22 June 2006	Schedule 7 (item 210): (zzu)	—
<i>New International Tax Arrangements (Participation Exemption and Other Measures) Act 2004</i>	96, 2004	29 June 2004	29 June 2004	Sch. 1 (item 1) and Sch. 2 (item 140(3)) (am. by 64, 2005, Sch. 5 [item 1])
<b>as amended by</b>				
<i>New International Tax Arrangements (Foreign-owned Branches and Other Measures) Act 2005</i>	64, 2005	26 June 2005	Schedule 5: (see 64, 2005 below)	—
<i>Veterans' Entitlements (Clarke Review) Act 2004</i>	100, 2004	30 June 2004	Schedule 2 (items 32–35): 20 Sept 2004	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 1) 2004</i>	101, 2004	30 June 2004	S. 4, Schedule 1 (items 2–4), Schedule 9, Schedule 10 (items 7–37) and Schedule 11 (items 144–146): Royal Assent Schedule 2: 30 June 2003 Schedule 3: 1 July 2003 Schedule 7 (items 1–8): (zzp) Schedule 11 (item 35): (zzp) Schedule 11 (items 52–59, 88, 89): (zzp) Schedule 11 (items 141–143): (zzp)	S. 4, Sch. 1 (item 4), Sch. 3 (item 72), Sch. 7 (item 8), Sch. 9 (item 17) and Sch. 11 (items 143, 145)
<i>Tax Laws Amendment (2004 Measures No. 3) Act 2004</i>	105, 2004	30 June 2004	Schedule 2: 1 Apr 2004 Remainder: Royal Assent	S. 4 and Sch. 1 (item 19)
<i>Tax Laws Amendment (Wine Producer Rebate and Other Measures) Act 2004</i>	129, 2004	31 Aug 2004	Schedules 1 and 3: 1 Oct 2004 Remainder: Royal Assent	Sch. 3 (item 25)
<i>Family and Community Services and Veterans' Affairs Legislation Amendment (2004 Election Commitments) Act 2004</i>	132, 2004	8 Dec 2004	Schedule 1 (items 1, 2, 17, 18) and Schedule 2 (items 1, 2, 13–15, 24): 1 Dec 2004	Sch. 2 (items 13, 24)
<i>Private Health Insurance Incentives Amendment Act 2005</i>	9, 2005	22 Feb 2005	22 Feb 2005	Sch. 1 (item 7)
<i>New International Tax Arrangements (Managed Funds and Other Measures) Act 2005</i>	21, 2005	21 Mar 2005	21 Mar 2005	Sch. 1 (item 7) and Sch. 3 (item 47(1))

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Laws Amendment (2004 Measures No. 6) Act 2005</i>	23, 2005	21 Mar 2005	S. 4, Schedule 1 (items 2–8, 11, 13–19, 21–24, 26, 27, 29–32), Schedule 2 (items 1–11, 14), Schedule 3 (items 1, 5–13, 75–102, 111(1)–(3)), Schedules 4–6, 8, 10 and Schedule 12 (items 2–6, 11(1)): Royal Assent Schedule 3 (items 2, 3): (zzq) Schedule 3 (item 4): (zzq) Schedule 12 (item 1): 1 July 2000	S. 4 and Sch. 1 (items 1, 19), Sch. 2 (item 14), Sch. 3 (item 111(1)–(3)), Sch. 4 (item 2), Sch. 6 (item 14), Sch. 8 (item 8), Sch. 10 (item 23) and Sch. 12 (item 11(1))
<i>Tax Laws Amendment (2004 Measures No. 7) Act 2005</i>	41, 2005	1 Apr 2005	S. 4, Schedule 1 (items 1–11), Schedule 2 (items 1–9, 11), Schedule 3 (items 17–22), Schedule 6 (items 1–3, 5, 12–15, 17–28), Schedule 7, Schedule 10 (items 36–221, 271–273) and Schedule 11 (items 4, 5): Royal Assent Schedule 10 (item 247): (zzr) Schedule 10 (item 248): (zzr) Schedule 10 (items 249, 250, 263, 264): (zzr) Schedule 10 (items 251–257): (zzr) Schedule 10 (item 258): (zzr) Schedule 10 (item 259): (zzr) Schedule 10 (item 260): (zzr) Schedule 10 (items 261, 262): (zzr)	S. 4, Sch. 1 (item 11), Sch. 2 (item 11), Sch. 3 (item 22), Sch. 6 (item 1), Sch. 7 (item 20) and Sch. 1 (item 5)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005</i>	45, 2005	1 Apr 2005	Schedule 1 (items 66, 67) and Schedule 4: 1 July 2005 (see s. 2(1))	Sch. 4 [see Note 1]
<i>Social Security Legislation Amendment (One-off Payments for Carers) Act 2005</i>	55, 2005	25 May 2005	25 May 2005	Sch. 2 (item 1)
<b>as amended by</b>				
<i>Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008</i>	19, 2008	26 May 2008	Schedule 3 (item 70): Royal Assent	—
<i>Film Licensed Investment Company (Consequential Provisions) Act 2005</i>	58, 2005	26 June 2005	Schedule 1: 27 June 2005 (see s. 2(1)) Remainder: Royal Assent	Sch. 1 (item 17)
<i>Tax Laws Amendment (2005 Measures No. 3) Act 2005</i>	63, 2005	26 June 2005	Schedule 1 (items 5–23): Royal Assent	Sch. 1 (item 23)
<i>New International Tax Arrangements (Foreign-owned Branches and Other Measures) Act 2005</i>	64, 2005	26 June 2005	Schedule 2: 27 June 2005 Schedule 5: (zss) Remainder: Royal Assent	Sch. 2 (item 11(2)), Sch. 3 (items 11, 39) and Sch. 4 (items 40, 41)
<i>Social Security Amendment (Extension of Youth Allowance and Austudy Eligibility to New Apprentices) Act 2005</i>	66, 2005	26 June 2005	Schedules 1 and 2: 1 July 2005 Schedule 3: 20 Mar 2000 (see s. 2(1)) Remainder: Royal Assent	Sch. 2 (item 3)
<i>Tax Laws Amendment (Improvements to Self Assessment) Act (No. 1) 2005</i>	75, 2005	29 June 2005	29 June 2005	Sch. 1 (item 31)
<i>Tax Laws Amendment (2005 Measures No. 1) Act 2005</i>	77, 2005	29 June 2005	29 June 2005	Sch. 2 (item 3) and Sch. 4 (item 5)
<i>Tax Laws Amendment (2005 Measures No. 2) Act 2005</i>	78, 2005	29 June 2005	29 June 2005	Sch. 1 (item 3) and Sch. 3 (items 5, 12)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Superannuation (Consequential Amendments) Act 2005</i>	81, 2005	29 June 2005	Schedule 7 (items 2, 3): 1 July 2005	Sch. 7 (item 3) (am. by 26, 2008, Sch. 1 [items 117–121])
<b>as amended by</b> <i>Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008</i>	26, 2008	23 June 2008	Schedule 1 (items 117–121): Royal Assent	—
<i>Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005</i>	147, 2005	14 Dec 2005	Schedule 1 (items 4–168, 169(2), 170–176), Schedule 2 (items 1, 12–24, 26–28), Schedule 3, Schedule 4 (items 4–12), Schedule 5 (items 13, 14, 20), Schedule 6 (items 1, 2, 10(1)) and Schedule 7 (items 14–16, 20): Royal Assent	Sch. 1 (items 169(2), 170–176), Sch. 2 (items 26–28), Sch. 3 (item 5), Sch. 4 (item 12), Sch. 5 (item 20), Sch. 6 (item 10(1)) and Sch. 7 (item 20)
<i>Tax Laws Amendment (2005 Measures No. 4) Act 2005</i>	160, 2005	19 Dec 2005	Schedule 1 (items 1–10, 14(1)) and Schedule 2 (items 1–12): Royal Assent	Sch. 1 (item 14(1)) and Sch. 2 (item 12)
<i>Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005</i>	161, 2005	19 Dec 2005	Schedule 1 (item 26) and Schedule 2 (items 6–14, 32): Royal Assent	Sch. 2 (item 32)
<i>Tax Laws Amendment (2005 Measures No. 5) Act 2005</i>	162, 2005	19 Dec 2005	Schedule 2 (items 1–13), Schedule 3 (items 1–3, 16–19, 33) and Schedule 6 (items 28–32): Royal Assent Schedule 6 (items 1–5, 7–13): 1 July 2005 Schedule 6 (items 6, 16–25): (zzt)	Sch. 2 (item 13), Sch. 3 (item 33) and Sch. 6 (items 13, 25)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Laws Amendment (2005 Measures No. 6) Act 2006</i>	13, 2006	29 Mar 2006	29 Mar 2006	Sch. 1 (item 2), Sch. 2 (item 4) and Sch. 3 (item 3)
<i>Offshore Petroleum (Repeals and Consequential Amendments) Act 2006</i>	17, 2006	29 Mar 2006	Schedule 2 (items 41, 42): 1 July 2008 (see s. 2(1) and F2008L02273)	Sch. 2 (item 42)
<i>Tax Laws Amendment (2006 Measures No. 1) Act 2006</i>	32, 2006	6 Apr 2006	6 Apr 2006	Sch. 1 (item 40(1)–(7), (9)), Sch. 2 (item 51) and Sch. 3 (item 17)
<i>Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Act 2006</i>	41, 2006	22 May 2006	22 May 2006	—
<i>Family Law Amendment (Shared Parental Responsibility) Act 2006</i>	46, 2006	22 May 2006	Schedule 4 (items 113A, 113B, 129, 138A): 1 July 2006	Sch. 4 (items 129, 138A)
<i>Tax Laws Amendment (Personal Tax Reduction and Improved Depreciation Arrangements) Act 2006</i>	55, 2006	19 June 2006	Schedules 1, 3 and 4: 1 July 2006 Remainder: Royal Assent	—
<i>Tax Laws Amendment (2006 Measures No. 2) Act 2006</i>	58, 2006	22 June 2006	S. 4, Schedules 1, 2, Schedule 3 (items 1–3, 7), Schedule 4, Schedule 5 (items 1–3) and Schedule 7 (items 51–113, 213–216, 257–263): Royal Assent Schedule 7 (items 179–191, 193): (zzu) Schedule 7 (item 192): 30 June 2004	S. 4, Sch. 1 (item 3), Sch. 3 (item 7), Sch. 4 (item 6), Sch. 5 (item 3) and Sch. 7 (items 55, 69, 92)
<i>Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006</i>	65, 2006	22 June 2006	Schedule 4 (items 1–10, 12): Royal Assent	Sch. 4 (item 12)



**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Fuel Tax (Consequential and Transitional Provisions) Act 2006</i>	73, 2006	26 June 2006	Schedule 5 (items 5–38, 156–159): 1 July 2006 (see s. 2(1))	—
<i>Tax Laws Amendment (2006 Measures No. 3) Act 2006</i>	80, 2006	30 June 2006	Schedule 1 (items 2–4), Schedule 2, Schedule 4 (items 1, 5–9, 14, 20, 23–30), Schedule 5, Schedule 6 (items 3–7) and Schedule 11 (items 1, 2, 4–24): Royal Assent Schedule 3 (items 2–5): (zzv) Schedule 11 (item 3): [see (zzv) and Note 5]	Sch. 1 (item 4), Sch. 2, Sch. 3 (item 5), Sch. 4 (items 14, 30), Sch. 5 (item 2) and Sch. 11 (items 23, 24)
<i>Families, Community Services and Indigenous Affairs and Other Legislation (2006 Budget and Other Measures) Act 2006</i>	82, 2006	30 June 2006	Schedule 4 (items 6–9): 1 Dec 2006	—
<i>International Tax Agreements Amendment Act (No. 1) 2006</i>	100, 2006	14 Sept 2006	14 Sept 2006	Sch. 1 (item 11)
<i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>	101, 2006	14 Sept 2006	Schedules 3 and 4: 1 Jan 2008 Remainder: Royal Assent	Sch. 6 (items 1, 4–11)
<b>as amended by</b>				
<i>Tax Laws Amendment (2006 Measures No. 7) Act 2007</i>	55, 2007	12 Apr 2007	Schedule 4 (item 5): Royal Assent	—
<i>Tax Laws Amendment (2007 Measures No. 2) Act 2007</i>	78, 2007	21 June 2007	Schedule 5 (item 9): Royal Assent	—
<i>Tax Laws Amendment (2009 Measures No. 2) Act 2009</i>	42, 2009	23 June 2009	Schedule 5 (items 13, 14): (zzw)	—
<i>Australian Participants in British Nuclear Tests (Treatment) (Consequential Amendments and Transitional Provisions) Act 2006</i>	136, 2006	30 Nov 2006	Schedules 1 and 2: 1 Dec 2006 (see s. 2(1)) Remainder: Royal Assent	Sch. 2 (items 1–3)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Laws Amendment (2006 Measures No. 4) Act 2006</i>	168, 2006	12 Dec 2006	Schedule 3 (items 3–5): 13 Dec 2005 Remainder: Royal Assent	S. 4, Sch. 1 (items 10, 11), Sch. 3 (item 2) and Sch. 4 (item 112)
<i>Tax Laws Amendment (2006 Measures No. 6) Act 2007</i>	4, 2007	19 Feb 2007	Schedule 1 and Schedule 2 (items 11–16, 26): Royal Assent	—
<i>Tax Laws Amendment (Simplified Superannuation) Act 2007</i>	9, 2007	15 Mar 2007	Schedule 1 (items 1, 2, 5–17, 24(1)), Schedule 2 (items 1, 2), Schedule 3, Schedule 5 (items 6–8, 36(1)) and Schedule 10: Royal Assent	Sch. 1 (items 2, 24(1)), Sch. 2 (item 2), Sch. 5 (items 8, 36(1)) and Sch. 10 (item 96)
<i>Superannuation Legislation Amendment (Simplification) Act 2007</i>	15, 2007	15 Mar 2007	S. 4, Schedule 3 (items 8–44, 66) and Schedule 4 (items 1–8): Royal Assent Schedule 1 (items 150–260, 406(1)–(3)): (zzx) Schedule 2: (zzx)	S. 4, Sch. 1 (item 406(1)–(3)) and Sch. 3 (item 66) Sch. 2 (item 12) (rs. by 143, 2007, Sch. 5 [item 28])
<b>as amended by</b>				
<i>Tax Laws Amendment (2007 Measures No. 4) Act 2007</i>	143, 2007	24 Sept 2007	Schedule 5 (item 28): (see 143, 2007 below)	—
<i>Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007</i>	32, 2007	30 Mar 2007	Schedule 2 (item 52): 1 Apr 2007 (see s. 2(1)) Schedule 3 (items 7A, 8, 9, 9A–9C): 1 July 2007	Sch. 3 (item 9A)
<i>Tax Laws Amendment (2006 Measures No. 7) Act 2007</i>	55, 2007	12 Apr 2007	12 Apr 2007	Sch. 1 (item 68(1)), Sch. 5 (item 2) and Sch. 7 (item 5)
<i>Tax Laws Amendment (2007 Measures No. 1) Act 2007</i>	56, 2007	12 Apr 2007	12 Apr 2007	Sch. 3 (item 39)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Act 2007</i>	66, 2007	11 May 2007	Schedule 1 (items 17–26) and Schedule 3 (items 13–16): Royal Assent	—
<i>Tax Laws Amendment (2007 Measures No. 2) Act 2007</i>	78, 2007	21 June 2007	Schedule 7 (items 2–14): 1 July 2005 Schedule 8 (items 350–353): (zzy) Remainder: Royal Assent	S. 4, Sch. 1 (item 7), Sch. 2 (item 18), Sch. 4 (item 10), Sch. 6 (item 10), Sch. 7 (items 15, 16) and Sch. 8 (items 85, 205)
<i>Tax Laws Amendment (2007 Measures No. 3) Act 2007</i>	79, 2007	21 June 2007	Schedule 1 (items 28, 29, 39–42, 43(1), (6)), Schedules 3, 4, Schedule 6 (items 3–8), Schedule 9 (items 14–26, 30, 34) and Schedule 10 (items 10–13, 32): Royal Assent Schedule 8 (items 2, 12–25, 26(1)–(3)): 1 July 2007	Sch. 1 (item 43(1), (6)), Sch. 3 (items 3, 4), Sch. 4 (items 4, 5), Sch. 6 (item 8), Sch. 8 (item 26(1)–(3)), Sch. 9 (items 30, 34) and Sch. 10 (item 32)
<i>Tax Laws Amendment (Small Business) Act 2007</i>	80, 2007	21 June 2007	21 June 2007	Sch. 1 (item 8), Sch. 2 (item 67(2), (3)), Sch. 3 (item 176), Sch. 4 (item 31(1)), Sch. 7 (item 2) and Sch. 8 (item 9)
<i>Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007</i>	82, 2007	21 June 2007	Schedule 6 (items 39, 40): 1 July 2007	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Veterans' Affairs Legislation Amendment (2007 Measures No. 1) Act 2007</i>	89, 2007	21 June 2007	Schedule 5: 1 July 2007	—
<i>Families, Community Services and Indigenous Affairs Legislation Amendment (Child Care and Other 2007 Budget Measures) Act 2007</i>	113, 2007	28 June 2007	Schedule 1 (items 20–22): 1 July 2007	—
<i>Social Security Amendment (Apprenticeship Wage Top-Up for Australian Apprentices) Act 2007</i>	114, 2007	28 June 2007	Schedule 1: 1 July 2007 Remainder: Royal Assent	Sch. 1 (item 3)
<i>Financial Sector Legislation Amendment (Restructures) Act 2007</i>	117, 2007	28 June 2007	28 June 2007	Sch. 2 (item 4) and Sch. 3 (item 24)
<i>Tax Laws Amendment (2007 Measures No. 4) Act 2007</i>	143, 2007	24 Sept 2007	Schedule 1 (items 1, 4, 128–194, 222, 223, 225, 226), Schedule 2, Schedule 5 (items 1–16, 28, 48(1)–(3)), Schedule 6 and Schedule 7 (items 18–68): Royal Assent Schedule 5 (items 31–46): (zzz)	Sch. 1 (items 222, 223, 225, 226), Sch. 2 (item 6), Sch. 5 (item 48(1)–(3)) and Sch. 7 (items 22, 38)
<i>International Trade Integrity Act 2007</i>	147, 2007	24 Sept 2007	Schedule 2 (items 5–9): 25 Sept 2007	Sch. 2 (item 9)
<i>Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007</i>	154, 2007	24 Sept 2007	Schedule 1 (items 173–176): 1 Jan 2008 Schedule 1 (item 296): Royal Assent	Sch. 1 (item 296)
<i>Higher Education Endowment Fund (Consequential Amendments) Act 2007</i>	161, 2007	24 Sept 2007	Schedule 1: 25 Sept 2007 (see s. 2(1)) Remainder: Royal Assent	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Laws Amendment (2007 Measures No. 5) Act 2007</i>	164, 2007	25 Sept 2007	S. 4, Schedule 1 (items 1–24, 36–67, 71), Schedules 2–6, Schedule 7 (items 1–3, 5–12, 14), Schedule 8 (items 6–13), Schedule 9 and Schedule 10 (items 1, 7–25, 91, 92): Royal Assent Schedule 10 (items 57–88): [see Note 7] Schedule 12 (items 72–87): 27 Sept 2007 (see F2007L03842)	S. 4, Sch. 1 (item 71), Sch. 2 (item 2), Sch. 3 (item 11), Sch. 4 (item 7), Sch. 5 (item 3), Sch. 6 (item 68), Sch. 7 (item 14), Sch. 8 (item 13), Sch. 9 (item 3) and Sch. 10 (items 91, 92)
<i>Families, Community Services and Indigenous Affairs Legislation Amendment (Child Disability Assistance) Act 2007</i>	182, 2007	28 Sept 2007	Schedule 1: 1 Oct 2007 Remainder: Royal Assent	—
<i>Families, Community Services and Indigenous Affairs Legislation Amendment (Further 2007 Budget Measures) Act 2007</i>	183, 2007	28 Sept 2007	1 Jan 2008	—
<i>Social Security Legislation Amendment (2007 Budget Measures for Students) Act 2007</i>	184, 2007	28 Sept 2007	Schedule 3: 1 Jan 2008	Sch. 3 (item 10)
<i>Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008</i>	8, 2008	20 Mar 2008	Schedules 1–7: 28 Mar 2008 (see F2008L00959) Remainder: Royal Assent	—
<i>Screen Australia and the National Film and Sound Archive (Consequential and Transitional Provisions) Act 2008</i>	13, 2008	20 Mar 2008	Schedule 1 (items 3, 4): 1 July 2008 (see s. 2(1) and F2008L01863)	—
<i>Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008</i>	19, 2008	26 May 2008	Schedule 1 (items 17–25) and Schedule 3 (items 14–32): Royal Assent	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Laws Amendment (Election Commitments No. 1) Act 2008</i>	32, 2008	23 June 2008	23 June 2008	Sch. 1 (item 58) and Sch. 2 (item 3)
<i>Tax Laws Amendment (2008 Measures No. 2) Act 2008</i>	38, 2008	24 June 2008	Schedule 1, Schedule 3, Schedule 4, Schedule 6, Schedule 7 (items 1–3, 5), Schedule 8 (items 1–11), Schedule 9 (items 2–4), Schedule 10, Schedule 12 and Schedule 13: Royal Assent Schedule 5: (zzza) Schedule 8 (items 12–21): [see Note 8 and Table A]	Sch. 1 (item 19), Sch. 3 (item 3), Sch. 4 (item 5), Sch. 5 (item 4), Sch. 7 (item 5), Sch. 8 (items 11, 21), Sch. 9 (item 4), Sch. 10 (item 5), Sch. 12 (item 2) and Sch. 13 (item 3)
<i>First Home Saver Accounts (Consequential Amendments) Act 2008</i>	45, 2008	25 June 2008	26 June 2008	—
<i>Veterans' Entitlements Legislation Amendment (2007 Election Commitments) Act 2008</i>	48, 2008	25 June 2008	Schedule 3 (items 1, 2, 16(1)): 1 July 2008	Sch. 3 (item 16(1))
<i>Tax Laws Amendment (Budget Measures) Act 2008</i>	59, 2008	30 June 2008	30 June 2008	Sch. 1 (item 9) and Sch. 2 (item 2) Sch. 1 (item 15) (rs. by 14, 2009, Sch. 4 [item 51])
<b>as amended by</b>				
<i>Tax Laws Amendment (2008 Measures No. 6) Act 2009</i>	14, 2009	26 Mar 2009	Schedule 4 (item 51): Royal Assent	—
<i>Social Security and Other Legislation Amendment (Employment Entry Payment) Act 2008</i>	64, 2008	30 June 2008	1 July 2008	Sch. 1 (item 11(1))
<i>Tax Laws Amendment (2008 Measures No. 3) Act 2008</i>	91, 2008	20 Sept 2008	Schedule 1: Royal Assent	Sch. 1 (item 9)
<i>First Home Saver Accounts (Further Provisions) Amendment Act 2008</i>	92, 2008	30 Sept 2008	Schedule 1 (items 10–22, 26): 1 Oct 2008	Sch. 1 (item 26)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Laws Amendment (2008 Measures No. 4) Act 2008</i>	97, 2008	3 Oct 2008	Schedule 1 (items 3–12) and Schedule 3 (items 44–86, 88–173, 189): Royal Assent Schedule 3 (item 87): (zzzb)	Sch. 1 (item 12) and Sch. 3 (items 147, 155)
<i>Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008</i>	115, 2008	21 Nov 2008	Schedule 2 (items 34–41): 1 Mar 2009 (see F2009L00264)	—
<i>Dairy Adjustment Levy Termination Act 2008</i>	123, 2008	25 Nov 2008	Schedule 3 (items 1, 2): 26 Nov 2008	Sch. 3 (item 2)
<i>National Rental Affordability Scheme (Consequential Amendments) Act 2008</i>	130, 2008	28 Nov 2008	1 July 2008	Sch. 1 (item 14)
<i>Social Security and Other Legislation Amendment (Economic Security Strategy) Act 2008</i>	131, 2008	1 Dec 2008	Schedule 5 (items 3–12): Royal Assent	—
<i>Tax Laws Amendment (Education Refund) Act 2008</i>	141, 2008	9 Dec 2008	Schedule 1 (items 2–5, 10): Royal Assent	Sch. 1 (item 10)
<i>Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008</i>	144, 2008	9 Dec 2008	Schedule 14 (items 59–96): 10 Dec 2008	Sch. 14 (item 96)
<i>Tax Laws Amendment (2008 Measures No. 5) Act 2008</i>	145, 2008	9 Dec 2008	Schedule 2: Royal Assent	Sch. 2 (item 9)
<i>Temporary Residents' Superannuation Legislation Amendment Act 2008</i>	151, 2008	11 Dec 2008	Schedule 1 (items 27–37): 18 Dec 2008 (see F2008L04636)	—
<i>Nation-building Funds (Consequential Amendments) Act 2008</i>	155, 2008	18 Dec 2008	Schedule 2 (items 45–47) and Schedule 3 (item 8): 1 Jan 2009 (see s. 2(1))	Sch. 3 (item 8)
<i>Household Stimulus Package Act (No. 2) 2009</i>	4, 2009	18 Feb 2009	Schedule 4 and Schedule 5 (items 6–14): Royal Assent	Sch. 4
<i>Tax Bonus for Working Australians (Consequential Amendments) Act (No. 2) 2009</i>	6, 2009	18 Feb 2009	Schedule 1 (items 2, 3): 18 Feb 2009 (see s. 2(1))	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Laws Amendment (2008 Measures No. 6) Act 2009</i>	14, 2009	26 Mar 2009	Schedule 1, Schedule 4 (items 11–34, 52) and Schedule 5 (items 7–13): Royal Assent Schedule 5 (items 2, 3, 14): 29 Jan 2009 Schedule 5 (items 5, 6): [see Note 9]	Sch. 1 (item 6), Sch. 4 (items 17, 25) and Sch. 5 (item 14)
<b>as amended by</b>				
<i>Tax Laws Amendment (2009 Measures No. 2) Act 2009</i>	42, 2009	23 June 2009	Schedule 2 (item 40): (zzzc)	—
<i>Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009</i>	15, 2009	26 Mar 2009	Schedule 1 (items 1–30, 52–97, 102–105): Royal Assent Schedule 1 (items 106–112, 114): (zzzd)	Sch. 1 (items 102–105, 114)
<i>Social Security Amendment (Liquid Assets Waiting Period) Act 2009</i>	25, 2009	26 Mar 2009	Schedule 1 (items 8–10): (zzze)	—
<i>Tax Laws Amendment (2009 Measures No. 1) Act 2009</i>	27, 2009	26 Mar 2009	Schedule 2 (items 43–52) and Schedule 3 (items 6–10, 44–47, 102(1)): 27 Mar 2009	Sch. 3 (item 102(1))
<i>Tax Laws Amendment (Small Business and General Business Tax Break) Act 2009</i>	31, 2009	22 May 2009	22 May 2009	—
<i>Social Security and Family Assistance Legislation Amendment (2009 Budget Measures) Act 2009</i>	35, 2009	27 May 2009	Schedule 1 (items 13–15): Royal Assent	—



**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Laws Amendment (2009 Measures No. 2) Act 2009</i>	42, 2009	23 June 2009	Schedule 1 (items 17–26), Schedule 2 (items 2–16, 19–39, 41–48), Schedule 4 (items 2–12), Schedule 5 (items 1–12, 15) and Schedule 8 (items 1, 2, 5): Royal Assent Schedule 2 (item 1): (zzzf) Schedule 3: 1 July 2009 Schedule 4 (items 16–19): [see Note 10 and Table A] Schedule 8 (items 3, 4): [see Note 10]	Sch. 1 (item 22), Sch. 2 (items 41–48), Sch. 3 (item 2), Sch. 4 (item 19), Sch. 5 (item 15) and Sch. 8 (item 5)
<i>Tax Laws Amendment (2009 Measures No. 3) Act 2009</i>	47, 2009	24 June 2009	Schedule 2 (item 1) and Schedule 4: Royal Assent	Sch. 4 (item 7)
<i>Family Assistance Legislation Amendment (Child Care) Act 2009</i>	50, 2009	24 June 2009	Schedule 1 (items 15, 40, 41): Royal Assent	—
<i>Social Security and Other Legislation Amendment (Australian Apprentices) Act 2009</i>	52, 2009	24 June 2009	Schedule 1 (items 1–3): 1 July 2009	Sch. 1 (item 3)
<i>Fair Work (State Referral and Consequential and Other Amendments) Act 2009</i>	54, 2009	25 June 2009	Schedule 18 (items 6–9): (zzzg)	—
<i>Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009</i>	60, 2009	29 June 2009	Schedule 4 (items 35–40): [see Note 11]	—
<i>Tax Laws Amendment (2009 Budget Measures No. 1) Act 2009</i>	62, 2009	29 June 2009	Schedule 3 (items 1–10): Royal Assent	—

## Act Notes

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(a) The *Income Tax Assessment Act 1997* was amended by Schedule 2 (items 7–9) only of the *Taxation Laws Amendment (Private Health Insurance Incentives) Act 1997*, subsection 2(4) of which provides as follows:

(4) Schedule 2 commences on 1 July 1997, immediately after the commencement of the *Income Tax Assessment Act 1997*.

(b) The *Income Tax Assessment Act 1997* was amended by Schedule 3 (items 15–17) only of the *Taxation Laws Amendment Act (No. 2) 1997*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(ba) The *Taxation Laws Amendment Act (No. 2) 1997* was amended by Schedule 6 (items 23, 24) only of the *Taxation Laws (Technical Amendments) Act 1998*, subsection 2(14) of which provides as follows:

(14) The items of Part 4 of Schedule 6, other than item 22, are taken to have commenced immediately after the *Taxation Laws Amendment Act (No. 2) 1997* received the Royal Assent.

The *Taxation Laws Amendment Act (No. 2) 1997* received the Royal Assent on 30 June 1997.

(c) The *Income Tax Assessment Act 1997* was amended by the *Tax Law Improvement Act 1997*, subsections 2(1)–(3) and (5) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Schedule 1 commences on 1 July 1997 immediately after the commencement of the *Income Tax Assessment Act 1997*.

(3) Each of the other Schedules (except Schedule 12) commences immediately after the commencement of the immediately preceding Schedule.

(5) If there is no note specifying the commencement of an item in Schedule 12, the item commences on 1 July 1997 immediately after the commencement of the *Income Tax Assessment Act 1997*.

(d) The *Income Tax Assessment Act 1997* was amended by Schedule 2 (items 2–7), Schedule 6 (items 10–12), Schedule 14 (items 43–60) and Schedule 15 (items 7–12) only of the *Taxation Laws Amendment Act (No. 3) 1997*, subsections 2(1), (3), (7) and (9) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(3) Part 2 of Schedule 6 commences, or is taken to have commenced, immediately after the commencement of the *Income Tax Assessment Act 1997*.

The *Income Tax Assessment Act 1997* came into operation on 1 July 1997.

(7) Part 4 of Schedule 14 commences, or is taken to have commenced, on 1 July 1997, immediately after the commencement of the *Income Tax Assessment Act 1997*.

(9) Part 2 of Schedule 15 commences at the later of:

(a) the start of the day on which this Act receives the Royal Assent; and

(b) immediately after the commencement of Schedule 1 to the *Tax Law Improvement Act 1997*.

Schedule 1 of the *Tax Law Improvement Act 1997* commenced on 1 July 1997, immediately after the commencement of the *Income Tax Assessment Act 1997*.

(e) The *Income Tax Assessment Act 1997* was amended by Schedule 2 only of the *Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

**Act Notes**

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- (f) The *Income Tax Assessment Act 1997* was amended by Schedule 1 (items 19, 20) only of the *Child Care Payments (Consequential Amendments and Transitional Provisions) Act 1997*, subsection 2(5) of which provides as follows:
- (5) Items 11, 17, 18, 19, 20, 21 and 41 of Schedule 1 commence on the commencement of the *Child Care Payments Act 1997*.
- (g) The *Income Tax Assessment Act 1997* was amended by Schedule 1 (items 338–342, 369–381) only of the *Social Security Legislation Amendment (Parenting and Other Measures) Act 1997*, subsection 2(2) of which provides as follows:
- (2) Part 3 of Schedule 1 commences on 1 July 1998. The remaining items of Schedule 1 commence on 20 March 1998.
- (h) The *Income Tax Assessment Act 1997* was amended by Schedule 1 (items 44, 45) only of the *Social Security and Veterans' Affairs Legislation Amendment (Family and Other Measures) Act 1997*, subsection 2(3) of which provides as follows:
- (3) Items 44 and 45 of Schedule 1 commence, or are taken to have commenced, immediately after the commencement of Schedule 1 to the *Tax Law Improvement Act 1997* or on 1 January 1998, whichever is the later.
- Schedule 1 to the *Tax Law Improvement Act 1997* commenced immediately after the commencement of the *Income Tax Assessment Act 1997*.
- The *Income Tax Assessment Act 1997* came into operation on 1 July 1997.
- (i) The *Income Tax Assessment Act 1997* was amended by Schedules 3, 4, 5, 10 (items 1–19) and 11 only of the *Taxation Laws Amendment Act (No. 1) 1998*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (j) The *Income Tax Assessment Act 1997* was amended by Schedule 3 (items 4–7) and Schedule 4 (items 1–3 and 5) only of the *Taxation Laws (Technical Amendments) Act 1998*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (k) The *Income Tax Assessment Act 1997* was amended by Schedule 12 (items 25–46) only of the *Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) to (10), this Act commences on 1 July 1998.
- (l) The *Income Tax Assessment Act 1997* was amended by the *Tax Law Improvement Act (No. 1) 1998*, subsections 2(1)–(4) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (2) Schedule 2 (except item 3 of it) commences immediately after the commencement of Schedule 1.
  - (3) Schedule 3 commences immediately after the commencement of Schedule 2 (except item 4 of it).
  - (4) Each of Schedules 4 to 8 commences immediately after the commencement of the immediately preceding Schedule.
- Schedule 1 to the *Tax Law Improvement Act (No. 1) 1998* commenced on 22 June 1998.
- (m) The *Income Tax Assessment Act 1997* was amended by Schedule 6 only of the *Taxation Laws Amendment (Company Law Review) Act 1998*, subsection 2(3) of which provides as follows:
- (3) Schedule 6 commences immediately after the later of:
    - (a) the commencement of section 1 of this Act; and
    - (b) the commencement of section 1 of the *Tax Law Improvement Act (No. 1) 1998*.
- Schedule 6 commences immediately after section 1 to this Act.
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## Act Notes

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Section 1 commenced on 1 July 1998 (see *Gazette* 1998, No. S325)

- (n) The *Income Tax Assessment Act 1997* was amended by Schedule 1 (items 1–13) only of the *Taxation Laws Amendment (Landcare and Water Facility Tax Offset) Act 1998*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (o) The *Income Tax Assessment Act 1997* was amended by Schedule 7 (items 40–45) only of the *Social Security and Veterans' Affairs Legislation Amendment (Budget and Other Measures) Act 1998*, subsection 2(9) of which provides as follows:
- (9) Schedule 7 commences, or is taken to have commenced, on 1 April 1998.
- (p) The *Income Tax Assessment Act 1997* was amended by Schedule 2 of the *Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998* subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on 1 July 1999.
- (q) The *Income Tax Assessment Act 1997* was amended by Schedule 1 (items 277–280) only of the *Taxation Laws Amendment Act (No. 3) 1999*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) and (5), Schedule 1 commences on 1 July 1999.
- (r) The *Income Tax Assessment Act 1997* was amended by Schedule 1 (items 122–125, 129–132 and 134–136) and Schedule 2 (items 50–55) only of the *Assistance for Carers Legislation Amendment Act 1999*, subsections 2(2)(a), (b), (3) and (4) of which provide as follows:
- (2) The following provisions:
    - (a) Parts 1 and 4 of Schedule 1;
    - (b) Schedule 2 (other than items 1 and 3);commence immediately after the commencement of Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998*.

Note: Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998* commences on 1 July 1999.
  - (3) Part 2 of Schedule 1 is taken to have commenced immediately after Schedule 1 to the *Tax Law Improvement Act 1997*.

Note: Schedule 1 to the *Tax Law Improvement Act 1997* commenced on 1 July 1997, immediately after the commencement of the *Income Tax Assessment Act 1997*.
  - (4) Part 3 of Schedule 1 is taken to have commenced on 1 July 1998.
- (s) The *Income Tax Assessment Act 1997* was amended by Schedule 3 (items 11, 12(3)), Schedule 4 and Schedule 7 (items 9–14) only of the *Taxation Laws Amendment Act (No. 1) 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (t) The *Income Tax Assessment Act 1997* was amended by Schedule 7 (item 105) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, subsections 3(2)(e) and (16) of which provide as follows:
- (2) The following provisions commence on the transfer date:
    - (e) subject to subsections (12), (14) and (15), Schedule 7, other than items 43, 44, 118, 205 and 207 (the commencement of those items is covered by subsections (10), (11) and (13)).
  - (16) The Governor-General may, by Proclamation published in the *Gazette*, specify the date that is to be the transfer date for the purposes of this Act.

**Act Notes**

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- (u) Subsection 2(2) of the *Taxation Laws Amendment Act (No. 6) 1999* provides as follows:
- (2) Item 2 of Schedule 7 commences immediately after the commencement of Schedule 5.
- (v) *The Income Tax Assessment Act 1997* was amended by Schedule 10 (items 24–54) only of the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999* subsection 2 (1) of which provides as follows:
- (2) Schedule 1 (Parts 1 to 5), Schedules 3 to 6, Schedule 7 (other than item 14), Schedules 8 and 9, Schedule 10 (other than items 22, 63, 66 and 67) and Schedule 11 (items 3 and 4 only) commence, or are taken to have commenced, on the commencement of Schedule 1 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999*.
- (w) Subsections 2(2) and (3) of the *Taxation Laws Amendment Act (No.4) 1999* provide as follows:
- (2) Schedule 2 commences just after Schedule 1.
  - (3) Part 2 of Schedule 3 commences just after Part 1 of Schedule 3.
- (x) *The Income Tax Assessment Act 1997* was amended by Schedule 2 (item 2) only of the *Taxation Laws Amendment Act (No. 7) 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (y) *The Income Tax Assessment Act 1997* was amended by Schedule 1 (items 532–534) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
  - (2) Subject to this section, this Act commences at the commencing time.
- (z) *The Income Tax Assessment Act 1997* was amended by Schedule 4 (items 17, 18) only of the *Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999*, subsection 2(4) of which provides as follows:
- (4) Schedules 4 and 12 commence on the day on which this Act receives the Royal Assent or 1 October 1999, whichever is the later.
- (za) *The Income Tax Assessment Act 1997* was amended by Schedule 5 (items 17–21) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2) of which provides as follows:
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
    - (a) section 3;
    - (b) the items in Schedules 1 to 7 (other than item 18 of Schedule 7);
    - (c) the items in Schedules 10, 11 and 12.
- (zaa) *The Income Tax Assessment Act 1997* was amended by the *New Business Tax System (Capital Allowances) Act 1999*, subsection 2(2) of which provides as follows:
- (2) Items 17 and 18 of Schedule 2 commence on the day on which the *Taxation Laws Amendment Act (No. 5) 1999* receives the Royal Assent.
- Items 17 and 18 did not commence due to incorrect citation. The *Taxation Laws Amendment Bill (No. 5) 1999* was enacted as the *Taxation Laws Amendment Act (No. 1) 2001* which commenced on 30 June 2001.
- (zab) *The Income Tax Assessment Act 1997* was amended by Schedule 1 of the *New Business Tax System (Capital Gains Tax) Act 1999*, subsection 2(2) of which provides as follows:
- (2) If item 1 of Schedule 9 to the *New Business Tax System (Integrity and Other Measures) Act 1999* has not commenced before that day, Schedule 1 to this Act commences immediately after that item commences.
- Item 1 of Schedule 9 commenced on 10 December 1999.
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## Act Notes

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(zba) The *New Business Tax System (Capital Gains Tax) Act 1999* was amended by Schedule 3 (item 16) only of the *Taxation Laws Amendment Act (No. 7) 2000*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(zc) The *Income Tax Assessment Act 1997* was amended by Schedule 1 (items 1–13, 18), Schedule 2 (items 1–3, 5), Schedule 3 (items 1–4, 7), Schedule 4 (items 1–15, 19), Schedule 5 (items 1–12), Schedule 6, Schedule 7 (item 11), Schedule 8, Schedule 9 (items 1–14, 23–33), and Schedule 10 only of the *New Business Tax System (Capital Gains Tax) Act 1999*, subsections 2(1) and (2) of which provide as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Schedule 5 is taken to have commenced on 22 February 1999.

(zd) The *Income Tax Assessment Act 1997* was amended by Schedule 3 only of the *A New Tax System (Indirect Tax and Consequential Amendments) Act 1999*, subsection 2(9) of which provides as follows:

- (9) Schedule 3 commences immediately after the commencement of the *A New Tax System (Goods and Services Tax) Act 1999*.

The *A New Tax System (Goods and Services Tax) Act 1999* came into operation on 1 July 2000.

(ze) The *Income Tax Assessment Act 1997* was amended by Schedule 5 and Schedule 8 (items 1–6) only of the *A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999*, subsections 2(1) and (10) of which provide as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (10) Items 1 to 6 of Schedule 8 commence immediately after the commencement of Schedule 3 to the *A New Tax System (Indirect Tax and Consequential Amendments) Act 1999*.

Schedule 3 of the *A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999* commenced on 1 July 2000.

(zf) The *A New Tax System (Pay As You Go) Act 1999* was amended by Schedule 10 (item 19) only of the *A New Tax System (Tax Administration) Act 1999*, subsection 2(11) of which provides as follows:

- (11) Subsection 2(1A) of the *A New Tax System (Pay As You Go) Act 1999* (inserted by item 19 of Schedule 10 to this Act) commences, or is taken to have commenced, at the commencement of section 1 of that Act.

(zg) The *Income Tax Assessment Act 1997* was amended by Schedule 7, Schedule 8, Schedule 11 (items 80–105), Schedule 16 (items 18, 19) and Schedule 18 only of the *A New Tax System (Tax Administration) Act 1999*, subsections 2(1), (7)(d), (e), (9)(b) and (14) of which provide as follows:

- (1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1 of the *A New Tax System (Pay As You Go) Act 1999*.
- (7) The following provisions commence on the day on which this Act receives the Royal Assent:
  - (d) Schedules 7, 8, 9 and 17;
  - (e) items 16 and 20 of Schedule 18.
- (9) The following provisions commence on 1 July 2000:
  - (b) Schedule 11 (other than item 44).
- (14) Items 4, 5, 17, 21 and 32 of Schedule 18 commence, or are taken to have commenced, at the commencement of the *A New Tax System (Goods and Services Tax) Act 1999*.

**Act Notes**

The *A New Tax System (Goods and Services Tax) Act 1999* came into operation on 1 July 2000.

(zga) The *A New Tax System (Tax Administration) Act 1999* was amended by Schedule 3 (item 17) only of the *A New Tax System (Tax Administration) Act (No. 2) 2000*, subsection 4 (4) of which provides as follows:

- (4) Schedule 3 commences, or is taken to have commenced, immediately after the commencement of section 1 of the *A New Tax System (Tax Administration) Act (No. 1) 2000*.

Section 1 commenced on 22 December 1999.

(zh) The *Income Tax Assessment Act 1997* was amended by Schedule 3 (item 38), Schedule 4 (items 13–16) and Schedule 5 only of the *A New Tax System (Tax Administration) Act (No. 1) 2000*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1 of the *A New Tax System (Tax Administration) Act 1999*.

Section 1 of the *A New Tax System (Tax Administration) Act 1999* commenced on 12 December 1999 immediately after the commencement of section 1 of the *A New Tax System (Pay As You Go) Act 1999*.

(zi) The *Income Tax Assessment Act 1997* was amended by Schedule 2 (items 2 and 3), Schedule 4, Schedule 5, Schedule 6 (items 1–32), Schedule 8 (item 19), Schedule 9, Schedule 10 (items 12–16, 31–37) only of the *Taxation Laws Amendment Act (No. 2) 2000*, subsections 2(1), (8), (10), (11) and (13) of which provide as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (8) Schedule 4 commences, or is taken to have commenced, immediately after the commencement of the *Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999*.
- (10) If, apart from this subsection, items 14, 15 and 16 of Schedule 6 would commence at or before the commencement of the *Taxation Laws Amendment (Political Donations) Act 2000*, those items are taken to have commenced immediately after the commencement of that Act.
- (11) Item 19 of Schedule 6 commences, or is taken to have commenced, immediately after item 26 of Schedule 1 to the *Taxation Laws Amendment Act (No. 4) 1999*.
- (13) Schedule 8, apart from items 18 and 20, is taken to have commenced immediately after the commencement of section 1 of the *Taxation Laws Amendment (Company Law Review) Act 1998*. Items 18 and 20 are taken to have commenced on 1 July 1999.

The *Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999* came into operation on 17 December 1999.

Item 26 of Schedule 1 to the *Taxation Laws Amendment Act (No. 4) 1998* commenced on 16 July 1999.

Items 14–16 of Schedule 6 to the *Taxation Laws Amendment Act (No. 2) 2000* were repealed by the *Taxation Laws Amendment Act (No. 2) 2002* before they commenced.

Section 1 of the *Taxation Laws Amendment (Company Law Review) Act 1998* commenced on 1 July 1998. (see *Gazette*, 1998 No. S325)

(zj) The *Income Tax Assessment Act 1997* was amended by Schedule 2 (items 3 and 4), Schedule 3 (items 1–4) and Schedule 5 (item 1) only of the *Taxation Laws Amendment Act (No. 3) 2000*, subsections 2(1) and (3) of which provide as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (3) Schedule 2 is taken to have commenced on 7 December 1998.

## Act Notes

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- (zk) The *Income Tax Assessment Act 1997* was amended by Schedule 1 (item 3), Schedule 2 (items 1–6) and Schedule 6 (items 1–11) only of the *New Business Tax System (Miscellaneous) Act (No. 1) 2000*, subsection 2(2) of which provides as follows:
- (2) Schedules 1, 2 and 3, Part 1 of Schedule 4 and Schedule 6 commence on 1 July 2000.
- (zl) The *Income Tax Assessment Act 1997* was amended by Schedule 1 (items 1–25) only of the *New Business Tax System (Alienation of Personal Services Income) Act 2000*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (zm) The *Income Tax Assessment Act 1997* was amended by the *New Business Tax System (Miscellaneous) Act (No. 2) 2000*, subsections 2(1)–(3), (5) and (11) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (2) Items 18 and 67 of Schedule 1 are taken to have commenced at 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999.
  - (3) Items 26 to 29 and 33 of Schedule 1 commence, or are taken to have commenced, immediately after the commencement of Schedule 9 to the *Taxation Laws Amendment Act (No. 2) 2000*.
  - (5) Items 67, 68 and 70 of Schedule 2 commence on 1 July 2001.
  - (11) Schedule 9 (except items 5, 9, 26, 43, 55, 56, 57, 62, 63, 66 and 67) commences, or is taken to have commenced, on 1 July 2000.
- Schedule 9 to the *Taxation Laws Amendment Act (No. 2) 2000* commenced on 31 May 2000.
- (zn) The *Income Tax Assessment Act 1997* was amended by Schedule 2 (items 49–53), Schedule 4A and Schedule 5 only of the *A New Tax System (Tax Administration) Act (No. 2) 2000*, subsections 3(1) and (6) of which provide as follows:
- (1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.
  - (6) Items 8 and 9 of Schedule 5 commence, or are taken to have commenced, on 1 July 2000.
- Section 1-1 of the *A New Tax System (Goods and Services Tax) Act 1999* commenced on 1 July 2000.
- (zo) The *Income Tax Assessment Act 1997* was amended by Schedule 7 (items 28–30) only of the *Indirect Tax Legislation Amendment Act 2000*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences immediately after the commencement of Part 1 of Schedule 1 to the *A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999*.
- Part 1 of Schedule 1 commenced on 1 July 2000.
- (zp) The *Income Tax Assessment Act 1997* was amended by Schedule 6 (items 47 and 48) and Schedule 7 (item 15) only of the *Taxation Laws Amendment Act (No. 8) 2000*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (zq) The *Income Tax Assessment Act 1997* was amended by the *Taxation Laws Amendment Act (No. 7) 2000*, subsections 2(1), (3) and (4) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (3) Items 46 and 50 of Schedule 4 are taken to have commenced at the start of the 1998–99 income year.



**Act Notes**

- (4) Schedule 5 commences, or is taken to have commenced, immediately after the commencement of Schedule 5 to the *Taxation Laws Amendment Act (No. 2) 2000*.  
Schedule 5 to the *Taxation Laws Amendment Act (No. 2) 2000* commenced on 31 May 2000.
- (zr) The *Income Tax Assessment Act 1997* was amended by Schedule 2 (item 62) only of the *Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.
- (zs) The *Income Tax Assessment Act 1997* was amended by Schedule 3 (items 264–275) only of the *Corporations (Repeals, Consequential and Transitional) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.
- (zt) Subsection 2(2) of the *New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001* provides as follows:
- (2) Schedule 3 commences, or is taken to have commenced, just after the commencement of the *Taxation Laws Amendment Act (No. 1) 2001*.  
The *Taxation Laws Amendment Act (No. 1) 2001* came into operation on 30 June 2001.
- (zta) Subsection 2(1) (item 9) of the *Taxation Laws Amendment Act (No. 5) 2002* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

**Commencement information**

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
9. Items 79 to 99 of Schedule 3	Immediately after the commencement of section 2 of the <i>New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001</i>	30 June 2001

- (zu) The *Income Tax Assessment Act 1997* was amended by Schedules 1 and 2 only of the *New Business Tax System (Simplified Tax System) Act 2001*, subsection 2(1) of which provides as follows:
- (1) Subject to this section this Act commences on the day on which it receives the Royal Assent.
- (zv) Section 2 of the *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001* provides as follows:
- 2 This Act commences immediately after the commencement of the *Family Law Legislation Amendment (Superannuation) Act 2001*.  
The *Family Law Legislation Amendment (Superannuation) Act 2001* came into operation on 28 December 2002.
- (zw) The *Income Tax Assessment Act 1997* was amended by Schedule 4 (items 92–101) only of the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day mentioned in subsection 2.2(2) of the *Criminal Code*.

## Act Notes

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(zx) The *Income Tax Assessment Act 1997* was amended by the *New Business Tax System (Thin Capitalisation) Act 2001*, subsection 2(1) of which provides as follows:

- (1) Subject to subsections (2) and (3), this Act is taken to have commenced on 1 July 2001, immediately after the commencement of the *New Business Tax System (Debt and Equity) Act 2001*.

(zy) The *Income Tax Assessment Act 1997* was amended by Schedule 4 (items 8 and 9) and Schedules 7 and 8 only of the *Taxation Laws Amendment Act (No. 2) 2001*, subsection 2(1) of which provide as follows:

- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

(zz) The *Income Tax Assessment Act 1997* was amended by Schedule 4, Schedule 5 (items 1–9) and Schedule 6 (items 1–16 and 16L–16N and 17) only of the *Taxation Laws Amendment Act (No. 6) 2001*, subsections 2(1), (4), (4B), (4C) and (5) of which provide as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (4) Items 4 and 5 of Schedule 4 commence, or are taken to have commenced, immediately after the commencement of Schedule 3 to the *Taxation Laws Amendment Act (No. 5) 2001*.
- (4B) Items 4A and 4B of Schedule 6 commence immediately after the commencement of item 4 of that Schedule.
- (4C) Item 4C of Schedule 6 commences:
  - (a) if Schedule 1 to the *Taxation Laws Amendment Act (No. 5) 2001* commences before the day on which this Act receives the Royal Assent—immediately after the commencement of item 4B of Schedule 6 to this Act; or
  - (b) if paragraph (a) does not apply—immediately after the commencement of Schedule 1 to that Act.
- (5) Item 5 of Schedule 6 commences:
  - (a) if Schedule 1 to the *Taxation Laws Amendment Act (No. 5) 2001* commences before the day on which this Act receives the Royal Assent—immediately after the commencement of item 4 of Schedule 6 to this Act; or
  - (b) if paragraph (a) does not apply—immediately after the commencement of Schedule 1 to that Act.

Schedules 1 and 3 to the *Taxation Laws Amendment Act (No. 5) 2001* commenced on 1 October 2001.

(zza) The *Income Tax Assessment Act 1997* was amended by Schedule 2 (items 28–44 and 69–84) and Schedule 3 (items 11–13) only of the *Taxation Laws Amendment (Research and Development) Act 2001*, section 2 of which provides as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Division 1 of Part 3 of Schedule 2 is taken to have commenced at 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001.
- (3) Division 2 of Part 3 of Schedule 2 commences, or is taken to have commenced, immediately after the commencement of Schedule 1 to the *New Business Tax System (Capital Allowances) Act 2001*.

(zzb) Subsection 2(1) (items 10, 12, 14, 29, 31, 32, 48, 50, 52, 53 and 58–61) of the *Taxation Laws Amendment Act (No. 2) 2002* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

**Act Notes**

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
10. Schedule 9, item 10	Immediately after section 30-25 of the <i>Income Tax Assessment Act 1997</i> commenced	1 July 1997
12. Schedule 9, items 13 and 14	Immediately after section 30-45 of the <i>Income Tax Assessment Act 1997</i> commenced	1 July 1997
14. Schedule 9, item 21	Immediately after section 30-55 of the <i>Income Tax Assessment Act 1997</i> commenced	1 July 1997
29. Schedule 12, item 19	Immediately after the time specified in the <i>Social Security and Veterans' Affairs Legislation Amendment (Pension Bonus Scheme) Act 1998</i> for the commencement of item 1 of Schedule 3 to that Act	30 June 1998
31. Schedule 12, items 21 and 22	Immediately after the time specified in the <i>Tax Law Improvement Act (No. 1) 1998</i> for the commencement of item 3 of Schedule 3 to that Act	22 June 1998
32. Schedule 12, items 23 and 24	Immediately after the time specified in the <i>Tax Law Improvement Act 1997</i> for the commencement of item 15 of Schedule 4 to that Act	1 July 1997
34. Schedule 12, items 27 and 28	Immediately after the time specified in the <i>Taxation Laws Amendment Act (No. 1) 1998</i> for the commencement of items 8 and 9 of Schedule 3 to that Act	16 April 1998
48. Schedule 12, items 44 and 45	Immediately after the time specified in the <i>New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001</i> for the commencement of items 219 and 230 of Schedule 2 to that Act	30 June 2001
50. Schedule 12, items 47 to 49	Immediately after the time specified in the <i>New Business Tax System (Miscellaneous) Act (No. 2) 2000</i> for the commencement of items 26 to 29 of Schedule 1 to that Act	31 May 2000
52. Schedule 12, items 51 and 52	Immediately after the time specified in the <i>Taxation Laws Amendment Act (No. 1) 2001</i> for the commencement of items 9 and 36 of Schedule 2 to that Act	30 June 2001
53. Schedule 12, item 53	Immediately after the time specified in the <i>Taxation Laws Amendment Act (No. 2) 1999</i> for the commencement of item 36 of Schedule 1 to that Act	16 July 1999

**Act Notes**

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
58. Schedule 12, items 58 and 59	Immediately after the time specified in the <i>Taxation Laws Amendment Act (No. 6) 2001</i> for the commencement of item 16L of Schedule 6 to that Act	1 October 2001
59. Schedule 12, items 60 and 61	Immediately after the time specified in the <i>Taxation Laws Amendment (Company Law Review) Act 1998</i> for the commencement of Schedule 6 to that Act	1 July 1998
60. Schedule 12, item 62	Immediately after the time specified in the <i>Taxation Laws Amendment (Private Health Insurance) Act 1998</i> for the commencement of item 4 of Schedule 2 to that Act	21 December 1998
61. Schedule 12, item 63	Immediately after section 2 of the <i>Taxation Laws Amendment (Research and Development) Act 2001</i> commenced	1 October 2001

(zzc) Subsection 2(1) (items 11 and 12) of the *New Business Tax System (Consolidation and Other Measures) Act 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
11. Schedule 19, items 1 to 6	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i>	24 October 2002
12. Schedule 19, item 7	Immediately after the time specified in the <i>New Business Tax System (Consolidation) Act (No. 1) 2002</i> for the commencement of item 34 of Schedule 5 to that Act	24 October 2002

(zzca) Subsection 2(1) (item 18) of the *Tax Laws Amendment (2004 Measures No. 7) Act 2005* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
18. Schedule 10, item 265	Immediately after the commencement of the <i>New Business Tax System (Consolidation) Act (No. 1) 2002</i> .	24 October 2002

**Act Notes**

(zzd) Subsection 2(1) (items 2–4) of the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedules 1 to 12	Immediately after the commencement of the <i>New Business Tax System (Consolidation) Act (No. 1) 2002</i>	24 October 2002
3. Schedule 13	Immediately after the commencement of the <i>New Business Tax System (Imputation) Act 2002</i>	29 June 2002
4. Schedules 14 and 15	Immediately after the commencement of the <i>New Business Tax System (Consolidation) Act (No. 1) 2002</i>	24 October 2002

(zze) Subsection 2(1) (items 2, 3, 5, 6, 9 and 11) of the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedules 1 and 2	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002</i>	24 October 2002
3. Schedule 3, Parts 1 and 2	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002</i>	24 October 2002
5. Schedule 4	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002</i>	24 October 2002
6. Schedule 5, items 1 to 12	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002</i>	24 October 2002
9. Schedules 6 to 15	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002</i>	24 October 2002
11. Schedules 17 and 18	Immediately after the commencement of the <i>New Business Tax System (Imputation) Act 2002</i>	29 June 2002

**Act Notes**

(zzf) Subsection 2(1) (items 3–8) of the *Taxation Laws Amendment Act (No. 5) 2002* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Items 1 to 12 of Schedule 3	Immediately after the commencement of section 2 of the <i>New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001</i>	30 June 2001
4. Items 13 to 49 of Schedule 3	Immediately after the commencement of section 2 of the <i>New Business Tax System (Capital Allowances) Act 2001</i>	30 June 2001
5. Items 50 to 71 of Schedule 3	Immediately after the commencement of section 2 of the <i>New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001</i>	30 June 2001
6. Items 72 to 75 of Schedule 3	Immediately after the commencement of section 2 of the <i>New Business Tax System (Simplified Tax System) Act 2001</i>	30 June 2001
7. Item 76 of Schedule 3	Immediately after the commencement of section 2 of the <i>New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001</i>	30 June 2001
8. Items 77 to 78 of Schedule 3	Immediately after the commencement of section 2 of the <i>New Business Tax System (Simplified Tax System) Act 2001</i>	30 June 2001

Schedule 1 (items 6 and 7) of the *Taxation Laws Amendment Act (No. 5) 2002* are taken never to have had effect see Schedule 10 (item 242) of the *Tax Laws Amendment (2004 Measures No. 7) Act 2005* (No. 41, 2005).

(zzg) Subsection 2(1) (items 2 and 4) of the *Taxation Laws Amendment (Venture Capital) Act 2002* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedule 1, item 1	Immediately after the commencement of item 2 of Schedule 2 to the <i>Taxation Laws Amendment Act (No. 2) 2000</i>	31 May 2000
4. Schedule 1, item 5	Immediately after the commencement of item 3 of Schedule 2 to the <i>Taxation Laws Amendment Act (No. 2) 2000</i>	31 May 2000

**Act Notes**

(zzh) Subsection 2(1) (items 2–19, 21 and 23) of the *New Business Tax System (Consolidation and Other Measures) Act 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedules 1 to 3	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i>	24 October 2002
3. Schedule 4	Immediately after the commencement of Schedule 21 to this Act	24 October 2002
4. Schedules 5 to 8	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i>	24 October 2002
5. Schedule 9	Immediately after the commencement of Schedule 8 to this Act	24 October 2002
6. Schedule 10	Immediately after the commencement of Schedule 9 to this Act	24 October 2002
7. Schedules 11 to 13	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i>	24 October 2002
8. Schedule 14, item 1	Immediately after the commencement of Schedule 5 to this Act	24 October 2002
9. Schedule 14, items 2 to 12	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i>	24 October 2002
10. Schedules 15 to 18	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i>	24 October 2002
11. Schedule 19, items 1 to 6	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i>	24 October 2002
12. Schedule 19, item 7	Immediately after the time specified in the <i>New Business Tax System (Consolidation) Act (No. 1) 2002</i> for the commencement of item 34 of Schedule 5 to that Act	24 October 2002

**Act Notes**

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
13. Schedules 20 to 23	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i>	24 October 2002
14. Schedule 24	Immediately after the commencement of Schedule 6 to this Act	24 October 2002
15. Schedules 25 to 27	Immediately after the commencement of Schedule 13 to the <i>New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002</i>	29 June 2002
16. Schedule 28, item 1	Immediately after the commencement of the <i>New Business Tax System (Imputation) Act 2002</i>	29 June 2002
17. Schedule 28, items 2 to 18	Immediately after the commencement of Schedule 27 to this Act	29 June 2002
18. Schedule 28, subitem 19(1)	Immediately after the commencement of the <i>New Business Tax System (Imputation) Act 2002</i>	29 June 2002
19. Schedule 28, subitems 19(2) and (3)	Immediately after the commencement of Schedule 27 to this Act	29 June 2002
21. Schedule 29, items 12 and 13	Immediately after the commencement of Schedule 27 to this Act	29 June 2002
23. Schedule 30	Immediately after the commencement of Schedule 13 to the <i>New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002</i>	29 June 2002

Schedule 7 (item 3) of the *New Business Tax System (Consolidation and Other Measures) Act 2003* is taken never to have had effect see Schedule 10 (item 224) of the *Tax Laws Amendment (2004 Measures No. 7) Act 2005* (No. 41, 2005).

(zzha)Subsection 2(1) (item 19) of the *Tax Laws Amendment (2004 Measures No. 7) Act 2005* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
19. Schedule 10, item 266	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i> .	24 October 2002



**Act Notes**

(zzi) Subsection 2(1) (items 7(a), 8A, 9(a), 11(a) and 12A) of the *Taxation Laws Amendment Act (No. 4) 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
7. Schedule 3, item 58	The later of: (a) Immediately after the commencement of Schedule 3 to the <i>Taxation Laws Amendment Act (No. 2) 2003</i> ; and	30 June 2003
8A. Schedule 3, item 70A	Immediately after the commencement of Schedule 3 to the <i>Taxation Laws Amendment Act (No. 1) 2003</i>	2 April 2003
9. Schedule 3, items 72 and 73	The later of: (a) Immediately after the commencement of Schedule 3 to the <i>Taxation Laws Amendment Act (No. 2) 2003</i> ; and	30 June 2003
11. Schedule 3, item 90	The later of: (a) Immediately after the commencement of Schedule 3 to the <i>Taxation Laws Amendment Act (No. 2) 2003</i> ; and	30 June 2003
12A. Schedule 3, item 128A	Immediately after the commencement of Schedule 3 to the <i>Taxation Laws Amendment Act (No. 1) 2003</i>	2 April 2003

(zzj) Subsection 2(1) (items 3 and 9) of the *Taxation Laws Amendment Act (No. 6) 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Schedules 3 to 7	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation and Other Measures) Act 2003</i>	24 October 2002
9. Schedule 10, Part 2, Division 3	The later of: (a) Immediately after the start of the day on which this Act receives the Royal Assent; and (b) Immediately after the commencement of the <i>New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) Act 2003</i>	17 December 2003

**Act Notes**

(zzk) Subsection 2(1) (items 17–20, 22, 24, 25, 36–38) of the *Taxation Laws Amendment Act (No. 3) 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
17. Schedule 6, item 17	Immediately after the commencement of section 43-240 of the <i>Income Tax Assessment Act 1997</i>	1 July 1997
18. Schedule 6, items 18 and 19	Immediately after the commencement of item 11 of Schedule 1 to the <i>Tax Law Improvement Act 1997</i>	1 July 1997
19. Schedule 6, item 20	Immediately after the commencement of item 22 of Schedule 4 to the <i>Taxation Laws Amendment Act (No. 7) 2000</i>	21 December 2000
20. Schedule 6, item 21	Immediately after the commencement of item 23 of Schedule 4 to the <i>Taxation Laws Amendment Act (No. 7) 2000</i>	21 December 2000
22. Schedule 6, item 26	Immediately after the commencement of item 1 of Schedule 1 to the <i>New Business Tax System (Capital Gains Tax) Act 1999</i>	10 December 1999
24. Schedule 6, item 28	Immediately after the commencement of item 27 of Schedule 6 to this Act	14 October 2003
25. Schedule 6, item 29	Immediately after the commencement of item 15 of Schedule 1 to the <i>New Business Tax System (Miscellaneous) Act (No. 2) 2000</i>	30 June 2000
36. Schedule 6, item 41	Immediately after the time specified in the <i>Taxation Laws Amendment Act (No. 4) 2000</i> for the commencement of item 63 of Schedule 4 to that Act	5 September 2000
37. Schedule 6, item 42	Immediately after the commencement of item 71 of Schedule 4 to the <i>Taxation Laws Amendment Act (No. 4) 2000</i>	5 September 2000
38. Schedule 6, item 43	Immediately after the time specified in the <i>Taxation Laws Amendment Act (No. 7) 2000</i> for the commencement of item 30 of Schedule 4 to that Act	21 December 2000

**Act Notes**

(zzl) Subsection 2(1) (items 5 and 7) of the *Taxation Laws Amendment Act (No. 8) 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
5. Schedule 7, items 6 to 8	Immediately after the commencement of Schedule 7 to the <i>Taxation Laws Amendment Act (No. 1) 2004</i> .	30 June 2003
7. Schedule 7, item 15	Immediately after the commencement of item 11 of Schedule 8 to the <i>Taxation Laws Amendment Act (No. 5) 2003</i> .	17 December 2003

(zzla) Subsection 2(1) (item 8) of the *Tax Laws Amendment (2004 Measures No. 6) Act 2005* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
8. Schedule 11	Immediately after the <i>Taxation Laws Amendment Act (No. 8) 2003</i> received the Royal Assent.	21 October 2003

(zzm) Subsection 2(1) (item 4) of the *Taxation Laws Amendment Act (No. 5) 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
4. Schedule 3, Part 1	Immediately after the commencement of Part 4 of Schedule 2 to this Act	17 December 2003

(zzn) Subsection 2(1) (item 16) of the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
16. Schedule 2, items 120 to 169	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	1 January 2004

**Act Notes**

(zzo) Subsection 2(1) (items 2–10, 23, 25, 26 and 30) of the *Tax Laws Amendment (2004 Measures No. 2) Act 2004* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedule 1, items 1 to 84	Immediately after the commencement of item 84 of Schedule 2 to the <i>New Business Tax System (Miscellaneous) Act (No. 2) 2000</i> .	30 June 2000
3. Schedule 1, items 85 to 89	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Capital Allowances) Act 2001</i> .	30 June 2001
4. Schedule 1, items 90 to 92	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001</i> .	30 June 2001
5. Schedule 1, items 93 and 94	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Capital Allowances) Act 2001</i> .	30 June 2001
6. Schedule 1, items 95 to 99	Immediately after the commencement of Schedule 6 to the <i>New Business Tax System (Consolidation and Other Measures) Act 2003</i> .	24 October 2002
7. Schedule 1, item 100	Immediately after the commencement of Schedule 1 to the <i>Taxation Laws Amendment (Structured Settlements and Structured Orders) Act 2002</i> .	19 December 2002
8. Schedule 1, items 101 to 103	Immediately after the commencement of item 126 of Schedule 3 to the <i>Taxation Laws Amendment Act (No. 4) 2003</i> .	30 June 2003
9. Schedule 1, item 104	Immediately after the commencement of item 127 of Schedule 3 to the <i>Taxation Laws Amendment Act (No. 4) 2003</i> .	30 June 2003
10. Schedule 1, items 105 and 106	Immediately after the commencement of item 9 of Schedule 8 to the <i>Taxation Laws Amendment Act (No. 5) 2003</i> .	17 December 2003
23. Schedule 10, items 3 to 22	Immediately after the commencement of the <i>New Business Tax System (Imputation) Act 2002</i> .	29 June 2002
25. Schedule 10, items 30 to 40	Immediately after the commencement of Part 1 of Schedule 10 to the <i>Taxation Laws Amendment Act (No. 6) 2003</i> .	30 June 2003

**Act Notes**

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
26. Schedule 10, items 41 and 42	The provision(s) do not commence at all unless the Bill introduced into the Parliament as the <i>Taxation Laws Amendment Bill (No. 7) 2003</i> is enacted (with or without amendments), in which case the provision(s) are taken to have commenced immediately after the commencement of Schedule 7 to that Act.	30 June 2003
30. Schedule 12, Part 2	Immediately after the commencement of Part 1 of Schedule 12 to this Act.	25 June 2004

(zzoa) Subsection 2(1) (item 22) of the *Tax Laws Amendment (2004 Measures No. 7) Act 2005* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
22. Schedule 10, item 269	Immediately after the commencement of section 2 of the <i>Tax Laws Amendment (2004 Measures No. 2) Act 2004</i> .	25 June 2004

(zzp) Subsection 2(1) (items 8, 13, 14, and 16) of the *Taxation Laws Amendment Act (No. 1) 2004* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
8. Schedule 7	Immediately after the commencement of Part 1 of Schedule 10 to the <i>Taxation Laws Amendment Act (No. 6) 2003</i>	30 June 2003
13. Schedule 11, Part 3	Immediately after the start of 30 June 2000	
14. Schedule 11, Part 4	Immediately after the start of 1 July 2000	
16. Schedule 11, Part 6	Immediately after the start of 1 July 2001	

**Act Notes**

(zzq) Subsection 2(1) (items 4 and 5) of the *Tax Laws Amendment (2004 Measures No. 6) Act 2005* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
4. Schedule 3, items 2 and 3	Immediately after the commencement of the provisions covered by table item 3.	21 March 2005
5. Schedule 3, item 4	Immediately after the commencement of the provisions covered by table item 4.	21 March 2005

(zzr) Subsection 2(1) (items 9–17) of the *Tax Laws Amendment (2004 Measures No. 7) Act 2005* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
9. Schedule 10, item 247	Immediately after the commencement of the <i>Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001</i> .	28 December 2002
10. Schedule 10, item 248	Immediately after the commencement of Schedule 7 to the <i>New Business Tax System (Consolidation and Other Measures) Act 2003</i> .	24 October 2002
11. Schedule 10, items 249 and 250	Immediately after the commencement of the <i>New Business Tax System (Imputation) Act 2002</i> .	29 June 2002
12. Schedule 10, items 251 to 257	Immediately after the commencement of Schedule 13 to the <i>New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002</i> .	29 June 2002
13. Schedule 10, item 258	Immediately after the commencement of item 84 of Schedule 2 to the <i>New Business Tax System (Miscellaneous) Act (No. 2) 2000</i> .	30 June 2000
14. Schedule 10, item 259	Immediately after the start of the day on which the <i>New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002</i> received the Royal Assent.	24 October 2002
15. Schedule 10, item 260	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i> .	24 October 2002

**Act Notes**

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
16. Schedule 10, items 261 and 262	Immediately after the commencement of the <i>A New Tax System (Goods and Services Tax) Act 1999</i> .	1 July 2000

17. Schedule 10, items 263 and 264	Immediately after the commencement of the <i>New Business Tax System (Imputation) Act 2002</i> .	29 June 2002
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(zsz) Subsection 2(1) (item 5) of the *New International Tax Arrangements (Foreign-owned Branches and Other Measures) Act 2005* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
5. Schedule 5	Immediately after the commencement of item 140 of Schedule 2 to the <i>New International Tax Arrangements (Participation Exemption and Other Measures) Act 2004</i> .	29 June 2004

(zzt) Subsection 2(1) (items 4 and 6) of the *Tax Laws Amendment (2005 Measures No. 5) Act 2005* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
4. Schedule 6, item 6	Immediately after the commencement of the <i>New Business Tax System (Debt and Equity) Act 2001</i> .	1 July 2001
6. Schedule 6, Part 2	Immediately after the commencement of the <i>New Business Tax System (Debt and Equity) Act 2001</i> .	1 July 2001

(zzu) Subsection 2(1) (items 15–18, 20 and 22) of the *Tax Laws Amendment (2006 Measures No. 2) Act 2006* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
15. Schedule 7, items 179 to 188	Immediately after the commencement of Schedule 7 to the <i>Tax Laws Amendment (2004 Measures No. 1) Act 2004</i> .	1 July 2004
16. Schedule 7, item 189	Immediately after the commencement of Schedule 5 to the <i>Taxation Laws Amendment Act (No. 6) 1999</i> .	5 July 1999

**Act Notes**

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
17. Schedule 7, item 190	Immediately after the commencement of item 82 of Schedule 2 to the <i>New Business Tax System (Miscellaneous) Act (No. 2) 2000</i> .	30 June 2000
18. Schedule 7, item 191	Immediately after the commencement of the <i>New Business Tax System (Consolidation) Act (No. 1) 2002</i> .	24 October 2002
20. Schedule 7, item 193	Immediately after the <i>A New Tax System (Pay As You Go) Act 1999</i> received the Royal Assent.	22 December 1999
22. Schedule 7, item 210	Immediately before the commencement of Schedule 10 to the <i>Tax Laws Amendment (2004 Measures No. 1) Act 2004</i> .	1 July 2005

(zzv) Subsection 2(1) (items 2, 3 and 10) of the *Tax Laws Amendment (2006 Measures No. 3) Act 2006* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedules 1 and 2	The day on which this Act receives the Royal Assent.	30 June 2006
3. Schedule 3	Immediately after the provision(s) covered by table item 2.	30 June 2006
10. Schedule 11, item 3	The later of: (a) immediately after the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of item 42 of Schedule 1 to the <i>Australian Citizenship (Transitional and Consequential) Act 2006</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	[see Note 5] (paragraph (b) applies)

(zzw) Subsection 2(1) (item 11) of the *Tax Laws Amendment (2009 Measures No. 2) Act 2009* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
11. Schedule 5, Part 2	Immediately before the commencement of Schedule 3 to the <i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i> .	1 January 2008



**Act Notes**

(zzx) Subsection 2(1) (items 2 and 3) of the *Superannuation Legislation Amendment (Simplification) Act 2007* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedule 1	Immediately after the commencement of Schedule 1 to the <i>Tax Laws Amendment (Simplified Superannuation) Act 2007</i> .	15 March 2007
3. Schedule 2	The later of: (a) at the same time as the provision(s) covered by table item 1; and (b) immediately after the commencement of the <i>Tax Laws Amendment (2006 Measures No. 7) Act 2007</i> .	12 April 2007 (paragraph (b) applies)

(zzy) Subsection 2(1) (item 7) of the *Tax Laws Amendment (2007 Measures No. 2) Act 2007* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
7. Schedule 8, Part 5	Immediately after the commencement of the <i>Venture Capital Act 2002</i> .	19 December 2002

(zzz) Subsection 2(1) (item 6) of the *Tax Laws Amendment (2007 Measures No. 4) Act 2007* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
6. Schedule 5, Part 2	Immediately after the commencement of Schedule 1 to the <i>Superannuation Legislation Amendment (Simplification) Act 2007</i> .	15 March 2007

(zzza) Subsection 2(1) (items 2 and 3) of the *Tax Laws Amendment (2008 Measures No. 2) Act 2008* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedules 1 to 4	The day on which this Act receives the Royal Assent.	24 June 2008
3. Schedule 5	Immediately after the commencement of the provisions covered by table item 2.	24 June 2008

**Act Notes**

(zzzb) Subsection 2(1) (item 4) of the *Tax Laws Amendment (2008 Measures No. 4) Act 2008* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
4. Schedule 3, item 87	The later of: (a) immediately after the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of the <i>First Home Saver Accounts (Consequential Amendments) Act 2008</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	3 October 2008  (paragraph (a) applies)

(zzzc) Subsection 2(1) (item 5) of the *Tax Laws Amendment (2009 Measures No. 2) Act 2009* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
5. Schedule 2, item 40	Immediately before the commencement of item 52 of Schedule 4 to the <i>Tax Laws Amendment (2008 Measures No. 6) Act 2009</i> .	26 March 2009

(zzzd) Subsection 2(1) (item 3) of the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Schedule 1, Part 4	Immediately after the commencement of the <i>New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003</i> .	17 December 2003

(zzze) Subsection 2(1) (item 3) of the *Social Security Amendment (Liquid Assets Waiting Period) Act 2009* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Schedule 1, Part 3	Immediately after the time specified in the <i>Household Stimulus Package Act (No. 2) 2009</i> for the commencement of Schedule 5 to that Act.	18 February 2009

**Act Notes**

(zzzf) Subsection 2(1) (item 3) of the *Tax Laws Amendment (2009 Measures No. 2) Act 2009* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Schedule 2, item 1	Immediately after the commencement of item 3 of Schedule 4 to the <i>Tax Laws Amendment (Small Business) Act 2007</i> .	21 June 2007

(zzzg) Subsection 2(1) (item 41) of the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
41. Schedule 18	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	1 July 2009



**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Chapter 1</b>	
<b>Part 1-1</b>	
<b>Division 1</b>	
Note to s. 1-3(2) .....	am. No. 161, 2005
S. 1-7 .....	ad. No. 97, 2008
<b>Part 1-2</b>	
<b>Division 2</b>	
<b>Subdivision 2-B</b>	
S. 2-5 .....	am. No. 58, 2006
Note to s. 2-5 .....	ad. No. 58, 2006
<b>Subdivision 2-C</b>	
S. 2-15 .....	am. No. 44, 2000
<b>Subdivision 2-D</b>	
S. 2-30 .....	am. No. 121, 1997; No. 54, 1999 rs. No. 41, 2005
<b>Division 3</b>	
S. 3-1 .....	am. No. 179, 1999; No. 150, 2003
S. 3-5 .....	am. No. 179, 1999; No. 44, 2000; No. 101, 2006
S. 3-10 .....	am. No. 97, 2008
<b>Part 1-3</b>	
<b>Division 4</b>	
Note to s. 4-5 .....	rep. No. 117, 1999
Note 1 to s. 4-5 .....	ad. No. 117, 1999
Note 2 to s. 4-5 .....	ad. No. 117, 1999 am. No. 55, 2001
Subhead. to s. 4-10(3A) .....	ad. No. 58, 2000 rep. No. 58, 2006
Subhead. to s. 4-10(4) .....	ad. No. 58, 2000
S. 4-10 .....	am. Nos. 46, 91 and 128, 1998; Nos. 58 and 79, 2000; No. 136, 2002; No. 58, 2006; No. 97, 2008
Note to s. 4-10(2) .....	rep. No. 136, 2002
Note 1 to s. 4-10(2) .....	ad. No. 136, 2002
Note 2 to s. 4-10(2) .....	ad. No. 136, 2002 am. No. 78, 2007
Note to s. 4-10(3) .....	rep. No. 128, 1998 ad. No. 58, 2006
Note to s. 4-10(3A) .....	rs. No. 58, 2000
Renumbered Note 1 .....	No. 79, 2000
Note 1 to s. 410(3A) .....	rep. No. 58, 2006
Note 2 to s. 4-10(3A) .....	ad. No. 79, 2000 rep. No. 58, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note 3 to s. 4-10(3A).....	ad. No. 142, 2003 rep. No. 58, 2006
S. 4-15.....	am. No. 78, 2001; No. 68, 2002; Nos. 41 and 147, 2005; Nos. 80 and 143, 2007
Note to s. 4-15(2).....	ad. No. 83, 2004 am. No. 45, 2008
Link note to s. 4-15.....	ad. No. 46, 1998 rep. No. 41, 2005
S. 4-25.....	ad. No. 46, 1998
<b>Division 6</b>	
S. 6-1.....	am. No. 16, 1998; No. 176, 1999 rs. No. 66, 2003
Link note to Guide.....	ad. No. 16, 1998 rep. No. 41, 2005
S. 6-5.....	am. No. 41, 2005
Note to s. 6-5(4).....	ad. No. 78, 2001 rep. No. 41, 2005
S. 6-10.....	am. No. 41, 2005
Note to s. 6-10(2).....	rep. No. 58, 2006
Notes 1, 2 to s. 6-10(2).....	ad. No. 58, 2006
S. 6-15.....	am. No. 66, 2003
Note to s. 6-15(2).....	rs. No. 66, 2003
S. 6-20.....	am. No. 94, 1999; No. 66, 2003
Note to s. 6-20(2).....	rep. No. 66, 2003
S. 6-23.....	ad. No. 66, 2003
<b>Division 8</b>	
S. 8-1.....	am. No. 176, 1999; No. 66, 2003
Note to s. 8-1(1).....	ad. No. 90, 2000
Note to s. 8-1(3).....	ad. No. 16, 1998
Renumbered Note 1.....	No. 78, 2001
Note 1 to s. 8-1(3) Renumbered Note.....	No. 41, 2005
Note 2 to s. 8-1(3).....	ad. No. 78, 2001 rep. No. 41, 2005
Note to s. 8-5(3).....	ad. No. 16, 1998
<b>Part 1-4</b>	
<b>Division 9</b>	
S. 9-1A.....	ad. No. 57, 2002
S. 9-1.....	am. No. 16, 1998; No. 169, 1999; Nos. 9 and 143, 2007; Nos. 45 and 97, 2008
S. 9-5.....	am. No. 16, 1998; No. 169, 1999; No. 136, 2002; Nos. 9, 15 and 143, 2007
Note to s. 9-5(2).....	rep. No. 136, 2002
Note 1 to s. 9-5(2).....	ad. No. 136, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note 2 to s. 9-5(2) .....	ad. No. 136, 2002 am. No. 78, 2007
<b>Division 10</b>	
S. 10-1.....	ad. No. 57, 2002
S. 10-5.....	am. Nos. 121 and 174, 1997; Nos. 16, 46, 47 and 85, 1998; Nos. 39, 54, 169 and 176, 1999; Nos. 79, 86 and 89, 2000; Nos. 72, 77, 169 and 170, 2001; Nos. 26, 97, 119 and 136, 2002; Nos. 12, 65, 66 and 133, 2003; Nos. 20 and 101, 2004; No. 23, 2005; Nos. 55 and 101, 2006; Nos. 15, 79 and 143, 2007; No. 92, 2008; No. 15, 2009
<b>Division 11</b>	
Heading to Div. 11 of..... Part 1-4	rs. No. 66, 2003
Table of Subdivs. to Div. 11 .....	ad. No. 66, 2003
<b>Subdivision 11-A</b>	
Heading to Subdiv. 11-A .....	ad. No. 66, 2003
Table of sections to .....	ad. No. 66, 2003
Subdiv. 11-A	
S. 11-1A .....	ad. No. 57, 2002 rs. No. 66, 2003
S. 11-1.....	am. No. 16, 1998
S. 11-5.....	am. No. 121, 1997; No. 169, 2001; No. 101, 2004; No. 63, 2005; No. 9, 2007
Note to s. 11-5.....	ad. No. 16, 1998
S. 11-10.....	am. Nos. 121 and 134, 1997; No. 23, 1998; No. 58, 2000; No. 136, 2002; Nos. 66 and 111, 2003; No. 20, 2004; Nos. 15, 143 and 164, 2007; Nos. 32 and 38, 2008; No. 15, 2009
S. 11-15.....	am. Nos. 121, 179 and 196, 1997; Nos. 45 and 102, 1998; No. 128, 1998 (as am. by No. 57, 2002); Nos. 13, 54, 60 and 83, 1999; No. 93, 1999 (as am. by No. 57, 2002); No. 165, 1999; Nos. 76, 89 and 144, 2000; No. 77, 2001; Nos. 57, 136 and 139, 2002; Nos. 65 and 66, 2003; Nos. 59, 60 and 101, 2004; Nos. 23, 55 and 66, 2005; Nos. 41, 58, 101 and 136, 2006; Nos. 15, 66, 78, 82, 113, 114, 143, 182, 183 and 184, 2007; Nos. 19, 38, 97 and 131, 2008; Nos. 4, 14, 25, 35, 50 and 52, 2009
<b>Subdivision 11-B</b>	
Subdivision 11-B .....	ad. No. 66, 2003
S. 11-50.....	ad. No. 66, 2003
S. 11-55.....	ad. No. 66, 2003 am. Nos. 41 and 147, 2005; Nos. 13, 32 and 101, 2006; Nos. 15 and 164, 2007; Nos. 32, 38, 45, 91, 92, 97 and 130, 2008; Nos. 6, 15 and 42, 2009
<b>Division 12</b>	
S. 12-1.....	ad. No. 57, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 12-5.....	am. Nos. 121, 134, 147, 174 and 191, 1997; Nos. 16, 23, 46, 85 and 108, 1998; Nos. 16, 39, 54, 83, 164, 169, 176, 177 and 179, 1999; Nos. 58, 79, 86, 89 and 90, 2000; Nos. 72, 77, 89, 162, 163, 167 and 169, 2001; Nos. 57, 97, 119 and 136, 2002; Nos. 67, 133 and 150, 2003; Nos. 83, 95, 101 and 129, 2004; Nos. 21, 23, 41, 64, 78, 147 and 162, 2005; Nos. 55 and 101, 2006; Nos. 4, 15, 78, 79, 143 and 164, 2007; No. 38, 2008; Nos. 15 and 31, 2009
<b>Division 13</b>	
S. 13-1A .....	ad. No. 57, 2002
S. 13-1.....	am. Nos. 56, 121 and 179, 1997; Nos. 16, 46, 47, 91, 102 and 128, 1998; Nos. 60 and 83, 1999; No. 144, 2000; Nos. 77 and 170, 2001; Nos. 32 and 57, 2002; Nos. 67 and 107, 2003; Nos. 23, 41, 77 and 160, 2005; Nos. 58, 80 and 101, 2006; Nos. 15, 32, 79, 80 and 143, 2007; Nos. 38, 97, 130 and 141, 2008; No. 42, 2009
Link note to s. 13-1.....	rep. No. 41, 2005
<b>Chapter 2</b>	
Link note to Chapt. 2 .....	rep. No. 121, 1997
<b>Part 2-1</b>	
Part 2-1 .....	ad. No. 121, 1997
Link note to Part 2-1 .....	rep. No. 41, 2005
<b>Division 15</b>	
S. 15-1.....	ad. No. 121, 1997
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 15-2.....	ad. No. 101, 2006 am. No. 15, 2007
S. 15-3.....	ad. No. 121, 1997
S. 15-5.....	ad. No. 121, 1997
S. 15-10.....	ad. No. 121, 1997
S. 15-15.....	ad. No. 121, 1997
S. 15-20.....	ad. No. 121, 1997 am. No. 23, 2005
S. 15-22.....	ad. No. 23, 2005
S. 15-25.....	ad. No. 121, 1997
S. 15-30.....	ad. No. 121, 1997
S. 15-35.....	ad. No. 121, 1997
Link note to s. 15-35.....	am. No. 176, 1999 rep. No. 41, 2005
S. 15-40.....	ad. No. 77, 2001
S. 15-45.....	ad. No. 26, 2002
S. 15-46.....	ad. No. 79, 2007
S. 15-50.....	ad. No. 119, 2002
S. 15-55.....	ad. No. 12, 2003 am. No. 143, 2007



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 15-60.....	ad. No. 12, 2003 am. No. 66, 2003; No. 143, 2007
S. 15-65.....	ad. No. 20, 2004
S. 15-70.....	ad. No. 101, 2006
S. 15-75.....	ad. No. 101, 2006
S. 15-80.....	ad. No. 92, 2008
<b>Division 17</b>	
Division 17.....	ad. No. 176, 1999
S. 17-1.....	ad. No. 176, 1999
Link note to Guide .....	rep. No. 41, 2005
S. 17-5.....	ad. No. 176, 1999 am. No. 66, 2003
S. 17-10.....	ad. No. 176, 1999 am. No. 95, 2004
S. 17-15.....	ad. No. 176, 1999
S. 17-20.....	ad. No. 176, 1999
Link note to s. 17-20.....	rep. No. 41, 2005
S. 17-25.....	ad. No. 177, 1999 rep. No. 101, 2006
Heading to s. 17-30.....	rs. No. 156, 2000; No. 101, 2006
S. 17-30.....	ad. No. 177, 1999 am. No. 156, 2000; No. 97, 2002 rs. No. 101, 2006
S. 17-35.....	ad. No. 77, 2001
<b>Division 20</b>	
S. 20-1.....	ad. No. 121, 1997
S. 20-5.....	ad. No. 121, 1997 am. No. 46, 1998; Nos. 72, 77 and 170, 2001; Nos. 15 and 143, 2007
<b>Subdivision 20-A</b>	
S. 20-10.....	ad. No. 121, 1997 rs. No. 16, 1998
Subhead. to s. 20-15(1) .....	ad. No. 16, 1998
S. 20-15.....	ad. No. 121, 1997 am. No. 16, 1998
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 20-20.....	ad. No. 121, 1997 am. No. 54, 1999
Subhead. to s. 20-25(2A) .....	rs. No. 75, 2005
S. 20-25.....	ad. No. 121, 1997 am. Nos. 11 and 178, 1999; No. 75, 2005
S. 20-30.....	ad. No. 121, 1997 am. Nos. 46 and 47, 1998; Nos. 39, 54, 164 and 177, 1999; Nos. 77 and 170, 2001; No. 119, 2002; No. 133, 2003; No. 95, 2004; No. 101, 2006; Nos. 38 and 97, 2008

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 20-35.....	ad. No. 121, 1997
S. 20-40.....	ad. No. 121, 1997 am. No. 77, 2001
S. 20-45.....	ad. No. 121, 1997 am. No. 16, 1998; No. 77, 2001
Note to s. 20-45(1) .....	am. No. 77, 2001
S. 20-50.....	ad. No. 121, 1997
S. 20-55.....	ad. No. 121, 1997 am. No. 77, 2001; No. 101, 2006; No. 14, 2009
S. 20-60.....	ad. No. 16, 1998
S. 20-65.....	ad. No. 16, 1998
<b>Subdivision 20-B</b>	
S. 20-100.....	ad. No. 121, 1997 am. No. 77, 2001
S. 20-105.....	ad. No. 121, 1997
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 20-110.....	ad. No. 121, 1997
S. 20-115.....	ad. No. 121, 1997 am. No. 176, 1999
S. 20-120.....	ad. No. 121, 1997 am. No. 77, 2001
Note 1 to s. 20-120.....	am. No. 77, 2001
S. 20-125.....	ad. No. 121, 1997
S. 20-130.....	ad. No. 121, 1997
S. 20-135.....	ad. No. 121, 1997 am. No. 176, 1999
S. 20-140.....	ad. No. 121, 1997
S. 20-145.....	ad. No. 121, 1997
S. 20-150.....	ad. No. 121, 1997 am. No. 77, 2001
Note to s. 20-150.....	am. No. 77, 2001
S. 20-155.....	ad. No. 121, 1997 am. No. 174, 1997
Heading to s. 20-157 .....	rs. No. 80, 2007
S. 20-157.....	ad. No. 78, 2001
S. 20-160.....	ad. No. 121, 1997
Link note to s. 20-160.....	rs. Nos. 65 and 66, 2003 rep. No. 41, 2005
Division 22.....	ad. No. 65, 2003 rep. No. 66, 2003
S. 22-1.....	ad. No. 65, 2003 rep. No. 66, 2003
S. 22-5.....	ad. No. 65, 2003 rep. No. 66, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 2-5</b>	
Link note to Part 2-5.....	am. No. 121, 1997 rep. No. 65, 2003
<b>Division 25</b>	
Division 25.....	ad. No. 121, 1997
S. 25-1.....	ad. No. 121, 1997
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 25-5.....	ad. No. 121, 1997 am. No. 16, 1998; Nos. 11, 178 and 179, 1999; No. 58, 2000; Nos. 73, 77 and 167, 2001; No. 75, 2005; No. 101, 2006; No. 14, 2009
Note to s. 25-5(1) Renumbered Note 1 .....	No. 16, 1998
Note 2 to s. 25-5(1) .....	ad. No. 16, 1998
S. 25-7.....	ad. No. 83, 1999 am. No. 33, 2004; No. 14, 2009
S. 25-10.....	ad. No. 121, 1997 am. No. 16, 1998; No. 77, 2001
S. 25-15.....	ad. No. 121, 1997
S. 25-20.....	ad. No. 121, 1997
S. 25-25.....	ad. No. 121, 1997 am. No. 16, 1998; No. 57, 2002
S. 25-30.....	ad. No. 121, 1997 am. No. 16, 1998; No. 57, 2002
S. 25-35.....	ad. No. 121, 1997 am. No. 174, 1997; Nos. 16, 17 and 46, 1998; No. 101, 2003; Nos. 41, 147 and 162, 2005
Note to s. 25-35(5) .....	ad. No. 15, 2009
S. 25-40.....	ad. No. 121, 1997
S. 25-45.....	ad. No. 121, 1997
Note to s. 25-45.....	ad. No. 16, 1998
S. 25-47.....	ad. No. 38, 2008
S. 25-50.....	ad. No. 121, 1997
S. 25-55.....	ad. No. 121, 1997
S. 25-60.....	ad. No. 121, 1997 am. No. 47, 1998
Note to s. 25-60.....	rep. No. 16, 1998
Note 1 to s. 25-60.....	ad. No. 16, 1998
Note 2 to s. 25-60.....	ad. No. 16, 1998
Link note to s. 25-60.....	rep. No. 41, 2005
S. 25-65.....	ad. No. 101, 2006
S. 25-70.....	ad. No. 121, 1997 am. No. 101, 2006
S. 25-75.....	ad. No. 121, 1997 am. No. 13, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note to s. 25-75(1) .....	ad. No. 16, 1998
S. 25-80.....	ad. No. 177, 1999 am. No. 91, 2000 rep. No. 101, 2006
S. 25-85.....	ad. No. 163, 2001 am. No. 15, 2009
Heading to s. 25-90.....	rs. No. 66, 2003
S. 25-90.....	ad. No. 162, 2001 am. No. 66, 2003
Note to s. 25-90.....	ad. No. 15, 2009
S. 25-95.....	ad. No. 119, 2002
S. 25-100.....	ad. No. 95, 2004
S. 25-105.....	ad. No. 83, 2004
S. 25-110.....	ad. No. 32, 2006
<b>Division 26</b>	
Heading to Div. 26 of..... Part 2-5	rs. No. 121, 1997
Link note to Div. 26 .....	rep. No. 121, 1997
S. 26-1.....	ad. No. 121, 1997
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 26-5.....	ad. No. 121, 1997 am. No. 73, 2001
Note to s. 26-5(2) .....	rs. No. 58, 2006
S. 26-10.....	ad. No. 121, 1997
Link note to s. 26-10.....	rep. No. 57, 2002
S. 26-15.....	ad. No. 134, 1997
S. 26-17.....	ad. No. 23, 1998
Heading to s. 26-20.....	rs. No. 150, 2003
S. 26-20.....	ad. No. 121, 1997 am. No. 45, 1998; No. 150, 2003
Link note to s. 26-20.....	rep. No. 41, 2005
S. 26-25.....	ad. No. 178, 1999 am. No. 44, 2000
S. 26-26.....	ad. No. 163, 2001
S. 26-30.....	ad. No. 121, 1997 am. No. 179, 1999; No. 168, 2001
S. 26-35.....	ad. No. 121, 1997
S. 26-40.....	ad. No. 121, 1997
S. 26-45.....	ad. No. 121, 1997
S. 26-47.....	ad. No. 78, 2007
Heading to s. 26-50.....	rs. No. 78, 2007
S. 26-50.....	ad. No. 121, 1997 am. No. 78, 2007; No. 14, 2009

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 26-52.....	ad. No. 58, 2000 am. No. 147, 2007
S. 26-53.....	ad. No. 58, 2000 am. No. 173, 2000
S. 26-54.....	ad. No. 147, 2005
S. 26-55.....	am. No. 121, 1997; No. 85, 1998; No. 169, 1999; No. 167, 2001; No. 101, 2006; No. 15, 2007
Link note to s. 26-55.....	rep. No. 41, 2005
S. 26-60.....	ad. No. 191, 1997
S. 26-65.....	ad. No. 191, 1997
Subhead. to s. 26-68(1) .....	rs. No. 78, 2007
S. 26-68.....	ad. No. 136, 2002 am. No. 78, 2007
S. 26-70.....	ad. No. 165, 1999
S. 26-75.....	ad. No. 89, 2001 rs. No. 15, 2007
S. 26-80.....	ad. No. 51, 2002 am. Nos. 92 and 93, 2004; No. 147, 2005; SLI 2006 No. 50; No. 58, 2006 rs. No. 15, 2007
Note to s. 26-80(4) .....	am. SLI 2006 No. 50 rep. No. 15, 2007
S. 26-85.....	ad. No. 147, 2005 rs. No. 15, 2007
S. 26-90.....	ad. No. 101, 2006
S. 26-95.....	ad. No. 101, 2006
<b>Division 27</b>	
Division 27.....	ad. No. 176, 1999
Table of Subdivs. to Div. 27 .....	ad. No. 77, 2001
S. 27-1.....	ad. No. 176, 1999
<b>Subdivision 27-A</b>	
Heading to Subdiv. 27-A .....	ad. No. 77, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 27-5.....	ad. No. 176, 1999
S. 27-10.....	ad. No. 176, 1999 am. No. 95, 2004; No. 41, 2005; No. 97, 2008
S. 27-15.....	ad. No. 176, 1999 am. No. 73, 2006
S. 27-20.....	ad. No. 176, 1999
S. 27-25.....	ad. No. 176, 1999
Link note to s. 27-25.....	rep. No. 41, 2005
S. 27-30.....	ad. No. 177, 1999 rep. No. 101, 2006
S. 27-35.....	ad. No. 77, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 27-B</b>	
Heading to Subdiv. 27-B .....	rs. No. 41, 2005
Subdivision 27-B .....	ad. No. 77, 2001
S. 27-80 .....	ad. No. 77, 2001 am. No. 119, 2002
S. 27-85 .....	ad. No. 77, 2001 am. No. 119, 2002
S. 27-87 .....	ad. No. 77, 2001 am. No. 119, 2002
S. 27-90 .....	ad. No. 77, 2001 am. No. 119, 2002
S. 27-92 .....	ad. No. 77, 2001
S. 27-95 .....	ad. No. 77, 2001
Subhead. to s. 27-100(5) .....	rs. No. 80, 2007
S. 27-100 .....	ad. No. 77, 2001
S. 27-105 .....	ad. No. 77, 2001 am. No. 119, 2002
S. 27-110 .....	ad. No. 77, 2001
<b>Division 28</b>	
<b>Subdivision 28-A</b>	
S. 28-12 .....	am. No. 174, 1997; No. 72, 2001 (as am. by No. 57, 2002)
Note to s. 28-12(1)	
Renumbered Note 1 .....	No. 174, 1997
Note 2 to s. 28-12(1) .....	ad. No. 174, 1997
Note 3 to s. 28-12(1) .....	ad. No. 72, 2001
S. 28-13 .....	am. No. 77, 2001
<b>Subdivision 28-B</b>	
S. 28-15 .....	am. No. 16, 1998
<b>Subdivision 28-C</b>	
S. 28-25 .....	am. No. 95, 2004
S. 28-30 .....	rs. No. 121, 1997; No. 77, 2001
<b>Subdivision 28-D</b>	
S. 28-45 .....	am. Nos. 121 and 174, 1997; No. 176, 1999; No. 72, 2001; No. 77, 2001 (as am. by No. 57, 2002)
Note to s. 28-45(1) .....	ad. No. 174, 1997
Renumbered Note 1 .....	No. 72, 2001
Note 2 to s. 28-45(1) .....	ad. No. 72, 2001
Note to s. 28-45(2) .....	rs. No. 121, 1997 am. No. 46, 1998 rs. No. 77, 2001
S. 28-50 .....	am. No. 95, 2004
S. 28-55 .....	rs. No. 121, 1997; No. 77, 2001
<b>Subdivision 28-E</b>	
S. 28-75 .....	am. No. 95, 2004

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 28-F</b>	
S. 28-90.....	am. No. 174, 1997; No. 72, 2001; No. 95, 2004
Note to s. 28-90(6) .....	ad. No. 174, 1997
Renumbered Note 1 .....	No. 72, 2001
Note 2 to s. 28-90(6) .....	ad. No. 72, 2001
<b>Subdivision 28-G</b>	
S. 28-110.....	am. No. 16, 1998
<b>Subdivision 28-J</b>	
S. 28-170.....	am. No. 179, 1999
Note to s. 28-180(1) .....	am. No. 179, 1999
S. 28-185.....	rs. No. 178, 1999 am. No. 168, 2001; No. 15, 2007
Link note to s. 28-185.....	am. No. 121, 1997 rep. No. 41, 2005
<b>Division 30</b>	
Division 30.....	ad. No. 121, 1997
S. 30-1.....	ad. No. 121, 1997
S. 30-5.....	ad. No. 121, 1997 am. No. 179, 1999; No. 58, 2000; No. 167, 2001; No. 67, 2003; No. 101, 2004; No. 65, 2006
Note to s. 30-5(1) .....	rep. No. 65, 2006
Notes 1, 2 to s. 30-5(1) .....	ad. No. 65, 2006
S. 30-10.....	ad. No. 121, 1997
<b>Subdivision 30-A</b>	
S. 30-15.....	ad. No. 121, 1997 am. No. 176, 1999 (am. by No. 57, 2002); No. 179, 1999; No. 58, 2000; No. 86, 2003; No. 95, 2004; Nos. 58 and 65, 2006; No. 78, 2007; No. 97, 2008; No. 14, 2009
Note to s. 30-15(2) Renumbered Note 1 .....	No. 65, 2006
Note 2 to s. 30-15(2) .....	ad. No. 65, 2006
S. 30-17.....	ad. No. 179, 1999
<b>Subdivision 30-B</b>	
S. 30-20.....	ad. No. 121, 1997 am. No. 94, 1999; Nos. 167 and 168, 2001; No. 57, 2002; No. 83, 2004; No. 42, 2009
S. 30-25.....	ad. No. 121, 1997 am. No. 94, 1999; No. 173, 2000; No. 168, 2001; No. 57, 2002; Nos. 101 and 150, 2003; Nos. 95 and 101, 2004; No. 23, 2005; Nos. 13, 80 and 101, 2006; Nos. 4 and 161, 2007; Nos. 38 and 155, 2008; Nos. 42 and 47, 2009
S. 30-30.....	ad. No. 121, 1997
S. 30-35.....	ad. No. 121, 1997
S. 30-37.....	ad. No. 80, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 30-40.....	ad. No. 121, 1997 am. No. 93, 1999; No. 168, 2001; Nos. 78 and 160, 2005; No. 4, 2007; No. 42, 2009
S. 30-45.....	ad. No. 121, 1997 am. No. 94, 1999; Nos. 66 and 173, 2000; No. 168, 2001; No. 57, 2002; Nos. 67 and 101, 2003; Nos. 95 and 101, 2004; Nos. 23, 78 and 160, 2005; Nos. 80 and 101, 2006; No. 164, 2007; No. 38, 2008; Nos. 14 and 42, 2009
S. 30-45A .....	ad. No. 14, 2009
Heading to s. 30-46.....	rs. No. 14, 2009
S. 30-46.....	ad. No. 80, 2006 am. No. 14, 2009
S. 30-50.....	ad. No. 121, 1997 am. No. 147, 1997; No. 47, 1998; No. 94, 1999; Nos. 66, 114 and 173, 2000; No. 168, 2001; No. 57, 2002; No. 101, 2003; No. 95, 2004; No. 23, 2005; Nos. 13, 80 and 101, 2006; Nos. 4, 78 and 164, 2007; No. 38, 2008
S. 30-55.....	ad. No. 121, 1997 am. No. 147, 1997; No. 94, 1999; No. 168, 2001; No. 57, 2002; No. 143, 2007
S. 30-60.....	ad. No. 121, 1997 am. No. 143, 2007
S. 30-65.....	ad. No. 121, 1997 am. No. 168, 2001; No. 23, 2005; No. 78, 2007
S. 30-70.....	ad. No. 121, 1997 am. No. 94, 1999; No. 101, 2003; No. 101, 2004; No. 160, 2005; Nos. 46, 58 and 101, 2006; No. 4, 2007; No. 38, 2008
Heading to s. 30-75.....	am. No. 94, 1999
S. 30-75.....	ad. No. 121, 1997 am. No. 94, 1999 rs. No. 46, 2006
S. 30-80.....	ad. No. 121, 1997 am. No. 94, 1999; No. 173, 2000; No. 168, 2001; No. 57, 2002; No. 101, 2003; Nos. 23 and 78, 2005; Nos. 13, 80 and 101, 2006; Nos. 55 and 78, 2007; No. 38, 2008; No. 47, 2009
Heading to s. 30-85.....	rs. No. 80, 2006
S. 30-85.....	ad. No. 121, 1997 am. No. 80, 2006
S. 30-86.....	ad. No. 80, 2006
S. 30-90.....	ad. No. 121, 1997 am. No. 41, 1998; No. 168, 2001; No. 38, 2008
S. 30-95.....	ad. No. 121, 1997 am. No. 168, 2001; No. 160, 2005; No. 101, 2006
S. 30-100.....	ad. No. 121, 1997 am. No. 147, 1997; No. 94, 1999; No. 168, 2001; No. 101, 2006; No. 4, 2007
S. 30-102.....	ad. No. 23, 2005 am. No. 101, 2006



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 30-105.....	ad. No. 94, 1999 am. Nos. 114 and 173, 2000; No. 57, 2002; No. 101, 2003; No. 95, 2004; Nos. 23, 78 and 160, 2005; Nos. 58 and 101, 2006; Nos. 4, 55, 78 and 143, 2007; No. 38, 2008; Nos. 42 and 47, 2009
<b>Subdivision 30-BA</b>	
Subdivision 30-BA.....	ad. No. 179, 1999
S. 30-115.....	ad. No. 179, 1999
Link note to Guide .....	rep. No. 41, 2005
S. 30-120.....	ad. No. 179, 1999 am. No. 95, 2004
Note to s. 30-120.....	ad. No. 95, 2004
Subhead to s. 30-125(6) .....	rs. No. 55, 2007
S. 30-125.....	ad. No. 179, 1999 am. No. 107, 2003; No. 95, 2004; No. 58, 2006; No. 55, 2007
Note 2 to s. 30-125(7) .....	rs. No. 95, 2004
Note 3 to s. 30-125.....	ad. No. 55, 2007
S. 30-130.....	ad. No. 179, 1999 rep. No. 95, 2004 ad. No. 58, 2006 am. No. 55, 2007
S. 30-135.....	ad. No. 179, 1999 rep. No. 95, 2004
S. 30-140.....	ad. No. 179, 1999 rep. No. 95, 2004
S. 30-145.....	ad. No. 179, 1999 rep. No. 95, 2004
S. 30-150.....	ad. No. 179, 1999 rep. No. 95, 2004
S. 30-155.....	ad. No. 179, 1999 rep. No. 95, 2004
S. 30-160.....	ad. No. 179, 1999 rep. No. 95, 2004
S. 30-165.....	ad. No. 179, 1999 rep. No. 95, 2004
S. 30-170.....	ad. No. 179, 1999 rep. No. 95, 2004
S. 30-175.....	ad. No. 179, 1999 rep. No. 95, 2004
S. 30-180.....	ad. No. 179, 1999 am. No. 95, 2004
<b>Subdivision 30-C</b>	
S. 30-200.....	ad. No. 121, 1997 am. No. 176, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Heading to s. 30-205.....	rs. No. 176, 1999
S. 30-205.....	ad. No. 121, 1997 am. No. 58, 2000
S. 30-210.....	ad. No. 121, 1997 am. No. 176, 1999
S. 30-212.....	ad. No. 58, 2000 am. No. 95, 2004
S. 30-215.....	ad. No. 121, 1997 am. No. 176, 1999; No. 58, 2006
S. 30-220.....	ad. No. 121, 1997 am. No. 176, 1999
S. 30-225.....	ad. No. 121, 1997
<b>Subdivision 30-CA</b>	
Subdivision 30-CA.....	ad. No. 179, 1999
S. 30-226.....	ad. No. 179, 1999
Link note to Guide .....	rep. No. 41, 2005
S. 30-227.....	ad. No. 179, 1999
Heading to s. 30-228.....	am. No. 95, 2004
S. 30-228.....	ad. No. 179, 1999 am. No. 95, 2004
Note to s. 30-228(1) .....	am. No. 95, 2004
S. 30-229.....	ad. No. 179, 1999
<b>Subdivision 30-D</b>	
S. 30-230.....	ad. No. 121, 1997 am. No. 179, 1999; No. 97, 2008
Note to s. 30-230(1) .....	am. No. 97, 2008
S. 30-235.....	ad. No. 121, 1997
S. 30-240.....	ad. No. 121, 1997
<b>Subdivision 30-DA</b>	
Subdivision 30-DA.....	ad. No. 65, 2006
S. 30-241.....	ad. No. 65, 2006
S. 30-242.....	ad. No. 65, 2006
S. 30-243.....	ad. No. 65, 2006
S. 30-244.....	ad. No. 65, 2006
S. 30-245.....	ad. No. 65, 2006
<b>Subdivision 30-DB</b>	
Subdivision 30-DB.....	ad. No. 58, 2000 rs. No. 101, 2004
S. 30-246.....	ad. No. 58, 2000 rs. No. 101, 2004
Link note to Guide .....	rep. No. 41, 2005
S. 30-247.....	ad. No. 58, 2000 rs. No. 101, 2004
S. 30-248.....	ad. No. 58, 2000 rs. No. 101, 2004

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Subdivision 30-DC .....	ad. No. 58, 2000 rep. No. 101, 2004
S. 30-249.....	ad. No. 58, 2000 rs. No. 101, 2004
S. 30-249A .....	ad. No. 58, 2000 rs. No. 101, 2004
S. 30-249B .....	ad. No. 58, 2000 rs. No. 101, 2004
Subdivision 30-DD .....	ad. No. 58, 2000 rep. No. 101, 2004
S. 30-249C .....	ad. No. 58, 2000 rs. No. 101, 2004
S. 30-249D .....	ad. No. 58, 2000 rs. No. 101, 2004
S. 30-249E .....	ad. No. 58, 2000 rep. No. 101, 2004
Subdivision 30-DE.....	ad. No. 167, 2001 rep. No. 101, 2004
S. 30-249F .....	ad. 167, 2001 rep. No. 101, 2004
S. 30-249G .....	ad. 167, 2001 rep. No. 101, 2004
S. 30-249H.....	ad. 167, 2001 rep. No. 101, 2004
<b>Subdivision 30-E</b>	
S. 30-250.....	ad. No. 121, 1997
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 30-255.....	ad. No. 121, 1997 am. No. 97, 2008
S. 30-260.....	ad. No. 121, 1997
S. 30-265.....	ad. No. 121, 1997 am. No. 179, 1999; No. 58, 2006; No. 143, 2007
S. 30-270.....	ad. No. 121, 1997 am. No. 97, 2008
S. 30-275.....	ad. No. 121, 1997 am. No. 143, 2007
S. 30-280.....	ad. No. 121, 1997 am. No. 143, 2007; No. 97, 2008
S. 30-285.....	ad. No. 121, 1997 am. No. 143, 2007; No. 97, 2008
<b>Subdivision 30-EA</b>	
Subdivision 30-EA.....	ad. No. 67, 2003
S. 30-286.....	ad. No. 67, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 30-287.....	ad. No. 67, 2003
S. 30-288.....	ad. No. 67, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 30-289.....	ad. No. 67, 2003 am. No. 58, 2006
S. 30-289A .....	ad. No. 67, 2003
S. 30-289B .....	ad. No. 67, 2003
S. 30-289C .....	ad. No. 67, 2003
<b>Subdivision 30-F</b>	
S. 30-290.....	ad. No. 121, 1997
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 30-295.....	ad. No. 121, 1997
S. 30-300.....	ad. No. 121, 1997 am. No. 179, 1999; No. 58, 2006
S. 30-305.....	ad. No. 121, 1997
S. 30-310.....	ad. No. 121, 1997
<b>Subdivision 30-G</b>	
S. 30-315.....	ad. No. 121, 1997 am. No. 147, 1997; No. 41, 1998; Nos. 93, 94 and 179, 1999; Nos. 58, 66 and 173, 2000; Nos. 167 and 168, 2001; No. 57, 2002; Nos. 67 and 101, 2003; Nos. 83, 95 and 101, 2004; Nos. 23, 78 and 160, 2005; Nos. 13, 58, 65, 80 and 101, 2006; Nos. 4, 78, 143, 161 and 164, 2007; Nos. 38 and 155, 2008; Nos. 14, 42 and 47, 2009
S. 30-320.....	ad. No. 121, 1997 am. No. 16, 1998
Link note to s. 30-320.....	rep. No. 167, 2001
<b>Division 31</b>	
Division 31.....	ad. No. 167, 2001
S. 31-1.....	ad. No. 167, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 31-5.....	ad. No. 167, 2001 am. No. 107, 2003; No. 143, 2007
Note to s. 31-5(3) .....	am. No. 101, 2004
S. 31-10.....	ad. No. 167, 2001
S. 31-15.....	ad. No. 167, 2001
<b>Division 32</b>	
Division 32.....	ad. No. 121, 1997
S. 32-1.....	ad. No. 121, 1997
<b>Subdivision 32-A</b>	
S. 32-5.....	ad. No. 121, 1997
S. 32-10.....	ad. No. 121, 1997
S. 32-15.....	ad. No. 121, 1997
<b>Subdivision 32-B</b>	
S. 32-20.....	ad. No. 121, 1997
S. 32-25.....	ad. No. 121, 1997
S. 32-30.....	ad. No. 121, 1997

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 32-35.....	ad. No. 121, 1997
S. 32-40.....	ad. No. 121, 1997
S. 32-45.....	ad. No. 121, 1997
S. 32-50.....	ad. No. 121, 1997
<b>Subdivision 32-C</b>	
S. 32-55.....	ad. No. 121, 1997
S. 32-60.....	ad. No. 121, 1997
S. 32-65.....	ad. No. 121, 1997
<b>Subdivision 32-D</b>	
S. 32-70.....	ad. No. 121, 1997
<b>Subdivision 32-E</b>	
S. 32-75.....	ad. No. 121, 1997
<b>Subdivision 32-F</b>	
S. 32-80.....	ad. No. 121, 1997
S. 32-85.....	ad. No. 121, 1997
S. 32-90.....	ad. No. 121, 1997
Link note to s. 32-90.....	rep. No. 41, 2005
<b>Division 34</b>	
Division 34.....	ad. No. 121, 1997
S. 34-1.....	ad. No. 121, 1997
S. 34-3.....	ad. No. 121, 1997
<b>Subdivision 34-A</b>	
S. 34-5.....	ad. No. 121, 1997 rs. No. 179, 1999
S. 34-7.....	ad. No. 121, 1997 am. No. 179, 1999
<b>Subdivision 34-B</b>	
S. 34-10.....	ad. No. 121, 1997 am. No. 41, 2005
Note 1 to s. 34-10(1) .....	am. No. 179, 1999
Heading to s. 34-15.....	rs. No. 41, 2005
S. 34-15.....	ad. No. 121, 1997
S. 34-20.....	ad. No. 121, 1997
<b>Subdivision 34-C</b>	
S. 34-25.....	ad. No. 121, 1997 am. No. 41, 2005
S. 34-30.....	ad. No. 121, 1997
S. 34-33.....	ad. No. 121, 1997
S. 34-35.....	ad. No. 121, 1997
<b>Subdivision 34-D</b>	
S. 34-40.....	ad. No. 121, 1997
<b>Subdivision 34-E</b>	
S. 34-45.....	ad. No. 121, 1997

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 34-50.....	ad. No. 121, 1997
<b>Subdivision 34-F</b>	
S. 34-55.....	ad. No. 121, 1997 am. No. 58, 2006
<b>Subdivision 34-G</b>	
S. 34-60.....	ad. No. 121, 1997
S. 34-65.....	ad. No. 121, 1997 rs. No. 146, 1999
Link note to s. 34-65.....	rep. No. 90, 2000
<b>Division 35</b>	
Division 35.....	ad. No. 90, 2000
S. 35-1.....	ad. No. 90, 2000
Link note to Guide .....	rep. No. 41, 2005
S. 35-5.....	ad. No. 90, 2000 rs. No. 32, 2006
Subhead. to s. 35-10(2) .....	rs. No. 32, 2006
S. 35-10.....	ad. No. 90, 2000 am. No. 32, 2006
S. 35-15.....	ad. No. 90, 2000 am. No. 32, 2006
S. 35-20.....	ad. No. 90, 2000 am. No. 32, 2006
S. 35-25.....	ad. No. 90, 2000 am. No. 58, 2006
S. 35-30.....	ad. No. 90, 2000 am. No. 32, 2006
S. 35-35.....	ad. No. 90, 2000 am. No. 32, 2006
S. 35-40.....	ad. No. 90, 2000 am. Nos. 32 and 58, 2006
S. 35-45.....	ad. No. 90, 2000 am. No. 77, 2001; No. 32, 2006
S. 35-50.....	ad. No. 90, 2000 am. No. 58, 2006
S. 35-55.....	ad. No. 90, 2000 am. No. 26, 2002; No. 32, 2006
<b>Division 36</b>	
<b>Subdivision 36-A</b>	
S. 36-10.....	am. No. 16, 1998
Note to s. 36-10	
Renumbered Note 1 .....	No. 142, 2003
Note 1 to s. 36-10.....	rs. No. 143, 2007
Note 2 to s. 36-10.....	ad. No. 142, 2003
Heading to s. 36-15.....	rs. No. 142, 2003
S. 36-15.....	am. No. 142, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note to s. 36-15.....	ad. No. 121, 1997
S. 36-17.....	ad. No. 142, 2003 am. No. 164, 2007; No. 14, 2009
S. 36-20.....	am. No. 147, 1997; No. 16, 1998; No. 60, 1999; No. 66, 2003; No. 41, 2005
S. 36-25.....	am. No. 17, 1998; No. 136, 2002; No. 142, 2003; Nos. 83 and 101, 2004; No. 147, 2005; Nos. 78 and 143, 2007
<b>Subdivision 36-B</b>	
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 36-40.....	am. No. 121, 1997
<b>Subdivision 36-C</b>	
Subdivision 36-C .....	ad. No. 142, 2003
S. 36-50.....	ad. No. 142, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 36-55.....	ad. No. 142, 2003 am. No. 107, 2003; No. 164, 2007
Note to s. 36-55(1) .....	am. No. 164, 2007
Link note to s. 36-55.....	rep. No. 41, 2005
<b>Part 2-10</b>	
<b>Division 40</b>	
Division 40.....	rs. No. 76, 2001
S. 40-1.....	rs. No. 76, 2001
S. 40-5.....	am. No. 72, 2001 rep. No. 76, 2001
S. 40-7.....	am. No. 16, 1998 rep. No. 76, 2001
S. 40-10.....	am. No. 16, 1998 rs. No. 91, 1998; No. 76, 2001 am. No. 129, 2004; No. 32, 2006; No. 38, 2008
<b>Subdivision 40-A</b>	
S. 40-15.....	am. No. 121, 1997; No. 16, 1998 rs. No. 76, 2001
Note to s. 40-15 Renumbered Note 1 .....	No. 83, 2004
Note 2 to s. 40-15.....	ad. No. 83, 2004
<b>Subdivision 40-B</b>	
S. 40-20.....	am. No. 16, 1998 rs. No. 76, 2001
Link note to Guide .....	rep. No. 41, 2005
Subhead. to s. 40-25(3) .....	rs. No. 78, 2007
S. 40-25.....	am. No. 16, 1998 rs. No. 76, 2001 am. No. 119, 2002; Nos. 78 and 164, 2007
Note 1 to s. 40-25(1) .....	rs. No. 55, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note 2 to s. 40-25(1) .....	am. No. 119, 2002; No. 80, 2007
Note to s. 40-25(5)	
Renumbered Note 1 .....	No. 164, 1999
Note 1 to s. 40-25(5) .....	rep. No. 76, 2001
Note 2 to s. 40-25(5) .....	ad. No. 164, 1999 rep. No. 76, 2001
S. 40-30.....	am. No. 121, 1997; Nos. 16, 46, 91 and 108, 1998; Nos. 39, 54 and 164, 1999 rs. No. 76, 2001 am. No. 66, 2003; No. 78, 2005
S. 40-35.....	ad. No. 76, 2001 am. No. 133, 2003; No. 31, 2009
S. 40-40.....	ad. No. 76, 2001
S. 40-45.....	ad. No. 76, 2001 am. No. 170, 2001; No. 119, 2002; No. 78, 2005; No. 164, 2007; No. 59, 2008
S. 40-50.....	ad. No. 76, 2001 am. No. 119, 2002; No. 38, 2008
S. 40-53.....	ad. No. 23, 2005
S. 40-55.....	ad. No. 76, 2001
S. 40-60.....	ad. No. 76, 2001
S. 40-65.....	ad. No. 76, 2001 am. No. 170, 2001
Note 2 to s. 40-65(1) .....	am. No. 55, 2006
S. 40-70.....	ad. No. 76, 2001 am. Nos. 78 and 147, 2005
S. 40-72.....	ad. No. 55, 2006
S. 40-75.....	ad. No. 76, 2001 am. No. 119, 2002; No. 133, 2003
S. 40-80.....	ad. No. 76, 2001 am. No. 66, 2003
S. 40-85.....	ad. No. 76, 2001
Note to s. 40-85(1) .....	ad. No. 164, 2007
Notes 1, 2 to s. 40-85(2) .....	rep. No. 119, 2002
Note to s. 40-85(2) .....	ad. No. 119, 2002 rs. No. 133, 2003
S. 40-90.....	ad. No. 76, 2001
S. 40-95.....	ad. No. 76, 2001 am. No. 53, 2002; No. 66, 2003; Nos. 78 and 147, 2005; No. 78, 2007; No. 59, 2008
Note to s. 40-95(1) .....	ad. No. 53, 2002
Note to s. 40-95.....	ad. No. 170, 2001
S. 40-100.....	ad. No. 76, 2001 am. No. 66, 2003; No. 147, 2005
S. 40-102.....	ad. No. 53, 2002 am. No. 77, 2005; No. 55, 2007



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 40-105.....	ad. No. 76, 2001 am. No. 66, 2003; No. 147, 2005; No. 78, 2007
S. 40-110.....	ad. No. 76, 2001 am. No. 53, 2002; No. 147, 2005; No. 78, 2007
S. 40-115.....	ad. No. 76, 2001
S. 40-120.....	ad. No. 76, 2001 am. No. 45, 2005
S. 40-125.....	ad. No. 76, 2001
S. 40-130.....	ad. No. 76, 2001
S. 40-135.....	ad. No. 76, 2001
S. 40-140.....	ad. No. 76, 2001 am. No. 53, 2002
S. 40-145.....	ad. No. 76, 2001 rep. No. 4, 2007
<b>Subdivision 40-C</b>	
S. 40-170.....	ad. No. 76, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 40-175.....	ad. No. 76, 2001
Note to s. 40-175.....	ad. No. 119, 2002 rs. No. 133, 2003
S. 40-180.....	ad. No. 76, 2001 am. No. 119, 2002; No. 32, 2006
Note to s. 40-180(1) Renumbered Note 1 .....	No. 15, 2009
Note 2 to s. 40-180(1) .....	ad. No. 15, 2009
S. 40-185.....	ad. No. 76, 2001 am. No. 32, 2006
Note to s. 40-185(1) Renumbered Note 1 .....	No. 15, 2009
Note 2 to s. 40-185(1) .....	ad. No. 15, 2009
S. 40-190.....	ad. No. 76, 2001 am. No. 32, 2006
S. 40-195.....	ad. No. 76, 2001
S. 40-200.....	ad. No. 76, 2001
S. 40-205.....	ad. No. 76, 2001
S. 40-210.....	ad. No. 76, 2001
S. 40-215.....	ad. No. 76, 2001 am. No. 170, 2001; No. 119, 2002; No. 101, 2006; No. 31, 2009
Note to s. 40-215(2)(a).....	ad. No. 170, 2001 rep. No. 101, 2006
S. 40-220.....	ad. No. 76, 2001
S. 40-225.....	ad. No. 76, 2001
S. 40-230.....	ad. No. 76, 2001 am. No. 119, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 40-D</b>	
S. 40-280.....	ad. No. 76, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 40-285.....	ad. No. 76, 2001
Note 3 to s. 40-285(1) .....	ad. No. 38, 2008
Note to s. 40-285(2)	
Renumbered Note 1 .....	No. 119, 2002
Note 2 to s. 40-285(2) .....	ad. No. 119, 2002
Note 3 to s. 40-285(2) .....	ad. No. 38, 2008
S. 40-290.....	ad. No. 76, 2001
S. 40-292.....	ad. No. 170, 2001 am. No. 16, 2003
Note to s. 40-292.....	ad. No. 16, 2003
S. 40-295.....	ad. No. 76, 2001 am. No. 119, 2002
S. 40-300.....	ad. No. 76, 2001 am. No. 119, 2002
Note to s. 40-300(1) .....	ad. No. 15, 2009
S. 40-305.....	ad. No. 76, 2001
Note to s. 40-305(1)	
Renumbered Note 1 .....	No. 15, 2009
Note 2 to s. 40-305(1) .....	ad. No. 15, 2009
S. 40-310.....	ad. No. 76, 2001
S. 40-315.....	ad. No. 76, 2001 rep. No. 32, 2006
S. 40-320.....	ad. No. 76, 2001
S. 40-325.....	ad. No. 76, 2001 am. No. 119, 2002
S. 40-335.....	ad. No. 76, 2001 am. No. 58, 2006
S. 40-340.....	ad. No. 76, 2001 am. No. 119, 2002; No. 41, 2005; No. 144, 2008; No. 14, 2009
Note to s. 40-340(3)	
Renumbered Note 1 .....	No. 20, 2004
Note 2 to s. 40-340(3) .....	ad. No. 20, 2004 rs. No. 41, 2005 am. No. 80, 2007
S. 40-345.....	ad. No. 76, 2001
S. 40-350.....	ad. No. 76, 2001 am. No. 58, 2006
S. 40-360.....	ad. No. 76, 2001
S. 40-365.....	ad. No. 76, 2001 am. No. 119, 2002; No. 58, 2006
S. 40-370.....	ad. No. 76, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 40-E</b>	
S. 40-420.....	ad. No. 76, 2001
Link note to Guide .....	rep. No. 41, 2005
Subhead. to s. 40-425(7) .....	rs. No. 80, 2007
S. 40-425.....	ad. No. 76, 2001 am. No. 170, 2001; No. 129, 2004; No. 80, 2007
S. 40-430.....	ad. No. 76, 2001 am. No. 41, 2005
Note 2 to s. 40-430(1) .....	rs. No. 80, 2007
S. 40-435.....	ad. No. 76, 2001
S. 40-440.....	ad. No. 76, 2001
S. 40-445.....	ad. No. 76, 2001
S. 40-450.....	ad. No. 76, 2001
S. 40-455.....	ad. No. 76, 2001
S. 40-460.....	ad. No. 76, 2001 am. No. 58, 2006
<b>Subdivision 40-F</b>	
S. 40-510.....	ad. No. 76, 2001 am. No. 129, 2004
Link note to Guide .....	rep. No. 41, 2005
Heading to s. 40-515.....	rs. No. 129, 2004
S. 40-515.....	ad. No. 76, 2001 am. No. 129, 2004; No. 23, 2005
Note 1 to s. 40-515(1) .....	am. No. 129, 2004
S. 40-520.....	ad. No. 76, 2001 am. No. 23, 2005
S. 40-525.....	ad. No. 76, 2001 am. No. 129, 2004; No. 23, 2005
Note to s. 40-525(1) .....	ad. No. 164, 2007
Note to s. 40-525(2) .....	ad. No. 164, 2007
Heading to s. 40-530.....	rs. No. 129, 2004
S. 40-530.....	ad. No. 76, 2001 am. No. 129, 2004
S. 40-535.....	ad. No. 76, 2001
S. 40-540.....	ad. No. 76, 2001
S. 40-545.....	ad. No. 76, 2001
S. 40-550.....	ad. No. 76, 2001 rep. No. 129, 2004
Subhead. to s. 40-555(3) .....	rs. No. 129, 2004
S. 40-555.....	ad. No. 76, 2001 am. No. 129, 2004; No. 23, 2005
Note to s. 40-555(1) .....	ad. No. 23, 2005
S. 40-560.....	ad. No. 76, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Heading to s. 40-565.....	rs. No. 129, 2004
S. 40-565.....	ad. No. 76, 2001 am. No. 129, 2004
S. 40-570.....	ad. No. 76, 2001
Heading to s. 40-575.....	rs. No. 129, 2004
S. 40-575.....	ad. No. 76, 2001 am. No. 129, 2004
<b>Subdivision 40-G</b>	
S. 40-625.....	ad. No. 76, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 40-630.....	ad. No. 76, 2001 am. No. 23, 2005; No. 38, 2008
Note to s. 40-630(1) .....	ad. No. 164, 2007
S. 40-635.....	ad. No. 76, 2001 am. No. 23, 2005
S. 40-640.....	ad. No. 76, 2001
S. 40-645.....	ad. No. 76, 2001
S. 40-650.....	ad. No. 76, 2001
S. 40-655.....	ad. No. 76, 2001
S. 40-660.....	ad. No. 76, 2001
S. 40-665.....	ad. No. 76, 2001 am. No. 119, 2002
S. 40-670.....	ad. No. 76, 2001
S. 40-675.....	ad. No. 76, 2001
<b>Subdivision 40-H</b>	
S. 40-725.....	ad. No. 76, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 40-730.....	ad. No. 76, 2001 am. No. 66, 2003
Note to s. 40-730(1) .....	ad. No. 164, 2007
S. 40-735.....	ad. No. 76, 2001
Note to s. 40-735(1) Renumbered Note 1 .....	No. 164, 2007
Note 2 to s. 40-735(1) .....	ad. No. 164, 2007
S. 40-740.....	ad. No. 76, 2001
S. 40-745.....	ad. No. 76, 2001
S. 40-750.....	ad. No. 76, 2001
Note to s. 40-750(1) Renumbered Note 1 .....	No. 164, 2007
Note 2 to s. 40-750(1) .....	ad. No. 164, 2007
S. 40-755.....	ad. No. 76, 2001
Note to s. 40-755(1) .....	ad. No. 164, 2007
S. 40-760.....	ad. No. 76, 2001
S. 40-765.....	ad. No. 76, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 40-I</b>	
S. 40-825.....	ad. No. 76, 2001 am. No. 32, 2006
Link note to Guide .....	rep. No. 41, 2005
S. 40-830.....	ad. No. 76, 2001 am. No. 58, 2006
Note to s. 40-830(3) .....	ad. No. 55, 2006
S. 40-832.....	ad. No. 55, 2006
S. 40-835.....	ad. No. 76, 2001 am. No. 55, 2006
Note to s. 40-835.....	ad. No. 164, 2007
S. 40-840.....	ad. No. 76, 2001 am. No. 129, 2004
S. 40-845.....	ad. No. 76, 2001
S. 40-855.....	ad. No. 76, 2001
S. 40-860.....	ad. No. 76, 2001
S. 40-865.....	ad. No. 76, 2001 am. No. 17, 2006
S. 40-870.....	ad. No. 76, 2001
S. 40-875.....	ad. No. 76, 2001
S. 40-880.....	ad. No. 76, 2001 am. No. 119, 2002 rs. No. 32, 2006
Note to s. 40-880(1) .....	ad. No. 164, 2007
S. 40-885.....	ad. No. 76, 2001
<b>Subdivision 40-J</b>	
Subdivision 40-J.....	ad. No. 38, 2008
S. 40-1000.....	ad. No. 38, 2008
S. 40-1005.....	ad. No. 38, 2008
S. 40-1010.....	ad. No. 38, 2008
S. 40-1015.....	ad. No. 38, 2008
S. 40-1020.....	ad. No. 38, 2008
S. 40-1025.....	ad. No. 38, 2008
<b>Division 41</b>	
Division 41.....	rep. No. 76, 2001 ad. No. 31, 2009
S. 41-1.....	ad. No. 31, 2009
S. 41-5.....	am. No. 121, 1997; Nos. 16 and 46, 1998; Nos. 39, 54 and 164, 1999; No. 72, 2001 rep. No. 76, 2001 ad. No. 31, 2009
S. 41-10.....	am. No. 46, 1998 rep. No. 76, 2001 ad. No. 31, 2009

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Link note to Guide .....	ad. No. 16, 1998 rep. No. 76, 2001
S. 41-14.....	ad. No. 169, 1999 rep. No. 76, 2001
S. 41-15.....	rs. No. 121, 1997 rep. No. 76, 2001 ad. No. 31, 2009
S. 41-20.....	am. No. 121, 1997; No. 46, 1998 rep. No. 76, 2001 ad. No. 31, 2009
Note to s. 41-20(1) .....	rs. No. 121, 1997 rep. No. 76, 2001
Notes to s. 41-20(2) .....	rep. No. 121, 1997
S. 41-23.....	ad. No. 121, 1997 am. No. 46, 1998; Nos. 39 and 54, 1999 rep. No. 76, 2001
Note to s. 41-23(1) Renumbered Note 1 .....	No. 164, 1999
Note 1 to s. 41-23(1) .....	rep. No. 76, 2001
Note 2 to s. 41-23(1) .....	ad. No. 164, 1999 rep. No. 76, 2001
S. 41-25.....	am. No. 121, 1997 rep. No. 76, 2001 ad. No. 31, 2009
Note to s. 41-25(1) .....	am. No. 121, 1997 rs. No. 16, 1998 rep. No. 76, 2001
S. 41-30.....	am. No. 121, 1997; No. 54, 1999 rep. No. 76, 2001 ad. No. 31, 2009
S. 41-35.....	rs. No. 121, 1997 rep. No. 76, 2001 ad. No. 31, 2009
S. 41-40.....	am. No. 121, 1997; No. 169, 1999 rep. No. 76, 2001
S. 41-45.....	rep. No. 121, 1997
S. 41-50.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 41-55.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 41-65.....	am. Nos. 121 and 174, 1997; No. 46, 1998; No. 176, 1999 rep. No. 76, 2001
Heading to Subdiv. 41-C .....	rs. No. 72, 2001 rep. No. 76, 2001
S. 41-85.....	am. No. 121, 1997 rep. No. 76, 2001
Link note to s. 41-85.....	rep. No. 121, 1997

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 41-90.....	ad. No. 72, 2001 rep. No. 76, 2001
Division 42.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-1.....	ad. No. 121, 1997 am. No. 164, 1999 rep. No. 76, 2001
S. 42-5.....	ad. No. 121, 1997 rs. No. 164, 1999 rep. No. 76, 2001
S. 42-10.....	ad. No. 121, 1997 rep. No. 76, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 76, 2001
S. 42-15.....	ad. No. 121, 1997 rep. No. 76, 2001
Note to s. 42-15 Renumbered Note 1 .....	No. 174, 1997
Note 1 to s. 42-15.....	rep. No. 76, 2001
Note 2 to s. 42-15.....	ad. No. 174, 1997 rep. No. 76, 2001
Note 3 to s. 42-15.....	ad. No. 91, 2000 rep. No. 76, 2001 ad. No. 72, 2001 rep. No. 76, 2001
S. 42-18.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-19.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-20.....	ad. No. 121, 1997 am. No. 79, 2000 rep. No. 76, 2001
S. 42-25.....	ad. No. 121, 1997 am. No. 164, 1999; Nos. 76 and 170, 2001 rep. No. 76, 2001
S. 42-30.....	ad. No. 121, 1997 am. No. 174, 1997; No. 164, 1999; No. 79, 2000; No. 72, 2001 rep. No. 76, 2001
Note 2 to s. 42-30(1) .....	am. No. 164, 1999 rep. No. 76, 2001
S. 42-35.....	ad. No. 121, 1997 am. No. 72, 2001 rep. No. 76, 2001
S. 42-40.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-45.....	ad. No. 121, 1997 am. No. 170, 2001 rep. No. 76, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 42-48.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-50.....	ad. No. 121, 1997 am. No. 164, 1999 rep. No. 76, 2001
S. 42-55.....	ad. No. 121, 1997 am. No. 174, 1997; No. 46, 1998; Nos. 39 and 164, 1999; No. 72, 2001 rep. No. 76, 2001
S. 42-60.....	ad. No. 121, 1997 rep. No. 76, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 76, 2001
S. 42-65.....	ad. No. 121, 1997 am. No. 174, 1997; Nos. 16 and 47, 1998; Nos. 93 and 176, 1999; Nos. 72 and 170, 2001 rep. No. 76, 2001
S. 42-70.....	ad. No. 121, 1997 am. No. 174, 1997; No. 46, 1998; No. 176, 1999 rep. No. 76, 2001
S. 42-75.....	ad. No. 121, 1997 am. No. 176, 1999 rep. No. 76, 2001
Note to s. 42-75.....	ad. No. 174, 1997 rep. No. 76, 2001
S. 42-80.....	ad. No. 121, 1997 am. No. 174, 1997; No. 46, 1998 rep. No. 76, 2001
S. 42-82.....	ad. No. 174, 1997 rep. No. 76, 2001
S. 42-85.....	ad. No. 121, 1997 am. No. 170, 2001 rep. No. 76, 2001
Note to s. 42-85.....	ad. No. 170, 2001 rep. No. 76, 2001
S. 42-90.....	ad. No. 121, 1997 am. No. 174, 1997; Nos. 164 and 176, 1999; No. 79, 2000 rep. No. 76, 2001
S. 42-95.....	ad. No. 121, 1997 rep. No. 76, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 76, 2001
S. 42-100.....	ad. No. 121, 1997 am. No. 76, 2001 rep. No. 76, 2001
Note to s. 42-100.....	ad. No. 170, 2001 rep. No. 76, 2001
S. 42-105.....	ad. No. 121, 1997 am. No. 164, 1999 rep. No. 76, 2001



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 42-110.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-112.....	ad. No. 164, 1999 rep. No. 76, 2001
S. 42-115.....	ad. No. 121, 1997 rep. No. 76, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 76, 2001
S. 42-118.....	ad. No. 164, 1999 rep. No. 76, 2001
S. 42-120.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-123.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-125.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-130.....	ad. No. 121, 1997 rep. No. 164, 1999
S. 42-135.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-140.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-145.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-150.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-155.....	ad. No. 121, 1997 rep. No. 76, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 76, 2001
S. 42-160.....	ad. No. 121, 1997 am. No. 164, 1999 rep. No. 76, 2001
Note to s. 42-160.....	ad. No. 72, 2001 rep. No. 76, 2001
S. 42-165.....	ad. No. 121, 1997 am. No. 164, 1999 rep. No. 76, 2001
S. 42-167.....	ad. No. 164, 1999 rs. No. 79, 2000 am. No. 76, 2001 rep. No. 76, 2001
S. 42-168.....	ad. No. 177, 1999 am. No. 91, 2000 rep. No. 76, 2001
S. 42-170.....	ad. No. 121, 1997 am. No. 91, 2000 rep. No. 76, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 42-175.....	ad. No. 121, 1997 am. Nos. 93 and 164, 1999 rep. No. 76, 2001
Note to s. 42-175.....	ad. No. 72, 2001 rep. No. 76, 2001
S. 42-180.....	ad. No. 121, 1997 am. No. 164, 1999 rep. No. 76, 2001
S. 42-182.....	ad. No. 121, 1997 rs. No. 164, 1999 rep. No. 76, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 76, 2001
S. 42-185.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-190.....	ad. No. 121, 1997 am. No. 93, 1999 rep. No. 76, 2001
Note to s. 42-190(2) .....	am. No. 164, 1999 rep. No. 76, 2001
S. 42-192.....	ad. No. 164, 1999 rep. No. 76, 2001
S. 42-195.....	ad. No. 121, 1997 am. No. 93, 1999 rep. No. 76, 2001
Note to s. 42-195.....	ad. No. 72, 2001 rep. No. 76, 2001
S. 42-197.....	ad. No. 164, 1999 rep. No. 76, 2001
S. 42-198.....	ad. No. 164, 1999 rep. No. 76, 2001
S. 42-200.....	ad. No. 121, 1997 am. No. 93, 1999 rep. No. 76, 2001
S. 42-205.....	ad. No. 121, 1997 am. No. 174, 1997; Nos. 16 and 47, 1998; Nos. 169 and 176, 1999; No. 72, 2001 rep. No. 76, 2001
S. 42-210.....	ad. No. 121, 1997 am. No. 174, 1997; No. 176, 1999 rep. No. 76, 2001
S. 42-215.....	ad. No. 121, 1997 am. No. 174, 1997 rep. No. 76, 2001
Heading to s. 42-220.....	rs. No. 170, 2001 rep. No. 76, 2001
S. 42-220.....	ad. No. 121, 1997 rep. No. 76, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 42-220A .....	ad. No. 170, 2001 rep. No. 76, 2001
Subdivision 42-GA .....	ad. No. 164, 1999 rep. No. 76, 2001
S. 42-221 .....	ad. No. 164, 1999 rep. No. 76, 2001
S. 42-222 .....	ad. No. 164, 1999 rep. No. 76, 2001
S. 42-223 .....	ad. No. 164, 1999 rep. No. 76, 2001
S. 42-224 .....	ad. No. 164, 1999 rep. No. 76, 2001
S. 42-225 .....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-230 .....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-232 .....	ad. No. 121, 1997 rep. No. 76, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 76, 2001
S. 42-235 .....	ad. No. 121, 1997 rep. No. 76, 2001
Note to s. 42-235(1) .....	ad. No. 174, 1997
Renumbered Note 1 .....	No. 72, 2001
Note 1 to s. 42-235(1) .....	rep. No. 76, 2001
Note 2 to s. 42-235(1) .....	ad. No. 72, 2001 rep. No. 76, 2001
S. 42-240 .....	ad. No. 121, 1997 rep. No. 76, 2001
Note to s. 42-240(3) .....	am. No. 164, 1999 rep. No. 76, 2001
S. 42-245 .....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-250 .....	ad. No. 121, 1997 rep. No. 76, 2001
Note to s. 42-250 .....	ad. No. 174, 1997
Renumbered Note 1 .....	No. 72, 2001
Note 1 to s. 42-250 .....	rep. No. 76, 2001
Note 2 to s. 42-250(1) .....	ad. No. 72, 2001 rep. No. 76, 2001
S. 42-255 .....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-260 .....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-265 .....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-270 .....	ad. No. 121, 1997 rep. No. 76, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Link note to Guide .....	ad. No. 16, 1998 rep. No. 76, 2001
S. 42-275.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-280.....	ad. No. 121, 1997 am. No. 164, 1999 rep. No. 76, 2001
S. 42-285.....	ad. No. 121, 1997 am. No. 164, 1999 rep. No. 76, 2001
Note to s. 42-285(1) .....	ad. No. 169, 1999 rep. No. 76, 2001
S. 42-290.....	ad. No. 121, 1997 am. No. 164, 1999 rep. No. 76, 2001
Note to s. 42-290(1) .....	ad. No. 169, 1999 rep. No. 76, 2001
S. 42-293.....	ad. No. 164, 1999 rep. No. 76, 2001
S. 42-295.....	ad. No. 121, 1997 am. No. 46, 1998; Nos. 70 and 164, 1999 rep. No. 76, 2001
S. 42-300.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-305.....	ad. No. 121, 1997 rep. No. 76, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 76, 2001
Heading to s. 42-310.....	am. No. 174, 1997 rep. No. 76, 2001
S. 42-310.....	ad. No. 121, 1997 am. No. 174, 1997; No. 16, 1998 rep. No. 76, 2001
S. 42-312.....	ad. No. 174, 1997 rep. No. 76, 2001
S. 42-313.....	ad. No. 174, 1997 rep. No. 76, 2001
S. 42-315.....	ad. No. 121, 1997 am. No. 54, 1999 rep. No. 76, 2001
S. 42-320.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-325.....	ad. No. 121, 1997 rep. No. 76, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 76, 2001
S. 42-330.....	ad. No. 121, 1997 rep. No. 76, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note to s. 42-330(1) .....	ad. No. 72, 2001 rep. No. 76, 2001
S. 42-335.....	ad. No. 121, 1997 rep. No. 76, 2001
Note to s. 42-335(3) Renumbered Note 1 .....	No. 164, 1999
Note 1 to s. 42-335(3) .....	rep. No. 76, 2001
Note 2 to s. 42-335(3) .....	ad. No. 164, 1999 rep. No. 76, 2001
Subdivision 42-K .....	rep. No. 46, 1998 ad. No. 164, 1999 rep. No. 76, 2001
S. 42-340.....	ad. No. 121, 1997 rep. No. 46, 1998 ad. No. 164, 1999 rep. No. 76, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 46, 1998
S. 42-345.....	ad. No. 121, 1997 rep. No. 46, 1998 ad. No. 164, 1999 rep. No. 76, 2001
S. 42-350.....	ad. No. 121, 1997 rep. No. 76, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 76, 2001
S. 42-355.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-360.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-365.....	ad. No. 121, 1997 am. No. 170, 2001 rep. No. 76, 2001
Note to s. 42-365.....	ad. No. 72, 2001 rep. No. 76, 2001
S. 42-370.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-375.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-380.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-385.....	ad. No. 121, 1997 rep. No. 76, 2001
S. 42-390.....	ad. No. 121, 1997 am. No. 164, 1999 rep. No. 76, 2001
Note to s. 42-390(2) .....	am. No. 164, 1999 rep. No. 76, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 42-395.....	ad. No. 121, 1997 rs. No. 46, 1998 rep. No. 76, 2001
Subdivision 42-M.....	ad. No. 79, 2000 rep. No. 76, 2001
S. 42-445.....	ad. No. 79, 2000 rep. No. 76, 2001
S. 42-450.....	ad. No. 79, 2000 rep. No. 76, 2001
S. 42-455.....	ad. No. 79, 2000 am. No. 170, 2001 rep. No. 76, 2001
S. 42-460.....	ad. No. 79, 2000 am. No. 76, 2001 rep. No. 76, 2001
S. 42-465.....	ad. No. 79, 2000 rep. No. 76, 2001
S. 42-470.....	ad. No. 79, 2000 rep. No. 76, 2001
S. 42-475.....	ad. No. 79, 2000 rep. No. 76, 2001
<b>Division 43</b>	
<b>Subdivision 43-A</b>	
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 43-20.....	am. No. 46, 1998; No. 77, 2001
Note to s. 43-20.....	am. No. 46, 1998
S. 43-40.....	am. No. 101, 2006
S. 43-45.....	rs. No. 77, 2001
S. 43-50.....	am. No. 121, 1997; Nos. 16 and 46, 1998; No. 72, 2001; No. 14, 2009
Note 1 to s. 43-50(3) .....	rs. No. 46, 1998
S. 43-55.....	am. No. 121, 1997; No. 101, 2004; No. 63, 2005
<b>Subdivision 43-B</b>	
S. 43-65.....	am. No. 16, 1998
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 43-70.....	am. No. 121, 1997; Nos. 77 and 170, 2001; No. 101, 2006
S. 43-72.....	ad. No. 77, 2001
Heading to s. 43-100.....	rs. No. 164, 2007
S. 43-100.....	am. No. 164, 2007
<b>Subdivision 43-C</b>	
S. 43-110.....	am. No. 16, 1998
Note to s. 43-110.....	ad. No. 72, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 43-D</b>	
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 43-140.....	am. No. 119, 2002
Note to s. 43-140(1) Renumbered Note 1 .....	No. 164, 2007
Note 2 to s. 43-140(1) .....	ad. No. 164, 2007
S. 43-150.....	am. No. 4, 2007
<b>Subdivision 43-E</b>	
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 43-180.....	am. No. 46, 1998
Note 1 to s. 43-180(3) .....	rs. No. 46, 1998
<b>Subdivision 43-F</b>	
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 43-210.....	am. No. 14, 2009
S. 43-215.....	am. No. 14, 2009
<b>Subdivision 43-G</b>	
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 43-240.....	am. No. 101, 2003
<b>Subdivision 43-H</b>	
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 43-250.....	rs. No. 16, 1998 am. No. 101, 2006
Link note to s. 43-260.....	rs. No. 121, 1997; No. 39, 1999 rep. No. 164, 1999
Division 44.....	ad. No. 164, 1999 rep. No. 77, 2001
S. 44-1.....	ad. No. 164, 1999 rep. No. 77, 2001
S. 44-5.....	ad. No. 164, 1999 rep. No. 77, 2001
S. 44-10.....	ad. No. 164, 1999 rep. No. 77, 2001
S. 44-15.....	ad. No. 164, 1999 rep. No. 77, 2001
S. 44-20.....	ad. No. 164, 1999 rep. No. 77, 2001
S. 44-25.....	ad. No. 164, 1999 rep. No. 77, 2001
S. 44-30.....	ad. No. 164, 1999 rep. No. 77, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 44-35.....	ad. No. 164, 1999 rep. No. 77, 2001
S. 44-40.....	ad. No. 164, 1999 rep. No. 77, 2001
<b>Division 45</b>	
Division 45.....	ad. No. 169, 1999
S. 45-1.....	ad. No. 169, 1999 am. No. 119, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 45-5.....	ad. No. 169, 1999 am. No. 77, 2001 (as am. by No. 57, 2002); No. 58, 2006
S. 45-10.....	ad. No. 169, 1999 am. No. 77, 2001; No. 58, 2006
S. 45-15.....	ad. No. 169, 1999 am. No. 77, 2001; No. 119, 2002; No. 58, 2006
S. 45-20.....	ad. No. 169, 1999 am. No. 77, 2001; No. 119, 2002; No. 58, 2006
S. 45-25.....	ad. No. 169, 1999
S. 45-30.....	ad. No. 169, 1999
S. 45-35.....	ad. No. 169, 1999 am. No. 119, 2002
S. 45-40.....	ad. No. 77, 2001
Division 46.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-1.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-5.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-10.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-15.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-20.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-25.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-30.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-35.....	ad. No. 39, 1999 am. No. 164, 1999 rep. No. 77, 2001
S. 46-40.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-45.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-50.....	ad. No. 39, 1999 rep. No. 77, 2001



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 46-55.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-60.....	ad. No. 39, 1999 am. No. 79, 2000 rep. No. 77, 2001
S. 46-62.....	ad. No. 177, 1999 rep. No. 77, 2001
S. 46-65.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-70.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-75.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-80.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-85.....	ad. No. 39, 1999 am. No. 177, 1999 rep. No. 77, 2001
S. 46-90.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-95.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-100.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-105.....	ad. No. 39, 1999 rep. No. 77, 2001
S. 46-110.....	ad. No. 39, 1999 rep. No. 77, 2001
<b>Part 2-15</b>	
Heading to Part 2-15.....	rs. No. 66, 2003
Part 2-15 .....	ad. No. 121, 1997
<b>Division 50</b>	
<b>Subdivision 50-A</b>	
S. 50-1.....	ad. No. 121, 1997
S. 50-5.....	ad. No. 121, 1997 am. No. 47, 1998; No. 179, 1999
Note to s. 50-5.....	ad. No. 47, 1998 rep. No. 179, 1999
Note 1 to s. 50-5.....	ad. No. 179, 1999
Note 2 to s. 50-5.....	ad. No. 179, 1999
S. 50-10.....	ad. No. 121, 1997 am. No. 47, 1998
S. 50-15.....	ad. No. 121, 1997 am. No. 47, 1998; SLI 2006 No. 50; No. 54, 2009
Note to s. 50-15.....	rep. No. 101, 2004

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 50-20.....	ad. No. 121, 1997 am. No. 47, 1998; No. 89, 2000 rep. No. 89, 2000 ad. No. 63, 2005
S. 50-25.....	ad. No. 121, 1997 am. No. 54, 1999; No. 58, 2006; No. 9, 2007
S. 50-30.....	ad. No. 121, 1997 am. No. 47, 1998; No. 32, 2007
S. 50-35.....	ad. No. 121, 1997
S. 50-40.....	ad. No. 121, 1997 am. No. 66, 2000; No. 168, 2001
S. 50-45.....	ad. No. 121, 1997 am. No. 47, 1998; No. 65, 2003; No. 58, 2006
S. 50-50.....	ad. No. 47, 1998 am. No. 179, 1999
Note to s. 50-50 Renumbered Note 1 .....	No. 179, 1999
Note 2 to s. 50-50.....	ad. No. 179, 1999
Heading to s. 50-52.....	rs. No. 63, 2005
S. 50-52.....	ad. No. 179, 1999 am. No. 95, 2004; No. 63, 2005
Note to s. 50-52(1) .....	am. No. 63, 2005
Note to s. 50-52(3) .....	am. No. 95, 2004; No. 63, 2005
S. 50-55.....	ad. No. 47, 1998 am. No. 179, 1999
S. 50-57.....	ad. No. 179, 1999
S. 50-60.....	ad. No. 47, 1998 am. No. 179, 1999; No. 63, 2005
Note to s. 50-60 Renumbered Note 1 .....	No. 179, 1999
Note 2 to s. 50-60.....	ad. No. 179, 1999
S. 50-65.....	ad. No. 47, 1998 am. No. 179, 1999
Heading to s. 50-70.....	rs. No. 143, 2007
S. 50-70.....	ad. No. 47, 1998 am. No. 179, 1999; No. 89, 2000
S. 50-72.....	ad. No. 89, 2000 rep. No. 89, 2000 ad. No. 63, 2005
S. 50-75.....	ad. No. 47, 1998 am. No. 63, 2005
S. 50-80.....	ad. No. 47, 1998 am. No. 179, 1999; No. 58, 2006
Link note to s. 50-80.....	rep. No. 179, 1999
<b>Subdivision 50-B</b>	
Subdivision 50-B .....	ad. No. 179, 1999
S. 50-100.....	ad. No. 179, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Link note to Guide .....	rep. No. 41, 2005
S. 50-105.....	ad. No. 179, 1999 am. No. 95, 2004
Note to s. 50-105.....	ad. No. 95, 2004
S. 50-110.....	ad. No. 179, 1999 am. No. 63, 2005
S. 50-115.....	ad. No. 179, 1999 rep. No. 95, 2004
S. 50-120.....	ad. No. 179, 1999 rep. No. 95, 2004
S. 50-125.....	ad. No. 179, 1999 rep. No. 95, 2004
S. 50-130.....	ad. No. 179, 1999 rep. No. 95, 2004
S. 50-135.....	ad. No. 179, 1999 rep. No. 95, 2004
S. 50-140.....	ad. No. 179, 1999 rep. No. 95, 2004
S. 50-145.....	ad. No. 179, 1999 rep. No. 95, 2004
S. 50-150.....	ad. No. 179, 1999 rep. No. 95, 2004
S. 50-155.....	ad. No. 179, 1999 rep. No. 95, 2004
S. 50-160.....	ad. No. 179, 1999 rep. No. 95, 2004
Link note to s. 50-160.....	rep. No. 41, 2005
<b>Division 51</b>	
S. 51-1.....	ad. No. 121, 1997
S. 51-5.....	ad. No. 121, 1997 am. No. 10, 2001; No. 65, 2003; No. 58, 2006
S. 51-10.....	ad. No. 121, 1997 am. No. 16, 1998; No. 54, 1999; No. 66, 2005; No. 114, 2007; No. 38, 2008; No. 52, 2009
Link note to s. 51-10.....	am. No. 66, 2003 rep. No. 41, 2005
S. 51-15.....	ad. No. 121, 1997 rep. No. 57, 2001
S. 51-25.....	ad. No. 121, 1997 rep. No. 66, 2003
S. 51-30.....	ad. No. 121, 1997 am. No. 97, 2008; No. 14, 2009
Link note to s. 51-30.....	rep. No. 54, 1999
S. 51-32.....	ad. No. 65, 2003 rs. No. 52, 2004
S. 51-33.....	ad. No. 65, 2003 rs. No. 52, 2004

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 51-35.....	ad. No. 54, 1999 am. No. 58, 2006
Note to s. 51-35.....	am. No. 184, 2007
S. 51-40.....	ad. No. 54, 1999
Note to s. 51-40.....	am. No. 184, 2007
S. 51-42.....	ad. No. 38, 2008
S. 51-43.....	ad. No. 23, 2005
S. 51-45.....	ad. No. 121, 1997 rep. No. 66, 2003
S. 51-48.....	ad. No. 134, 1997 rep. No. 66, 2003
S. 51-49.....	ad. No. 23, 1998 rep. No. 66, 2003
S. 51-50.....	ad. No. 121, 1997 am. No. 14, 2009
S. 51-52.....	ad. No. 78, 2007
Subhead. to s. 51-54(1) .....	rs. No. 78, 2007
S. 51-54.....	ad. No. 136, 2002 am. No. 78, 2007
S. 51-55.....	ad. No. 165, 1999
S. 51-55.....	ad. No. 58, 2000
Renumbered s. 51-57.....	No. 136, 2002
S. 51-57.....	am. No. 143, 2007
S. 51-60.....	ad. No. 76, 2000 rep. No. 101, 2006 ad. No. 164, 2007 am. No. 32, 2008
S. 51-65.....	ad. No. 111, 2003 rep. No. 15, 2007
<b>Division 52</b>	
S. 52-1.....	ad. No. 121, 1997
Table of Subdiv. to Div. 52.....	am. No. 128, 1998
<b>Subdivision 52-A</b>	
S. 52-5.....	ad. No. 121, 1997
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 52-10.....	ad. No. 121, 1997 am. Nos. 197 and 202, 1997; Nos. 45, 67 and 93, 1998; Nos. 13, 83 and 152, 1999; Nos. 43 and 44, 2001; Nos. 60 and 132, 2004; No. 55, 2005; Nos. 41 and 82, 2006; Nos. 66, 182 and 183, 2007; Nos. 19, 64, 97 and 131, 2008; Nos. 4 and 35, 2009
S. 52-15.....	ad. No. 121, 1997 am. No. 197, 1997; No. 45, 1998; Nos. 13 and 83, 1999; No. 35, 2003; Nos. 38 and 97, 2008
S. 52-20.....	ad. No. 121, 1997 am. No. 197, 1997; Nos. 45 and 132, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 52-25.....	ad. No. 121, 1997 am. No. 197, 1997; No. 132, 1998; No. 13, 1999; No. 97, 2008
S. 52-30.....	ad. No. 121, 1997 am. No. 197, 1997; Nos. 45 and 132, 1998
S. 52-35.....	ad. No. 121, 1997 am. No. 132, 1998; No. 13, 1999
S. 52-40.....	ad. No. 121, 1997 am. Nos. 197 and 202, 1997; Nos. 45 and 93, 1998; Nos. 13, 83 and 152, 1999; No. 35, 2003; No. 132, 2004; No. 82, 2006; Nos. 64 and 97, 2008
<b>Subdivision 52-B</b>	
S. 52-60.....	ad. No. 121, 1997 am. No. 101, 2003
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 52-65.....	ad. No. 121, 1997 am. No. 67, 1998; Nos. 100 and 132, 2004; No. 41, 2006; Nos. 66, 89 and 183, 2007; Nos. 19, 48, 97 and 131, 2008
S. 52-70.....	ad. No. 121, 1997 am. No. 45, 1998; No. 14, 2009
S. 52-75.....	ad. No. 121, 1997 am. No. 101, 2003; Nos. 100 and 132, 2004; No. 41, 2006; No. 66, 2007; Nos. 19, 48, 97 and 131, 2008
<b>Subdivision 52-C</b>	
S. 52-100.....	ad. No. 121, 1997
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 52-105.....	ad. No. 121, 1997 am. No. 144, 2008; No. 14, 2009
S. 52-110.....	ad. No. 121, 1997
<b>Subdivision 52-CA</b>	
Subdivision 52-CA.....	ad. No. 52, 2004
S. 52-112.....	ad. No. 52, 2004
Link note to Guide .....	rep. No. 41, 2005
S. 52-114.....	ad. No. 52, 2004
<b>Subdivision 52-CB</b>	
Subdivision 52-CB.....	ad. No. 136, 2006
S. 52-117.....	ad. No. 136, 2006
<b>Subdivision 52-D</b>	
Heading to Subdiv. 52-D .....	rs. No. 128, 1998
Subdivision 52-D .....	ad. No. 196, 1997
S. 52-120.....	ad. No. 196, 1997 rep. No. 83, 1999
S. 52-125.....	ad. No. 128, 1998 am. No. 32, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 52-E</b>	
Subdivision 52-E .....	ad. No. 60, 1999 rep. No. 66, 2003 ad. No. 184, 2007
S. 52-130.....	ad. No. 60, 1999 rep. No. 66, 2003 ad. No. 184, 2007
S. 52-131.....	ad. No. 184, 2007
S. 52-132.....	ad. No. 184, 2007
S. 52-133.....	ad. No. 184, 2007
S. 52-134.....	ad. No. 184, 2007
<b>Subdivision 52-F</b>	
Subdivision 52-F .....	ad. No. 54, 1999
S. 52-140.....	ad. No. 54, 1999 am. No. 150, 2003; No. 184, 2007
Note to s. 52-140(1) .....	ad. No. 184, 2007
S. 52-145.....	ad. No. 54, 1999 am. No. 54, 1999; No. 52, 2004
<b>Subdivision 52-G</b>	
Subdivision 52-G.....	ad. No. 83, 1999
S. 52-150.....	ad. No. 83, 1999 am. Nos. 59 and 60, 2004; Nos. 82 and 113, 2007; Nos. 97 and 131, 2008; Nos. 4 and 50, 2009
<b>Subdivision 52-H</b>	
Subdivision 52-H.....	ad. No. 131, 2008
S. 52-160.....	ad. No. 131, 2008
S. 52-165.....	ad. No. 4, 2009 am. No. 25, 2009
<b>Division 53</b>	
S. 53-1.....	ad. No. 121, 1997
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 53-10.....	ad. No. 121, 1997 am. No. 179, 1997; No. 102, 1998; No. 13, 1999; No. 144, 2000; No. 20, 2004; Nos. 38 and 97, 2008
Note to s. 53-10.....	ad. No. 179, 1997
Renumbered Note 1 .....	No. 20, 2004
Note 2 to s. 53-10.....	ad. No. 20, 2004
Heading to s. 53-15.....	am. No. 179, 1997 rs. No. 144, 2000
S. 53-15.....	ad. No. 121, 1997 am. No. 179, 1997; Nos. 93 and 102, 1998; No. 83, 1999; No. 144, 2000; No. 97, 2008
S. 53-20.....	ad. No. 121, 1997
Link note to s. 53-20.....	rep. No. 102, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 53-25.....	ad. No. 102, 1998 am. No. 144, 2000 rep. No. 97, 2008
Link note to s. 53-25.....	rep. No. 139, 2002
<b>Division 54</b>	
Division 54.....	ad. No. 139, 2002
S. 54-1.....	ad. No. 139, 2002
<b>Subdivision 54-A</b>	
S. 54-5.....	ad. No. 139, 2002
S. 54-10.....	ad. No. 139, 2002
<b>Subdivision 54-B</b>	
S. 54-15.....	ad. No. 139, 2002
S. 54-20.....	ad. No. 139, 2002
S. 54-25.....	ad. No. 139, 2002
S. 54-30.....	ad. No. 139, 2002
S. 54-35.....	ad. No. 139, 2002
S. 54-40.....	ad. No. 139, 2002
<b>Subdivision 54-C</b>	
S. 54-45.....	ad. No. 139, 2002
S. 54-50.....	ad. No. 139, 2002
S. 54-55.....	ad. No. 139, 2002
S. 54-60.....	ad. No. 139, 2002
<b>Subdivision 54-D</b>	
S. 54-65.....	ad. No. 139, 2002
S. 54-70.....	ad. No. 139, 2002
S. 54-75.....	ad. No. 139, 2002
<b>Division 55</b>	
S. 55-1.....	ad. No. 121, 1997
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 55-5.....	ad. No. 121, 1997 am. No. 81, 2005
S. 55-10.....	ad. No. 121, 1997
Link note to s. 55-10.....	rs. No. 93, 1999 rep. No. 41, 2005
<b>Division 58</b>	
Division 58.....	ad. No. 93, 1999 rs. No. 77, 2001
S. 58-1.....	ad. No. 93, 1999 rs. No. 77, 2001
S. 58-2.....	ad. No. 93, 1999 rep. No. 77, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 58-A</b>	
S. 58-5.....	ad. No. 93, 1999 rs. No. 77, 2001 am. No. 78, 2007
S. 58-10.....	ad. No. 93, 1999 rs. No. 77, 2001 am. No. 58, 2006; No. 78, 2007
S. 58-15.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-20.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-25.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-30.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-35.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-40.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-45.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-50.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-55.....	ad. No. 93, 1999 rep. No. 77, 2001
<b>Subdivision 58-B</b>	
S. 58-60.....	ad. No. 93, 1999 rs. No. 77, 2001
S. 58-65.....	ad. No. 93, 1999 rs. No. 77, 2001 am. No. 97, 2008
S. 58-70.....	ad. No. 93, 1999 rs. No. 77, 2001
S. 58-75.....	ad. No. 93, 1999 rs. No. 77, 2001 am. No. 53, 2002
S. 58-80.....	ad. No. 93, 1999 rs. No. 77, 2001
Note to s. 58-80(6) .....	ad. No. 53, 2002
S. 58-85.....	ad. No. 93, 1999 am. Nos. 164 and 169, 1999 rs. No. 77, 2001 am. No. 78, 2007
Heading to s. 58-90.....	am. No. 53, 2002
S. 58-90.....	ad. No. 93, 1999 rs. No. 77, 2001 am. No. 53, 2002



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 58-95.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-100.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-105.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-110.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-115.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-120.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-125.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-130.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-135.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-140.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-145.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-150.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-155.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-160.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-165.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-170.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-175.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-180.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-185.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-190.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-195.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-200.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-205.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-210.....	ad. No. 93, 1999 rep. No. 77, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 58-215.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-220.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-225.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-230.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-235.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-240.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-245.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-250.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-255.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-260.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-265.....	ad. No. 93, 1999 rep. No. 77, 2001
S. 58-270.....	ad. No. 93, 1999 rep. No. 77, 2001
<b>Division 59</b>	
Division 59.....	ad. No. 66, 2003
S. 59-1.....	ad. No. 66, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 59-5.....	ad. No. 66, 2003
S. 59-10.....	ad. No. 66, 2003
S. 59-15.....	ad. No. 66, 2003
S. 59-20.....	ad. No. 66, 2003
S. 59-25.....	ad. No. 66, 2003
S. 59-30.....	ad. No. 66, 2003
Link note to s. 59-30.....	rep. No. 41, 2005
S. 59-35.....	ad. No. 13, 2006
S. 59-40.....	ad. No. 91, 2008
S. 59-45.....	ad. No. 6, 2009
S. 59-50.....	ad. No. 42, 2009
<b>Part 2-20</b>	
Heading to Part 2-20 .....	ad. No. 56, 1997
Link note to Part 2-20.....	rep. No. 41, 2005
<b>Division 61</b>	
Division 61.....	ad. No. 56, 1997
Subdivision 61-A .....	rep. No. 60, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 61-50.....	ad. No. 47, 1998 rep. No. 60, 1999
S. 61-55.....	ad. No. 47, 1998 rep. No. 60, 1999
S. 61-60.....	ad. No. 47, 1998 rep. No. 60, 1999
S. 61-65.....	ad. No. 47, 1998 rep. No. 60, 1999
S. 61-70.....	ad. No. 47, 1998 rep. No. 60, 1999
Link note to Subdiv. 61-G..... of Div. 61	ad. No. 60, 1999 rep. No. 41, 2005
<b>Subdivision 61-G</b>	
Heading to Subdiv. 61-G.....	rs. No. 128, 1998 rep. No. 101, 2006 ad. No. 32, 2007
Subdivision 61-G.....	rep. No. 101, 2006 ad. No. 32, 2007
S. 61-200.....	ad. No. 32, 2007
S. 61-205.....	ad. No. 32, 2007
S. 61-210.....	ad. No. 32, 2007
S. 61-215.....	ad. No. 32, 2007
S. 61-220.....	ad. No. 32, 2007
S. 61-300.....	ad. No. 56, 1997 rep. No. 101, 2006
S. 61-305.....	ad. No. 56, 1997 rep. No. 101, 2006
S. 61-310.....	ad. No. 56, 1997 rep. No. 101, 2006
S. 61-315.....	ad. No. 56, 1997 rep. No. 101, 2006
S. 61-320.....	ad. No. 56, 1997 rep. No. 101, 2006
Link note to s. 61-320.....	ad. No. 91, 1998 rep. No. 128, 1998
Subdivision 61-H.....	ad. No. 128, 1998 rep. No. 32, 2007
S. 61-330.....	ad. No. 128, 1998 rep. No. 32, 2007
S. 61-335.....	ad. No. 128, 1998 am. No. 79, 2000 rep. No. 32, 2007
Note to s. 61-335.....	rs. No. 79, 2000 rep. No. 32, 2007
S. 61-340.....	ad. No. 128, 1998 am. No. 9, 2005 rep. No. 32, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 61-342.....	ad. No. 9, 2005 rep. No. 32, 2007
S. 61-345.....	ad. No. 128, 1998 rep. No. 32, 2007
Link note to s. 61-345.....	rep. No. 32, 2002
<b>Subdivision 61-I</b>	
Subdivision 61-I.....	ad. No. 32, 2002
S. 61-350.....	ad. No. 32, 2002 am. No. 23, 2005
Link note to Guide .....	rep. No. 41, 2005
Group heading to s. 61-355 .....	rs. No. 23, 2005
Heading to s. 61-355.....	rs. No. 23, 2005
S. 61-355.....	ad. No. 32, 2002
Note to s. 61-355(1) .....	ad. No. 23, 2005
S. 61-360.....	ad. No. 32, 2002 am. No. 59, 2004
S. 61-365.....	ad. No. 32, 2002 am. No. 23, 2005
S. 61-370.....	ad. No. 32, 2002 am. No. 23, 2005
S. 61-375.....	ad. No. 32, 2002 am. No. 23, 2005
S. 61-380.....	ad. No. 32, 2002 am. No. 23, 2005
Group heading to s. 61-385 .....	rs. No. 23, 2005
Heading to s. 61-385.....	rs. No. 23, 2005
S. 61-385.....	ad. No. 32, 2002 am. No. 23, 2005
S. 61-390.....	ad. No. 32, 2002
S. 61-395.....	ad. No. 32, 2002
S. 61-400.....	ad. No. 32, 2002
Group heading to s. 61-405 .....	rs. No. 23, 2005
S. 61-405.....	ad. No. 32, 2002 am. No. 59, 2004; No. 97, 2008
S. 61-410.....	ad. No. 32, 2002
Group heading to s. 61-415 .....	rs. No. 23, 2005
S. 61-415.....	ad. No. 32, 2002 am. No. 23, 2005
S. 61-420.....	ad. No. 32, 2002
S. 61-425.....	ad. No. 32, 2002 am. No. 23, 2005
S. 61-430.....	ad. No. 32, 2002 am. No. 23, 2005
Note to s. 61-430(1) .....	ad. No. 23, 2005
Link note to s. 61-430.....	rep. No. 23, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Group heading to s. 61-440 .....	ad. No. 23, 2005
S. 61-440.....	ad. No. 23, 2005
S. 61-445.....	ad. No. 23, 2005
S. 61-450.....	ad. No. 23, 2005
S. 61-455.....	ad. No. 23, 2005
<b>Subdivision 61-IA</b>	
Subdivision 61-IA .....	ad. No. 160, 2005
S. 61-460.....	ad. No. 160, 2005
S. 61-465.....	ad. No. 160, 2005
S. 61-470.....	ad. No. 160, 2005 am. No. 13, 2006; No. 113, 2007
S. 61-475.....	ad. No. 160, 2005
S. 61-480.....	ad. No. 160, 2005
S. 61-485.....	ad. No. 160, 2005
S. 61-490.....	ad. No. 160, 2005
S. 61-495.....	ad. No. 160, 2005
S. 61-496.....	ad. No. 160, 2005 rs. No. 58, 2006
S. 61-497.....	ad. No. 160, 2005 am. No. 58, 2006
<b>Subdivision 61-J</b>	
Subdivision 61-J.....	ad. No. 41, 2005
S. 61-500.....	ad. No. 41, 2005 am. No. 80, 2007
S. 61-505.....	ad. No. 41, 2005 am. No. 80, 2007
S. 61-510.....	ad. No. 41, 2005 am. No. 80, 2007
S. 61-515.....	ad. No. 41, 2005 am. No. 80, 2007
S. 61-520.....	ad. No. 41, 2005 am. No. 80, 2007
S. 61-525.....	ad. No. 41, 2005 rs. No. 80, 2007
<b>Subdivision 61-K</b>	
Subdivision 61-K .....	ad. No. 77, 2005
S. 61-550.....	ad. No. 77, 2005
S. 61-555.....	ad. No. 77, 2005
S. 61-560.....	ad. No. 77, 2005
Note to s. 61-560.....	am. No. 143, 2007
S. 61-565.....	ad. No. 77, 2005
S. 61-570.....	ad. No. 77, 2005 am. Nos. 15 and 143, 2007; No. 27, 2009

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 61-L</b>	
Subdivision 61-L.....	ad. No. 80, 2006
S. 61-575.....	ad. No. 80, 2006
S. 61-580.....	ad. No. 80, 2006 am. No. 27, 2009
S. 61-585.....	ad. No. 80, 2006
S. 61-590.....	ad. No. 80, 2006
<b>Subdivision 61-M</b>	
Subdivision 61-M.....	ad. No. 141, 2008
S. 61-600.....	ad. No. 141, 2008
S. 61-610.....	ad. No. 141, 2008
S. 61-620.....	ad. No. 141, 2008
S. 61-630.....	ad. No. 141, 2008
S. 61-640.....	ad. No. 141, 2008
S. 61-650.....	ad. No. 141, 2008
S. 61-660.....	ad. No. 141, 2008
S. 61-670.....	ad. No. 141, 2008
S. 61-680.....	ad. No. 141, 2008
<b>Division 63</b>	
Division 63.....	ad. No. 58, 2006
S. 63-1.....	ad. No. 58, 2006
S. 63-10.....	ad. No. 58, 2006 am. Nos. 143 and 164, 2007
Note 3 to s. 63-10(1) .....	rep. No. 143, 2007
<b>Division 65</b>	
Division 65.....	ad. No. 91, 1998
S. 65-10.....	ad. No. 91, 1998 am. No. 97, 2008
Link note to Guide .....	rep. No. 41, 2005
S. 65-20.....	ad. No. 91, 1998 rep. No. 58, 2006
Note to s. 65-20.....	am. No. 77, 2001 rep. No. 58, 2006
S. 65-25.....	ad. No. 91, 1998 am. No. 128, 1998; No. 77, 2001; No. 66, 2003; No. 160, 2005 rep. No. 58, 2006
Note to s. 65-25(2) .....	ad. No. 77, 2001 rep. No. 58, 2006
S. 65-30.....	ad. No. 91, 1998 am. No. 66, 2003; No. 58, 2006
S. 65-35.....	ad. No. 91, 1998 am. No. 66, 2003; No. 58, 2006
S. 65-40.....	ad. No. 91, 1998
S. 65-50.....	ad. No. 16, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 65-55.....	ad. No. 16, 1999
Link note to s. 65-55.....	ad. No. 121, 1997 rs. No. 128, 1998 rep. No. 41, 2005
<b>Division 67</b>	
Division 67.....	ad. No. 128, 1998 rs. No. 79, 2000
S. 67-10.....	ad. No. 128, 1998 rs. No. 79, 2000; No. 164, 2007
Link note to Guide .....	rep. No. 41, 2005
S. 67-20.....	ad. No. 128, 1998 rs. No. 79, 2000
S. 67-23.....	ad. No. 42, 2009
Heading to s. 67-25.....	rs. No. 42, 2009
Subhead. to s. 67-25(1) .....	rep. No. 42, 2009
S. 67-25.....	ad. No. 128, 1998 rs. No. 79, 2000 am. No. 170, 2001; Nos. 27, 32 and 57, 2002; No. 66, 2003; No. 83, 2004; Nos. 41 and 64, 2005; Nos. 9, 32 and 164, 2007; Nos. 130 and 141, 2008; No. 42, 2009
Note to s. 67-25(2) .....	ad. No. 66, 2003 rs. No. 32, 2007 rep. No. 42, 2009
S. 67-30.....	ad. No. 128, 1998 rs. No. 79, 2000 am. No. 23, 2005 rep. No. 58, 2006
S. 67-35.....	ad. No. 79, 2000 rep. No. 58, 2006
<b>Part 2-25</b>	
Part 2-25 .....	ad. No. 121, 1997
<b>Division 70</b>	
Heading to Guide to Div. 70 .....	ad. No. 54, 1999
S. 70-1.....	ad. No. 121, 1997
S. 70-5.....	ad. No. 121, 1997
Note to s. 70-5(3) .....	ad. No. 78, 2001 am. No. 80, 2007
<b>Subdivision 70-A</b>	
S. 70-10.....	ad. No. 121, 1997 rs. No. 15, 2009
<b>Subdivision 70-B</b>	
S. 70-15.....	ad. No. 121, 1997
Note to s. 70-15(3) Renumbered Note 1 .....	No. 78, 2001
Note 1 to s. 70-15(3) Renumbered Note .....	No. 41, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note 2 to s. 70-15(3) .....	ad. No. 78, 2001 rep. No. 41, 2005
S. 70-20.....	ad. No. 121, 1997 am. No. 176, 1999
S. 70-25.....	ad. No. 121, 1997
S. 70-30.....	ad. No. 121, 1997 am. Nos. 16 and 46, 1998; No. 176, 1999; No. 77, 2001; No. 101, 2006
Note to s. 70-30(1) .....	am. No. 46, 1998
<b>Subdivision 70-C</b>	
S. 70-35.....	ad. No. 121, 1997
Note to s. 70-35(1) .....	ad. No. 78, 2001 am. No. 80, 2007
S. 70-40.....	ad. No. 121, 1997 am. No. 78, 2001; No. 80, 2007
Note to s. 70-40(2) Renumbered Note 1 .....	No. 119, 2002 rep. No. 101, 2006
Note 2 to s. 70-40(2) .....	ad. No. 119, 2002 rep. No. 101, 2006
S. 70-45.....	ad. No. 121, 1997 am. No. 176, 1999; No. 78, 2001; No. 23, 2005; No. 80, 2007
S. 70-50.....	ad. No. 121, 1997
S. 70-55.....	ad. No. 121, 1997
S. 70-60.....	ad. No. 121, 1997
S. 70-65.....	ad. No. 121, 1997 am. No. 77, 2001
S. 70-70.....	ad. No. 121, 1997 am. No. 58, 2006
<b>Subdivision 70-D</b>	
S. 70-75.....	ad. No. 121, 1997
S. 70-80.....	ad. No. 121, 1997
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 70-85.....	ad. No. 121, 1997
S. 70-90.....	ad. No. 121, 1997 am. No. 176, 1999; No. 58, 2000; No. 58, 2006
Note 5 to s. 70-90.....	ad. No. 16, 1998
S. 70-95.....	ad. No. 121, 1997 am. No. 58, 2000
S. 70-100.....	ad. No. 121, 1997 am. Nos. 54, and 176, 1999
Note to s. 70-100(10) .....	ad. No. 144, 2008
S. 70-105.....	ad. No. 121, 1997 am. No. 176, 1999; No. 58, 2006



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 70-110.....	ad. No. 121, 1997 am. No. 54, 1999; No. 77, 2001
S. 70-115.....	ad. No. 121, 1997
<b>Subdivision 70-E</b>	
S. 70-120.....	ad. No. 121, 1997 am. No. 176, 1999; No. 58, 2006; No. 38, 2008
Link note to s. 70-120.....	rs. No. 86, 2000 rep. No. 41, 2005
<b>Part 2-40</b>	
Part 2-40 .....	ad. No. 9, 2007
<b>Division 80</b>	
S. 80-1.....	ad. No. 9, 2007
S. 80-5.....	ad. No. 9, 2007
S. 80-10.....	ad. No. 9, 2007
S. 80-15.....	ad. No. 9, 2007 am. No. 15, 2007
S. 80-20.....	ad. No. 9, 2007
<b>Division 82</b>	
S. 82-1.....	ad. No. 9, 2007
<b>Subdivision 82-A</b>	
S. 82-5.....	ad. No. 9, 2007
S. 82-10.....	ad. No. 9, 2007
<b>Subdivision 82-B</b>	
S. 82-60.....	ad. No. 9, 2007
S. 82-65.....	ad. No. 9, 2007
S. 82-70.....	ad. No. 9, 2007
S. 82-75.....	ad. No. 9, 2007
<b>Subdivision 82-C</b>	
S. 82-125.....	ad. No. 9, 2007
S. 82-130.....	ad. No. 9, 2007
S. 82-135.....	ad. No. 9, 2007 am. No. 15, 2007
S. 82-140.....	ad. No. 9, 2007
S. 82-145.....	ad. No. 9, 2007
S. 82-150.....	ad. No. 9, 2007
S. 82-155.....	ad. No. 9, 2007
S. 82-160.....	ad. No. 9, 2007
<b>Division 83</b>	
S. 83-1.....	ad. No. 9, 2007
<b>Subdivision 83-A</b>	
S. 83-5.....	ad. No. 9, 2007
S. 83-10.....	ad. No. 9, 2007
S. 83-15.....	ad. No. 9, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 83-B</b>	
S. 83-65.....	ad. No. 9, 2007
S. 83-70.....	ad. No. 9, 2007
S. 83-75.....	ad. No. 9, 2007
S. 83-80.....	ad. No. 9, 2007
S. 83-85.....	ad. No. 9, 2007
S. 83-90.....	ad. No. 9, 2007
S. 83-95.....	ad. No. 9, 2007
S. 83-100.....	ad. No. 9, 2007
S. 83-105.....	ad. No. 9, 2007
S. 83-110.....	ad. No. 9, 2007
S. 83-115.....	ad. No. 9, 2007
<b>Subdivision 83-C</b>	
S. 83-165.....	ad. No. 9, 2007
S. 83-170.....	ad. No. 9, 2007
S. 83-175.....	ad. No. 9, 2007
S. 83-180.....	ad. No. 9, 2007 am. No. 15, 2007
<b>Subdivision 83-D</b>	
S. 83-230.....	ad. No. 9, 2007
S. 83-235.....	ad. No. 9, 2007
S. 83-240.....	ad. No. 9, 2007
<b>Subdivision 83-E</b>	
S. 83-290.....	ad. No. 9, 2007
S. 83-295.....	ad. No. 9, 2007
<b>Part 2-42</b>	
Part 2-42.....	ad. No. 86, 2000
<b>Division 84</b>	
S. 84-1.....	ad. No. 86, 2000
Link note to Guide.....	rep. No. 41, 2005
S. 84-5.....	ad. No. 86, 2000
S. 84-10.....	ad. No. 86, 2000
<b>Division 85</b>	
S. 85-1.....	ad. No. 86, 2000
Link note to Guide.....	rep. No. 41, 2005
S. 85-5.....	ad. No. 86, 2000
S. 85-10.....	ad. No. 86, 2000 am. No. 15, 2007
S. 85-15.....	ad. No. 86, 2000
S. 85-20.....	ad. No. 86, 2000 am. No. 169, 2001
S. 85-25.....	ad. No. 86, 2000 am. No. 51, 2002; No. 15, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 85-30.....	ad. No. 86, 2000
Heading to s. 85-35.....	rs. No. 168, 2001
S. 85-35.....	ad. No. 86, 2000 am. No. 168, 2001
S. 85-40.....	ad. No. 86, 2000
<b>Division 86</b>	
S. 86-1.....	ad. No. 86, 2000
S. 86-5.....	ad. No. 86, 2000
<b>Subdivision 86-A</b>	
S. 86-10.....	ad. No. 86, 2000
S. 86-15.....	ad. No. 86, 2000
S. 86-20.....	ad. No. 86, 2000 am. No. 169, 2001
Note 2 to s. 86-20.....	rs. No. 20, 2004
S. 86-25.....	ad. No. 86, 2000
S. 86-27.....	ad. No. 20, 2004
S. 86-30.....	ad. No. 86, 2000
S. 86-35.....	ad. No. 86, 2000 am. No. 169, 2001
S. 86-40.....	ad. No. 86, 2000
<b>Subdivision 86-B</b>	
S. 86-60.....	ad. No. 86, 2000
S. 86-65.....	ad. No. 86, 2000 am. No. 55, 2001
S. 86-70.....	ad. No. 86, 2000
S. 86-75.....	ad. No. 86, 2000 am. No. 51, 2002; No. 58, 2006; No. 15, 2007
S. 86-80.....	ad. No. 86, 2000
S. 86-85.....	ad. No. 86, 2000 am. No. 77, 2001
S. 86-87	ad. No. 20, 2004
S. 86-90.....	ad. No. 86, 2000
<b>Division 87</b>	
S. 87-1.....	ad. No. 86, 2000 rs. No. 169, 2001
S. 87-5.....	ad. No. 86, 2000 rs. No. 169, 2001
<b>Subdivision 87-A</b>	
S. 87-10.....	ad. No. 86, 2000
S. 87-15.....	ad. No. 86, 2000 rs. No. 169, 2001 am. No. 169, 2001
S. 87-18.....	ad. No. 169, 2001 am. No. 169, 2001
S. 87-20.....	ad. No. 86, 2000

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note to s. 87-20(1) .....	ad. No. 169, 2001
S. 87-25 .....	ad. No. 86, 2000 am. No. 169, 2001; No. 58, 2006
S. 87-30 .....	ad. No. 86, 2000
S. 87-35 .....	ad. No. 86, 2000
S. 87-40 .....	ad. No. 169, 2001 am. No. 58, 2006; No. 4, 2007
<b>Subdivision 87-B</b>	
S. 87-55 .....	ad. No. 86, 2000 rep. No. 169, 2001
Subhead. to s. 87-60(3B) .....	rs. No. 83, 2004
S. 87-60 .....	ad. No. 86, 2000 am. No. 169, 2001; No. 83, 2004
Subhead. to s. 87-65(3B) .....	rs. No. 83, 2004
S. 87-65 .....	ad. No. 86, 2000 am. No. 169, 2001; No. 83, 2004
S. 87-70 .....	ad. No. 86, 2000
S. 87-75 .....	ad. No. 86, 2000
S. 87-80 .....	ad. No. 86, 2000
S. 87-85 .....	ad. No. 86, 2000
Link note to s. 87-85 .....	rep. No. 41, 2005
<b>Chapter 3</b>	
Link note to Chapt. 3 .....	rep. No. 46, 1998
<b>Part 3-1</b>	
Part 3-1 .....	ad. No. 46, 1998
<b>Division 100</b>	
S. 100-1 .....	ad. No. 46, 1998
S. 100-5 .....	ad. No. 46, 1998
S. 100-10 .....	ad. No. 46, 1998 am. No. 144, 2008
S. 100-15 .....	ad. No. 46, 1998
Note to s. 100-15 .....	ad. No. 77, 2001 am. No. 117, 2002; No. 16, 2003
S. 100-20 .....	ad. No. 46, 1998
S. 100-25 .....	ad. No. 46, 1998
S. 100-30 .....	ad. No. 46, 1998 am. No. 165, 1999; No. 173, 2000
Note to s. 100-30(2) .....	am. No. 165, 1999 rs. No. 173, 2000
S. 100-33 .....	ad. No. 46, 1998 am. No. 144, 2008
S. 100-35 .....	ad. No. 46, 1998
S. 100-40 .....	ad. No. 46, 1998 am. No. 169, 1999
S. 100-45 .....	ad. No. 46, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 100-50.....	ad. No. 46, 1998 rs. No. 169, 1999 am. No. 165, 1999
S. 100-55.....	ad. No. 46, 1998
S. 100-60.....	ad. No. 46, 1998
S. 100-65.....	ad. No. 46, 1998
S. 100-70.....	ad. No. 46, 1998
<b>Division 102</b>	
S. 102-1.....	ad. No. 46, 1998
S. 102-3.....	ad. No. 169, 1999 am. No. 89, 2000; No. 45, 2008
Note to s. 102-3(2) .....	ad. No. 169, 2001
Link note to Guide .....	ad. No. 94, 1999 rep. No. 41, 2005
S. 102-5.....	ad. No. 46, 1998 am. Nos. 165 and 169, 1999; No. 41, 2005; No. 55, 2007
S. 102-10.....	ad. No. 46, 1998
S. 102-15.....	ad. No. 46, 1998
S. 102-20.....	ad. No. 46, 1998
Note 2 to s. 102-20.....	rs. No. 94, 1999
Note 3 to s. 102-20.....	ad. No. 53, 2002 rs. No. 97, 2008
Note 4 to s. 102-20.....	ad. No. 90, 2002 rs. No. 97, 2008
Note 5 to s. 102-20 (first occurring) .....	ad. No. 97, 2008
Note 5 to s. 102-20 (second occurring).....	ad. No. 15, 2009
S. 102-22.....	ad. No. 46, 1998
S. 102-23.....	ad. No. 46, 1998
S. 102-25.....	ad. No. 46, 1998 am. Nos. 94 and 165, 1999; No. 101, 2004; No. 55, 2007
S. 102-30.....	ad. No. 46, 1998 am. Nos. 94, 165 and 169, 1999; No. 89, 2000; No. 117, 2002; No. 107, 2003; No. 96, 2004; No. 147, 2005
<b>Division 103</b>	
S. 103-1.....	ad. No. 46, 1998
Link note to Guide .....	ad. No. 94, 1999 rep. No. 41, 2005
S. 103-5.....	ad. No. 46, 1998 am. No. 176, 1999; No. 173, 2000
S. 103-10.....	ad. No. 46, 1998
S. 103-15.....	ad. No. 46, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 103-20.....	ad. No. 46, 1998 rs. No. 94, 1999 am. No. 176, 1999 rep. No. 133, 2003
S. 103-25.....	ad. No. 46, 1998 am. Nos. 94 and 165, 1999; No. 117, 2002; Nos. 55 and 79, 2007
S. 103-30.....	ad. No. 95, 2004
<b>Division 104</b>	
S. 104-1.....	ad. No. 46, 1998
S. 104-5.....	ad. No. 46, 1998 am. Nos. 94 and 165, 1999; Nos. 77 and 167, 2001; Nos. 53, 90, 117 and 136, 2002; Nos. 16, 107 and 133, 2003; No. 101, 2004; Nos. 23 and 41, 2005; No. 55, 2007
Note to s. 104-5.....	ad. No. 15, 2009
Link note to Guide .....	rep. No. 41, 2005
<b>Subdivision 104-A</b>	
S. 104-10.....	ad. No. 46, 1998 am. No. 94, 1999; No. 173, 2000; No. 97, 2008
Note to s. 104-10(5)	
Renumbered Note 1 .....	No. 169, 2001
Note 2 to s. 104-10(5) .....	ad. No. 169, 2001
Note 3 to s. 104-10(5) .....	ad. No. 90, 2002
Note 4 to s. 104-10(5) .....	ad. No. 42, 2009
Note 5 to s. 104-10(5) .....	ad. No. 42, 2009
<b>Subdivision 104-B</b>	
S. 104-15.....	ad. No. 46, 1998 am. No. 114, 2000; No. 97, 2008
Note to s. 104-15(1) .....	ad. No. 72, 2001
Note to s. 104-15(4) .....	ad. No. 94, 1999 rep. No. 101, 2006
<b>Subdivision 104-C</b>	
S. 104-20.....	ad. No. 46, 1998 am. No. 97, 2008
S. 104-25.....	ad. No. 46, 1998 am. No. 94, 1999; No. 173, 2000; No. 163, 2001; No. 97, 2008
Note to s. 104-25(3) .....	ad. No. 114, 2000 am. No. 101, 2006
Note 1 to s. 104-25(5) .....	am. No. 163, 2001
Note 4 to s. 104-25(5) .....	ad. No. 89, 2000
Note 5 to s. 104-25(5) .....	ad. No. 90, 2002
Note 6 to s. 104-25(5) .....	ad. No. 90, 2002
Note 7 to s. 104-25(5) .....	ad. No. 42, 2009
S. 104-30.....	ad. No. 46, 1998 am. No. 94, 1999; No. 97, 2008
<b>Subdivision 104-D</b>	

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 104-35.....	ad. No. 46, 1998 am. No. 94, 1999; No. 114, 2000; No. 163, 2001; No. 162, 2005; No. 97, 2008
S. 104-40.....	ad. No. 46, 1998 am. No. 94, 1999; No. 97, 2008
Note to s. 104-40(5) Renumbered Note 1 .....	No. 114, 2000
Note 2 to s. 104-40(5) .....	ad. No. 114, 2000 am. No. 101, 2006
S. 104-45.....	ad. No. 46, 1998 am. No. 97, 2008
S. 104-47.....	ad. No. 167, 2001 am. No. 41, 2005
<b>Subdivision 104-E</b>	
S. 104-55.....	ad. No. 46, 1998 am. No. 176, 1999; No. 97, 2008
S. 104-60.....	ad. No. 46, 1998 am. No. 176, 1999; No. 173, 2000; No. 97, 2008
S. 104-65.....	ad. No. 46, 1998 am. Nos. 94 and 176, 1999
Subhead. to s. 104-70(7) .....	am. No. 169, 2001
S. 104-70.....	ad. No. 46, 1998 am. Nos. 94, 165 and 169, 1999; Nos. 86, 89 and 173, 2000 rs. No. 168, 2001 am. No. 169, 2001; No. 21, 2005
Note 1 to s. 104-70(1) .....	ad. No. 89, 2000 rs. No. 168, 2001
Note 2 to s. 104-70(1) .....	ad. No. 89, 2000 rs. No. 168, 2001
Note to s. 104-70(4) .....	rep. No. 89, 2000 ad. No. 168, 2001
Note 1 to s. 104-70(4) .....	ad. No. 89, 2000 rep. No. 168, 2001
Note 2 to s. 104-70(4) .....	ad. No. 89, 2000 rep. No. 168, 2001
Note to s. 104-70(5) .....	ad. No. 173, 2000 rs. No. 168, 2001 am. No. 101, 2006
Note to s. 104-70(6) .....	ad. No. 90, 2002
S. 104-71.....	ad. No. 89, 2000 rs. No. 168, 2001 am. No. 66, 2003
S. 104-72.....	ad. No. 89, 2000 rs. No. 168, 2001
S. 104-75.....	ad. No. 46, 1998 am. No. 176, 1999
Note to s. 104-75(6) .....	ad. No. 101, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 104-80.....	ad. No. 46, 1998 am. No. 176, 1999
S. 104-85.....	ad. No. 46, 1998 am. No. 176, 1999
S. 104-90.....	ad. No. 46, 1998
S. 104-95.....	ad. No. 46, 1998 am. No. 176, 1999
S. 104-100.....	ad. No. 46, 1998 am. No. 176, 1999
S. 104-105.....	ad. No. 46, 1998 am. No. 176, 1999
<b>Subdivision 104-F</b>	
S. 104-110.....	ad. No. 46, 1998 am. No. 97, 2008
S. 104-115.....	ad. No. 46, 1998 am. No. 94, 1999; No. 97, 2008
S. 104-120.....	ad. No. 46, 1998
S. 104-125.....	ad. No. 46, 1998
S. 104-130.....	ad. No. 46, 1998 am. No. 97, 2008
<b>Subdivision 104-G</b>	
S. 104-135.....	ad. No. 46, 1998 am. Nos. 86, 114 and 173, 2000; No. 41, 2005; No. 55, 2007; No. 91, 2008
Note to s. 104-135(3) Renumbered Note 1 .....	No. 173, 2000
Note 2 to s. 104-135(3) .....	ad. No. 173, 2000 am. No. 101, 2006
Note to s. 104-135(4) .....	ad. No. 90, 2002
S. 104-140.....	ad. No. 46, 1998 rep. No. 90, 2002
S. 104-145.....	ad. No. 46, 1998 rs. No. 23, 2005
<b>Subdivision 104-H</b>	
S. 104-150.....	ad. No. 46, 1998 am. No. 173, 2000
S. 104-155.....	ad. No. 46, 1998 am. No. 94, 1999; No. 114, 2000; No. 163, 2001; No. 90, 2002; No. 162, 2005; Nos. 91 and 97, 2008
<b>Subdivision 104-I</b>	
Heading to s. 104-160.....	rs. No. 41, 2005
Subhead. to s. 104-160(5) .....	rs. No. 64, 2005
S. 104-160.....	ad. No. 46, 1998 am. No. 176, 1999; Nos. 41 and 64, 2005; No. 168, 2006
Note 1 to s. 104-160(5) .....	am. No. 41, 2005
Note 2 to s. 104-160(5) .....	am. No. 41, 2005



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note 1 to s. 104-160(6) .....	am. No. 32, 2006
Note 1A to s. 104-160(6) .....	ad. No. 32, 2006
Note 2 to s. 104-160(6) .....	am. No. 168, 2006
Heading to s. 104-165 .....	rs. No. 41, 2005; No. 32, 2006
Subhead. to s. 104-165(1) .....	rs. No. 41, 2005 rep. No. 32, 2006
S. 104-165 .....	ad. No. 46, 1998 am. No. 41, 2005; Nos. 32 and 168, 2006
Note to s. 104-165 .....	ad. No. 168, 2006
S. 104-166 .....	ad. No. 32, 2006 rep. No. 168, 2006
S. 104-170 .....	ad. No. 46, 1998 am. No. 176, 1999; No. 168, 2006
<b>Subdivision 104-J</b>	
Heading to Subdiv. 104-J .....	rs. No. 173, 2000
S. 104-175 .....	ad. No. 46, 1998 am. No. 176, 1999; No. 173, 2000; No. 68, 2002
Note to s. 104-175(1) .....	am. No. 101, 2006
Note to s. 104-175(7) .....	ad. No. 90, 2002
S. 104-180 .....	ad. No. 46, 1998
S. 104-182 .....	ad. No. 68, 2002
Heading to s. 104-185 .....	am. No. 165, 1999 rs. No. 55, 2007
S. 104-185 .....	ad. No. 94, 1999 am. No. 165, 1999; No. 173, 2000; No. 66, 2003 rs. No. 55, 2007
Note to s. 104-185(1) Renumbered Note 1 .....	No. 173, 2000
Note 1 to s. 104-185(1) .....	rs. No. 55, 2007
Note 2 to s. 104-185(1) .....	ad. No. 173, 2000 am. No. 101, 2003; No. 101, 2006 rs. No. 55, 2007
Heading to s. 104-190 .....	am. No. 165, 1999 rs. No. 55, 2007
S. 104-190 .....	ad. No. 94, 1999 am. No. 165, 1999; No. 58, 2006 rs. No. 55, 2007 am. No. 38, 2008
Note to s. 104-190(1) .....	ad. No. 173, 2000 am. No. 101, 2003; No. 101, 2006 rs. No. 55, 2007; No. 38, 2008
S. 104-195 .....	ad. No. 53, 2002
S. 104-197 .....	ad. No. 55, 2007 am. No. 80, 2007
Note to s. 104-197(1) .....	ad. No. 42, 2009
S. 104-198 .....	ad. No. 55, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note to s. 104-198(1) .....	ad. No. 42, 2009
<b>Subdivision 104-K</b>	
S. 104-205.....	ad. No. 46, 1998 rep. No. 77, 2001
Note to s. 104-205(3) Renumbered Note 1 .....	No. 173, 2000
Note 1 to s. 104-205(3) .....	rep. No. 77, 2001
Note 2 to s. 104-205(3) .....	ad. No. 173, 2000 rep. No. 77, 2001
S. 104-210.....	ad. No. 46, 1998
Note to s. 104-210(1) .....	rep. No. 101, 2006
S. 104-215.....	ad. No. 46, 1998 am. Nos. 169 and 176, 1999; No. 41, 2005; No. 168, 2006
Note to s. 104-215(5) .....	rs. No. 41, 2005
S. 104-220.....	ad. No. 46, 1998 am. No. 176, 1999; No. 58, 2006
S. 104-225.....	ad. No. 46, 1998 am. No. 176, 1999; No. 58, 2006
S. 104-230.....	ad. No. 46, 1998 am. No. 176, 1999; Nos. 89 and 114, 2000; No. 83, 2004; No. 41, 2005; Nos. 58 and 168, 2006
Note to s. 104-230.....	ad. No. 90, 2002
Heading to s. 104-235.....	am. No. 170, 2001
S. 104-235.....	ad. No. 77, 2001 am. No. 170, 2001; No. 119, 2002; No. 80, 2007
S. 104-240.....	ad. No. 77, 2001 am. No. 170, 2001; No. 38, 2008
S. 104-245.....	ad. No. 77, 2001 am. No. 38, 2008
Heading to s. 104-250.....	rs. No. 41, 2005
S. 104-250.....	ad. No. 90, 2002
S. 104-255.....	ad. No. 136, 2002 am. No. 78, 2007
S. 104-260.....	ad. No. 133, 2003
S. 104-265.....	ad. No. 133, 2003
S. 104-270.....	ad. No. 101, 2004
<b>Subdivision 104-L</b>	
Heading to Subdiv. 104-L.....	rs. No. 107, 2003
Subdivision 104-L.....	ad. No. 117, 2002
S. 104-500.....	ad. No. 117, 2002 am. No. 107, 2003
S. 104-505.....	ad. No. 16, 2003 am. No. 107, 2003
S. 104-510.....	ad. No. 16, 2003 am. Nos. 67 and 107, 2003; No. 83, 2004

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 104-515.....	ad. No. 16, 2003 am. No. 107, 2003
S. 104-520.....	ad. No. 16, 2003 am. No. 107, 2003
S. 104-525.....	ad. No. 16, 2003 am. No. 107, 2003
S. 104-530.....	ad. No. 16, 2003 am. No. 107, 2003; No. 58, 2006
S. 104-535.....	ad. No. 107, 2003
<b>Division 106</b>	
S. 106-1.....	ad. No. 46, 1998
<b>Subdivision 106-A</b>	
S. 106-5.....	ad. No. 46, 1998 am. No. 77, 2001; No. 119, 2002
<b>Subdivision 106-B</b>	
S. 106-30.....	ad. No. 46, 1998 am. No. 80, 2004
S. 106-35.....	ad. No. 46, 1998
<b>Subdivision 106-C</b>	
S. 106-50.....	ad. No. 46, 1998
<b>Subdivision 106-D</b>	
S. 106-60.....	ad. No. 46, 1998 am. No. 58, 2006
<b>Division 108</b>	
S. 108-1.....	ad. No. 46, 1998
<b>Subdivision 108-A</b>	
S. 108-5.....	ad. No. 46, 1998
Note 2 to s. 108-5(2) .....	am. No. 114, 2000; No. 101, 2006
S. 108-7.....	ad. No. 46, 1998
<b>Subdivision 108-B</b>	
S. 108-10.....	ad. No. 46, 1998
Note to s. 108-10(1) .....	ad. No. 169, 1999
S. 108-15.....	ad. No. 46, 1998
S. 108-17.....	ad. No. 46, 1998 am. No. 32, 2006
<b>Subdivision 108-C</b>	
S. 108-20.....	ad. No. 46, 1998
S. 108-25.....	ad. No. 46, 1998
S. 108-30.....	ad. No. 46, 1998 am. No. 32, 2006
<b>Subdivision 108-D</b>	
S. 108-50.....	ad. No. 46, 1998
Note to s. 108-50.....	ad. No. 173, 2000 am. No. 101, 2004

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Link note to Guide .....	ad. No. 94, 1999 rep. No. 41, 2005
S. 108-55.....	ad. No. 46, 1998 am. Nos. 77 and 170, 2001; No. 119, 2002
S. 108-60.....	ad. No. 46, 1998 rs. No. 77, 2001
S. 108-65.....	ad. No. 46, 1998
S. 108-70.....	ad. No. 46, 1998 am. No. 114, 2000; No. 77, 2001
S. 108-75.....	ad. No. 46, 1998 am. No. 77, 2001; No. 101, 2004
Note to s. 108-75(2) .....	am. No. 101, 2006
S. 108-80.....	ad. No. 46, 1998
S. 108-85.....	ad. No. 46, 1998
<b>Division 109</b>	
S. 109-1.....	ad. No. 46, 1998
<b>Subdivision 109-A</b>	
S. 109-5.....	ad. No. 46, 1998 am. Nos. 114 and 173, 2000; Nos. 77 and 167, 2001
S. 109-10.....	ad. No. 46, 1998 am. No. 173, 2000; No. 163, 2001; No. 162, 2005; No. 58, 2006
S. 109-15.....	ad. No. 46, 1998 rs. No. 114, 2000
<b>Subdivision 109-B</b>	
S. 109-50.....	ad. No. 46, 1998
S. 109-55.....	ad. No. 46, 1998 am. No. 63, 1998; Nos. 94 and 169, 1999; Nos. 58 and 114, 2000; No. 163, 2001; No. 53, 2002; Nos. 101 and 133, 2003; No. 101, 2004; No. 41, 2005; Nos. 32 and 168, 2006
S. 109-60.....	ad. No. 46, 1998 am. No. 103, 1999; No. 89, 2000; No. 41, 2005; No. 58, 2006; No. 15, 2007; Nos. 45 and 97, 2008
<b>Division 110</b>	
S. 110-1.....	ad. No. 46, 1998
S. 110-5.....	ad. No. 46, 1998
S. 110-10.....	ad. No. 46, 1998 am. No. 77, 2001; Nos. 117 and 136, 2002; Nos. 16, 107 and 133, 2003; No. 101, 2004; No. 55, 2007
<b>Subdivision 110-A</b>	
S. 110-25.....	ad. No. 46, 1998 am. Nos. 16, 94 and 169, 1999; Nos. 58 and 89, 2000; No. 169, 2001; No. 101, 2003; No. 83, 2004; Nos. 32 and 58, 2006
Note to s. 110-25(1) Renumbered Note 1 .....	No. 95, 2004
Note 2 to s. 110-25(1) .....	ad. No. 95, 2004

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note 3 to s. 110-25(1) .....	ad. No. 15, 2009
Note 1 to s. 110-25(12) .....	am. No. 32, 2006
S. 110-30.....	ad. No. 46, 1998 rep. No. 16, 1999
S. 110-35.....	ad. No. 46, 1998 am. Nos. 32 and 58, 2006
Note to s. 110-35(2) .....	rs. No. 94, 1999
S. 110-36.....	ad. No. 32, 2006 am. No. 45, 2008
S. 110-37.....	ad. No. 173, 2000
S. 110-38.....	ad. No. 147, 2005 am. No. 32, 2006; No. 78, 2007
S. 110-40.....	ad. No. 16, 1999 am. No. 173, 2000; No. 72, 2001
Notes to s. 110-40(1) .....	rep. No. 97, 2008
Note to s. 110-40(1) .....	ad. No. 97, 2008
S. 110-43.....	ad. No. 16, 1999 am. No. 173, 2000; No. 72, 2001
Note to s. 110-43(1) .....	rep. No. 97, 2008
Subhead. to s. 110-45(2) .....	am. No. 114, 2000
S. 110-45.....	ad. No. 16, 1999 am. Nos. 164 and 176, 1999; Nos. 114 and 173, 2000; Nos. 72 and 77, 2001; No. 119, 2002; No. 95, 2004; No. 101, 2006
Subhead. to s. 110-50(2) .....	am. No. 114, 2000
S. 110-50.....	ad. No. 16, 1999 am. No. 176, 1999; Nos. 114 and 173, 2000; Nos. 72 and 77, 2001; No. 95, 2004; No. 101, 2006
Heading to s. 110-53.....	rs. No. 97, 2008
S. 110-53.....	ad. No. 16, 1999 am. Nos. 114 and 173, 2000
S. 110-54.....	ad. No. 142, 2003
<b>Subdivision 110-B</b>	
S. 110-55.....	ad. No. 46, 1998 am. Nos. 16, 93, 164 and 169, 1999; No. 77, 2001; No. 83, 2004; Nos. 23 and 147, 2005; Nos. 32, 58 and 101, 2006; No. 78, 2007
Note to s. 110-55(1) .....	ad. No. 95, 2004
S. 110-60.....	ad. No. 46, 1998 am. Nos. 16, 93, 164 and 169, 1999; No. 77, 2001; No. 23, 2005; No. 101, 2006
<b>Division 112</b>	
S. 112-1.....	ad. No. 46, 1998
S. 112-5.....	ad. No. 46, 1998 am. No. 15, 2009

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 112-A</b>	
S. 112-15.....	ad. No. 46, 1998
S. 112-20.....	ad. No. 46, 1998 am. Nos. 94 and 176, 1999; No. 114, 2000; No. 58, 2006; No. 91, 2008
S. 112-25.....	ad. No. 46, 1998
Heading to s. 112-30.....	rs. No. 94, 1999
S. 112-30.....	ad. No. 46, 1998 am. No. 114, 2000
S. 112-35.....	ad. No. 46, 1998 am. No. 94, 1999
Note to s. 112-35.....	am. No. 94, 1999
S. 112-37.....	ad. No. 91, 2008
<b>Subdivision 112-B</b>	
S. 112-40.....	ad. No. 46, 1998
S. 112-45.....	ad. No. 46, 1998 am. Nos. 77 and 167, 2001; Nos. 53 and 90, 2002; Nos. 23 and 41, 2005
S. 112-48.....	ad. No. 58, 2000
S. 112-50.....	ad. No. 46, 1998
S. 112-53.....	ad. No. 89, 2000 am. No. 14, 2009
S. 112-53AA.....	ad. No. 164, 2007
S. 112-53A.....	ad. No. 143, 2007
S. 112-53B.....	ad. No. 164, 2007
S. 112-54.....	ad. No. 90, 2002
S. 112-55.....	ad. No. 46, 1998 am. No. 169, 1999
S. 112-60.....	ad. No. 46, 1998 am. No. 63, 1998
S. 112-65.....	ad. No. 46, 1998
S. 112-70.....	ad. No. 46, 1998 rs. No. 163, 2001
S. 112-75.....	ad. No. 46, 1998 am. No. 101, 2003
S. 112-77.....	ad. No. 133, 2003
S. 112-80.....	ad. No. 46, 1998
S. 112-85.....	ad. No. 46, 1998
S. 112-87.....	ad. No. 46, 1998 am. No. 32, 2006; No. 97, 2008
S. 112-90.....	ad. No. 46, 1998
S. 112-92.....	ad. No. 57, 2002
S. 112-95.....	ad. No. 46, 1998 rs. No. 169, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 112-97.....	ad. No. 46, 1998 am. No. 103 and 169, 1999; Nos. 89 and 173, 2000; Nos. 101 and 133, 2003; No. 101, 2004; No. 41, 2005; Nos. 58, 101 and 168, 2006; Nos. 15, 79 and 164, 2007; Nos. 45 and 97, 2008; Nos. 15 and 42, 2009
<b>Subdivision 112-C</b>	
S. 112-100.....	ad. No. 46, 1998
S. 112-105.....	ad. No. 46, 1998 am. No. 90, 2002
S. 112-110.....	ad. No. 46, 1998
Note 3 to s. 112-110.....	ad. No. 90, 2002 am. No. 97, 2008
S. 112-115.....	ad. No. 46, 1998 am. Nos. 94 and 165, 1999; No. 173, 2000; No. 77, 2001; Nos. 53 and 90, 2002; No. 101, 2004; Nos. 55, 143 and 164, 2007; No. 97, 2008
<b>Subdivision 112-D</b>	
S. 112-135.....	ad. No. 46, 1998
S. 112-140.....	ad. No. 46, 1998 am. Nos. 53 and 90, 2002
S. 112-145.....	ad. No. 46, 1998
Note to s. 112-145 Renumbered Note 1 .....	No. 90, 2002
Note 2 to s. 112-145.....	ad. No. 90, 2002 am. No. 97, 2008
S. 112-150.....	ad. No. 46, 1998 am. No. 114, 2001; Nos. 53, 57 and 117, 2002; No. 66, 2003; No. 78, 2005; No. 58, 2006; No. 164, 2007; No. 144, 2008
<b>Division 114</b>	
S. 114-1.....	ad. No. 46, 1998 am. No. 169, 1999
Note 1 to s. 114-1.....	rs. No. 169, 1999
Note 2 to s. 114-1.....	rs. No. 169, 1999
Note 3 to s. 114-1.....	rs. No. 169, 1999 am. No. 32, 2006
Note 4 to s. 114-1.....	ad. No. 169, 1999
S. 114-5.....	ad. No. 46, 1998 am. No. 169, 1999; No. 89, 2000; No. 169, 2001; No. 32, 2006; No. 45, 2008
S. 114-10.....	ad. No. 46, 1998 am. No. 169, 1999; No. 117, 2002
Subhead. to s. 114-15(6) .....	rs. No. 163, 2001
S. 114-15.....	ad. No. 46, 1998 am. No. 114, 2000; No. 163, 2001
Note to s. 114-15(6) .....	am. No. 163, 2001
S. 114-20.....	ad. No. 46, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 115</b>	
Division 115.....	ad. No. 169, 1999
S. 115-1.....	ad. No. 169, 1999 am. No. 169, 2001
<b>Subdivision 115-A</b>	
S. 115-5.....	ad. No. 169, 1999
Note to s. 115-5.....	am. No. 133, 2003
S. 115-10.....	ad. No. 169, 1999 am. No. 89, 2000; No. 45, 2008
Note to s. 115-10.....	rep. No. 101, 2006
S. 115-15.....	ad. No. 169, 1999
S. 115-20.....	ad. No. 169, 1999 rs. No. 173, 2000 am. No. 101, 2006; Nos. 119 and 136, 2002
Note to s. 115-20(1).....	ad. No. 169, 2001
S. 115-25.....	ad. No. 169, 1999 am. No. 165, 1999; Nos. 77 and 167, 2001; No. 136, 2002; No. 133, 2003; No. 55, 2007
S. 115-30.....	ad. No. 169, 1999 am. No. 173, 2000; No. 101, 2003; No. 147, 2005; No. 56, 2007
Link note to s. 115-30.....	rep. No. 41, 2005
S. 115-40.....	ad. No. 169, 1999
S. 115-45.....	ad. No. 169, 1999 rs. No. 173, 2000 am. No. 58, 2006
Note to s. 115-45(2).....	rs. No. 58, 2006
S. 115-50.....	ad. No. 169, 1999
Link note to s. 115-50.....	ad. No. 173, 2000 rep. No. 41, 2005
S. 115-60.....	ad. No. 173, 2000 rep. No. 168, 2001
<b>Subdivision 115-B</b>	
S. 115-100.....	ad. No. 169, 1999 rs. No. 89, 2000 am. No. 45, 2008
<b>Subdivision 115-C</b>	
Subdivision 115-C.....	rs. No. 165, 1999
S. 115-200.....	ad. No. 169, 1999 rs. No. 165, 1999
Link note to Guide.....	rep. No. 41, 2005
S. 115-210.....	ad. No. 169, 1999 rs. No. 165, 1999
S. 115-215.....	ad. No. 169, 1999 rs. No. 165, 1999 am. No. 173, 2000; No. 79, 2007; No. 32, 2008



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Heading to s. 115-220.....	rs. No. 79, 2007
Subhead. to s. 115-220(2) .....	rs. No. 79, 2007
S. 115-220.....	ad. No. 169, 1999 rs. No. 165, 1999 am. No. 79, 2007
S. 115-222.....	ad. No. 79, 2007
S. 115-225.....	ad. No. 169, 1999 rs. No. 165, 1999
S. 115-230.....	ad. No. 79, 2007
<b>Subdivision 115-D</b>	
Subdivision 115-D.....	ad. No. 169, 2001
S. 115-275.....	ad. No. 169, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 115-280.....	ad. No. 169, 2001 am. No. 64, 2005; Nos. 45 and 97, 2008
S. 115-285.....	ad. No. 169, 2001 am. No. 117, 2002; No. 164, 2007
S. 115-290.....	ad. No. 169, 2001 am. No. 58, 2006; No. 97, 2008
S. 115-295.....	ad. No. 169, 2001
<b>Division 116</b>	
S. 116-1.....	ad. No. 46, 1998
S. 116-5.....	ad. No. 46, 1998
S. 116-10.....	ad. No. 46, 1998 am. No. 38, 2008
Note to s. 116-10(7) Renumbered Note 1 .....	No. 15, 2009
Note 2 to s. 116-10(7) .....	ad. No. 15, 2009
Link note to Guide .....	rep. No. 41, 2005
S. 116-20.....	ad. No. 46, 1998 am. No. 176, 1999 (as am. by No. 57, 2002); No. 77, 2001; No. 136, 2002; No. 58, 2006
S. 116-25.....	ad. No. 46, 1998 am. No. 58, 2000; Nos. 77 and 167, 2001; Nos. 119 and 136, 2002; No. 38, 2008
Subhead. to s. 116-30(3) .....	am. No. 114, 2000
S. 116-30.....	ad. No. 46, 1998 am. Nos. 94 and 176, 1999; No. 77, 2001; No. 136, 2002; No. 41, 2005; Nos. 78 and 164, 2007; No. 38, 2008; No. 14, 2009
Note to s. 116-30(1) .....	ad. No. 94, 1999 am. Nos. 165 and 169, 1999; No. 173, 2000; No. 55, 2007
Note to s. 116-30(2) .....	rep. No. 94, 1999
S. 116-35.....	ad. No. 38, 2008
S. 116-40.....	ad. No. 46, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 116-45.....	ad. No. 46, 1998 am. No. 97, 2008
S. 116-50.....	ad. No. 46, 1998 am. No. 97, 2008
S. 116-55.....	ad. No. 46, 1998
S. 116-60.....	ad. No. 38, 2008
S. 116-65.....	ad. No. 46, 1998 rs. No. 58, 2006
S. 116-70.....	ad. No. 46, 1998 rs. No. 58, 2006
S. 116-75.....	ad. No. 46, 1998 rs. No. 173, 2000
S. 116-80.....	ad. No. 46, 1998 am. No. 176, 1999; No. 58, 2006
S. 116-85.....	ad. No. 46, 1998 am. No. 176, 1999; No. 77, 2001; No. 96, 2004
S. 116-95.....	ad. No. 46, 1998 am. No. 176, 1999; No. 64, 2005; No. 168, 2006
S. 116-100.....	ad. No. 58, 2000
S. 116-105.....	ad. No. 167, 2001
<b>Division 118</b>	
S. 118-1.....	ad. No. 46, 1998 am. No. 165, 1999
Note to s. 118-1.....	am. No. 93, 1999
Renumbered Note 1 .....	No. 139, 2002
Note 1 to s. 118-1.....	am. No. 101, 2004; No. 15, 2007
Note 2 to s. 118-1.....	ad. No. 139, 2002
Note 3 to s. 118-1.....	ad. No. 97, 2008
<b>Subdivision 118-A</b>	
Link note to Guide .....	rep. No. 41, 2005
S. 118-5.....	ad. No. 46, 1998
S. 118-10.....	ad. No. 46, 1998 am. No. 176, 1999; No. 173, 2000; No. 77, 2001
S. 118-12.....	ad. No. 46, 1998 rs. No. 66, 2003 am. No. 147, 2005; No. 143, 2007; No. 32, 2008
S. 118-13.....	ad. No. 46, 1998
S. 118-14.....	ad. No. 76, 2000 rep. No. 101, 2006
Group heading to s. 118-15 .....	rep. No. 114, 2000
S. 118-15.....	ad. No. 46, 1998 rs. No. 94, 1999 rep. No. 114, 2000
S. 118-20.....	ad. No. 46, 1998 am. No. 63, 1998; No. 176, 1999; No. 66, 2003; No. 23, 2005; No. 80, 2006; No. 15, 2007; No. 91, 2008

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note to s. 118-20(3) .....	rs. No. 15, 2007
S. 118-21 .....	ad. No. 136, 2002 am. No. 78, 2007
S. 118-22 .....	ad. No. 46, 1998 rs. No. 15, 2007
Heading to s. 118-24 .....	am. No. 170, 2001
S. 118-24 .....	ad. No. 164, 1999 rs. No. 77, 2001 am. No. 170, 2001 rs. No. 119, 2002
S. 118-25 .....	ad. No. 46, 1998
S. 118-27 .....	ad. No. 164, 2007 rs. No. 15, 2009
S. 118-30 .....	ad. No. 46, 1998 am. No. 58, 2006 rs. No. 101, 2006
S. 118-35 .....	ad. No. 46, 1998 am. No. 170, 2001
S. 118-37 .....	ad. No. 94, 1999 am. Nos. 22 and 114, 2000; No. 12, 2003; Nos. 20 and 101, 2004; No. 41, 2005; No. 80, 2006; Nos. 38, 123 and 130, 2008; No. 42, 2009
S. 118-40 .....	ad. No. 46, 1998
S. 118-42 .....	ad. No. 46, 1998
S. 118-45 .....	ad. No. 46, 1998 am. No. 77, 2001
S. 118-55 .....	ad. No. 46, 1998
Heading to s. 118-60 .....	rs. No. 58, 2000
S. 118-60 .....	ad. No. 46, 1998 am. No. 58, 2000; No. 63, 2005; No. 58, 2006
S. 118-65 .....	ad. No. 86, 2000
S. 118-65 .....	ad. No. 173, 2000
Renumbered s. 118-70 .....	No. 101, 2003
Heading to s. 118-75 .....	rs. No. 144, 2008
S. 118-75 .....	ad. No. 168, 2006 am. No. 144, 2008
Group Heading to .....	ad. No. 78, 2007
s. 118-80	
S. 118-80 .....	ad. No. 78, 2007
<b>Subdivision 118-B</b>	
S. 118-100 .....	ad. No. 46, 1998
S. 118-105 .....	ad. No. 46, 1998
Link note to Guide .....	rep. No. 41, 2005
S. 118-110 .....	ad. No. 46, 1998
S. 118-115 .....	ad. No. 46, 1998
S. 118-120 .....	ad. No. 46, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 118-125.....	ad. No. 46, 1998
S. 118-130.....	ad. No. 46, 1998
S. 118-135.....	ad. No. 46, 1998
S. 118-140.....	ad. No. 46, 1998
S. 118-145.....	ad. No. 46, 1998
S. 118-150.....	ad. No. 46, 1998 am. No. 94, 1999
S. 118-155.....	ad. No. 46, 1998
S. 118-160.....	ad. No. 46, 1998
S. 118-165.....	ad. No. 46, 1998
S. 118-170.....	ad. No. 46, 1998
S. 118-175.....	ad. No. 46, 1998
S. 118-178.....	ad. No. 168, 2006 am. No. 144, 2008
Heading to s. 118-180.....	rs. No. 144, 2008
S. 118-180.....	ad. No. 46, 1998
S. 118-185.....	ad. No. 46, 1998
S. 118-190.....	ad. No. 46, 1998
S. 118-192.....	ad. No. 46, 1998 am. No. 94, 1999; No. 114, 2000; No. 58, 2006
Note to s. 118-192.....	ad. No. 94, 1999
S. 118-195.....	ad. No. 46, 1998
Note 2 to s. 118-195(1) .....	am. No. 94, 1999
S. 118-197.....	ad. No. 114, 2000
S. 118-200.....	ad. No. 46, 1998
S. 118-205.....	ad. No. 46, 1998
S. 118-210.....	ad. No. 46, 1998 am. No. 173, 2000
Subdivision 118-C .....	rep. No. 165, 1999
S. 118-250.....	ad. No. 46, 1998 am. No. 114, 2000 rep. No. 165, 1999
S. 118-255.....	ad. No. 46, 1998 am. No. 114, 2000 rep. No. 165, 1999
S. 118-260.....	ad. No. 46, 1998 rep. No. 165, 1999
<b>Subdivision 118-D</b>	
S. 118-300.....	ad. No. 46, 1998 am. No. 169, 1999; No. 89, 2000; No. 45, 2008
S. 118-305.....	ad. No. 46, 1998 am. No. 114, 2001
S. 118-310.....	ad. No. 46, 1998
S. 118-315.....	ad. No. 114, 2001
Renumbered s. 118-313.....	No. 41, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 118-315..... (2nd occurring)	ad. No. 89, 2000
S. 118-320.....	ad. No. 89, 2000 am. No. 15, 2007
<b>Subdivision 118-E</b>	
S. 118-350.....	ad. No. 46, 1998 am. No. 169, 1999; No. 89, 2000; No. 45, 2008
S. 118-355.....	ad. No. 89, 2000 rep. No. 58, 2006
<b>Subdivision 118-F</b>	
Subdivision 118-F .....	ad. No. 94, 1999 rep. No. 165, 1999 ad. No. 136, 2002
S. 118-400.....	ad. No. 94, 1999 rep. No. 165, 1999 ad. No. 136, 2002 am. No. 78, 2007
Note to s. 118-400.....	am. No. 78, 2007
Link note to Guide .....	rep. No. 41, 2005
Subhead. to s. 118-405(3) .....	rs. No. 78, 2007
S. 118-405.....	ad. No. 94, 1999 rep. No. 165, 1999 ad. No. 136, 2002 am. No. 78, 2007
S. 118-407.....	ad. No. 173, 2000 rep. No. 165, 1999 ad. No. 78, 2007
Subhead. to s. 118-410(1) .....	rs. No. 78, 2007
Subhead. to s. 118-410(4) .....	rs. No. 78, 2007
S. 118-410.....	ad. No. 94, 1999 rep. No. 165, 1999 ad. No. 136, 2002 am. No. 105, 2004; No. 78, 2007
Subhead. to s. 118-415(3) .....	rs. No. 78, 2007
S. 118-415.....	ad. No. 94, 1999 rep. No. 165, 1999 ad. No. 136, 2002 am. No. 41, 2005; No. 78, 2007
S. 118-420.....	ad. No. 94, 1999 rep. No. 165, 1999 ad. No. 136, 2002 am. No. 105, 2004; No. 41, 2005; No. 78, 2007
Heading to s. 118-425.....	rs. No. 78, 2007
Subhead. to s. 118-425(10) .....	rs. No. 78, 2007
Subhead. to s. 118-425(14) .....	rs. Nos. 78 and 164, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 118-425.....	ad. No. 94, 1999 rep. No. 165, 1999 ad. No. 136, 2002 am. No. 105, 2004; Nos. 78 and 164, 2007
Note to s. 118-425(2) .....	ad. No. 78, 2007
Note 3 to s. 118-425(3) .....	am. Nos. 78 and 164, 2007
Note to s. 118-425(5) .....	rs. No. 78, 2007
Subhead. to s. 118-427(15) .....	rs. No. 164, 2007
S. 118-427.....	ad. No. 78, 2007 am. No. 164, 2007
Note 3 to s. 118-427(4) .....	am. No. 164, 2007
S. 118-428.....	ad. No. 78, 2007
S. 118-430.....	ad. No. 94, 1999 rep. No. 165, 1999 ad. No. 136, 2002 am. No. 78, 2007
Heading to s. 118-435.....	rs. No. 41, 2005
S. 118-435.....	ad. No. 94, 1999 rep. No. 165, 1999 ad. No. 136, 2002 am. No. 78, 2007
S. 118-440.....	ad. No. 94, 1999 rep. No. 165, 1999 ad. No. 136, 2002 am. No. 105, 2004; No. 78, 2007
Note to s. 118-440(1) .....	ad. No. 105, 2004 rs. No. 78, 2007
S. 118-445.....	ad. No. 94, 1999 rep. No. 165, 1999 ad. No. 136, 2002
S. 118-450.....	ad. No. 94, 1999 rep. No. 165, 1999
<b>Subdivision 118-G</b>	
Heading to Subdiv. 118-G.....	rs. No. 136, 2002; No. 9, 2007
Subdivision 118-G.....	ad. No. 165, 1999
S. 118-500.....	ad. No. 165, 1999 am. No. 41, 2005
Link note to Guide .....	rep. No. 41, 2005
S. 118-505.....	ad. No. 165, 1999
S. 118-510.....	ad. No. 165, 1999 am. No. 55, 2001
S. 118-515.....	ad. No. 165, 1999 am. No. 41, 2005; No. 9, 2007
S. 118-520.....	ad. No. 165, 1999 am. No. 4, 2007 rs. No. 9, 2007
S. 118-525.....	ad. No. 165, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 118-H</b>	
Subdivision 118-H.....	ad. No. 57, 2002
S. 118-550.....	ad. No. 57, 2002
<b>Division 121</b>	
S. 121-10.....	ad. No. 46, 1998
Link note to Guide.....	rep. No. 41, 2005
S. 121-20.....	ad. No. 46, 1998 am. No. 91, 2000; No. 146, 2001; No. 117, 2002
Note to s. 121-20(1) Renumbered Note 1.....	No. 91, 2000
Note 2 to s. 121-20(1).....	ad. No. 91, 2000
S. 121-25.....	ad. No. 46, 1998 am. No. 146, 2001; No. 41, 2005
Note to s. 121-25(4) Renumbered Note 1.....	No. 91, 2000
Note 1 to s. 121-25(4).....	am. No. 101, 2006
Note 2 to s. 121-25(4).....	ad. No. 91, 2000
S. 121-30.....	ad. No. 46, 1998 am. No. 114, 2000; No. 21, 2005; No. 168, 2006
S. 121-35.....	ad. No. 94, 1999
Link note to s. 121-35.....	rep. No. 41, 2005
<b>Part 3-3</b>	
Part 3-3.....	ad. No. 46, 1998
<b>Division 122</b>	
S. 122-1.....	ad. No. 46, 1998
<b>Subdivision 122-A</b>	
Heading to Subdiv. 122-A.....	rs. No. 173, 2000
S. 122-5.....	ad. No. 46, 1998
Link note to Guide.....	rep. No. 41, 2005
S. 122-15.....	ad. No. 46, 1998
S. 122-20.....	ad. No. 46, 1998 am. No. 176, 1999; No. 58, 2006
S. 122-25.....	ad. No. 46, 1998 am. No. 173, 2000; No. 77, 2001; No. 133, 2003; No. 41, 2005; Nos. 58 and 168, 2006
S. 122-35.....	ad. No. 46, 1998 am. No. 176, 1999
S. 122-37.....	ad. No. 46, 1998 am. No. 176, 1999
S. 122-40.....	ad. No. 46, 1998
S. 122-45.....	ad. No. 46, 1998
S. 122-50.....	ad. No. 46, 1998 am. No. 176, 1999; No. 14, 2009
S. 122-55.....	ad. No. 46, 1998 am. No. 176, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 122-60.....	ad. No. 46, 1998 am. No. 176, 1999
S. 122-65.....	ad. No. 46, 1998
S. 122-70.....	ad. No. 46, 1998
Note to s. 122-70(2) Renumbered Note 1 .....	No. 90, 2002
Note 2 to s. 122-70(2) .....	ad. No. 90, 2002 am. No. 97, 2008
S. 122-75.....	ad. No. 46, 1998
<b>Subdivision 122-B</b>	
S. 122-120.....	ad. No. 46, 1998
Link note to Guide .....	rep. No. 41, 2005
S. 122-125.....	ad. No. 46, 1998
S. 122-130.....	ad. No. 46, 1998 am. No. 176, 1999; No. 58, 2006
S. 122-135.....	ad. No. 46, 1998 am. No. 173, 2000; No. 133, 2003; No. 41, 2005; No. 168, 2006
S. 122-140.....	ad. No. 46, 1998 am. No. 176, 1999; No. 58, 2006
Note to s. 122-140(1) .....	am. No. 41, 2005
S. 122-145.....	ad. No. 46, 1998 am. No. 176, 1999
S. 122-150.....	ad. No. 46, 1998
S. 122-155.....	ad. No. 46, 1998
S. 122-160.....	ad. No. 46, 1998 am. No. 176, 1999
S. 122-170.....	ad. No. 46, 1998
S. 122-175.....	ad. No. 46, 1998
S. 122-180.....	ad. No. 46, 1998 am. No. 176, 1999
S. 122-185.....	ad. No. 46, 1998 am. No. 176, 1999
S. 122-190.....	ad. No. 46, 1998 am. No. 176, 1999
S. 122-195.....	ad. No. 46, 1998
S. 122-200.....	ad. No. 46, 1998
Note to s. 122-200(1) Renumbered Note 1 .....	No. 90, 2002
Note 2 to s. 122-200(1) .....	ad. No. 90, 2002 am. No. 97, 2008
S. 122-205.....	ad. No. 46, 1998
Link note to s. 122-205.....	rep. No. 94, 1999 ad. No. 165, 1999 rep. No. 41, 2005



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Division 123.....	ad. No. 94, 1999 rep. No. 165, 1999
S. 123-1.....	ad. No. 94, 1999 rep. No. 165, 1999
S. 123-5.....	ad. No. 94, 1999 rep. No. 165, 1999
S. 123-7.....	ad. No. 173, 2000 rep. No. 165, 1999
S. 123-10.....	ad. No. 94, 1999 rep. No. 165, 1999
S. 123-15.....	ad. No. 94, 1999 rep. No. 165, 1999
S. 123-20.....	ad. No. 94, 1999 rep. No. 165, 1999
S. 123-25.....	ad. No. 94, 1999 rep. No. 165, 1999
S. 123-30.....	ad. No. 94, 1999 rep. No. 165, 1999
S. 123-35.....	ad. No. 94, 1999 rep. No. 165, 1999
S. 123-40.....	ad. No. 94, 1999 rep. No. 165, 1999
S. 123-45.....	ad. No. 94, 1999 rep. No. 165, 1999
S. 123-50.....	ad. No. 94, 1999 rep. No. 165, 1999
S. 123-55.....	ad. No. 94, 1999 rep. No. 165, 1999
S. 123-60.....	ad. No. 94, 1999 am. No. 164, 1999 rep. No. 165, 1999
S. 123-65.....	ad. No. 94, 1999 rep. No. 165, 1999
S. 123-70.....	ad. No. 94, 1999 rep. No. 165, 1999
S. 123-75.....	ad. No. 94, 1999 rep. No. 165, 1999
S. 123-80.....	ad. No. 94, 1999 rep. No. 165, 1999
S. 123-85.....	ad. No. 94, 1999 rep. No. 165, 1999
<b>Division 124</b>	
S. 124-1.....	ad. No. 46, 1998
S. 124-5.....	ad. No. 46, 1998 am. No. 165, 1999; No. 53, 2002; No. 101, 2004; Nos. 143 and 164, 2007
Note to s. 124-5(1) .....	ad. No. 165, 1999
Renumbered Note 1 .....	No. 101, 2004

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note 2 to s. 124-5(1) .....	ad. No. 101, 2004
Note to s. 124-5(2) .....	ad. No. 165, 1999 am. No. 101, 2004; Nos. 143 and 164, 2007
<b>Subdivision 124-A</b>	
S. 124-10.....	ad. No. 46, 1998 am. No. 114, 2000; No. 53, 2002; No. 164, 2007
Note 1 to s. 124-10(3) .....	am. No. 101, 2004; No. 164, 2007
Note 2 to s. 124-10(3) .....	am. No. 101, 2004
Note 5 to s. 124-10(3) .....	ad. No. 90, 2002 am. No. 97, 2008
S. 124-15.....	ad. No. 46, 1998 am. No. 114, 2000; No. 53, 2002
Note to s. 124-15(5) .....	ad. No. 101, 2004
<b>Subdivision 124-B</b>	
Link note to Guide .....	rep. No. 41, 2005
S. 124-70.....	ad. No. 46, 1998 am. No. 114, 2000; No. 41, 2005; Nos. 58 and 168, 2006
S. 124-75.....	ad. No. 46, 1998 am. No. 114, 2000; No. 77, 2001; No. 119, 2002
S. 124-80.....	ad. No. 46, 1998 am. No. 176, 1999; No. 114, 2000; No. 77, 2001; No. 119, 2002
S. 124-85.....	ad. No. 46, 1998 am. No. 176, 1999; No. 77, 2001; No. 41, 2005
S. 124-90.....	ad. No. 46, 1998
S. 124-95.....	ad. No. 46, 1998 am. No. 176, 1999
<b>Subdivision 124-C</b>	
Heading to s. 124-140.....	rs. No. 164, 2007
S. 124-140.....	ad. No. 46, 1998 am. No. 164, 2007
Note 1 to s. 124-140(1) .....	rs. No. 173, 2000 rep. No. 164, 2007
Note to s. 124-140(2) .....	rep. No. 164, 2007
S. 124-145.....	ad. No. 164, 2007
S. 124-150.....	ad. No. 164, 2007
S. 124-155.....	ad. No. 164, 2007
S. 124-160.....	ad. No. 164, 2007
S. 124-165.....	ad. No. 164, 2007
<b>Subdivision 124-D</b>	
S. 124-190.....	ad. No. 46, 1998
<b>Subdivision 124-E</b>	
S. 124-240.....	ad. No. 46, 1998 am. No. 63, 1998; No. 41, 2005; Nos. 58 and 168, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 124-245.....	ad. No. 46, 1998 am. No. 41, 2005; Nos. 58 and 168, 2006
<b>Subdivision 124-F</b>	
S. 124-295.....	ad. No. 46, 1998 am. No. 41, 2005; Nos. 58 and 168, 2006
S. 124-300.....	ad. No. 46, 1998 am. No. 41, 2005; Nos. 58 and 168, 2006
<b>Subdivision 124-G</b>	
S. 124-350.....	ad. No. 46, 1998
S. 124-355.....	ad. No. 46, 1998
Link note to Guide .....	rep. No. 41, 2005
S. 124-360.....	ad. No. 46, 1998 am. No. 117, 2002
S. 124-365.....	ad. No. 46, 1998 am. No. 41, 2005; Nos. 58 and 168, 2006
S. 124-370.....	ad. No. 46, 1998 am. No. 117, 2002
S. 124-375.....	ad. No. 46, 1998 am. No. 41, 2005; Nos. 58 and 168, 2006
S. 124-380.....	ad. No. 46, 1998 am. No. 117, 2002; No. 83, 2004; Nos. 58 and 168, 2006
S. 124-382.....	ad. No. 117, 2007
Group heading to s. 124-385 ....	rs. No. 117, 2002
S. 124-385.....	ad. No. 46, 1998 am. No. 176, 1999; No. 117, 2002
S. 124-390.....	ad. No. 117, 2002
<b>Subdivision 124-H</b>	
S. 124-435.....	ad. No. 46, 1998
S. 124-440.....	ad. No. 46, 1998
Link note to Guide .....	rep. No. 41, 2005
S. 124-445.....	ad. No. 46, 1998
S. 124-450.....	ad. No. 46, 1998 am. No. 41, 2005; Nos. 58 and 168, 2006
S. 124-455.....	ad. No. 46, 1998
S. 124-460.....	ad. No. 46, 1998 am. No. 41, 2005; Nos. 58 and 168, 2006
S. 124-465.....	ad. No. 46, 1998 am. Nos. 58 and 168, 2006
S. 124-470.....	ad. No. 46, 1998 am. No. 176, 1999
<b>Subdivision 124-I</b>	
S. 124-520.....	ad. No. 46, 1998 am. No. 103, 1999; No. 55, 2001; No. 41, 2005; Nos. 58 and 168, 2006
<b>Subdivision 124-J</b>	
S. 124-570.....	ad. No. 46, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Link note to Guide .....	rep. No. 41, 2005
S. 124-575.....	ad. No. 46, 1998
S. 124-580.....	ad. No. 46, 1998
S. 124-585.....	ad. No. 46, 1998 am. No. 176, 1999
S. 124-590.....	ad. No. 46, 1998
S. 124-595.....	ad. No. 46, 1998
S. 124-600.....	ad. No. 46, 1998 am. No. 176, 1999
S. 124-605.....	ad. No. 46, 1998
<b>Subdivision 124-K</b>	
Heading to Subdiv. 124-K .....	rs. No. 77, 2001
S. 124-655.....	ad. No. 46, 1998 rs. No. 77, 2001
S. 124-660.....	ad. No. 46, 1998 am. No. 77, 2001
<b>Subdivision 124-L</b>	
S. 124-700.....	ad. No. 46, 1998
Link note to Guide .....	rep. No. 41, 2005
S. 124-705.....	ad. No. 46, 1998
S. 124-710.....	ad. No. 46, 1998 am. No. 41, 2005
S. 124-715.....	ad. No. 46, 1998 am. No. 176, 1999
S. 124-720.....	ad. No. 46, 1998
S. 124-725.....	ad. No. 46, 1998
S. 124-730.....	ad. No. 46, 1998 am. No. 176, 1999
<b>Subdivision 124-M</b>	
Subdivision 124-M.....	ad. No. 165, 1999
S. 124-775.....	ad. No. 165, 1999
Link note to Guide .....	rep. No. 41, 2005
S. 124-780.....	ad. No. 165, 1999 rs. No. 89, 2000 am. No. 55, 2001; No. 58, 2006
Note 2 to s. 124-780(1) .....	am. No. 97, 2008
Note 3 to s. 124-780(1) .....	ad. No. 57, 2002 am. No. 58, 2006
Note 2 to s. 124-780(2) .....	am. No. 55, 2001
Note to s. 124-780(6) .....	am. No. 97, 2008
S. 124-781.....	ad. No. 89, 2000 am. No. 58, 2006
Note 2 to s. 124-781(1) .....	am. No. 97, 2008
Note to s. 124-781(5) .....	am. No. 97, 2008

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 124-782.....	ad. No. 89, 2000 am. No. 58, 2006; No. 97, 2008
Subhead. to s. 124-783(3) ..... (1st occurring)	rep. No. 101, 2003
S. 124-783.....	ad. No. 89, 2000
S. 124-784.....	ad. No. 89, 2000 am. No. 58, 2006
S. 124-784A .....	ad. No. 14, 2009
S. 124-784B .....	ad. No. 14, 2009
S. 124-784C .....	ad. No. 14, 2009
S. 124-785.....	ad. No. 165, 1999
S. 124-790.....	ad. No. 165, 1999 am. No. 89, 2000; No. 97, 2008
S. 124-795.....	ad. No. 165, 1999 am. No. 89, 2000; No. 117, 2002; No. 41, 2005; No. 168, 2006; No. 14, 2009
Note to s. 124-795(1) .....	rs. No. 41, 2005 rep. No. 168, 2006
S. 124-800.....	ad. No. 165, 1999 rs. No. 89, 2000 am. No. 58, 2006
S. 124-805.....	ad. No. 165, 1999 rep. No. 89, 2000
S. 124-810.....	ad. No. 165, 1999 am. No. 89, 2000
<b>Subdivision 124-N</b>	
Subdivision 124-N.....	ad. No. 53, 2002
S. 124-850.....	ad. No. 53, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 124-855.....	ad. No. 53, 2002
S. 124-860.....	ad. No. 53, 2002 am. Nos. 58 and 168, 2006
S. 124-865.....	ad. No. 53, 2002
S. 124-870.....	ad. No. 53, 2002 am. No. 41, 2005; No. 168, 2006
Note to s. 124-870(4) .....	am. No. 58, 2006
S. 124-875.....	ad. No. 53, 2002 am. No. 168, 2006
<b>Subdivision 124-O</b>	
Subdivision 124-O.....	ad. No. 101, 2004
S. 124-880.....	ad. No. 101, 2004
S. 124-885.....	ad. No. 101, 2004
S. 124-890.....	ad. No. 101, 2004
S. 124-895.....	ad. No. 101, 2004
S. 124-900.....	ad. No. 101, 2004

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 124-905.....	ad. No. 101, 2004
S. 124-910.....	ad. No. 101, 2004
S. 124-915.....	ad. No. 101, 2004
S. 124-920.....	ad. No. 101, 2004
S. 124-925.....	ad. No. 101, 2004
S. 124-930.....	ad. No. 101, 2004
<b>Subdivision 124-P</b>	
Subdivision 124-P .....	ad. No. 143, 2007
S. 124-975.....	ad. No. 143, 2007
S. 124-980.....	ad. No. 143, 2007
S. 124-985.....	ad. No. 143, 2007
S. 124-990.....	ad. No. 143, 2007
S. 124-995.....	ad. No. 143, 2007
<b>Subdivision 124-Q</b>	
Subdivision 124-Q.....	ad. No. 164, 2007
S. 124-1040.....	ad. No. 164, 2007
S. 124-1045.....	ad. No. 164, 2007
S. 124-1050.....	ad. No. 164, 2007
S. 124-1055.....	ad. No. 164, 2007
S. 124-1060.....	ad. No. 164, 2007
S. 124-1065.....	ad. No. 164, 2007
<b>Division 125</b>	
Division 125.....	ad. No. 90, 2002
S. 125-1.....	ad. No. 90, 2002
<b>Subdivision 125-A</b>	
S. 125-5.....	ad. No. 90, 2002
<b>Subdivision 125-B</b>	
S. 125-50.....	ad. No. 90, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 125-55.....	ad. No. 90, 2002 am. No. 168, 2006
Note to s. 125-55(2) .....	rs. No. 168, 2006
S. 125-60.....	ad. No. 90, 2002 am. No. 147, 2005
S. 125-65.....	ad. No. 90, 2002
S. 125-70.....	ad. No. 90, 2002 am. No. 168, 2006
S. 125-75.....	ad. No. 90, 2002 am. No. 56, 2007
Subhead. to s. 125-80(8) .....	ad. No. 97, 2008
S. 125-80.....	ad. No. 90, 2002 am. No. 41, 2005
Note to s. 125-80(7) .....	am. No. 41, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 125-85.....	ad. No. 90, 2002
S. 125-90.....	ad. No. 90, 2002
S. 125-95.....	ad. No. 90, 2002
S. 125-100.....	ad. No. 90, 2002
<b>Subdivision 125-C</b>	
S. 125-150.....	ad. No. 90, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 125-155.....	ad. No. 90, 2002
S. 125-160.....	ad. No. 90, 2002
S. 125-165.....	ad. No. 90, 2002
S. 125-170.....	ad. No. 90, 2002
<b>Subdivision 125-D</b>	
S. 125-225.....	ad. No. 90, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 125-230.....	ad. No. 90, 2002
<b>Division 126</b>	
S. 126-1.....	ad. No. 46, 1998
<b>Subdivision 126-A</b>	
Heading to Subdiv. 126-A .....	rs. No. 144, 2008
S. 126-5.....	ad. No. 46, 1998 am. No. 114, 2000; No. 168, 2006; No. 164, 2007; Nos. 115 and 144, 2008
Note to s. 126-5(5) Renumbered Note 1 .....	No. 168, 2006
Note 2 to s. 126-5(5) .....	ad. No. 168, 2006
S. 126-15.....	ad. No. 46, 1998 am. No. 176, 1999; No. 168, 2006; No. 164, 2007; Nos. 115 and 144, 2008
Note after s. 126-15(4) .....	ad. No. 90, 2002 am. No. 97, 2008
S. 126-20.....	ad. No. 46, 1998 am. No. 168, 2006
S. 126-25.....	ad. No. 168, 2006 am. No. 144, 2008
<b>Subdivision 126-B</b>	
S. 126-40.....	ad. No. 46, 1998 rs. No. 68, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 126-45.....	ad. No. 46, 1998 am. No. 114, 2000
S. 126-50.....	ad. No. 46, 1998 am. No. 94, 1999; No. 173, 2000; No. 68, 2002; No. 133, 2003; No. 83, 2004; No. 168, 2006
S. 126-55.....	ad. No. 46, 1998 am. No. 169, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 126-60.....	ad. No. 46, 1998 am. No. 169, 1999
Note to s. 126-60(2) Renumbered Note 1 .....	No. 90, 2002
Note 2 to s. 126-60(2) .....	ad. No. 90, 2002 am. No. 97, 2008
Note to s. 126-60(3) .....	am. No. 173, 2000
Renumbered Note 1 .....	No. 107, 2003
Note 2 to s. 126-60(3) .....	ad. No. 107, 2003
Note to s. 126-60(4) .....	rep. No. 169, 1999
S. 126-65.....	ad. No. 46, 1998 rep. No. 169, 1999
S. 126-70.....	ad. No. 46, 1998 rep. No. 169, 1999
S. 126-75.....	ad. No. 46, 1998 am. No. 168, 2006
S. 126-80.....	ad. No. 46, 1998 rep. No. 169, 1999
S. 126-85.....	ad. No. 46, 1998 am. Nos. 94, 169 and 176, 1999
<b>Subdivision 126-C</b>	
S. 126-125.....	ad. No. 46, 1998 am. No. 66, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 126-130.....	ad. No. 46, 1998 am. No. 66, 2003
S. 126-135.....	ad. No. 46, 1998
<b>Subdivision 126-D</b>	
Subdivision 126-D .....	ad. No. 114, 2001
S. 126-140.....	ad. No. 114, 2001 am. No. 164, 2007; Nos. 115 and 144, 2008
<b>Subdivision 126-E</b>	
Subdivision 126-D .....	ad. No. 57, 2002
Relettered Subdivision 126-E .....	No. 58, 2006
Group heading to s. 126-185 ....	rs. No. 58, 2006
S. 126-185.....	ad. No. 57, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 126-190.....	ad. No. 57, 2002
Note to s. 126-190.....	ad. No. 97, 2008
S. 126-195.....	ad. No. 57, 2002
<b>Subdivision 126-F</b>	
Subdivision 126-F .....	ad. No. 78, 2005
S. 126-200.....	ad. No. 78, 2005
S. 126-205.....	ad. No. 78, 2005



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 126-210.....	ad. No. 78, 2005
Note 2 to s. 126-210(5) .....	am. No. 15, 2007
<b>Division 128</b>	
S. 128-1.....	ad. No. 46, 1998
Link note to Guide .....	rep. No. 41, 2005
S. 128-10.....	ad. No. 46, 1998
Note 1 to s. 128-10.....	rs. No. 169, 1999 am. No. 41, 2005
S. 128-15.....	ad. No. 46, 1998 am. No. 176, 1999; Nos. 58 and 168, 2006
Note to s. 128-15(1) .....	rs. No. 169, 1999 am. No. 41, 2005 rep. No. 97, 2008
Note 1 to s. 128-15(1) .....	ad. No. 97, 2008
Note 2 to s. 128-15(1) .....	ad. No. 97, 2008
Note 3 to s. 128-15(1) .....	ad. No. 97, 2008
S. 128-20.....	ad. No. 46, 1998
S. 128-25.....	ad. No. 46, 1998 am. Nos. 169 and 176, 1999
Note 1 to s. 128-25(2) .....	rep. No. 97, 2008
Note 2 to s. 128-25(2) .....	rs. No. 41, 2005 am. No. 168, 2006 rep. No. 97, 2008
S. 128-50.....	ad. No. 46, 1998 am. No. 176, 1999
<b>Division 130</b>	
S. 130-1.....	ad. No. 46, 1998 rs. No. 133, 2003
<b>Subdivision 130-A</b>	
S. 130-15.....	ad. No. 46, 1998 am. No. 63, 1998; No. 94, 1999
Link note to Guide .....	rep. No. 41, 2005
S. 130-20.....	ad. No. 46, 1998 am. No. 63, 1998 (as am. by No. 57, 2002); No. 94, 1999; No. 58, 2006
Note 3 to s. 130-20(2) .....	ad. No. 63, 1998
(2nd occurring) Renumbered Note 4 .....	No. 173, 2000
Note to s. 130-20(3) .....	ad. No. 63, 1998
<b>Subdivision 130-B</b>	
S. 130-40.....	ad. No. 46, 1998 am. No. 94, 1999; No. 163, 2001; No. 133, 2003
S. 130-45.....	ad. No. 46, 1998 am. No. 163, 2001
S. 130-50.....	ad. No. 46, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 130-C</b>	
Heading to Subdiv. 130-C .....	rs. No. 163, 2001
Heading to s. 130-60 .....	am. No. 163, 2001
S. 130-60 .....	ad. No. 46, 1998 am. No. 114, 2000; No. 163, 2001; No. 133, 2003
Note 1 to s. 130-60(3) .....	am. No. 163, 2001
<b>Subdivision 130-D</b>	
S. 130-80 .....	ad. No. 46, 1998 am. No. 101, 2003; Nos. 41 and 64, 2005; Nos. 32, 58 and 168, 2006
Note to s. 130-80(1) .....	ad. No. 147, 2005
Note to s. 130-80(4) .....	am. No. 32, 2006
Renumbered Note 1 .....	No. 32, 2006
Note 1 to s. 130-80(4) .....	rep. No. 168, 2006
Note to s. 130-80(4) .....	ad. No. 168, 2006
Renumbered Note 1 .....	No. 97, 2008
Note 2 to s. 130-80(4) .....	ad. No. 32, 2006
S. 130-83 .....	ad. No. 46, 1998 am. No. 173, 2000; No. 101, 2003; Nos. 41 and 64, 2005; Nos. 32 and 168, 2006
Note to s. 130-83(4) .....	am. No. 32, 2006
Renumbered Note 1 .....	No. 32, 2006
Note 1 to s. 130-83(4) .....	rs. No. 168, 2006
Renumbered Note .....	No. 97, 2008
S. 130-85 .....	ad. No. 46, 1998 am. No. 101, 2003; No. 64, 2005; Nos. 32 and 168, 2006
Note to s. 130-85(4) .....	am. No. 32, 2006
Renumbered Note 1 .....	No. 32, 2006
Note 1 to s. 130-85(4) .....	rs. No. 168, 2006
Note 2 to s. 130-85(4) .....	ad. No. 32, 2006
Heading to s. 130-90 .....	rs. No. 41, 2005
S. 130-90 .....	ad. No. 46, 1998 am. No. 179, 1999; No. 168, 2001; No. 101, 2003; Nos. 41 and 64, 2005; No. 56, 2007; No. 59, 2008
S. 130-95 .....	ad. No. 41, 2005
S. 130-97 .....	ad. No. 56, 2007
<b>Subdivision 130-E</b>	
Subdivision 130-E .....	ad. No. 133, 2003
S. 130-100 .....	ad. No. 133, 2003 am. No. 15, 2009
S. 130-105 .....	ad. No. 133, 2003
<b>Division 132</b>	
S. 132-1 .....	ad. No. 46, 1998
S. 132-5 .....	ad. No. 46, 1998
S. 132-10 .....	ad. No. 46, 1998 am. No. 176, 1999; No. 77, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 132-15.....	ad. No. 46, 1998 am. No. 176, 1999
<b>Division 134</b>	
S. 134-1.....	ad. No. 46, 1998 am. No. 94, 1999; No. 53, 2002; No. 133, 2003; No. 58, 2006
Note 3 to s. 134-1(1) .....	ad. No. 173, 2000
Heading to Div. 136 of..... Part 3-3	rs. No. 41, 2005 rep. No. 168, 2006
Division 136.....	rep. No. 168, 2006
S. 136-1.....	ad. No. 46, 1998 am. No. 41, 2005 rep. No. 168, 2006
Link note to Guide .....	rep. No. 41, 2005
Heading to s. 136-5.....	rs. No. 41, 2005 rep. No. 168, 2006
S. 136-5.....	ad. No. 46, 1998 am. No. 41, 2005 rep. No. 168, 2006
S. 136-10.....	ad. No. 46, 1998 am. Nos. 94 and 165, 1999; Nos. 89 and 114, 2000; Nos. 77 and 167, 2001; No. 53, 2002; Nos. 16 and 133, 2003; Nos. 23 and 41, 2005 rep. No. 168, 2006
Heading to s. 136-15.....	rs. No. 136, 2002 rep. No. 168, 2006
S. 136-15.....	ad. No. 46, 1998 am. No. 136, 2002 rep. No. 168, 2006
S. 136-20.....	ad. No. 46, 1998 am. No. 41, 2005 rep. No. 168, 2006
S. 136-25.....	ad. No. 46, 1998 am. No. 63, 1998; No. 165, 1999; No. 89, 2000; No. 117, 2002; No. 41, 2005 rep. No. 168, 2006
Note to s. 136-25.....	ad. No. 114, 2000 am. No. 41, 2005; No. 101, 2006 rep. No. 168, 2006
S. 136-30.....	ad. No. 46, 1998 rep. No. 168, 2006
Heading to Subdiv. 136-B .....	rs. No. 41, 2005 rep. No. 168, 2006
Heading to s. 136-40.....	rs. No. 41, 2005 rep. No. 168, 2006
S. 136-40.....	ad. No. 46, 1998 am. No. 176, 1999; No. 64, 2005 rep. No. 168, 2006
Note to s. 136-40(1) .....	ad. No. 32, 2006 rep. No. 168, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 136-45.....	ad. No. 46, 1998 am. No. 176, 1999 rep. No. 168, 2006
S. 136-50.....	ad. No. 46, 1998 rep. No. 168, 2006
-Division 138 .....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-1.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-3.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-5.....	ad. No. 94, 1999 am. No. 77, 2001 rep. No. 90, 2002
Note 1 to s. 138-5.....	am. No. 77, 2001 rep. No. 90, 2002
S. 138-15.....	ad. No. 94, 1999 am. No. 114, 2000 rep. No. 90, 2002
Note to s. 138-15.....	ad. No. 169, 1999 rep. No. 90, 2002
S. 138-20.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-25.....	ad. No. 23, 2005 rep. No. 90, 2002
S. 138-30.....	ad. No. 94, 1999 rep. No. 90, 2002
Heading to Subdiv. 138-B .....	rs. No. 77, 2001 rep. No. 90, 2002
S. 138-80.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-85.....	ad. No. 94, 1999 am. No. 77, 2001 rep. No. 90, 2002
S. 138-90.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-95.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-100.....	ad. No. 94, 1999 am. No. 77, 2001 rep. No. 90, 2002
S. 138-105.....	ad. No. 94, 1999 rep. No. 90, 2002
Heading to s. 138-110.....	am. No. 77, 2001 rep. No. 90, 2002
S. 138-110.....	ad. No. 94, 1999 am. No. 77, 2001 rep. No. 90, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 138-155.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-160.....	ad. No. 94, 1999 am. No. 114, 2000 rep. No. 90, 2002
Note to s. 138-160(3) .....	am. No. 114, 2000 rep. No. 90, 2002
S. 138-165.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-170.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-175.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-180.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-182.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-185.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-190.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-240.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-245.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-250.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-255.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-260.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-265.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-270.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-275.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-280.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-285.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-295.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-300.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-350.....	ad. No. 94, 1999 rep. No. 90, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 138-355.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-360.....	ad. No. 94, 1999 am. No. 77, 2001 rep. No. 90, 2002
S. 138-365.....	ad. No. 94, 1999 am. No. 77, 2001 rep. No. 90, 2002
S. 138-370.....	ad. No. 94, 1999 rs. No. 77, 2001 rep. No. 90, 2002
S. 138-375.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-420.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-425.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-430.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-433.....	ad. No. 94, 1999 rep. No. 90, 2002
S. 138-435.....	ad. No. 94, 1999 am. No. 165, 1999 rep. No. 90, 2002
S. 138-440.....	ad. No. 94, 1999 rep. No. 90, 2002
Division 139.....	ad. No. 169, 1999 rep. No. 90, 2002
S. 139-5.....	ad. No. 169, 1999 rep. No. 90, 2002
S. 139-10.....	ad. No. 169, 1999 rep. No. 90, 2002
S. 139-15.....	ad. No. 169, 1999 rep. No. 90, 2002
S. 139-20.....	ad. No. 169, 1999 rep. No. 90, 2002
S. 139-25.....	ad. No. 169, 1999 rep. No. 90, 2002
S. 139-30.....	ad. No. 169, 1999 rep. No. 90, 2002
S. 139-35.....	ad. No. 169, 1999 rep. No. 90, 2002
S. 139-40.....	ad. No. 169, 1999 rep. No. 90, 2002
S. 139-45.....	ad. No. 169, 1999 rep. No. 90, 2002
S. 139-50.....	ad. No. 169, 1999 rep. No. 90, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Division 140.....	rep. No. 90, 2002
S. 140-1.....	ad. No. 46, 1998 rep. No. 90, 2002
S. 140-5.....	ad. No. 46, 1998 rep. No. 90, 2002
S. 140-10.....	ad. No. 46, 1998 am. No. 94, 1999 rep. No. 90, 2002
S. 140-15.....	ad. No. 46, 1998 am. No. 173, 2000 rep. No. 90, 2002
S. 140-20.....	ad. No. 46, 1998 rep. No. 90, 2002
S. 140-22.....	ad. No. 46, 1998 rep. No. 90, 2002
S. 140-25.....	ad. No. 46, 1998 rep. No. 90, 2002
S. 140-30.....	ad. No. 46, 1998 rep. No. 90, 2002
S. 140-45.....	ad. No. 46, 1998 rep. No. 90, 2002
S. 140-50.....	ad. No. 46, 1998 rep. No. 90, 2002
S. 140-55.....	ad. No. 46, 1998 am. No. 114, 2000 rep. No. 90, 2002
S. 140-60.....	ad. No. 46, 1998 rep. No. 90, 2002
S. 140-65.....	ad. No. 46, 1998 rep. No. 90, 2002
S. 140-70.....	ad. No. 46, 1998 rep. No. 90, 2002
S. 140-75.....	ad. No. 46, 1998 rep. No. 90, 2002
S. 140-90.....	ad. No. 46, 1998 rep. No. 90, 2002
S. 140-95.....	ad. No. 46, 1998 rep. No. 90, 2002
<b>Division 149</b>	
<b>Subdivision 149-A</b>	
S. 149-10.....	ad. No. 46, 1998 am. No. 101, 2006
S. 149-15.....	ad. No. 46, 1998 am. No. 97, 2008; No. 14, 2009
<b>Subdivision 149-B</b>	
S. 149-25.....	ad. No. 46, 1998
S. 149-30.....	ad. No. 46, 1998 am. No. 144, 2008

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 149-35.....	ad. No. 46, 1998 am. No. 176, 1999
<b>Subdivision 149-C</b>	
S. 149-50.....	ad. No. 46, 1998 am. No. 94, 1999
Heading to s. 149-55.....	am. No. 94, 1999
S. 149-55.....	ad. No. 46, 1998 am. No. 94, 1999
Heading to s. 149-60.....	am. No. 94, 1999
S. 149-60.....	ad. No. 46, 1998 am. No. 94, 1999; No. 144, 2008
S. 149-65.....	ad. No. 46, 1998 rep. No. 94, 1999
S. 149-70.....	ad. No. 46, 1998 am. No. 94, 1999
S. 149-75.....	ad. No. 46, 1998 am. Nos. 94 and 176, 1999
Heading to s. 149-80.....	am. No. 94, 1999
S. 149-80.....	ad. No. 46, 1998 am. No. 94, 1999
Subdivision 149-D.....	rep. No. 94, 1999
S. 149-100.....	ad. No. 46, 1998 rep. No. 94, 1999
S. 149-105.....	ad. No. 46, 1998 rep. No. 94, 1999
Note to s. 149-105(3).....	rep. No. 94, 1999
S. 149-110.....	ad. No. 46, 1998 rep. No. 94, 1999
S. 149-115.....	ad. No. 46, 1998 rep. No. 94, 1999
S. 149-120.....	ad. No. 46, 1998 rep. No. 94, 1999
S. 149-125.....	ad. No. 46, 1998 rep. No. 94, 1999
S. 149-130.....	ad. No. 46, 1998 rep. No. 94, 1999
S. 149-135.....	ad. No. 46, 1998 rep. No. 94, 1999
S. 149-140.....	ad. No. 46, 1998 rep. No. 94, 1999
Subdivision 149-E.....	rep. No. 94, 1999
S. 149-145.....	ad. No. 46, 1998 rep. No. 94, 1999
S. 149-150.....	ad. No. 46, 1998 rep. No. 94, 1999
S. 149-155.....	ad. No. 46, 1998 rep. No. 94, 1999



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 149-F</b>	
S. 149-162.....	ad. No. 94, 1999
S. 149-165.....	ad. No. 46, 1998 am. No. 94, 1999
S. 149-170.....	ad. No. 46, 1998 am. No. 94, 1999
Link note to s. 149-170.....	rs. No. 165, 1999 rep. No. 41, 2005
<b>Division 152</b>	
Division 152.....	ad. No. 165, 1999
S. 152-1.....	ad. No. 165, 1999
Link note to Guide .....	rep. No. 41, 2005
<b>Subdivision 152-A</b>	
S. 152-5.....	ad. No. 165, 1999 am. No. 41, 2005; Nos. 55 and 80, 2007; No. 42, 2009
Link note to Guide .....	rep. No. 41, 2005
Subhead. to s. 152-10(2) .....	ad. No. 42, 2009
Subhead. to s. 152-10(3) .....	ad. No. 42, 2009
Subhead. to s. 152-10(4) .....	ad. No. 42, 2009
S. 152-10.....	ad. No. 165, 1999 am. No. 173, 2000; No. 77, 2001; Nos. 55 and 80, 2007; No. 42, 2009
Note to s. 152-10(1)(a).....	ad. No. 173, 2000
Note to s. 152-10(1)(c).....	rs. No. 42, 2009
Note to s. 152-10(1)(d).....	ad. No. 173, 2000
Note to s. 152-10(4) Renumbered Note 1 .....	No. 42, 2009
Note 2 to s. 152-10(4) .....	ad. No. 42, 2009
S. 152-12.....	ad. No. 173, 2000
S. 152-15.....	ad. No. 165, 1999 am. No. 173, 2000 rs. No. 55, 2007 am. No. 80, 2007
Subhead. s. 152-20(2) .....	ad. No. 55, 2007
S. 152-20.....	ad. No. 165, 1999 am. Nos. 89 and 173, 2000; No. 58, 2006; Nos. 55 and 80, 2007; No. 42, 2009
S. 152-25.....	ad. No. 165, 1999 am. No. 41, 2005; No. 55, 2007 rep. No. 80, 2007
S. 152-30.....	ad. No. 165, 1999 am. No. 95, 2004; No. 55, 2007 rep. No. 80, 2007
Note to s. 152-30(2) .....	ad. No. 95, 2004 rep. No. 80, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 152-35.....	ad. No. 165, 1999 rs. No. 55, 2007
S. 152-40.....	ad. No. 165, 1999 am. No. 58, 2006; Nos. 55 and 80, 2007; No. 14, 2009 (as am. by No. 42, 2009); No. 42, 2009
Note to s. 152-40(1) Renumbered Note 1 .....	No. 80, 2007
Note 2 to s. 152-40(1) .....	ad. No. 80, 2007 am. No. 42, 2009
Note 3 to s. 152-40(1) .....	ad. No. 42, 2009
Note 4 to s. 152-40(1) .....	ad. No. 42, 2009
Example to s. 152-40(3) Renumbered Note .....	No. 101, 2003
Note to s. 152-40(3) .....	rep. No. 55, 2007
S. 152-42.....	ad. No. 80, 2007 am. No. 42, 2009
Subhead. to s. 152-45(1) .....	rs. No. 173, 2000
Subhead. to s. 152-45(2) .....	rs. No. 144, 2008
S. 152-45.....	ad. No. 165, 1999 am. No. 101, 2004
Note 2 to s. 152-45(2) .....	am. No. 144, 2008
Group heading to ..... s. 152-47	ad. No. 42, 2009
S. 152-47.....	ad. No. 42, 2009
S. 152-48.....	ad. No. 42, 2009
S. 152-49.....	ad. No. 42, 2009
Group heading to ..... s. 152-50	rs. No. 55, 2007
S. 152-50.....	ad. No. 165, 1999 rs. No. 55, 2007
S. 152-55.....	ad. No. 165, 1999 rs. No. 55, 2007
Group heading to ..... s. 152-60	rs. No. 55, 2007
S. 152-60.....	ad. No. 165, 1999 rs. No. 55, 2007
S. 152-65.....	ad. No. 55, 2007
S. 152-70.....	ad. No. 55, 2007
S. 152-75.....	ad. No. 55, 2007
Group heading to ..... s. 152-80	rs. No. 42, 2009
Heading to s. 152-80.....	rs. No. 42, 2009
S. 152-80.....	ad. No. 55, 2007 am. No. 42, 2009

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 152-B</b>	
S. 152-100.....	ad. No. 165, 1999 am. No. 55, 2007; No. 144, 2008
Link note to Guide .....	rep. No. 41, 2005
S. 152-105.....	ad. No. 165, 1999 am. No. 55, 2007
S. 152-110.....	ad. No. 165, 1999 am. No. 119, 2002; No. 66, 2003; No. 55, 2007
Subhead. to s. 152-115(1) .....	rs. No. 173, 2000
Subhead. to s. 152-115(2) .....	rs. No. 144, 2008
S. 152-115.....	ad. No. 165, 1999 am. No. 101, 2004; No. 55, 2007
Note to s. 152-115(2) .....	am. No. 144, 2008
S. 152-120.....	ad. No. 165, 1999 rs. No. 55, 2007
S. 152-125.....	ad. No. 165, 1999 am. No. 173, 2000 rs. No. 55, 2007
<b>Subdivision 152-C</b>	
Heading to Subdiv. 152-C .....	rs. No. 41, 2005
S. 152-200.....	ad. No. 165, 1999 rs. No. 58, 2006
Link note to Guide .....	rep. No. 41, 2005
S. 152-205.....	ad. No. 165, 1999
S. 152-210.....	ad. No. 165, 1999
S. 152-215.....	ad. No. 165, 1999 rs. No. 41, 2005
S. 152-220.....	ad. No. 173, 2000
Note to s. 152-220.....	am. No. 55, 2007
<b>Subdivision 152-D</b>	
S. 152-300.....	ad. No. 165, 1999 am. No. 58, 2006; No. 42, 2009
Link note to Guide .....	rep. No. 41, 2005
S. 152-305.....	ad. No. 165, 1999 am. No. 173, 2000; No. 95, 2004; Nos. 15, 55 and 80, 2007; No. 42, 2009
Note 2 to s. 152-305(1) .....	am. No. 101, 2004 rep. No. 15, 2007
S. 152-310.....	ad. No. 165, 1999 am. No. 58, 2006; Nos. 15 and 55, 2007; No. 97, 2008; No. 42, 2009
S. 152-315.....	ad. No. 165, 1999 am. No. 55, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 152-320.....	ad. No. 165, 1999 am. No. 55, 2007
S. 152-325.....	ad. No. 165, 1999 am. No. 173, 2000; No. 58, 2006 rs. No. 55, 2007 am. No. 15, 2007; No. 42, 2009
Note to s. 152-325(7) .....	am. No. 101, 2004 rs. Nos. 15 and 55, 2007
S. 152-330.....	ad. No. 41, 2005
<b>Subdivision 152-E</b>	
S. 152-400.....	ad. No. 165, 1999 am. No. 58, 2006; No. 55, 2007
S. 152-405.....	ad. No. 165, 1999 rep. No. 55, 2007
Link note to Guide .....	rep. No. 41, 2005
Group heading to s. 152-410 ....	ad. No. 55, 2007
S. 152-410.....	ad. No. 165, 1999 rs. No. 55, 2007
S. 152-415.....	ad. No. 165, 1999 rs. No. 55, 2007
S. 152-420.....	ad. No. 165, 1999 rs. No. 55, 2007
S. 152-425.....	ad. No. 165, 1999 am. No. 173, 2000 rep. No. 55, 2007
S. 152-430.....	ad. No. 41, 2005
Link note to s. 152-430.....	rep. No. 41, 2005
<b>Part 3-5</b>	
Link note to Part 3-5.....	rs. No. 163, 2001 rep. No. 41, 2005
<b>Division 164</b>	
Division 164.....	ad. No. 163, 2001
S. 164-1.....	ad. No. 163, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 164-5.....	ad. No. 163, 2001
S. 164-10.....	ad. No. 163, 2001 am. No. 162, 2005
S. 164-15.....	ad. No. 163, 2001 am. No. 162, 2005; Nos. 58 and 80, 2006
S. 164-20.....	ad. No. 163, 2001 am. No. 162, 2005; No. 58, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 165</b>	
S. 165-1.....	rs. No. 46, 1998
<b>Subdivision 165-A</b>	
S. 165-5.....	am. No. 46, 1998; No. 169, 1999 rs. No. 147, 2005 am. No. 164, 2007
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 165-10.....	am. No. 142, 2003; No. 147, 2005
Note to s. 165-10(a) .....	ad. No. 58, 2000
Note to s. 165-10.....	rep. No. 147, 2005
Note 1 to s. 165-10.....	ad. No. 147, 2005
Renumbered Note .....	No. 164, 2007
Note 2 to s. 165-10.....	ad. No. 147, 2005 rep. No. 164, 2007
S. 165-12.....	rs. No. 169, 1999 am. No. 89, 2000; No. 147, 2005; No. 143, 2007
Note to s. 165-12(1) .....	ad. No. 147, 2005
Note to s. 165-12(2) .....	am. No. 89, 2000
Heading to s. 165-13.....	rs. No. 147, 2005
S. 165-13.....	am. No. 169, 1999 rs. No. 142, 2003 am. No. 147, 2005; No. 164, 2007
Note to s. 165-13(1) Renumbered Note 1 .....	No. 147, 2005
Note 1 to s. 165-13(1) Renumbered Note .....	No. 164, 2007
Note 2 to s. 165-13(1) .....	ad. No. 147, 2005 rep. No. 164, 2007
Heading to s. 165-15.....	rs. No. 147, 2005
S. 165-15.....	am. No. 169, 1999
Note to s. 165-15(1) .....	ad. No. 147, 2005
Note to s. 165-15(2) .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 165-20.....	am. No. 114, 2000
<b>Subdivision 165-B</b>	
S. 165-23.....	am. No. 147, 2005; No. 164, 2007
S. 165-25.....	am. No. 16, 1998
S. 165-30.....	rs. No. 147, 2005; No. 164, 2007
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
Heading to s. 165-35.....	rs. No. 147, 2005
S. 165-35.....	am. No. 114, 2000
Note to s. 165-35(a) .....	ad. No. 58, 2000
Notes to s. 165-35.....	rep. No. 147, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Notes 1, 2 to s. 165-35.....	ad. No. 147, 2005
Note 3 to s. 165-35.....	ad. No. 147, 2005 rep. No. 164, 2007
Heading to s. 165-37.....	rs. No. 97, 2008
S. 165-37.....	am. No. 89, 2000; No. 147, 2005; No. 143, 2007; No. 97, 2008
Heading to s. 165-40.....	rs. No. 147, 2005
Note to s. 165-40(1).....	ad. No. 147, 2005
Note to s. 165-40(2).....	ad. No. 147, 2005 rep. No. 164, 2007
Note to s. 165-45.....	ad. No. 58, 2000
Note to s. 165-45(3).....	ad. No. 147, 2005
Notes to s. 165-45(4).....	rep. No. 147, 2005
Notes 1, 2 to s. 165-45(4).....	ad. No. 147, 2005
Note 3 to s. 165-45(4).....	ad. No. 147, 2005 rep. No. 164, 2007
S. 165-55.....	am. No. 121, 1997; No. 85, 1998; No. 169, 1999; No. 77, 2001; Nos. 58 and 101, 2006; No. 97, 2008
Note to s. 165-55(2)(a).....	rs. No. 121, 1997 am. No. 77, 2001
Note to s. 165-55(6).....	rep. No. 101, 2006
S. 165-60.....	am. Nos. 121 and 147, 1997; No. 46, 1998; No. 79, 2007
Note to s. 165-60(3)(a).....	am. No. 121, 1997; No. 101, 2006
Note to s. 165-60(3)(b).....	am. No. 121, 1997; No. 101, 2006
Note to s. 165-60(3)(c).....	rs. No. 121, 1997
S. 165-65.....	am. Nos. 121 and 147, 1997; No. 46, 1998
S. 165-70.....	am. Nos. 121 and 147, 1997; No. 46, 1998
Note to s. 165-70.....	ad. No. 142, 2003
Note at end of s. 165-70.....	am. No. 142, 2003
S. 165-75.....	am. No. 16, 1998; No. 101, 2003
S. 165-80.....	am. No. 16, 1998
S. 165-85.....	am. No. 16, 1998
S. 165-90.....	am. No. 16, 1998
Link note to s. 165-90.....	rep. No. 46, 1998
<b>Subdivision 165-CA</b>	
S. 165-93.....	ad. No. 46, 1998 rs. No. 169, 1999; No. 147, 2005 am. No. 164, 2007
Link note to Guide.....	rep. No. 41, 2005
S. 165-96.....	ad. No. 46, 1998 am. No. 147, 2005
Note 1 to s. 165-96(1).....	am. No. 147, 2005
Note 2 to s. 165-96(1).....	am. No. 147, 2005
Note 3 to s. 165-96(1).....	ad. No. 58, 2000

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 165-CB</b>	
S. 165-99.....	ad. No. 46, 1998 am. No. 147, 2005; No. 164, 2007
Link note to Guide .....	rep. No. 41, 2005
Heading to s. 165-102.....	rs. No. 147, 2005
S. 165-102.....	ad. No. 46, 1998
Note to s. 165-102(a) .....	ad. No. 58, 2000
Note to s. 165-102.....	rs. No. 147, 2005
S. 165-105.....	ad. No. 46, 1998
S. 165-108.....	ad. No. 46, 1998
S. 165-111.....	ad. No. 46, 1998
S. 165-114.....	ad. No. 46, 1998
<b>Subdivision 165-CC</b>	
Subdivision 165-CC .....	ad. No. 169, 1999
S. 165-115.....	ad. No. 169, 1999 rs. No. 89, 2000; No. 90, 2002 am. No. 147, 2005; No. 164, 2007
S. 165-115AA.....	ad. No. 90, 2002 am. No. 58, 2006; No. 80, 2007
Link note to Guide .....	rep. No. 41, 2005
S. 165-115A .....	ad. No. 169, 1999 am. No. 89, 2000; No. 90, 2002; No. 58, 2006; No. 97, 2008
Heading to s. 165-115B .....	am. No. 89, 2000
S. 165-115B .....	ad. No. 169, 1999 am. No. 89, 2000; No. 142, 2003; No. 58, 2006
Note to s. 165-115B(4).....	ad. No. 147, 2005 rep. No. 164, 2007
S. 165-115BA.....	ad. No. 89, 2000 am. No. 142, 2003
Note to s. 165-115BA(4) .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 165-115BB.....	ad. No. 89, 2000 am. No. 41, 2005
S. 165-115C .....	ad. No. 169, 1999 rs. No. 89, 2000 am. No. 147, 2005; No. 143, 2007
Note 4 to s. 165-115C(1).....	am. No. 101, 2003
S. 165-115D .....	ad. No. 169, 1999 rs. No. 89, 2000
Note to s. 165-115D(1).....	ad. No. 147, 2005
S. 165-115E .....	ad. No. 169, 1999 am. No. 89, 2000; No. 90, 2002; No. 58, 2006; No. 97, 2008
S. 165-115F .....	ad. No. 169, 1999 am. No. 89, 2000; No. 77, 2001; No. 90, 2002; No. 58, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 165-CD</b>	
Subdivision 165-CD .....	ad. No. 89, 2000
S. 165-115G .....	ad. No. 89, 2000 rep. No. 90, 2002
S. 165-115GA .....	ad. No. 90, 2002
S. 165-115GB .....	ad. No. 90, 2002 am. No. 23, 2005; No. 143, 2007
S. 165-115GC .....	ad. No. 90, 2002 am. No. 58, 2006; No. 80, 2007
S. 165-115H .....	ad. No. 89, 2000 am. No. 23, 2005; No. 97, 2008
Link note to Guide .....	rep. No. 41, 2005
S. 165-115J .....	ad. No. 89, 2000
S. 165-115K .....	ad. No. 89, 2000
S. 165-115L .....	ad. No. 89, 2000 am. No. 147, 2005
S. 165-115M .....	ad. No. 89, 2000
Note to s. 165-115M(1) .....	ad. No. 147, 2005
S. 165-115N .....	ad. No. 89, 2000 rs. No. 23, 2005
S. 165-115P .....	ad. No. 89, 2000
S. 165-115Q .....	ad. No. 89, 2000
S. 165-115R .....	ad. No. 89, 2000 am. No. 90, 2002
Note to s. 165-115R(6) .....	rs. No. 77, 2001
S. 165-115S .....	ad. No. 89, 2000 am. No. 90, 2002
Note to s. 165-115S(6) .....	rs. No. 77, 2001
S. 165-115T .....	ad. No. 89, 2000 am. No. 90, 2002
S. 165-115U .....	ad. No. 89, 2000 am. No. 90, 2002; No. 58, 2006; No. 97, 2008
S. 165-115V .....	ad. No. 89, 2000 am. No. 77, 2001; No. 90, 2002; No. 58, 2006
S. 165-115W .....	ad. No. 89, 2000 am. No. 90, 2002; No. 58, 2006
S. 165-115X .....	ad. No. 89, 2000
S. 165-115Y .....	ad. No. 89, 2000 am. No. 58, 2006
S. 165-115Z .....	ad. No. 89, 2000
S. 165-115ZA .....	ad. No. 89, 2000 am. No. 58, 2006
Note to s. 165-115ZA(1) .....	ad. No. 90, 2002
S. 165-115ZB .....	ad. No. 89, 2000 am. No. 16, 2003; No. 58, 2006



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 165-115ZC.....	ad. No. 89, 2000 am. No. 146, 2001; Nos. 23 and 41, 2005
Note to s. 165-115ZC(1) .....	ad. No. 23, 2005
S. 165-115ZD.....	ad. No. 90, 2002 am. No. 16, 2003; No. 58, 2006
<b>Subdivision 165-C</b>	
S. 165-117.....	ad. No. 46, 1998 am. No. 169, 1999 rs. No. 147, 2005 am. No. 164, 2007
S. 165-119.....	ad. No. 169, 1999
S. 165-120.....	ad. No. 46, 1998 am. No. 142, 2003; No. 147, 2005
Note to s. 165-120(1)(a).....	ad. No. 58, 2000
Note 1 to s. 165-120(1) .....	rs. No. 147, 2005
Note 3 to s. 165-120(1) .....	ad. No. 41, 2005 rs. No. 162, 2005
Note 4 to s. 165-120(1) .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 165-123.....	ad. No. 46, 1998 rs. No. 169, 1999 am. No. 89, 2000; No. 147, 2005; No. 143, 2007
Note to s. 165-123(1) .....	ad. No. 147, 2005
Note to s. 165-123(2) .....	am. No. 89, 2000
Heading to s. 165-126.....	rs. No. 147, 2005
S. 165-126.....	ad. No. 46, 1998 rs. No. 142, 2003 am. No. 147, 2005; No. 164, 2007
Note to s. 165-126(1) Renumbered Note 1 .....	No. 147, 2005
Note 1 to s. 165-126(1) Renumbered Note .....	No. 164, 2007
Note 2 to s. 165-126(1) .....	ad. No. 147, 2005 rep. No. 164, 2007
Heading to s. 165-129.....	rs. No. 147, 2005
S. 165-129.....	ad. No. 46, 1998 am. No. 169, 1999
Note to s. 165-129(1) .....	ad. No. 147, 2005
Note to s. 165-129(2) .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 165-132.....	ad. No. 46, 1998 am. No. 142, 2003; No. 147, 2005
Note to s. 165-132(1) .....	ad. No. 147, 2005 rep. No. 164, 2007
<b>Subdivision 165-D</b>	
S. 165-150.....	rs. No. 169, 1999; No. 89, 2000
S. 165-155.....	rs. No. 169, 1999; No. 89, 2000

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 165-160.....	rs. No. 169, 1999; No. 89, 2000
S. 165-165.....	rs. No. 169, 1999; No. 89, 2000
Link note to s. 165-165.....	ad. No. 121, 1997 rep. No. 41, 2005
S. 165-180.....	am. No. 169, 1999; No. 114, 2000; No. 147, 2005
S. 165-185.....	rs. No. 169, 1999
S. 165-190.....	rs. No. 169, 1999
S. 165-195.....	am. No. 46, 1998; No. 169, 1999 rep. No. 147, 2005
Heading to s. 165-200.....	rs. No. 89, 2000
S. 165-200.....	am. No. 89, 2000; No. 147, 2005
S. 165-202.....	ad. No. 147, 2005
S. 165-203.....	ad. No. 147, 2005
S. 165-207.....	ad. No. 58, 2000 rs. No. 147, 2005
S. 165-208.....	ad. No. 147, 2005
S. 165-209.....	ad. No. 147, 2005
<b>Subdivision 165-E</b>	
S. 165-210.....	am. No. 114, 2000; No. 147, 2005; No. 164, 2007
Note to s. 165-210(1) .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 165-212A .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 165-212B .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 165-212C .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 165-212D .....	ad. No. 147, 2005
S. 165-212E .....	ad. No. 147, 2005
<b>Subdivision 165-F</b>	
Subdivision 165-F .....	ad. No. 58, 2000
S. 165-215.....	ad. No. 58, 2000 am. No. 89, 2000 (as am. by No. 57, 2002)
S. 165-220.....	ad. No. 58, 2000
S. 165-225.....	ad. No. 58, 2000
S. 165-230.....	ad. No. 58, 2000 am. No. 89, 2000 (as am. by No. 57, 2002)
Subhead. to s. 165-235(1) .....	rs. No. 41, 2005
Subhead. to s. 165-235(4) .....	rs. No. 41, 2005
S. 165-235.....	ad. No. 58, 2000 am. Nos. 41 and 147, 2005; No. 97, 2008
S. 165-240.....	ad. No. 58, 2000 am. No. 101, 2006
S. 165-245.....	ad. No. 58, 2000

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 165-G</b>	
Subdivision 165-G.....	ad. No. 147, 2005
S. 165-250.....	ad. No. 147, 2005
S. 165-255.....	ad. No. 147, 2005
<b>Division 166</b>	
Division 166.....	rs. No. 147, 2005
S. 166-1.....	rs. No. 147, 2005
<b>Subdivision 166-AA</b>	
S. 166-3.....	ad. No. 147, 2005 am. No. 97, 2008
<b>Subdivision 166-A</b>	
S. 166-5.....	am. No. 114, 2000 rs. No. 147, 2005
Note 2 to s. 166-5(5) .....	rep. No. 164, 2007
Note 3 to s. 166-5(5) Renumbered Note 2 .....	No. 164, 2007
S. 166-10.....	am. No. 16, 1998 rep. No. 147, 2005
S. 166-15.....	rs. No. 147, 2005
<b>Subdivision 166-B</b>	
Heading to Subdiv. 166-B .....	rs. No. 46, 1998; No. 147, 2005
Heading to s. 166-20.....	am. No. 46, 1998 rs. No. 147, 2005
S. 166-20.....	am. No. 46, 1998 rs. No. 147, 2005
Note 1A to s. 166-20(1).....	ad. No. 46, 1998 rep. No. 147, 2005
Note 2 to s. 166-20(1) .....	am. No. 46, 1998 rep. No. 147, 2005
Note 2 to s. 166-20(4) .....	rep. No. 164, 2007
Note 3 to s. 166-20(4) Renumbered Note 2 .....	No. 164, 2007
Heading to s. 166-25.....	am. No. 46, 1998 rep. No. 147, 2005
S. 166-25.....	am. No. 46, 1998 rs. No. 147, 2005
Heading to s. 166-30.....	am. No. 46, 1998 rep. No. 147, 2005
S. 166-30.....	am. Nos. 16 and 46, 1998 rep. No. 147, 2005
Note 2 to s. 166-30(1) .....	ad. No. 46, 1998 rep. No. 147, 2005
S. 166-35.....	am. No. 46, 1998 rs. No. 147, 2005
Link note to s. 166-35.....	rep. No. 46, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 166-C</b>	
S. 166-40.....	ad. No. 46, 1998 am. No. 114, 2000; No. 142, 2003 rs. No. 147, 2005
Note 2 to s. 166-40(5) .....	rep. No. 164, 2007
Note 3 to s. 166-40(5) Renumbered Note 2 .....	No. 164, 2007
S. 166-45.....	ad. No. 46, 1998 rep. No. 147, 2005
S. 166-50.....	ad. No. 46, 1998 rs. No. 147, 2005
<b>Subdivision 166-CA</b>	
Subdivision 166-CA.....	ad. No. 89, 2000 rs. No. 147, 2005
S. 166-80.....	ad. No. 89, 2000 rs. No. 147, 2005
S. 166-85.....	ad. No. 89, 2000 rep. No. 147, 2005
S. 166-90.....	ad. No. 89, 2000 rs. No. 147, 2005
<b>Subdivision 166-D</b>	
S. 166-135.....	ad. No. 147, 2005
S. 166-140.....	rep. No. 147, 2005
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 166-145.....	am. No. 16, 1998; No. 89, 2000 rs. No. 147, 2005
S. 166-150.....	am. No. 89, 2000 rep. No. 147, 2005
Note to s. 166-150.....	ad. No. 46, 1998 rep. No. 147, 2005
S. 166-155.....	rep. No. 147, 2005
Note to s. 166-155.....	ad. No. 46, 1998 rep. No. 147, 2005
S. 166-160.....	rep. No. 147, 2005
Note to s. 166-160.....	ad. No. 46, 1998 rep. No. 147, 2005
S. 166-165.....	am. No. 58, 2000 rs. No. 89, 2000 am. No. 114, 2000 rs. No. 147, 2005
S. 166-170.....	ad. No. 89, 2000 rep. No. 147, 2005
S. 166-175.....	ad. No. 147, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 166-E</b>	
Subdivision 166-E .....	ad. No. 147, 2005
S. 166-215.....	rs. No. 147, 2005
S. 166-220.....	am. No. 68, 2002 rs. No. 147, 2005
S. 166-225.....	am. No. 68, 2002 rs. No. 147, 2005
Subhead. to s. 166-230(1) .....	rs. No. 68, 2002 rep. No. 147, 2005
S. 166-230.....	am. No. 114, 2000; No. 68, 2002 rs. No. 147, 2005
S. 166-235.....	am. No. 68, 2002 rs. No. 147, 2005
S. 166-240.....	am. No. 46, 1998 rs. No. 147, 2005
S. 166-245.....	am. No. 156, 1999; No. 114, 2000; No. 55, 2001 rs. No. 147, 2005 am. No. 45, 2008
S. 166-250.....	am. No. 68, 2002 rep. No. 147, 2005
S. 166-255.....	am. No. 68, 2002 rs. No. 147, 2005
S. 166-260.....	rs. No. 147, 2005
S. 166-265.....	am. No. 16, 1998; No. 89, 2000 rs. No. 147, 2005
S. 166-270.....	am. Nos. 16 and 46, 1998 rs. No. 147, 2005
Link note to s. 166-270.....	rep. No. 41, 2005
S. 166-272.....	ad. No. 147, 2005 am. No. 143, 2007
Note to s. 166-272(8) .....	rep. No. 143, 2007
Note to s. 166-272(10) .....	rep. No. 143, 2007
S. 166-275.....	ad. No. 147, 2005
S. 166-280.....	ad. No. 147, 2005
Subdivision 166-F .....	rep. No. 147, 2005
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
Subdivision 166-G.....	rep. No. 147, 2005
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
<b>Division 170</b>	
Heading to Div. 170.....	rs. No. 68, 2002
<b>Subdivision 170-A</b>	
Heading to Subdiv. 170-A .....	rs. No. 68, 2002
S. 170-1.....	rs. No. 68, 2002
S. 170-5.....	am. No. 121, 1997; No. 68, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note to s. 170-5(2A).....	ad. No. 64, 2005
Note to s. 170-5.....	ad. No. 108, 1998
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 170-15.....	am. No. 114, 2000; No. 117, 2002
S. 170-20.....	am. No. 142, 2003
S. 170-25.....	rs. No. 147, 1997 am. No. 114, 2000
Note to s. 170-25(1) .....	ad. No. 169, 1999
Note to s. 170-25(2) .....	ad. No. 169, 1999
Heading to s. 170-30.....	am. No. 68, 2002 rs. No. 117, 2002
S. 170-30.....	am. No. 68, 2002; No. 41, 2005
Note to s. 170-30(1) .....	ad. No. 117, 2002
Note to s. 170-30(2) .....	ad. No. 117, 2002
S. 170-32.....	ad. No. 117, 2002 am. No. 41, 2005
S. 170-33.....	ad. No. 117, 2002
S. 170-35.....	am. No. 95, 1997
Note to s. 170-35(3) Renumbered Note 1 .....	No. 117, 2002
Note 2 to s. 170-35(3) .....	ad. No. 117, 2002
S. 170-40.....	am. No. 95, 1997
Note to s. 170-40(2) Renumbered Note 1 .....	No. 117, 2002
Note 2 to s. 170-40(2) .....	ad. No. 117, 2002
S. 170-42.....	ad. No. 117, 2002
S. 170-45.....	am. No. 117, 2002; No. 142, 2003
S. 170-55.....	am. No. 117, 2002
Link note to s. 170-70.....	rep. No. 46, 1998
Group heading to s. 170-75 .....	ad. No. 64, 2005
S. 170-75.....	ad. No. 64, 2005
<b>Subdivision 170-B</b>	
Heading to Subdiv. 170-B .....	rs. No. 68, 2002 of Div. 170
S. 170-101.....	ad. No. 46, 1998 rs. No. 68, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 170-105.....	ad. No. 46, 1998 am. No. 169, 1999; No. 68, 2002
Note to s. 170-105(2A).....	ad. No. 64, 2005
Note to s. 170-105.....	ad. No. 108, 1998
S. 170-110.....	ad. No. 46, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 170-115.....	ad. No. 46, 1998 am. No. 117, 2002
Note to s. 170-115(1) .....	am. No. 41, 2005
S. 170-120.....	ad. No. 46, 1998
S. 170-125.....	ad. No. 46, 1998 am. No. 114, 2000
Note to s. 170-125(1) .....	am. No. 169, 1999
Note to s. 170-125(2) .....	am. No. 169, 1999
Heading to s. 170-130.....	am. No. 68, 2002 rs. No. 117, 2002
S. 170-130.....	ad. No. 46, 1998 am. No. 68, 2002; No. 41, 2005
Note to s. 170-130(1) .....	ad. No. 117, 2002
Note to s. 170-130(2) .....	ad. No. 117, 2002
S. 170-132.....	ad. No. 117, 2002 am. No. 41, 2005
S. 170-133.....	ad. No. 117, 2002 am. No. 41, 2005
S. 170-135.....	ad. No. 46, 1998 am. No. 114, 2000
Note 2 to s. 170-135(3) .....	rs. No. 117, 2002
Note 3 to s. 170-135(3) .....	ad. No. 117, 2002
S. 170-140.....	ad. No. 46, 1998
Note 2 to s. 170-140(2) .....	am. No. 41, 2005
Note 3 to s. 170-140(2) .....	ad. No. 117, 2002
S. 170-142.....	ad. No. 117, 2002
S. 170-145.....	ad. No. 46, 1998 am. No. 169, 1999; No. 117, 2002
S. 170-150.....	ad. No. 46, 1998
S. 170-155.....	ad. No. 46, 1998 am. No. 117, 2002
S. 170-160.....	ad. No. 46, 1998
S. 170-165.....	ad. No. 46, 1998
S. 170-170.....	ad. No. 46, 1998
Note to s. 170-170.....	ad. No. 169, 1999
Group heading to s. 170-174 ....	ad. No. 64, 2005
S. 170-174.....	ad. No. 64, 2005
S. 170-175.....	ad. No. 46, 1998 rep. No. 169, 1999
S. 170-180.....	ad. No. 46, 1998 rep. No. 169, 1999
Link note to s. 170-180.....	rep. No. 169, 1999
<b>Subdivision 170-C</b>	
Subdivision 170-C.....	ad. No. 169, 1999
S. 170-201.....	ad. No. 169, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Link note to Guide .....	rep. No. 41, 2005
S. 170-205.....	ad. No. 169, 1999 am. No. 58, 2006
S. 170-210.....	ad. No. 169, 1999 am. No. 89, 2000; No. 41, 2005; No. 58, 2006
Note to s. 170-210(3B).....	rs. No. 77, 2001
Note to s. 170-210.....	rep. No. 89, 2000
Note 1 to s. 170-210.....	ad. No. 89, 2000
Note 2 to s. 170-210.....	ad. No. 89, 2000
S. 170-215.....	ad. No. 169, 1999 am. No. 89, 2000; No. 41, 2005; No. 58, 2006
Note to s. 170-215(4A).....	rs. No. 77, 2001
Note to s. 170-215.....	ad. No. 89, 2000
S. 170-220.....	ad. No. 169, 1999 am. No. 89, 2000; No. 41, 2005; No. 58, 2006
Note to s. 170-220(3B).....	rs. No. 77, 2001
Note 2 to s. 170-220(4) .....	am. No. 101, 2006
Note 3 to s. 170-220.....	ad. No. 89, 2000
S. 170-225.....	ad. No. 169, 1999 am. No. 89, 2000; No. 41, 2005; No. 58, 2006
Note to s. 170-225(4A).....	rs. No. 77, 2001
Note to s. 170-225(6) .....	am. No. 101, 2006
Link note to s. 170-225.....	rep. No. 169, 1999
<b>Subdivision 170-D</b>	
Subdivision 170-D.....	ad. No. 169, 1999
S. 170-250.....	ad. No. 169, 1999
Link note to Guide .....	rep. No. 41, 2005
S. 170-255.....	ad. No. 169, 1999 am. No. 89, 2000; No. 41, 2005; No. 168, 2006
S. 170-260.....	ad. No. 169, 1999 am. No. 89, 2000
S. 170-265.....	ad. No. 169, 1999 am. No. 89, 2000
S. 170-270.....	ad. No. 169, 1999 am. No. 90, 2002
S. 170-275.....	ad. No. 169, 1999 am. No. 89, 2000
Heading to s. 170-280.....	rs. No. 89, 2000
S. 170-280.....	ad. No. 169, 1999 am. No. 89, 2000
Link note to s. 170-280.....	rep. No. 41, 2005
<b>Division 175</b>	
S. 175-1.....	am. No. 46, 1998
<b>Subdivision 175-A</b>	
S. 175-5.....	am. No. 16, 1998; No. 114, 2000; No. 147, 2005



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note to s. 175-5(2) .....	ad. No. 147, 2005 rep. No. 164, 2007
Heading to s. 175-10 .....	rs. No. 147, 1997
S. 175-10 .....	am. No. 147, 1997; No. 114, 2000
Note to s. 175-10(2) .....	ad. No. 147, 2005
S. 175-15 .....	am. No. 114, 2000
Note to s. 175-15(2) .....	ad. No. 147, 2005
Heading to s. 175-20 .....	rs. No. 147, 1997
S. 175-20 .....	am. No. 147, 1997; No. 114, 2000
Note to s. 175-20(2) .....	ad. No. 147, 2005
Heading to s. 175-25 .....	rs. No. 46, 1998
S. 175-25 .....	am. No. 46, 1998
Note to s. 175-25(2) .....	ad. No. 147, 2005
Heading to s. 175-30 .....	rs. No. 147, 1997
S. 175-30 .....	am. No. 147, 1997; No. 114, 2000
Note to s. 175-30(4) .....	ad. No. 147, 2005
S. 175-35 .....	am. No. 114, 2000
Note to s. 175-35 .....	ad. No. 142, 2003
Note at end of s. 175-35 .....	am. No. 142, 2003
Link note to s. 175-35 .....	rep. No. 46, 1998
<b>Subdivision 175-CA</b>	
S. 175-40 .....	ad. No. 46, 1998 am. No. 114, 2000; No. 147, 2005
Note to s. 175-40(1) .....	am. No. 147, 2005
Note to s. 175-40(2) .....	rep. No. 147, 2005
Note 1 to s. 175-40(2) .....	ad. No. 147, 2005
Renumbered Note .....	No. 164, 2007
Note 2 to s. 175-40(2) .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 175-45 .....	ad. No. 46, 1998 am. No. 147, 2005
Note to s. 175-45(2) .....	ad. No. 147, 2005
S. 175-50 .....	ad. No. 46, 1998 am. No. 147, 2005
Note to s. 175-50(2) .....	ad. No. 147, 2005
<b>Subdivision 175-CB</b>	
S. 175-55 .....	ad. No. 46, 1998
S. 175-60 .....	ad. No. 46, 1998 am. No. 114, 2000
Note to s. 175-60(2) .....	ad. No. 147, 2005
S. 175-65 .....	rs. No. 46, 1998 am. No. 114, 2000
Note to s. 175-65(2) .....	ad. No. 147, 2005
S. 175-70 .....	ad. No. 46, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note to s. 175-70(4) .....	ad. No. 147, 2005
S. 175-75.....	ad. No. 46, 1998
<b>Subdivision 175-C</b>	
S. 175-80.....	ad. No. 46, 1998 am. No. 114, 2000; No. 147, 2005
Note to s. 175-80(2) .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 175-85.....	ad. No. 46, 1998
Note to s. 175-85(2) .....	ad. No. 147, 2005
S. 175-90.....	ad. No. 46, 1998
Note to s. 175-90(2) .....	ad. No. 147, 2005
<b>Subdivision 175-D</b>	
Heading to Subdiv. 175-D .....	rs. No. 147, 2005
S. 175-95.....	ad. No. 46, 1998 am. No. 58, 2000
Link note to s. 175-95.....	rep. No. 41, 2005
S. 175-100.....	ad. No. 147, 2005
<b>Division 180</b>	
Division 180.....	ad. No. 58, 2000
S. 180-1.....	ad. No. 58, 2000 rs. No. 41, 2005
<b>Subdivision 180-A</b>	
Subhead. to s. 180-5(4) .....	rs. No. 41, 2005
S. 180-5.....	ad. No. 58, 2000 am. Nos. 41 and 147, 2005; No. 97, 2008
S. 180-10.....	ad. No. 58, 2000 am. No. 101, 2006; No. 97, 2008
<b>Subdivision 180-B</b>	
Subhead. to s. 180-15(4) .....	rs. No. 41, 2005
S. 180-15.....	ad. No. 58, 2000 am. No. 41, 2005
S. 180-20.....	ad. No. 58, 2000 am. No. 101, 2006; No. 97, 2008
<b>Division 195</b>	
<b>Subdivision 195-A</b>	
S. 195-1.....	am. No. 46, 1998
Link note to Guide .....	am. No. 16, 1998 rep. No. 41, 2005
S. 195-10.....	am. No. 68, 2002
S. 195-15.....	am. No. 68, 2002
Link note to s. 195-15.....	rep. No. 46, 1998
S. 195-25.....	ad. No. 46, 1998
S. 195-30.....	ad. No. 46, 1998 am. No. 68, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 195-35.....	ad. No. 46, 1998 am. No. 68, 2002
Link note to s. 195-35.....	rs. No. 89, 2000; No. 72, 2001 (as am. by No. 57, 2002) rep. No. 41, 2005
<b>Subdivision 195-B</b>	
Subdivision 195-B.....	ad. No. 136, 2002
S. 195-60.....	ad. No. 136, 2002 am. No. 78, 2007
Link note to Guide.....	rep. No. 41, 2005
Heading to s. 195-65.....	rs. No. 78, 2007
S. 195-65.....	ad. No. 136, 2002 am. No. 78, 2007
Heading to s. 195-70.....	rs. No. 78, 2007
S. 195-70.....	ad. No. 136, 2002 am. No. 78, 2007
S. 195-75.....	ad. No. 136, 2002 am. No. 58, 2006
<b>Division 197</b>	
Division 197.....	ad. No. 80, 2006
S. 197-1.....	ad. No. 80, 2006
<b>Subdivision 197-A</b>	
S. 197-5.....	ad. No. 80, 2006
S. 197-10.....	ad. No. 80, 2006
S. 197-15.....	ad. No. 80, 2006
S. 197-20.....	ad. No. 80, 2006 am. No. 143, 2007
S. 197-25.....	ad. No. 80, 2006
S. 197-30.....	ad. No. 80, 2006
S. 197-35.....	ad. No. 80, 2006
S. 197-37.....	ad. No. 97, 2008
S. 197-40.....	ad. No. 80, 2006
<b>Subdivision 197-B</b>	
S. 197-45.....	ad. No. 80, 2006
<b>Subdivision 197-C</b>	
S. 197-50.....	ad. No. 80, 2006
Note to s. 197-50(1).....	rs. No. 79, 2007
S. 197-55.....	ad. No. 80, 2006
S. 197-60.....	ad. No. 80, 2006
S. 197-65.....	ad. No. 80, 2006
S. 197-70.....	ad. No. 80, 2006
S. 197-75.....	ad. No. 80, 2006
S. 197-80.....	ad. No. 80, 2006
S. 197-85.....	ad. No. 80, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 3-6</b>	
Part 3-6 .....	ad. No. 48, 2002
<b>Division 200</b>	
S. 200-1 .....	ad. No. 48, 2002
S. 200-5 .....	ad. No. 48, 2002
S. 200-10 .....	ad. No. 48, 2002
S. 200-15 .....	ad. No. 48, 2002
S. 200-20 .....	ad. No. 48, 2002
S. 200-25 .....	ad. No. 48, 2002
S. 200-30 .....	ad. No. 48, 2002
S. 200-35 .....	ad. No. 48, 2002
S. 200-40 .....	ad. No. 48, 2002
S. 200-45 .....	ad. No. 48, 2002 am. No. 67, 2003; No. 101, 2003 (as am. by No. 67, 2003)
<b>Division 201</b>	
S. 201-1 .....	ad. No. 48, 2002
S. 201-5 .....	ad. No. 48, 2002
<b>Division 202</b>	
<b>Subdivision 202-A</b>	
S. 202-1 .....	ad. No. 48, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 202-5 .....	ad. No. 48, 2002
<b>Subdivision 202-B</b>	
S. 202-10 .....	ad. No. 48, 2002 am. No. 41, 2005
Link note to Guide .....	rep. No. 41, 2005
S. 202-15 .....	ad. No. 48, 2002 am. No. 41, 2005
S. 202-20 .....	ad. No. 48, 2002 am. No. 41, 2005
<b>Subdivision 202-C</b>	
S. 202-25 .....	ad. No. 48, 2002
S. 202-30 .....	ad. No. 48, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 202-35 .....	ad. No. 48, 2002
S. 202-40 .....	ad. No. 48, 2002
S. 202-45 .....	ad. No. 48, 2002 am. Nos. 90 and 117, 2002; Nos. 67 and 101, 2003; Nos. 58 and 101, 2006; Nos. 55 and 79, 2007
S. 202-47 .....	ad. No. 117, 2007
<b>Subdivision 202-D</b>	
S. 202-50 .....	ad. No. 48, 2002
S. 202-55 .....	ad. No. 48, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Link note to Guide .....	rep. No. 41, 2005
S. 202-60.....	ad. No. 48, 2002
S. 202-65.....	ad. No. 48, 2002
<b>Subdivision 202-E</b>	
S. 202-70.....	ad. No. 48, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 202-75.....	ad. No. 48, 2002 am. No. 16, 2003
S. 202-80.....	ad. No. 48, 2002
S. 202-85.....	ad. No. 48, 2002
<b>Division 203</b>	
S. 203-1.....	ad. No. 48, 2002
S. 203-5.....	ad. No. 48, 2002
S. 203-10.....	ad. No. 48, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 203-15.....	ad. No. 48, 2002
S. 203-20.....	ad. No. 48, 2002 rs. No. 117, 2002
S. 203-25.....	ad. No. 48, 2002
S. 203-30.....	ad. No. 48, 2002
S. 203-35.....	ad. No. 48, 2002
S. 203-40.....	ad. No. 48, 2002
S. 203-45.....	ad. No. 48, 2002
S. 203-50.....	ad. No. 48, 2002
S. 203-55.....	ad. No. 48, 2002
<b>Division 204</b>	
<b>Subdivision 204-A</b>	
S. 204-1.....	ad. No. 48, 2002 am. No. 58, 2006
S. 204-5.....	ad. No. 48, 2002
<b>Subdivision 204-B</b>	
S. 204-10.....	ad. No. 48, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 204-15.....	ad. No. 48, 2002
<b>Subdivision 204-C</b>	
S. 204-20.....	ad. No. 48, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 204-25.....	ad. No. 48, 2002 am. No. 41, 2005
<b>Subdivision 204-D</b>	
S. 204-26.....	ad. No. 48, 2002
Link note to Guide .....	rep. No. 41, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 204-30.....	ad. No. 48, 2002 am. No. 90, 2002; No. 16, 2003; No. 83, 2004; No. 41, 2005; No. 58, 2006; No. 4, 2007
S. 204-35.....	ad. No. 48, 2002 am. No. 90, 2002
S. 204-40.....	ad. No. 48, 2002
S. 204-41.....	ad. No. 90, 2002
Heading to s. 204-45.....	rs. No. 58, 2006
S. 204-45.....	ad. No. 48, 2002 am. No. 90, 2002; No. 58, 2006
S. 204-50.....	ad. No. 48, 2002 am. No. 90, 2002
S. 204-55.....	ad. No. 48, 2002
<b>Subdivision 204-E</b>	
S. 204-65.....	ad. No. 48, 2002
S. 204-70.....	ad. No. 48, 2002
S. 204-75.....	ad. No. 48, 2002 am. No. 16, 2003
S. 204-80.....	ad. No. 48, 2002 am. No. 58, 2006
<b>Division 205</b>	
Heading to Div. 205 of..... Part 3-6	rs. No. 107, 2003
S. 205-1.....	ad. No. 48, 2002 am. No. 107, 2003
Heading to s. 205-5.....	rs. No. 107, 2003
S. 205-5.....	ad. No. 48, 2002 am. No. 107, 2003
Link note to Guide.....	rep. No. 41, 2005
S. 205-10.....	ad. No. 48, 2002
S. 205-15.....	ad. No. 48, 2002 am. Nos. 83 and 101, 2004; No. 58, 2006; No. 92, 2008
S. 205-20.....	ad. No. 48, 2002 am. No. 143, 2007
S. 205-25.....	ad. No. 48, 2002 am. No. 90, 2002; No. 101, 2004; No. 41, 2005
S. 205-30.....	ad. No. 48, 2002 am. No. 41, 2005; No. 80, 2006; No. 79, 2007; No. 92, 2008
S. 205-35.....	ad. No. 48, 2002
S. 205-40.....	ad. No. 48, 2002
S. 205-45.....	ad. No. 48, 2002
S. 205-50.....	ad. No. 48, 2002 am. No. 41, 2005
S. 205-70.....	ad. No. 107, 2003 am. No. 78, 2005; No. 58, 2006; No. 143, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 207</b>	
S. 207-5.....	ad. No. 48, 2002 am. No. 83, 2004
<b>Subdivision 207-A</b>	
S. 207-10.....	ad. No. 48, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 207-15.....	ad. No. 48, 2002 am. No. 83, 2004; No. 45, 2008
Note 2 to s. 207-15(3) .....	am. No. 66, 2003 rs. No. 83, 2004
S. 207-20.....	ad. No. 48, 2002
<b>Subdivision 207-B</b>	
Subdivision 207-B .....	rs. No. 83, 2004
S. 207-25.....	ad. No. 48, 2002 rs. No. 83, 2004
Link note to Guide .....	rep. No. 41, 2005
S. 207-30.....	ad. No. 48, 2002 rs. No. 83, 2004
Note 2 to s. 207-30.....	am. No. 66, 2003 rep. No. 83, 2004
S. 207-35.....	ad. No. 48, 2002 rs. No. 83, 2004 am. No. 45, 2008
S. 207-40.....	ad. No. 48, 2002 rep. No. 83, 2004
S. 207-45.....	ad. No. 48, 2002 rs. No. 83, 2004 am. No. 15, 2007; No. 45, 2008
Note 1 to s. 207-45.....	rep. No. 15, 2007
Note 2 to s. 207-45 Renumbered Note .....	No. 15, 2007
S. 207-50.....	ad. No. 48, 2002 rs. No. 83, 2004 am. No. 79, 2007
S. 207-55.....	ad. No. 48, 2002 rs. No. 83, 2004 am. No. 58, 2006
S. 207-57.....	ad. No. 83, 2004
<b>Subdivision 207-C</b>	
S. 207-60.....	ad. No. 48, 2002
S. 207-65.....	ad. No. 48, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 207-70.....	ad. No. 48, 2002
S. 207-75.....	ad. No. 48, 2002 am. No. 90, 2002; Nos. 41 and 64, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 207-D</b>	
Subdivision 207-D .....	rs. No. 83, 2004
S. 207-80.....	ad. No. 48, 2002 rs. No. 83, 2004 am. No. 83, 2004
S. 207-85.....	ad. No. 48, 2002 rs. No. 83, 2004
S. 207-90.....	ad. No. 48, 2002 rs. No. 83, 2004 am. No. 83, 2004
S. 207-95.....	ad. No. 48, 2002 rs. No. 83, 2004 am. No. 83, 2004; No. 41, 2005
S. 207-100.....	ad. No. 48, 2002 rep. No. 83, 2004
<b>Subdivision 207-E</b>	
Heading to Subdiv. 207-E .....	rs. No. 83, 2004
S. 207-105.....	ad. No. 48, 2002 rs. No. 83, 2004
Link note to Guide .....	rep. No. 41, 2005
Heading to s. 207-110.....	rs. No. 66, 2003; No. 83, 2004
S. 207-110.....	ad. No. 48, 2002 am. No. 66, 2003 rs. No. 83, 2004 am. No. 83, 2004; No. 15, 2007
S. 207-115.....	ad. No. 48, 2002 rep. No. 83, 2004
Group heading to s. 207-130 ....	ad. No. 83, 2004
S. 207-130.....	ad. No. 48, 2002 am. No. 23, 2005
Renumbered s. 207-115 .....	No. 23, 2005
Subhead. to s. 207-115(2) .....	rs. No. 63, 2005
S. 207-115.....	am. No. 63, 2005; No. 58, 2006
S. 207-135.....	ad. No. 48, 2002
Renumbered s. 207-117.....	No. 23, 2005
S. 207-119.....	ad. No. 23, 2005
S. 207-120.....	ad. No. 48, 2002 am. No. 66, 2003 rep. No. 83, 2004 ad. No. 23, 2005 am. No. 58, 2006
S. 207-122.....	ad. No. 23, 2005
S. 207-124.....	ad. No. 23, 2005
S. 207-125.....	ad. No. 48, 2002 rep. No. 83, 2004
S. 207-126.....	ad. No. 23, 2005



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 207-128.....	ad. No. 23, 2005 am. No. 58, 2006
S. 207-130.....	ad. No. 23, 2005
S. 207-132.....	ad. No. 23, 2005
S. 207-134.....	ad. No. 23, 2005
S. 207-136.....	ad. No. 23, 2005
<b>Subdivision 207-F</b>	
S. 207-140.....	ad. No. 48, 2002 rs. No. 83, 2004
Link note to Guide .....	rep. No. 41, 2005
S. 207-145.....	ad. No. 48, 2002 rs. No. 83, 2004 am. No. 101, 2006
S. 207-150.....	ad. No. 48, 2002 rs. No. 83, 2004 am. No. 101, 2006
S. 207-155.....	ad. No. 48, 2002 am. No. 58, 2006
S. 207-160.....	ad. No. 48, 2002 rs. No. 83, 2004
S. 207-165.....	ad. No. 48, 2002 rep. No. 83, 2004
S. 207-170.....	ad. No. 48, 2002 rep. No. 83, 2004
<b>Division 208</b>	
Division 208.....	ad. No. 90, 2002
S. 208-5.....	ad. No. 90, 2002 am. No. 66, 2003
S. 208-10.....	ad. No. 90, 2002
S. 208-15.....	ad. No. 90, 2002
<b>Subdivision 208-A</b>	
S. 208-20.....	ad. No. 90, 2002
S. 208-25.....	ad. No. 90, 2002
S. 208-30.....	ad. No. 90, 2002
S. 208-35.....	ad. No. 90, 2002
S. 208-40.....	ad. No. 90, 2002 am. No. 66, 2003; No. 83, 2004; No. 41, 2005; No. 58, 2006
S. 208-45.....	ad. No. 90, 2002 am. No. 83, 2004; No. 41, 2005; No. 58, 2006; No. 97, 2008
S. 208-50.....	ad. No. 90, 2002
<b>Subdivision 208-B</b>	
S. 208-55.....	ad. No. 90, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 208-60.....	ad. No. 90, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 208-C</b>	
S. 208-65.....	ad. No. 90, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 208-70.....	ad. No. 90, 2002
<b>Subdivision 208-D</b>	
S. 208-75.....	ad. No. 90, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 208-80.....	ad. No. 90, 2002 am. No. 41, 2005
<b>Subdivision 208-E</b>	
S. 208-85.....	ad. No. 90, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 208-90.....	ad. No. 90, 2002
S. 208-95.....	ad. No. 90, 2002
S. 208-100.....	ad. No. 90, 2002
<b>Subdivision 208-F</b>	
S. 208-105.....	ad. No. 90, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 208-110.....	ad. No. 90, 2002
S. 208-115.....	ad. No. 90, 2002 am. No. 66, 2003; No. 23, 2005
S. 208-120.....	ad. No. 90, 2002
S. 208-125.....	ad. No. 90, 2002
S. 208-130.....	ad. No. 90, 2002 am. No. 66, 2003; No. 23, 2005
S. 208-135.....	ad. No. 90, 2002
S. 208-140.....	ad. No. 90, 2002
S. 208-145.....	ad. No. 90, 2002 am. No. 101, 2004
S. 208-150.....	ad. No. 90, 2002
S. 208-155.....	ad. No. 90, 2002 am. No. 41, 2005; No. 58, 2006
S. 208-160.....	ad. No. 90, 2002
S. 208-165.....	ad. No. 90, 2002 am. No. 23, 2005
S. 208-170.....	ad. No. 90, 2002 am. No. 23, 2005
S. 208-175.....	ad. No. 90, 2002 am. No. 83, 2004
S. 208-180.....	ad. No. 90, 2002 am. No. 83, 2004
S. 208-185.....	ad. No. 90, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 208-G</b>	
S. 208-190.....	ad. No. 90, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 208-195.....	ad. No. 90, 2002
S. 208-200.....	ad. No. 90, 2002
S. 208-205.....	ad. No. 90, 2002 am. No. 41, 2005
S. 208-210.....	ad. No. 90, 2002
S. 208-215.....	ad. No. 90, 2002 am. No. 41, 2005; No. 56, 2007
<b>Subdivision 208-H</b>	
S. 208-220.....	ad. No. 90, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 208-225.....	ad. No. 90, 2002
S. 208-230.....	ad. No. 90, 2002
S. 208-235.....	ad. No. 90, 2002 am. No. 41, 2005
S. 208-240.....	ad. No. 90, 2002 am. No. 41, 2005
<b>Division 210</b>	
Division 210.....	ad. No. 16, 2003
S. 210-1.....	ad. No. 16, 2003
S. 210-5.....	ad. No. 16, 2003
S. 210-10.....	ad. No. 16, 2003
S. 210-15.....	ad. No. 16, 2003
S. 210-20.....	ad. No. 16, 2003
<b>Subdivision 210-A</b>	
S. 210-25.....	ad. No. 16, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 210-30.....	ad. No. 16, 2003
<b>Subdivision 210-B</b>	
S. 210-35.....	ad. No. 16, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 210-40.....	ad. No. 16, 2003
<b>Subdivision 210-C</b>	
S. 210-45.....	ad. No. 16, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 210-50.....	ad. No. 16, 2003
<b>Subdivision 210-D</b>	
S. 210-55.....	ad. No. 16, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 210-60.....	ad. No. 16, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 210-E</b>	
S. 210-65.....	ad. No. 16, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 210-70.....	ad. No. 16, 2003
<b>Subdivision 210-F</b>	
S. 210-75.....	ad. No. 16, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 210-80.....	ad. No. 16, 2003
S. 210-81.....	ad. No. 16, 2003
S. 210-82.....	ad. No. 16, 2003
<b>Subdivision 210-G</b>	
S. 210-85.....	ad. No. 16, 2003
S. 210-90.....	ad. No. 16, 2003
S. 210-95.....	ad. No. 16, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 210-100.....	ad. No. 16, 2003
S. 210-105.....	ad. No. 16, 2003
S. 210-110.....	ad. No. 16, 2003
S. 210-115.....	ad. No. 16, 2003 am. No. 97, 2008
S. 210-120.....	ad. No. 16, 2003 am. No. 41, 2005
S. 210-125.....	ad. No. 16, 2003
S. 210-130.....	ad. No. 16, 2003
S. 210-135.....	ad. No. 16, 2003
S. 210-140.....	ad. No. 16, 2003
S. 210-145.....	ad. No. 16, 2003
S. 210-150.....	ad. No. 16, 2003 am. No. 41, 2005
<b>Subdivision 210-H</b>	
S. 210-155.....	ad. No. 16, 2003
S. 210-160.....	ad. No. 16, 2003
S. 210-165.....	ad. No. 16, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 210-170.....	ad. No. 16, 2003 am. No. 23, 2005; Nos. 58 and 101, 2006; No. 15, 2007
S. 210-175.....	ad. No. 16, 2003 am. No. 45, 2008
S. 210-180.....	ad. No. 16, 2003
<b>Division 214</b>	
Division 214.....	ad. No. 16, 2003
S. 214-1.....	ad. No. 16, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 214-5.....	ad. No. 16, 2003 am. No. 97, 2008
<b>Subdivision 214-A</b>	
S. 214-10.....	ad. No. 16, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 214-15.....	ad. No. 16, 2003
S. 214-20.....	ad. No. 16, 2003 am. No. 97, 2008
S. 214-25.....	ad. No. 16, 2003 am. No. 58, 2006
S. 214-30.....	ad. No. 16, 2003
S. 214-35.....	ad. No. 16, 2003
S. 214-40.....	ad. No. 16, 2003
S. 214-45.....	ad. No. 16, 2003 am. No. 41, 2005
S. 214-50.....	ad. No. 16, 2003
<b>Subdivision 214-B</b>	
S. 214-55.....	ad. No. 16, 2003 am. No. 97, 2008
Link note to Guide .....	rep. No. 41, 2005
S. 214-60.....	ad. No. 16, 2003 am. No. 79, 2007
S. 214-65.....	ad. No. 16, 2003
S. 214-70.....	ad. No. 16, 2003
S. 214-75.....	ad. No. 16, 2003
S. 214-80.....	ad. No. 16, 2003
S. 214-85.....	ad. No. 16, 2003
<b>Subdivision 214-C</b>	
S. 214-90.....	ad. No. 16, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 214-95.....	ad. No. 16, 2003
S. 214-100.....	ad. No. 16, 2003
S. 214-105.....	ad. No. 16, 2003 am. No. 41, 2005; No. 97, 2008
S. 214-110.....	ad. No. 16, 2003
S. 214-115.....	ad. No. 16, 2003
S. 214-120.....	ad. No. 16, 2003
S. 214-125.....	ad. No. 16, 2003
S. 214-130.....	ad. No. 16, 2003
S. 214-135.....	ad. No. 16, 2003
S. 214-140.....	ad. No. 16, 2003
<b>Subdivision 214-D</b>	
S. 214-145.....	ad. No. 16, 2003
Link note to Guide .....	rep. No. 41, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 214-150.....	ad. No. 16, 2003 am. No. 41, 2005
S. 214-155.....	ad. No. 16, 2003
Note to s. 214-155.....	am. No. 101, 2006
S. 214-160.....	ad. No. 16, 2003
S. 214-165.....	ad. No. 16, 2003
<b>Subdivision 214-E</b>	
S. 214-170.....	ad. No. 16, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 214-175.....	ad. No. 16, 2003
S. 214-180.....	ad. No. 16, 2003
S. 214-185.....	ad. No. 16, 2003 am. No. 97, 2008
<b>Division 215</b>	
<b>Subdivision 215-A</b>	
Heading to Subdiv. 215-A .....	ad. No. 117, 2002
S. 215-1.....	ad. No. 48, 2002
<b>Subdivision 215-B</b>	
Subdivision 215-B .....	ad. No. 117, 2002
S. 215-5.....	ad. No. 117, 2002
S. 215-10.....	ad. No. 117, 2002 am. No. 96, 2004; No. 41, 2005; No. 14, 2009
S. 215-15.....	ad. No. 117, 2002
S. 215-20.....	ad. No. 117, 2002 am. No. 58, 2006
S. 215-25.....	ad. No. 117, 2002 am. No. 107, 2003
<b>Division 216</b>	
Division 216.....	ad. No. 16, 2003
<b>Subdivision 216-A</b>	
S. 216-1.....	ad. No. 16, 2003
S. 216-5.....	ad. No. 16, 2003
S. 216-10.....	ad. No. 16, 2003
S. 216-15.....	ad. No. 16, 2003
<b>Subdivision 216-B</b>	
S. 216-20.....	ad. No. 16, 2003
S. 216-25.....	ad. No. 16, 2003
S. 216-30.....	ad. No. 16, 2003
<b>Division 218</b>	
Division 218.....	ad. No. 101, 2003
S. 218-5.....	ad. No. 101, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 219</b>	
Division 219.....	ad. No. 101, 2004
S. 219-1.....	ad. No. 101, 2004
<b>Subdivision 219-A</b>	
S. 219-10.....	ad. No. 101, 2004
<b>Subdivision 219-B</b>	
S. 219-15.....	ad. No. 101, 2004 am. No. 83, 2004; No. 58, 2006; No. 164, 2007
S. 219-30.....	ad. No. 101, 2004
S. 219-40.....	ad. No. 101, 2004
S. 219-45.....	ad. No. 101, 2004
S. 219-50.....	ad. No. 101, 2004
Note to s. 219-50(1).....	ad. No. 107, 2003
S. 219-55.....	ad. No. 101, 2004
Note to s. 219-55(1).....	ad. No. 107, 2003
S. 219-70.....	ad. No. 107, 2003
S. 219-75.....	ad. No. 107, 2003
Link note to Div. 220.....	rep. No. 101, 2004
<b>Division 220</b>	
Division 220.....	ad. No. 67, 2003
S. 220-1.....	ad. No. 67, 2003
<b>Subdivision 220-A</b>	
S. 220-15.....	ad. No. 67, 2003
S. 220-20.....	ad. No. 67, 2003
<b>Subdivision 220-B</b>	
S. 220-25.....	ad. No. 67, 2003
S. 220-30.....	ad. No. 67, 2003
S. 220-35.....	ad. No. 67, 2003
S. 220-40.....	ad. No. 67, 2003
S. 220-45.....	ad. No. 67, 2003
S. 220-50.....	ad. No. 67, 2003
<b>Subdivision 220-C</b>	
S. 220-100.....	ad. No. 67, 2003
S. 220-105.....	ad. No. 67, 2003
S. 220-110.....	ad. No. 67, 2003 am. No. 67, 2003
Link note to s. 220-110.....	rs. No. 67, 2003 rep. No. 41, 2005
S. 220-200.....	ad. No. 67, 2003 rep. No. 67, 2003
S. 220-205.....	ad. No. 67, 2003 am. No. 58, 2006
S. 220-210.....	ad. No. 67, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 220-215.....	ad. No. 67, 2003 am. No. 41, 2005
Link note to s. 220-215.....	rep. No. 41, 2005
S. 220-300.....	ad. No. 67, 2003
Link note to s. 220-300.....	rep. No. 41, 2005
S. 220-350.....	ad. No. 168, 2006
S. 220-400.....	ad. No. 67, 2003 am. No. 83, 2004; No. 143, 2007
Heading to s. 220-405.....	rs. No. 83, 2004
S. 220-405.....	ad. No. 67, 2003 am. No. 83, 2004; No. 143, 2007
S. 220-410.....	ad. No. 67, 2003 am. No. 83, 2004
Link note to s. 220-410.....	rep. No. 41, 2005
S. 220-500.....	ad. No. 67, 2003
S. 220-505.....	ad. No. 67, 2003
S. 220-510.....	ad. No. 67, 2003
Link note to s. 220-510 .....	rs. No. 67, 2003 rep. No. 41, 2005
S. 220-600.....	ad. No. 67, 2003 rep. No. 67, 2003
S. 220-605.....	ad. No. 67, 2003 am. No. 41, 2005
Link note to s. 220-605.....	rep. No. 41, 2005
S. 220-700.....	ad. No. 67, 2003
Link note to s. 220-700.....	rep. No. 41, 2005
S. 220-800.....	ad. No. 67, 2003
Link note to s. 220-800.....	rep. No. 41, 2005
<b>Part 3-10</b>	
Part 3-10 .....	ad. No. 72, 2001
Link note to Part 3-10.....	rep. No. 41, 2005
<b>Division 230</b>	
Division 230.....	ad. No. 15, 2009
S. 230-1.....	ad. No. 15, 2009
S. 230-5.....	ad. No. 15, 2009
<b>Subdivision 230-A</b>	
S. 230-10.....	ad. No. 15, 2009
S. 230-15.....	ad. No. 15, 2009
S. 230-20.....	ad. No. 15, 2009
S. 230-25.....	ad. No. 15, 2009
S. 230-30.....	ad. No. 15, 2009
S. 230-35.....	ad. No. 15, 2009
S. 230-40.....	ad. No. 15, 2009
S. 230-45.....	ad. No. 15, 2009



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 230-50.....	ad. No. 15, 2009
S. 230-55.....	ad. No. 15, 2009
S. 230-60.....	ad. No. 15, 2009
S. 230-65.....	ad. No. 15, 2009
S. 230-70.....	ad. No. 15, 2009
S. 230-75.....	ad. No. 15, 2009
S. 230-80.....	ad. No. 15, 2009
S. 230-85.....	ad. No. 15, 2009
<b>Subdivision 230-B</b>	
S. 230-90.....	ad. No. 15, 2009
S. 230-95.....	ad. No. 15, 2009
S. 230-100.....	ad. No. 15, 2009
S. 230-105.....	ad. No. 15, 2009
S. 230-110.....	ad. No. 15, 2009
S. 230-115.....	ad. No. 15, 2009
S. 230-120.....	ad. No. 15, 2009
S. 230-125.....	ad. No. 15, 2009
S. 230-130.....	ad. No. 15, 2009
S. 230-135.....	ad. No. 15, 2009
S. 230-140.....	ad. No. 15, 2009
S. 230-145.....	ad. No. 15, 2009
S. 230-150.....	ad. No. 15, 2009
S. 230-155.....	ad. No. 15, 2009
S. 230-160.....	ad. No. 15, 2009
S. 230-165.....	ad. No. 15, 2009
S. 230-170.....	ad. No. 15, 2009
S. 230-175.....	ad. No. 15, 2009
S. 230-180.....	ad. No. 15, 2009
S. 230-185.....	ad. No. 15, 2009
S. 230-190.....	ad. No. 15, 2009
S. 230-195.....	ad. No. 15, 2009
S. 230-200.....	ad. No. 15, 2009
<b>Subdivision 230-C</b>	
S. 230-205.....	ad. No. 15, 2009
S. 230-210.....	ad. No. 15, 2009
S. 230-215.....	ad. No. 15, 2009
S. 230-220.....	ad. No. 15, 2009
S. 230-225.....	ad. No. 15, 2009
S. 230-230.....	ad. No. 15, 2009
S. 230-235.....	ad. No. 15, 2009
S. 230-240.....	ad. No. 15, 2009
S. 230-245.....	ad. No. 15, 2009

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 230-D</b>	
S. 230-250.....	ad. No. 15, 2009
S. 230-255.....	ad. No. 15, 2009
S. 230-260.....	ad. No. 15, 2009
S. 230-265.....	ad. No. 15, 2009
S. 230-270.....	ad. No. 15, 2009
S. 230-275.....	ad. No. 15, 2009
S. 230-280.....	ad. No. 15, 2009
S. 230-285.....	ad. No. 15, 2009
S. 230-290.....	ad. No. 15, 2009
<b>Subdivision 230-E</b>	
S. 230-295.....	ad. No. 15, 2009
S. 230-300.....	ad. No. 15, 2009
S. 230-305.....	ad. No. 15, 2009
S. 230-310.....	ad. No. 15, 2009
S. 230-315.....	ad. No. 15, 2009
S. 230-320.....	ad. No. 15, 2009
S. 230-325.....	ad. No. 15, 2009
S. 230-330.....	ad. No. 15, 2009
S. 230-335.....	ad. No. 15, 2009
S. 230-340.....	ad. No. 15, 2009
S. 230-345.....	ad. No. 15, 2009
S. 230-350.....	ad. No. 15, 2009
S. 230-355.....	ad. No. 15, 2009
S. 230-360.....	ad. No. 15, 2009
S. 230-365.....	ad. No. 15, 2009
S. 230-370.....	ad. No. 15, 2009
S. 230-375.....	ad. No. 15, 2009
S. 230-380.....	ad. No. 15, 2009
S. 230-385.....	ad. No. 15, 2009
<b>Subdivision 230-F</b>	
S. 230-390.....	ad. No. 15, 2009
S. 230-395.....	ad. No. 15, 2009
S. 230-400.....	ad. No. 15, 2009
S. 230-405.....	ad. No. 15, 2009
S. 230-410.....	ad. No. 15, 2009
S. 230-415.....	ad. No. 15, 2009
S. 230-420.....	ad. No. 15, 2009
S. 230-425.....	ad. No. 15, 2009
S. 230-430.....	ad. No. 15, 2009
<b>Subdivision 230-G</b>	
S. 230-435.....	ad. No. 15, 2009

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 230-440.....	ad. No. 15, 2009
S. 230-445.....	ad. No. 15, 2009
<b>Subdivision 230-H</b>	
S. 230-450.....	ad. No. 15, 2009
S. 230-455.....	ad. No. 15, 2009
S. 230-460.....	ad. No. 15, 2009
S. 230-465.....	ad. No. 15, 2009
S. 230-470.....	ad. No. 15, 2009
S. 230-475.....	ad. No. 15, 2009
S. 230-480.....	ad. No. 15, 2009
<b>Subdivision 230-I</b>	
S. 230-485.....	ad. No. 15, 2009
S. 230-490.....	ad. No. 15, 2009
S. 230-495.....	ad. No. 15, 2009
S. 230-500.....	ad. No. 15, 2009
S. 230-505.....	ad. No. 15, 2009
S. 230-510.....	ad. No. 15, 2009
S. 230-515.....	ad. No. 15, 2009
S. 230-520.....	ad. No. 15, 2009
S. 230-525.....	ad. No. 15, 2009
<b>Subdivision 230-J</b>	
S. 230-530.....	ad. No. 15, 2009
<b>Division 240</b>	
S. 240-1.....	ad. No. 72, 2001
S. 240-3.....	ad. No. 72, 2001 (as am. by No. 77, 2001)
S. 240-7.....	ad. No. 72, 2001 (as am. by No. 77, 2001)
<b>Subdivision 240-A</b>	
S. 240-10.....	ad. No. 72, 2001
S. 240-15.....	ad. No. 72, 2001 am. No. 101, 2006
<b>Subdivision 240-B</b>	
S. 240-17.....	ad. No. 72, 2001
S. 240-20.....	ad. No. 72, 2001 am. No. 97, 2008
S. 240-25.....	ad. No. 72, 2001
<b>Subdivision 240-C</b>	
S. 240-30.....	ad. No. 72, 2001
Link note to Guide.....	rep. No. 41, 2005
S. 240-35.....	ad. No. 72, 2001
S. 240-40.....	ad. No. 72, 2001
<b>Subdivision 240-D</b>	
S. 240-45.....	ad. No. 72, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Link note to Guide .....	rep. No. 41, 2005
S. 240-50.....	ad. No. 72, 2001
Heading to s. 240-55.....	rs. No. 14, 2009
S. 240-55.....	ad. No. 72, 2001
<b>Subdivision 240-E</b>	
S. 240-60.....	ad. No. 72, 2001
S. 240-65.....	ad. No. 72, 2001
S. 240-70.....	ad. No. 72, 2001
<b>Subdivision 240-F</b>	
S. 240-75.....	ad. No. 72, 2001
S. 240-78.....	ad. No. 72, 2001
S. 240-80.....	ad. No. 72, 2001
S. 240-85.....	ad. No. 72, 2001
S. 240-90.....	ad. No. 72, 2001 (as am. by No. 77, 2001) am. No. 58, 2006
<b>Subdivision 240-G</b>	
S. 240-100.....	ad. No. 72, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 240-105.....	ad. No. 72, 2001
S. 240-110.....	ad. No. 72, 2001
<b>Subdivision 240-H</b>	
S. 240-112.....	ad. No. 72, 2001
<b>Subdivision 240-I</b>	
S. 240-115.....	ad. No. 72, 2001
Link note to s. 240-115.....	rep. No. 41, 2005
<b>Division 243</b>	
S. 243-10.....	ad. No. 72, 2001
<b>Subdivision 243-A</b>	
S. 243-15.....	ad. No. 72, 2001 am. No. 101, 2006
S. 243-20.....	ad. No. 72, 2001
S. 243-25.....	ad. No. 72, 2001
S. 243-30.....	ad. No. 72, 2001
<b>Subdivision 243-B</b>	
S. 243-35.....	ad. No. 72, 2001 (as am. by No. 77, 2001) am. No. 101, 2006
<b>Subdivision 243-C</b>	
S. 243-40.....	ad. No. 72, 2001
S. 243-45.....	ad. No. 72, 2001
S. 243-50.....	ad. No. 72, 2001
S. 243-55.....	ad. No. 72, 2001 am. No. 101, 2006
S. 243-57.....	ad. No. 72, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 243-58.....	ad. No. 72, 2001
<b>Subdivision 243-D</b>	
S. 243-60.....	ad. No. 72, 2001
S. 243-65.....	ad. No. 72, 2001 am. No. 101, 2006
S. 243-70.....	ad. No. 72, 2001
S. 243-75.....	ad. No. 72, 2001
Link note to s. 243-75.....	rep. No. 41, 2005
<b>Division 247</b>	
Division 247.....	ad. No. 55, 2007
S. 247-1.....	ad. No. 55, 2007
S. 247-5.....	ad. No. 55, 2007
S. 247-10.....	ad. No. 55, 2007
S. 247-15.....	ad. No. 55, 2007
S. 247-20.....	ad. No. 55, 2007
S. 247-25.....	ad. No. 55, 2007
S. 247-30.....	ad. No. 55, 2007
<b>Division 250</b>	
Division 250.....	ad. No. 164, 2007
S. 250-1.....	ad. No. 164, 2007
<b>Subdivision 250-A</b>	
S. 250-5.....	ad. No. 164, 2007
<b>Subdivision 250-B</b>	
S. 250-10.....	ad. No. 164, 2007
S. 250-15.....	ad. No. 164, 2007 am. No. 97, 2008
S. 250-20.....	ad. No. 164, 2007
S. 250-25.....	ad. No. 164, 2007
S. 250-30.....	ad. No. 164, 2007
S. 250-35.....	ad. No. 164, 2007
S. 250-40.....	ad. No. 164, 2007
S. 250-45.....	ad. No. 164, 2007
S. 250-50.....	ad. No. 164, 2007
S. 250-55.....	ad. No. 164, 2007 am. No. 97, 2008
S. 250-60.....	ad. No. 164, 2007 am. No. 97, 2008
S. 250-65.....	ad. No. 164, 2007
S. 250-70.....	ad. No. 164, 2007
S. 250-75.....	ad. No. 164, 2007
S. 250-80.....	ad. No. 164, 2007
S. 250-85.....	ad. No. 164, 2007
S. 250-90.....	ad. No. 164, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 250-95.....	ad. No. 164, 2007
S. 250-100.....	ad. No. 164, 2007
S. 250-105.....	ad. No. 164, 2007
S. 250-110.....	ad. No. 164, 2007
S. 250-115.....	ad. No. 164, 2007 am. No. 97, 2008
S. 250-120.....	ad. No. 164, 2007
S. 250-125.....	ad. No. 164, 2007
S. 250-130.....	ad. No. 164, 2007
S. 250-135.....	ad. No. 164, 2007
S. 250-140.....	ad. No. 164, 2007
<b>Subdivision 250-C</b>	
S. 250-145.....	ad. No. 164, 2007
S. 250-150.....	ad. No. 164, 2007
<b>Subdivision 250-D</b>	
S. 250-155.....	ad. No. 164, 2007
S. 250-160.....	ad. No. 164, 2007
S. 250-165.....	ad. No. 164, 2007 rep. No. 15, 2009
S. 250-170.....	ad. No. 164, 2007 rep. No. 15, 2009
S. 250-175.....	ad. No. 164, 2007 rep. No. 15, 2009
S. 250-180.....	ad. No. 164, 2007
S. 250-185.....	ad. No. 164, 2007
<b>Subdivision 250-E</b>	
S. 250-190.....	ad. No. 164, 2007
S. 250-195.....	ad. No. 164, 2007
S. 250-200.....	ad. No. 164, 2007
S. 250-205.....	ad. No. 164, 2007
S. 250-210.....	ad. No. 164, 2007
S. 250-215.....	ad. No. 164, 2007
S. 250-220.....	ad. No. 164, 2007
S. 250-225.....	ad. No. 164, 2007
S. 250-230.....	ad. No. 164, 2007
S. 250-235.....	ad. No. 164, 2007
S. 250-240.....	ad. No. 164, 2007
S. 250-245.....	ad. No. 164, 2007
S. 250-250.....	ad. No. 164, 2007
S. 250-255.....	ad. No. 164, 2007
S. 250-260.....	ad. No. 164, 2007
S. 250-265.....	ad. No. 164, 2007
S. 250-270.....	ad. No. 164, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 250-275.....	ad. No. 164, 2007
S. 250-280.....	ad. No. 164, 2007
<b>Subdivision 250-F</b>	
S. 250-285.....	ad. No. 164, 2007
S. 250-290.....	ad. No. 164, 2007
<b>Subdivision 250-G</b>	
S. 250-295.....	ad. No. 164, 2007
<b>Division 253</b>	
Division 253.....	ad. No. 42, 2009
<b>Subdivision 253-A</b>	
S. 253-1.....	ad. No. 42, 2009
S. 253-5.....	ad. No. 42, 2009
S. 253-10.....	ad. No. 42, 2009
S. 253-15.....	ad. No. 42, 2009
<b>Part 3-30</b>	
Part 3-30.....	ad. No. 9, 2007
<b>Division 280</b>	
S. 280-1.....	ad. No. 9, 2007
S. 280-5.....	ad. No. 9, 2007
S. 280-10.....	ad. No. 9, 2007
S. 280-15.....	ad. No. 9, 2007
S. 280-20.....	ad. No. 9, 2007
S. 280-25.....	ad. No. 9, 2007
S. 280-30.....	ad. No. 9, 2007
S. 280-35.....	ad. No. 9, 2007
S. 280-40.....	ad. No. 9, 2007
<b>Division 285</b>	
Division 285.....	ad. No. 15, 2007
S. 285-5.....	ad. No. 15, 2007
<b>Division 290</b>	
S. 290-1.....	ad. No. 9, 2007
<b>Subdivision 290-A</b>	
S. 290-5.....	ad. No. 9, 2007 am. No. 15, 2007; Nos. 45 and 92, 2008
S. 290-10.....	ad. No. 9, 2007
<b>Subdivision 290-B</b>	
S. 290-60.....	ad. No. 9, 2007
Note to s. 290-60(1).....	am. No. 15, 2007
S. 290-65.....	ad. No. 9, 2007
Heading to s. 290-70.....	rs. No. 143, 2007
S. 290-70.....	ad. No. 9, 2007 am. No. 143, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 290-75.....	ad. No. 9, 2007
S. 290-80.....	ad. No. 9, 2007 am. No. 54, 2009
Note to s. 290-80(2) .....	am. No. 8, 2008; No. 54, 2009
S. 290-85.....	ad. No. 9, 2007 am. No. 15, 2007
S. 290-90.....	ad. No. 9, 2007 am. No. 143, 2007
Note 2 to s. 290-90(2) .....	am. No. 14, 2009
S. 290-95.....	ad. No. 9, 2007
S. 290-100.....	ad. No. 9, 2007
<b>Subdivision 290-C</b>	
S. 290-150.....	ad. No. 9, 2007 am. No. 15, 2007
S. 290-155.....	ad. No. 9, 2007
S. 290-160.....	ad. No. 9, 2007 am. No. 27, 2009
S. 290-165.....	ad. No. 9, 2007
S. 290-170.....	ad. No. 9, 2007 am. No. 15, 2007
S. 290-175.....	ad. No. 9, 2007
S. 290-180.....	ad. No. 9, 2007 am. No. 15, 2007
<b>Subdivision 290-D</b>	
S. 290-230.....	ad. No. 9, 2007 am. No. 27, 2009
S. 290-235.....	ad. No. 9, 2007
S. 290-240.....	ad. No. 9, 2007
<b>Division 292</b>	
S. 292-1.....	ad. No. 9, 2007
<b>Subdivision 292-A</b>	
S. 292-5.....	ad. No. 9, 2007
<b>Subdivision 292-B</b>	
S. 292-10.....	ad. No. 9, 2007
S. 292-15.....	ad. No. 9, 2007
S. 292-20.....	ad. No. 9, 2007 am. No. 62, 2009
Note to s. 292-20(2) Renumbered Note 1 .....	No. 97, 2008
S. 292-25.....	ad. No. 9, 2007 am. No. 15, 2007
<b>Subdivision 292-C</b>	
S. 292-75.....	ad. No. 9, 2007
S. 292-80.....	ad. No. 9, 2007



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 292-85.....	ad. No. 9, 2007 am. No. 62, 2009
S. 292-90.....	ad. No. 9, 2007 am. No. 15, 2007
S. 292-95.....	ad. No. 9, 2007
S. 292-100.....	ad. No. 9, 2007 am. No. 15, 2007; No. 97, 2008
S. 292-105.....	ad. No. 9, 2007
<b>Subdivision 292-D</b>	
S. 292-155.....	ad. No. 9, 2007
S. 292-160.....	ad. No. 9, 2007
S. 292-165.....	ad. No. 9, 2007
S. 292-170.....	ad. No. 9, 2007 am. No. 15, 2007; No. 62, 2009
S. 292-175.....	ad. No. 9, 2007
<b>Subdivision 292-E</b>	
S. 292-225.....	ad. No. 9, 2007
S. 292-230.....	ad. No. 9, 2007
S. 292-235.....	ad. No. 9, 2007
S. 292-240.....	ad. No. 9, 2007
S. 292-245.....	ad. No. 9, 2007
S. 292-250.....	ad. No. 9, 2007
<b>Subdivision 292-F</b>	
S. 292-300.....	ad. No. 9, 2007
S. 292-305.....	ad. No. 9, 2007
S. 292-310.....	ad. No. 9, 2007
S. 292-315.....	ad. No. 9, 2007
S. 292-320.....	ad. No. 9, 2007
S. 292-325.....	ad. No. 9, 2007
S. 292-330.....	ad. No. 9, 2007 am. No. 15, 2007
<b>Subdivision 292-G</b>	
S. 292-380.....	ad. No. 9, 2007
S. 292-385.....	ad. No. 9, 2007
S. 292-390.....	ad. No. 9, 2007 am. No. 15, 2007
S. 292-395.....	ad. No. 9, 2007
S. 292-400.....	ad. No. 9, 2007
S. 292-405.....	ad. No. 9, 2007
S. 292-410.....	ad. No. 9, 2007 am. No. 15, 2007
S. 292-415.....	ad. No. 9, 2007 am. No. 15, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 292-H</b>	
S. 292-465.....	ad. No. 9, 2007
S. 292-470.....	ad. No. 9, 2007
<b>Division 295</b>	
S. 295-1.....	ad. No. 9, 2007
<b>Subdivision 295-A</b>	
S. 295-5.....	ad. No. 9, 2007
Note to s. 295-5(4) Renumbered Note 1 .....	No. 15, 2007
Note 2 to s. 295-5(4) .....	ad. No. 15, 2007
S. 295-10.....	ad. No. 9, 2007 am. No. 45, 2008
S. 295-15.....	ad. No. 9, 2007
S. 295-20.....	ad. No. 9, 2007
S. 295-25.....	ad. No. 9, 2007
S. 295-30.....	ad. No. 9, 2007
S. 295-35.....	ad. No. 9, 2007
<b>Subdivision 295-B</b>	
S. 295-85.....	ad. No. 9, 2007 am. No. 15, 2009
S. 295-90.....	ad. No. 9, 2007
S. 295-95.....	ad. No. 9, 2007 am. No. 15, 2007
S. 295-100.....	ad. No. 9, 2007 am. No. 45, 2008
S. 295-105.....	ad. No. 9, 2007
<b>Subdivision 295-C</b>	
S. 295-155.....	ad. No. 9, 2007
S. 295-160.....	ad. No. 9, 2007
S. 295-165.....	ad. No. 9, 2007
S. 295-170.....	ad. No. 9, 2007
S. 295-171.....	ad. No. 45, 2008 am. No. 92, 2008
S. 295-173.....	ad. No. 15, 2007
S. 295-175.....	ad. No. 9, 2007
S. 295-180.....	ad. No. 9, 2007 am. No. 15, 2007
S. 295-185.....	ad. No. 9, 2007
S. 295-190.....	ad. No. 9, 2007 am. No. 151, 2008
S. 295-195.....	ad. No. 9, 2007
S. 295-200.....	ad. No. 9, 2007 am. No. 15, 2007
S. 295-205.....	ad. No. 9, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 295-210.....	ad. No. 9, 2007
<b>Subdivision 295-D</b>	
S. 295-260.....	ad. No. 9, 2007
S. 295-265.....	ad. No. 9, 2007
S. 295-270.....	ad. No. 9, 2007
<b>Subdivision 295-E</b>	
S. 295-320.....	ad. No. 9, 2007
S. 295-325.....	ad. No. 9, 2007
S. 295-330.....	ad. No. 9, 2007
S. 295-335.....	ad. No. 9, 2007
<b>Subdivision 295-F</b>	
S. 295-385.....	ad. No. 9, 2007 am. No. 143, 2007
S. 295-390.....	ad. No. 9, 2007 am. No. 143, 2007
S. 295-395.....	ad. No. 9, 2007
S. 295-400.....	ad. No. 9, 2007
S. 295-405.....	ad. No. 9, 2007
S. 295-410.....	ad. No. 9, 2007
<b>Subdivision 295-G</b>	
S. 295-460.....	ad. No. 9, 2007 am. No. 15, 2007
S. 295-465.....	ad. No. 9, 2007
S. 295-470.....	ad. No. 9, 2007 am. No. 15, 2007
S. 295-475.....	ad. No. 9, 2007
S. 295-480.....	ad. No. 9, 2007
S. 295-485.....	ad. No. 9, 2007 am. No. 143, 2007; No. 14, 2009
Note to s. 295-485(1) .....	ad. No. 143, 2007
S. 295-490.....	ad. No. 9, 2007
S. 295-495.....	ad. No. 9, 2007 am. No. 92, 2008
<b>Subdivision 295-H</b>	
S. 295-545.....	ad. No. 9, 2007
S. 295-550.....	ad. No. 9, 2007
S. 295-555.....	ad. No. 9, 2007 am. No. 45, 2008
<b>Subdivision 295-I</b>	
S. 295-605.....	ad. No. 9, 2007
S. 295-610.....	ad. No. 9, 2007
S. 295-615.....	ad. No. 9, 2007 am. No. 143, 2007; No. 92, 2008
S. 295-620.....	ad. No. 9, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 295-625.....	ad. No. 9, 2007
<b>Subdivision 295-J</b>	
S. 295-675.....	ad. No. 9, 2007
S. 295-680.....	ad. No. 9, 2007
<b>Division 301</b>	
S. 301-1.....	ad. No. 9, 2007
<b>Subdivision 301-A</b>	
S. 301-5.....	ad. No. 9, 2007
<b>Subdivision 301-B</b>	
S. 301-10.....	ad. No. 9, 2007
S. 301-15.....	ad. No. 9, 2007
S. 301-20.....	ad. No. 9, 2007
S. 301-25.....	ad. No. 9, 2007
S. 301-30.....	ad. No. 9, 2007
S. 301-35.....	ad. No. 9, 2007
S. 301-40.....	ad. No. 9, 2007
<b>Subdivision 301-C</b>	
S. 301-90.....	ad. No. 9, 2007
S. 301-95.....	ad. No. 9, 2007
S. 301-100.....	ad. No. 9, 2007
S. 301-105.....	ad. No. 9, 2007
S. 301-110.....	ad. No. 9, 2007
S. 301-115.....	ad. No. 9, 2007
S. 301-120.....	ad. No. 9, 2007
Group heading to s. 301-125 ....	ad. No. 27, 2009
S. 301-125.....	ad. No. 27, 2009
<b>Subdivision 301-D</b>	
S. 301-170.....	ad. No. 9, 2007 am. No. 151, 2008
S. 301-175.....	ad. No. 9, 2007
<b>Subdivision 301-E</b>	
S. 301-225.....	ad. No. 9, 2007
<b>Division 302</b>	
S. 302-1.....	ad. No. 9, 2007
<b>Subdivision 302-A</b>	
S. 302-5.....	ad. No. 9, 2007 am. No. 15, 2007
S. 302-10.....	ad. No. 9, 2007
<b>Subdivision 302-B</b>	
S. 302-60.....	ad. No. 9, 2007
S. 302-65.....	ad. No. 9, 2007
S. 302-70.....	ad. No. 9, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 302-75.....	ad. No. 9, 2007
S. 302-80.....	ad. No. 9, 2007
S. 302-85.....	ad. No. 9, 2007
S. 302-90.....	ad. No. 9, 2007
<b>Subdivision 302-C</b>	
S. 302-140.....	ad. No. 9, 2007
S. 302-145.....	ad. No. 9, 2007
<b>Subdivision 302-D</b>	
S. 302-195.....	ad. No. 9, 2007 am. No. 79, 2007
S. 302-200.....	ad. No. 9, 2007
<b>Division 303</b>	
S. 303-5.....	ad. No. 9, 2007
S. 303-10.....	ad. No. 38, 2008
<b>Division 304</b>	
S. 304-1.....	ad. No. 9, 2007
S. 304-5.....	ad. No. 9, 2007
S. 304-10.....	ad. No. 9, 2007 am. No. 15, 2007
S. 304-15.....	ad. No. 9, 2007 am. No. 15, 2007
<b>Division 305</b>	
S. 305-1.....	ad. No. 9, 2007
<b>Subdivision 305-A</b>	
S. 305-5.....	ad. No. 9, 2007 am. No. 15, 2007
<b>Subdivision 305-B</b>	
S. 305-55.....	ad. No. 9, 2007 am. No. 15, 2007
S. 305-60.....	ad. No. 9, 2007
S. 305-65.....	ad. No. 9, 2007
Note to s. 305-65(1) .....	am. No. 15, 2007
S. 305-70.....	ad. No. 9, 2007
S. 305-75.....	ad. No. 9, 2007 am. No. 143, 2007
S. 305-80.....	ad. No. 9, 2007
<b>Division 306</b>	
S. 306-1.....	ad. No. 9, 2007
S. 306-5.....	ad. No. 9, 2007
S. 306-10.....	ad. No. 9, 2007
S. 306-15.....	ad. No. 9, 2007 am. No. 15, 2007; No. 27, 2009
Note to s. 306-15(1) .....	ad. No. 27, 2009
S. 306-20.....	ad. No. 9, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 306-25.....	ad. No. 42, 2009
<b>Division 307</b>	
S. 307-1.....	ad. No. 9, 2007
<b>Subdivision 307-A</b>	
S. 307-5.....	ad. No. 9, 2007 am. No. 143, 2007; No. 151, 2008; No. 27, 2009
S. 307-10.....	ad. No. 9, 2007 am. No. 15, 2007
S. 307-15.....	ad. No. 9, 2007
<b>Subdivision 307-B</b>	
S. 307-65.....	ad. No. 9, 2007
S. 307-70.....	ad. No. 9, 2007
<b>Subdivision 307-C</b>	
S. 307-120.....	ad. No. 9, 2007 am. No. 151, 2008; No. 27, 2009
S. 307-125.....	ad. No. 9, 2007
S. 307-130.....	ad. No. 9, 2007
S. 307-135.....	ad. No. 9, 2007
S. 307-140.....	ad. No. 9, 2007
S. 307-142.....	ad. No. 151, 2008 rs. No. 27, 2009
S. 307-145.....	ad. No. 9, 2007
Note to s. 307-145(1) .....	ad. No. 27, 2009
S. 307-150.....	ad. No. 9, 2007
<b>Subdivision 307-D</b>	
S. 307-200.....	ad. No. 9, 2007
S. 307-205.....	ad. No. 9, 2007
S. 307-210.....	ad. No. 9, 2007
S. 307-215.....	ad. No. 9, 2007
S. 307-220.....	ad. No. 9, 2007 am. No. 151, 2008
S. 307-225.....	ad. No. 9, 2007
<b>Subdivision 307-E</b>	
S. 307-275.....	ad. No. 9, 2007
S. 307-280.....	ad. No. 9, 2007
S. 307-285.....	ad. No. 9, 2007 am. No. 15, 2007
S. 307-290.....	ad. No. 9, 2007
Note to s. 307-290(1) .....	rep. No. 143, 2007
Notes 1, 2 to s. 307-290(1) .....	ad. No. 143, 2007
S. 307-295.....	ad. No. 9, 2007 am. No. 15, 2007
S. 307-300.....	ad. No. 151, 2008 rs. No. 27, 2009

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 307-F</b>	
S. 307-345.....	ad. No. 9, 2007
S. 307-350.....	ad. No. 9, 2007 am. No. 15, 2007; No. 27, 2009
<b>Subdivision 307-G</b>	
S. 307-400.....	ad. No. 9, 2007
<b>Part 3-32</b>	
Part 3-32 .....	ad. No. 97, 2008
<b>Division 315</b>	
S. 315-1.....	ad. No. 97, 2008
<b>Subdivision 315-A</b>	
S. 315-5.....	ad. No. 97, 2008
S. 315-10.....	ad. No. 97, 2008
S. 315-15.....	ad. No. 97, 2008
S. 315-20.....	ad. No. 97, 2008
S. 315-25.....	ad. No. 97, 2008
S. 315-30.....	ad. No. 97, 2008
<b>Subdivision 315-B</b>	
S. 315-80.....	ad. No. 97, 2008
S. 315-85.....	ad. No. 97, 2008
S. 315-90.....	ad. No. 97, 2008
<b>Subdivision 315-C</b>	
S. 315-140.....	ad. No. 97, 2008
S. 315-145.....	ad. No. 97, 2008
S. 315-150.....	ad. No. 97, 2008
S. 315-155.....	ad. No. 97, 2008
S. 315-160.....	ad. No. 97, 2008
<b>Subdivision 315-D</b>	
S. 315-210.....	ad. No. 97, 2008
<b>Subdivision 315-E</b>	
S. 315-260.....	ad. No. 97, 2008
<b>Subdivision 315-F</b>	
S. 315-310.....	ad. No. 97, 2008
<b>Part 3-35</b>	
Heading to Part 3-35.....	rs. No. 169, 2001
Part 3-35 .....	ad. No. 89, 2000
Link note to Part 3-35.....	rep. No. 41, 2005
<b>Division 320</b>	
S. 320-1.....	ad. No. 89, 2000 am. No. 66, 2003; No. 83, 2004; No. 15, 2007; No. 45, 2008
Link note to Guide .....	rep. No. 41, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 320-A</b>	
S. 320-5.....	ad. No. 89, 2000 am. No. 66, 2003; No. 83, 2004; No. 58, 2006; No. 45, 2008
<b>Subdivision 320-B</b>	
S. 320-10.....	ad. No. 89, 2000 am. No. 66, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 320-15.....	ad. No. 89, 2000 am. No. 83, 2004; Nos. 9 and 15, 2007; No. 45, 2008
S. 320-30.....	ad. No. 89, 2000 am. No. 97, 2008
Note to s. 320-30(1) .....	ad. No. 23, 2005
S. 320-35.....	ad. No. 89, 2000 am. No. 57, 2002; No. 12, 2003 rs. No. 66, 2003 am. No. 83, 2004; No. 58, 2006; No. 45, 2008
S. 320-37.....	ad. No. 66, 2003 am. No. 83, 2004; No. 41, 2005; No. 58, 2006
Note to s. 320-37(1) .....	ad. No. 23, 2005
Heading to s. 320-40.....	rs. No. 83, 2004 rep. No. 101, 2006
S. 320-40.....	ad. No. 89, 2000 am. No. 66, 2003; No. 83, 2004 rep. No. 101, 2006
Note to s. 320-40(1) .....	ad. No. 23, 2005 rep. No. 101, 2006
Heading to s. 320-45.....	rs. No. 45, 2008
S. 320-45.....	ad. No. 89, 2000 am. No. 15, 2007; No. 45, 2008; No. 15, 2009
Note to s. 320-45.....	ad. No. 15, 2007
<b>Subdivision 320-C</b>	
S. 320-50.....	ad. No. 89, 2000
Link note to Guide .....	rep. No. 41, 2005
Heading to s. 320-55.....	rs. No. 45, 2008
S. 320-55.....	ad. No. 89, 2000 am. No. 83, 2004; No. 45, 2008
S. 320-60.....	ad. No. 89, 2000
S. 320-65.....	ad. No. 89, 2000 am. No. 45, 2008
S. 320-70.....	ad. No. 89, 2000 am. No. 83, 2004
S. 320-75.....	ad. No. 89, 2000 am. No. 57, 2002 rs. No. 83, 2004
S. 320-80.....	ad. No. 89, 2000 am. No. 83, 2004; No. 45, 2008



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Provision affected	How affected
S. 320-85.....	ad. No. 89, 2000 am. No. 83, 2004; No. 45, 2008
Note 1 to s. 320-85(1) .....	am. No. 143, 2007
Heading to s. 320-87 .....	rs. No. 45, 2008
S. 320-87.....	ad. No. 89, 2000 rs. No. 83, 2004 am. No. 45, 2008
S. 320-100.....	ad. No. 89, 2000 rs. No. 83, 2004
S. 320-105.....	ad. No. 89, 2000 am. No. 83, 2004
S. 320-107.....	ad. No. 9, 2007 am. No. 45, 2008; No. 14, 2009
S. 320-110.....	ad. No. 89, 2000 am. No. 57, 2002; No. 12, 2003
S. 320-111.....	ad. No. 12, 2003
S. 320-112.....	ad. No. 12, 2003 am. No. 66, 2003
S. 320-115.....	ad. No. 89, 2000
Heading to s. 320-120.....	rs. No. 45, 2008
S. 320-120.....	ad. No. 89, 2000 am. No. 45, 2008
Note to s. 320-120.....	ad. No. 83, 2004
Heading to s. 320-125.....	rs. No. 45, 2008
S. 320-125.....	ad. No. 89, 2000 am. No. 45, 2008
Note to s. 320-125.....	ad. No. 83, 2004 am. No. 45, 2008
<b>Subdivision 320-D</b>	
Subdivision 320-D .....	rs. No. 83, 2004
S. 320-130.....	ad. No. 89, 2000 rs. No. 83, 2004 am. No. 45, 2008
S. 320-131.....	ad. No. 83, 2004 am. No. 45, 2008
Link note to Guide .....	rep. No. 41, 2005
S. 320-133.....	ad. No. 83, 2004 am. No. 45, 2008
S. 320-134.....	ad. No. 83, 2004
Note to s. 320-134(3) .....	am. No. 58, 2006
S. 320-135.....	ad. No. 89, 2000 rs. No. 83, 2004
Heading to s. 320-137.....	rs. No. 45, 2008
S. 320-137.....	ad. No. 83, 2004 am. No. 58, 2006; No. 15, 2007; No. 45, 2008
S. 320-139.....	ad. No. 83, 2004

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 320-140.....	ad. No. 89, 2000 rep. No. 83, 2004
Heading to s. 320-141.....	rs. No. 45, 2008
Subhead. to s. 320-141(1).....	rs. No. 45, 2008
Subhead. to s. 320-141(2).....	rs. No. 45, 2008
S. 320-141.....	ad. No. 83, 2004 am. No. 58, 2006; No. 45, 2008
Note to s. 320-141(2).....	am. No. 83, 2004
S. 320-143.....	ad. No. 83, 2004 am. No. 58, 2006; No. 45, 2008
Note to s. 320-143(2).....	am. No. 83, 2004
S. 320-145.....	ad. No. 89, 2000 rep. No. 83, 2004
S. 320-149.....	ad. No. 83, 2004 am. No. 45, 2008
<b>Subdivision 320-E</b>	
Subdivision 320-E.....	rep. No. 83, 2004 ad. No. 15, 2007
S. 320-150.....	ad. No. 89, 2000 rep. No. 83, 2004 ad. No. 15, 2007
S. 320-155.....	ad. No. 89, 2000 rep. No. 83, 2004 ad. No. 15, 2007
S. 320-160.....	ad. No. 89, 2000 rep. No. 83, 2004
<b>Subdivision 320-F</b>	
Heading to Subdiv. 320-F.....	rs. No. 83, 2004; No. 45, 2008
S. 320-165.....	ad. No. 89, 2000 rs. No. 83, 2004 am. No. 45, 2008
Link note to Guide.....	rep. No. 41, 2005
Heading to s. 320-170.....	rs. No. 45, 2008
S. 320-170.....	ad. No. 89, 2000 am. No. 83, 2004; No. 45, 2008
Note to s. 320-170(1).....	rep. No. 45, 2008
Heading to s. 320-175.....	rs. No. 45, 2008
S. 320-175.....	ad. No. 89, 2000 rs. No. 83, 2004 am. No. 45, 2008
Note to s. 320-175(1).....	ad. No. 16, 2003
Notes to s. 320-175(2).....	ad. No. 83, 2004 rep. No. 41, 2005
Note 1 to s. 320-175(2).....	ad. No. 41, 2005
Note 2 to s. 320-175(2).....	ad. No. 41, 2005
Subhead. to s. 320-180(1).....	rs. No. 45, 2008

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Subhead. to s. 320-180(3) .....	rs. No. 45, 2008
S. 320-180.....	ad. No. 89, 2000 rs. No. 83, 2004 am. No. 45, 2008
Heading to s. 320-185.....	rs. No. 83, 2004; No. 45, 2008
S. 320-185.....	ad. No. 89, 2000 am. No. 83, 2004; No. 45, 2008
Heading to s. 320-190.....	rs. No. 45, 2008
S. 320-190.....	ad. No. 89, 2000 am. No. 45, 2008
Heading to s. 320-195.....	rs. No. 83, 2004; No. 45, 2008
S. 320-195.....	ad. No. 89, 2000 am. No. 83, 2004; No. 41, 2005; No. 15, 2007; No. 45, 2008
Heading to s. 320-200.....	rs. No. 45, 2008
S. 320-200.....	ad. No. 89, 2000 am. No. 83, 2004; No. 45, 2008
S. 320-205.....	ad. No. 89, 2000 am. No. 169, 2001 rep. No. 83, 2004
Subdivision 320-G.....	rep. No. 83, 2004
S. 320-210.....	ad. No. 89, 2000 rep. No. 83, 2004
S. 320-215.....	ad. No. 89, 2000 rep. No. 83, 2004
<b>Subdivision 320-H</b>	
S. 320-220.....	ad. No. 89, 2000
Link note to Guide .....	rep. No. 41, 2005
S. 320-225.....	ad. No. 89, 2000 am. No. 83, 2004
S. 320-230.....	ad. No. 89, 2000 rs. No. 83, 2004
Note to s. 320-230(1) .....	ad. No. 16, 2003
Notes to s. 320-230(2) .....	ad. No. 83, 2004 rep. No. 41, 2005
Note 1 to s. 320-230(2) .....	ad. No. 41, 2005
Note 2 to s. 320-230(2) .....	ad. No. 41, 2005
S. 320-235.....	ad. No. 89, 2000 rs. No. 83, 2004
Heading to s. 320-240.....	rs. No. 83, 2004
S. 320-240.....	ad. No. 89, 2000 am. No. 83, 2004
S. 320-245.....	ad. No. 89, 2000 am. No. 83, 2004
S. 320-246.....	ad. No. 83, 2004 am. No. 83, 2004; No. 58, 2006; No. 15, 2007

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 320-247.....	ad. No. 83, 2004 am. No. 15, 2007
Heading to s. 320-250.....	rs. No. 83, 2004
S. 320-250.....	ad. No. 89, 2000 am. No. 83, 2004
S. 320-255.....	ad. No. 89, 2000 am. No. 77, 2001; No. 83, 2004
Link note to s. 320-255.....	rep. No. 169, 2001
<b>Subdivision 320-I</b>	
Subdivision 320-I.....	ad. No. 23, 2005
S. 320-300.....	ad. No. 23, 2005 am. No. 117, 2007
S. 320-305.....	ad. No. 23, 2005 am. No. 117, 2007
S. 320-310.....	ad. No. 23, 2005
Heading to s. 320-315.....	rs. No. 45, 2008
S. 320-315.....	ad. No. 23, 2005 am. No. 45, 2008
S. 320-320.....	ad. No. 23, 2005 am. No. 45, 2008
S. 320-325.....	ad. No. 23, 2005
S. 320-330.....	ad. No. 23, 2005
S. 320-335.....	ad. No. 23, 2005
S. 320-340.....	ad. No. 23, 2005
S. 320-345.....	ad. No. 23, 2005
<b>Division 322</b>	
Heading to Div. 322 of..... Part 3-35	rs. No. 42, 2009
Division 322.....	ad. No. 169, 2001
S. 322-1.....	ad. No. 169, 2001 am. No. 42, 2009
Link note to Guide.....	rep. No. 41, 2005
<b>Subdivision 322-A</b>	
Heading to Subdiv. 322-A.....	ad. No. 42, 2009
Group heading to s. 322-5.....	rep. No. 42, 2009
S. 322-5.....	ad. No. 169, 2001
S. 322-10.....	ad. No. 169, 2001
S. 322-15.....	ad. No. 169, 2001
Link note to s. 322-15.....	rep. No. 41, 2005
<b>Subdivision 322-B</b>	
Subdivision 322-B.....	ad. No. 42, 2009
S. 322-20.....	ad. No. 42, 2009
S. 322-25.....	ad. No. 42, 2009
S. 322-30.....	ad. No. 42, 2009

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 3-45</b>	
Link note to Part 3-45.....	rep. No. 41, 2005
<b>Division 328</b>	
Heading to Div. 328 of..... Part 3-45	rs. No. 80, 2007
Division 328.....	ad. No. 78, 2001
Subdivision 328-A.....	rep. No. 80, 2007
S. 328-5.....	ad. No. 78, 2001 am. No. 41, 2005 rs. No. 80, 2007
Note to s. 328-5.....	ad. No. 41, 2005 rep. No. 80, 2007
S. 328-10.....	ad. No. 78, 2001 rep. No. 41, 2005 ad. No. 80, 2007
<b>Subdivision 328-B</b>	
S. 328-50.....	ad. No. 78, 2001
<b>Subdivision 328-C</b>	
Subdivision 328-C.....	rep. No. 41, 2005 ad. No. 80, 2007
S. 328-100.....	ad. No. 78, 2001 rep. No. 41, 2005
S. 328-105.....	ad. No. 78, 2001 rep. No. 41, 2005 ad. No. 80, 2007
S. 328-110.....	ad. No. 78, 2001 rep. No. 41, 2005 ad. No. 80, 2007 am. No. 42, 2009
S. 328-115.....	ad. No. 78, 2001 rep. No. 41, 2005 ad. No. 80, 2007
Note to s. 328-115(1).....	ad. No. 42, 2009
S. 328-120.....	ad. No. 80, 2007
S. 328-125.....	ad. No. 80, 2007
S. 328-130.....	ad. No. 80, 2007
Note to s. 328-130.....	ad. No. 42, 2009
<b>Subdivision 328-D</b>	
Heading to Subdiv. 328-D.....	rs. No. 80, 2007
S. 328-170.....	ad. No. 78, 2001 am. No. 80, 2007
Link note to Guide.....	rep. No. 41, 2005
S. 328-175.....	ad. No. 78, 2001 am. No. 170, 2001; No. 119, 2002; No. 80, 2007
Note to s. 328-175(3).....	ad. No. 20, 2004 rs. No. 41, 2005 am. No. 80, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 328-180.....	ad. No. 78, 2001 am. No. 119, 2002; No. 80, 2007
S. 328-185.....	ad. No. 78, 2001 am. No. 80, 2007
Note to s. 328-185(7) .....	rs. No. 80, 2007
S. 328-190.....	ad. No. 78, 2001 am. No. 80, 2007
Note to s. 328-190(4) .....	ad. No. 20, 2004 rs. No. 41, 2005 am. No. 80, 2007
S. 328-195.....	ad. No. 78, 2001 am. No. 80, 2007
Note to s. 328-195(2) .....	rs. No. 80, 2007
S. 328-200.....	ad. No. 78, 2001
Note to s. 328-200.....	ad. No. 20, 2004 rs. No. 41, 2005 am. No. 80, 2007
S. 328-205.....	ad. No. 78, 2001 am. No. 80, 2007
Note 3 to s. 328-205(1) .....	ad. No. 20, 2004 rs. No. 41, 2005 am. No. 80, 2007
S. 328-210.....	ad. No. 78, 2001 am. No. 80, 2007
S. 328-215.....	ad. No. 78, 2001
S. 328-220.....	ad. No. 78, 2001 am. No. 41, 2005 rs. No. 80, 2007
S. 328-225.....	ad. No. 78, 2001 am. No. 119, 2002; No. 80, 2007
Note to s. 328-225(1) .....	ad. No. 20, 2004 rs. No. 41, 2005 am. No. 80, 2007
Note to s. 328-225(4) .....	am. No. 80, 2007
S. 328-230.....	ad. No. 78, 2001
S. 328-235.....	ad. No. 78, 2001 am. No. 80, 2007
S. 328-240.....	ad. No. 20, 2004 rep. No. 41, 2005
Heading to s. 328-243.....	rs. No. 41, 2005
S. 328-243.....	ad. No. 20, 2004 am. No. 41, 2005; No. 80, 2007
S. 328-245.....	ad. No. 20, 2004
S. 328-247.....	ad. No. 20, 2004 am. No. 41, 2005; No. 80, 2007
S. 328-250.....	ad. No. 20, 2004 am. No. 41, 2005; No. 80, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 328-253.....	ad. No. 20, 2004 am. No. 41, 2005
S. 328-255.....	ad. No. 20, 2004 am. No. 41, 2005; No. 80, 2007
S. 328-257.....	ad. No. 20, 2004
<b>Subdivision 328-E</b>	
Heading to Subdiv. 328-E .....	rs. No. 80, 2007
S. 328-280.....	ad. No. 78, 2001 am. No. 80, 2007
Link note to Guide .....	rep. No. 41, 2005
Heading to s. 328-285.....	rs. No. 80, 2007
S. 328-285.....	ad. No. 78, 2001 am. No. 80, 2007
Note 3 to s. 328-285(1) .....	ad. No. 80, 2007
S. 328-290.....	ad. No. 78, 2001 rep. No. 80, 2007
S. 328-295.....	ad. No. 78, 2001 am. No. 80, 2007
Note to s. 328-295(1) Renumbered Note 1 .....	No. 119, 2002
Renumbered Note .....	No. 101, 2006
Note 2 to s. 328-295(1) .....	ad. No. 119, 2002 rep. No. 101, 2006
Note to s. 328-295(2) .....	am. No. 80, 2007
Subdivision 328-F .....	rep. No. 80, 2007
S. 328-360.....	ad. No. 78, 2001 rep. No. 80, 2007
Link note to Guide .....	rep. No. 41, 2005
S. 328-365.....	ad. No. 78, 2001 rep. No. 80, 2007
Note to s. 328-365(1) Renumbered Note 1 .....	No. 41, 2005
Note 1 to s. 328-365(1) .....	rep. No. 80, 2007
Note 2 to s. 328-365(1) .....	ad. No. 41, 2005 rep. No. 80, 2007
S. 328-370.....	ad. No. 78, 2001 rep. No. 80, 2007
S. 328-375.....	ad. No. 78, 2001 am. No. 41, 2005 rep. No. 80, 2007
S. 328-380.....	ad. No. 78, 2001 am. No. 41, 2005 rep. No. 80, 2007
Subdivision 328-G .....	rep. No. 80, 2007
S. 328-430.....	ad. No. 78, 2001 rep. No. 80, 2007
Link note to Guide .....	rep. No. 41, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 328-435.....	ad. No. 78, 2001 rep. No. 80, 2007
S. 328-440.....	ad. No. 78, 2001 rep. No. 80, 2007
Division 330.....	rep. No. 77, 2001
S. 330-1.....	rep. No. 77, 2001
S. 330-5.....	am. No. 16, 1998 rep. No. 77, 2001
S. 330-10.....	am. No. 16, 1998 rep. No. 77, 2001
S. 330-15.....	rep. No. 77, 2001
Note to s. 330-15(1) .....	rep. No. 121, 1997
Notes 1, 2 to s. 330-15(1) .....	ad. No. 121, 1997 rep. No. 77, 2001
Note 3 to s. 330-15(1) .....	ad. No. 16, 1998 rep. No. 77, 2001 ad. No. 72, 2001 rep. No. 77, 2001
S. 330-20.....	rep. No. 77, 2001
S. 330-25.....	rep. No. 77, 2001
S. 330-30.....	rep. No. 77, 2001
S. 330-35.....	rep. No. 77, 2001
S. 330-40.....	rep. No. 77, 2001
S. 330-60.....	am. No. 147, 1997; No. 176, 1999 rep. No. 77, 2001
S. 330-80.....	rep. No. 77, 2001
Note 1A to s. 330-80 .....	ad. No. 121, 1997 rep. No. 77, 2001
Note 1B to s. 330-80 .....	ad. No. 72, 2001 rep. No. 77, 2001
Note 3 to s. 330-80.....	ad. No. 16, 1998 rep. No. 77, 2001
S. 330-85.....	rep. No. 77, 2001
S. 330-90.....	rep. No. 77, 2001
S. 330-95.....	am. No. 121, 1997 rep. No. 77, 2001
S. 330-100.....	rep. No. 77, 2001
S. 330-105.....	rep. No. 77, 2001
S. 330-110.....	am. No. 16, 1998 rep. No. 77, 2001
Note to s. 330-110(1) .....	am. No. 16, 1998 rep. No. 77, 2001
S. 330-115.....	rep. No. 77, 2001
S. 330-120.....	rep. No. 77, 2001
S. 330-125.....	rep. No. 77, 2001
S. 330-145.....	rep. No. 77, 2001



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Link note to Guide .....	am. No. 16, 1998 rep. No. 77, 2001
S. 330-150.....	rep. No. 77, 2001
S. 330-155.....	rep. No. 77, 2001
S. 330-160.....	rep. No. 77, 2001
S. 330-165.....	rep. No. 77, 2001
S. 330-170.....	rep. No. 77, 2001
S. 330-175.....	am. No. 16, 1998 rep. No. 77, 2001
S. 330-180.....	rep. No. 77, 2001
S. 330-185.....	rep. No. 77, 2001
S. 330-190.....	rep. No. 77, 2001
S. 330-195.....	rep. No. 77, 2001
S. 330-200.....	rep. No. 77, 2001
S. 330-205.....	rep. No. 77, 2001
S. 330-210.....	rep. No. 77, 2001
S. 330-215.....	rep. No. 77, 2001
S. 330-235.....	rep. No. 77, 2001
S. 330-240.....	rep. No. 77, 2001
S. 330-245.....	rep. No. 77, 2001
S. 330-250.....	rep. No. 77, 2001
S. 330-255.....	rep. No. 77, 2001
S. 330-260.....	rep. No. 77, 2001
S. 330-265.....	rep. No. 77, 2001
S. 330-270.....	rep. No. 77, 2001
S. 330-275.....	rep. No. 77, 2001
Link note to Guide .....	am. No. 16, 1998 rep. No. 77, 2001
S. 330-300.....	rep. No. 77, 2001
S. 330-305.....	rep. No. 77, 2001
S. 330-310.....	rep. No. 77, 2001
S. 330-315.....	rep. No. 77, 2001
S. 330-320.....	rep. No. 77, 2001
S. 330-325.....	rep. No. 77, 2001
S. 330-330.....	rep. No. 77, 2001
S. 330-335.....	ad. No. 169, 1999 am. No. 89, 2000 rep. No. 77, 2001
S. 330-340.....	ad. No. 169, 1999 rep. No. 77, 2001
S. 330-350.....	rep. No. 77, 2001
S. 330-370.....	rep. No. 77, 2001
Note to s. 330-370.....	rep. No. 121, 1997

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note 1 to s. 330-370.....	ad. No. 121, 1997 rep. No. 77, 2001
Note 1A to s. 330-370 .....	ad. No. 72, 2001 rep. No. 77, 2001
Note 2 to s. 330-370.....	ad. No. 121, 1997 rep. No. 77, 2001
Note 3 to s. 330-370.....	ad. No. 16, 1998 rep. No. 77, 2001
S. 330-375.....	am. No. 121, 1997; No. 93, 1999 rep. No. 77, 2001
Heading to s. 330-380.....	am. No. 121, 1997 rep. No. 77, 2001
S. 330-380.....	am. No. 121, 1997 rep. No. 77, 2001
S. 330-385.....	rep. No. 77, 2001
S. 330-390.....	rep. No. 77, 2001
S. 330-395.....	rep. No. 77, 2001
S. 330-400.....	rep. No. 77, 2001
S. 330-405.....	rep. No. 77, 2001
S. 330-410.....	rep. No. 77, 2001
S. 330-415.....	rep. No. 77, 2001
S. 330-435.....	rep. No. 77, 2001
Note to s. 330-435(1) .....	ad. No. 16, 1998 rep. No. 77, 2001 ad. No. 72, 2001 rep. No. 77, 2001
S. 330-440.....	rep. No. 77, 2001
S. 330-445.....	rep. No. 77, 2001
S. 330-450.....	rep. No. 77, 2001
S. 330-455.....	rep. No. 77, 2001
S. 330-475.....	rep. No. 77, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 77, 2001
S. 330-480.....	am. No. 121, 1997 rep. No. 77, 2001
Note 4 to s. 330-480(1) .....	ad. No. 72, 2001 rep. No. 77, 2001
Note to s. 330-480(2) .....	am. No. 72, 2001 rep. No. 77, 2001
S. 330-485.....	am. No. 121, 1997 rep. No. 77, 2001
S. 330-490.....	am. No. 176, 1999 rep. No. 77, 2001
S. 330-495.....	rs. No. 66, 2000 rep. No. 77, 2001
S. 330-500.....	rep. No. 77, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 330-520.....	am. No. 121, 1997; No. 176, 1999 rep. No. 77, 2001
S. 330-540.....	rep. No. 77, 2001
S. 330-545.....	am. No. 121, 1997 rep. No. 77, 2001
Note to s. 330-545(2) .....	rep. No. 121, 1997
S. 330-547.....	rep. No. 77, 2001
Note 3 to s. 330-547(1) .....	am. No. 16, 1998 rep. No. 77, 2001
S. 330-550.....	rep. No. 77, 2001
S. 330-552.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 330-555.....	rep. No. 77, 2001
S. 330-560.....	am. No. 176, 1999 rep. No. 77, 2001
S. 330-580.....	rep. No. 77, 2001
S. 330-585.....	rep. No. 121, 1997
S. 330-590.....	am. No. 121, 1997 rep. No. 77, 2001
Note to s. 330-590(3) .....	rep. No. 121, 1997
S. 330-595.....	rep. No. 77, 2001
S. 330-600.....	rep. No. 77, 2001
S. 330-605.....	rep. No. 77, 2001
Link note to s. 330-605.....	rs. No. 46, 1998 rep. No. 77, 2001
<b>Division 345</b>	
Division 345.....	ad. No. 45, 2008
S. 345-1.....	ad. No. 45, 2008
<b>Subdivision 345-A</b>	
S. 345-5.....	ad. No. 45, 2008
S. 345-10.....	ad. No. 45, 2008
S. 345-15.....	ad. No. 45, 2008
S. 345-20.....	ad. No. 45, 2008
S. 345-25.....	ad. No. 92, 2008
S. 345-30.....	ad. No. 92, 2008
<b>Subdivision 345-B</b>	
S. 345-50.....	ad. No. 45, 2008
<b>Subdivision 345-C</b>	
S. 345-100.....	ad. No. 45, 2008
S. 345-110.....	ad. No. 45, 2008
S. 345-115.....	ad. No. 45, 2008
Division 373.....	ad. No. 46, 1998 rep. No. 77, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 373-1.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 373-5.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 373-10.....	ad. No. 46, 1998 am. No. 39, 1999 rep. No. 77, 2001
Note 4 of s. 373-10(2) .....	ad. No. 39, 1999 rep. No. 77, 2001
S. 373-15.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 373-20.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 373-25.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 373-30.....	ad. No. 46, 1998 am. Nos. 94 and 176, 1999 rep. No. 77, 2001
S. 373-35.....	ad. No. 46, 1998 am. No. 140, 2000 rep. No. 77, 2001
S. 373-40.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 373-45.....	ad. No. 46, 1998 am. No. 176, 1999 rep. No. 77, 2001
S. 373-50.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 373-55.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 373-60.....	ad. No. 46, 1998 am. No. 39, 1999 rep. No. 77, 2001
S. 373-65.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 373-70.....	ad. No. 46, 1998 am. No. 176, 1999 rep. No. 77, 2001
S. 373-75.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 373-80.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 373-85.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 373-90.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 373-95.....	ad. No. 46, 1998 am. No. 176, 1999 rep. No. 77, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 373-100.....	ad. No. 46, 1998 am. No. 176, 1999 rep. No. 77, 2001
S. 373-105.....	ad. No. 46, 1998 rep. No. 77, 2001
<b>Division 375</b>	
Link note to Div. 375 .....	rep. No. 41, 2005
<b>Subdivision 375-G</b>	
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 375-805.....	am. No. 41, 1998; No. 101, 2006; No. 97, 2008
Link note to s. 375-820.....	rs. No. 121, 1997 rep. No. 108, 1998
<b>Subdivision 375-H</b>	
Subdivision 375-H.....	ad. No. 108, 1998
S. 375-850.....	ad. No. 108, 1998 am. No. 58, 2005
S. 375-855.....	ad. No. 108, 1998 am. No. 58, 2005
Note to s. 375-855(1) .....	am. No. 58, 2005
Note to s. 375-855(2) .....	am. No. 58, 2005
S. 375-860.....	ad. No. 108, 1998
Note to s. 375-860(2) .....	am. No. 58, 2005
S. 375-865.....	ad. No. 108, 1998 am. No. 58, 2005
Note to s. 375-865(1) .....	rs. No. 58, 2005
Note to s. 375-865(2) .....	rs. No. 58, 2005
S. 375-870.....	ad. No. 108, 1998
Subhead. to s. 375-872(3) .....	am. No. 55, 2001
S. 375-872.....	ad. No. 66, 2000 am. No. 55, 2001; No. 58, 2006; No. 79, 2007
S. 375-875.....	ad. No. 108, 1998
Note 1 to s. 375-875(2) .....	am. No. 58, 2005
S. 375-880.....	ad. No. 108, 1998 am. No. 58, 2006
Link note to s. 375-880.....	rs. No. 54, 1999 rep. No. 27, 2002
<b>Division 376</b>	
Division 376.....	ad. No. 27, 2002 rs. No. 164, 2007
<b>Subdivision 376-A</b>	
S. 376-1.....	ad. No. 27, 2002 rs. No. 164, 2007
S. 376-2.....	ad. No. 27, 2002 rs. No. 164, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 376-5.....	ad. No. 27, 2002 am. No. 41, 2005 rs. No. 164, 2007
<b>Subdivision 376-B</b>	
S. 376-10.....	ad. No. 27, 2002 rs. No. 164, 2007
Note to s. 376-10(1) .....	am. No. 42, 2009
S. 376-15.....	ad. No. 27, 2002 am. Nos. 41 and 162, 2005 rs. No. 164, 2007
S. 376-17.....	ad. No. 162, 2005 rep. No. 164, 2007
S. 376-20.....	ad. No. 27, 2002 rs. No. 164, 2007
S. 376-25.....	ad. No. 27, 2002 am. No. 162, 2005 rs. No. 164, 2007
Note to s. 376-25(6) .....	am. No. 162, 2005 rep. No. 164, 2007
S. 376-30.....	ad. No. 27, 2002 rs. No. 164, 2007
S. 376-35.....	ad. No. 27, 2002 am. No. 162, 2005 rs. No. 164, 2007
Note to s. 376-35(1) .....	am. No. 42, 2009
S. 376-40.....	ad. No. 27, 2002 rs. No. 164, 2007
S. 376-45.....	ad. No. 27, 2002 rs. No. 164, 2007
S. 376-50.....	ad. No. 27, 2002 am. No. 41, 2005 rs. No. 164, 2007
S. 376-55.....	ad. No. 27, 2002 rs. No. 164, 2007 am. No. 13, 2008
Note to s. 376-55(1) .....	am. No. 42, 2009
S. 376-60.....	ad. No. 27, 2002 rep. No. 133, 2003 ad. No. 164, 2007
S. 376-65.....	ad. No. 27, 2002 rs. No. 164, 2007
S. 376-70.....	ad. No. 27, 2002 rs. No. 164, 2007
S. 376-75.....	ad. No. 27, 2002 rs. No. 164, 2007
S. 376-80.....	ad. No. 27, 2002 rep. No. 164, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 376-85.....	ad. No. 27, 2002 rep. No. 164, 2007
S. 376-90.....	ad. No. 27, 2002 rep. No. 164, 2007
S. 376-95.....	ad. No. 27, 2002 rep. No. 164, 2007
S. 376-100.....	ad. No. 27, 2002 rep. No. 164, 2007
S. 376-105.....	ad. No. 27, 2002 am. No. 58, 2006 rep. No. 164, 2007
S. 376-110.....	ad. No. 27, 2002 am. No. 58, 2006 rep. No. 164, 2007
Link note to s. 376-110.....	rep. No. 41, 2005
<b>Subdivision 376-C</b>	
S. 376-125.....	ad. No. 164, 2007
S. 376-130.....	ad. No. 164, 2007
S. 376-135.....	ad. No. 164, 2007
S. 376-140.....	ad. No. 164, 2007
S. 376-145.....	ad. No. 164, 2007
S. 376-150.....	ad. No. 164, 2007
S. 376-155.....	ad. No. 164, 2007
S. 376-160.....	ad. No. 164, 2007
S. 376-165.....	ad. No. 164, 2007
S. 376-170.....	ad. No. 164, 2007 am. No. 13, 2008
S. 376-175.....	ad. No. 164, 2007
S. 376-180.....	ad. No. 164, 2007
<b>Subdivision 376-D</b>	
S. 376-230.....	ad. No. 164, 2007
S. 376-235.....	ad. No. 164, 2007
S. 376-240.....	ad. No. 164, 2007
S. 376-245.....	ad. No. 164, 2007
S. 376-250.....	ad. No. 164, 2007
S. 376-255.....	ad. No. 164, 2007
S. 376-260.....	ad. No. 164, 2007
S. 376-265.....	ad. No. 164, 2007
S. 376-270.....	ad. No. 164, 2007
<b>Division 380</b>	
Division 380.....	ad. No. 54, 1999 rep. No. 77, 2001 ad. No. 130, 2008
S. 380-1.....	ad. No. 130, 2008

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 380-A</b>	
S. 380-5.....	ad. No. 54, 1999 rep. No. 77, 2001 ad. No. 130, 2008
S. 380-10.....	ad. No. 54, 1999 rep. No. 77, 2001 ad. No. 130, 2008
S. 380-15.....	ad. No. 54, 1999 rep. No. 77, 2001 ad. No. 130, 2008
S. 380-20.....	ad. No. 54, 1999 rep. No. 77, 2001 ad. No. 130, 2008
S. 380-25.....	ad. No. 54, 1999 rep. No. 77, 2001 ad. No. 130, 2008
S. 380-30.....	ad. No. 54, 1999 rep. No. 77, 2001 ad. No. 130, 2008
<b>Subdivision 380-B</b>	
S. 380-35.....	ad. No. 54, 1999 rep. No. 77, 2001 ad. No. 130, 2008
S. 380-40.....	ad. No. 54, 1999 rep. No. 77, 2001
S. 380-45.....	ad. No. 54, 1999 rep. No. 77, 2001
S. 380-50.....	ad. No. 54, 1999 rep. No. 77, 2001
S. 380-55.....	ad. No. 54, 1999 rep. No. 77, 2001
S. 380-60.....	ad. No. 54, 1999 rep. No. 77, 2001
S. 380-65.....	ad. No. 54, 1999 rep. No. 77, 2001
S. 380-70.....	ad. No. 54, 1999 rep. No. 77, 2001
S. 380-75.....	ad. No. 54, 1999 rep. No. 77, 2001
S. 380-80.....	ad. No. 54, 1999 rep. No. 77, 2001
S. 380-85.....	ad. No. 54, 1999 rep. No. 77, 2001
S. 380-90.....	ad. No. 54, 1999 rep. No. 77, 2001
S. 380-95.....	ad. No. 54, 1999 rep. No. 77, 2001
S. 380-100.....	ad. No. 54, 1999 rep. No. 77, 2001



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 380-105.....	ad. No. 54, 1999 rep. No. 77, 2001
S. 380-110.....	ad. No. 54, 1999 rep. No. 77, 2001
S. 380-115.....	ad. No. 54, 1999 rep. No. 77, 2001
<b>Division 385</b>	
Division 385.....	ad. No. 121, 1997
S. 385-1.....	ad. No. 121, 1997
S. 385-5.....	ad. No. 121, 1997 am. No. 46, 1998; No. 54, 1999; No. 77, 2001
Link note to s. 385-5.....	rep. No. 41, 2005
<b>Subdivision 385-E</b>	
S. 385-90.....	ad. No. 121, 1997
S. 385-95.....	ad. No. 121, 1997 am. No. 176, 1999
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 385-100.....	ad. No. 121, 1997 am. No. 176, 1999
S. 385-105.....	ad. No. 121, 1997 am. No. 176, 1999
S. 385-110.....	ad. No. 121, 1997 am. No. 176, 1999
S. 385-115.....	ad. No. 121, 1997
S. 385-120.....	ad. No. 121, 1997 am. No. 176, 1999
S. 385-125.....	ad. No. 121, 1997
<b>Subdivision 385-F</b>	
S. 385-130.....	ad. No. 121, 1997
<b>Subdivision 385-G</b>	
S. 385-135.....	ad. No. 121, 1997
<b>Subdivision 385-H</b>	
S. 385-145.....	ad. No. 121, 1997
S. 385-150.....	ad. No. 121, 1997
S. 385-155.....	ad. No. 121, 1997
S. 385-160.....	ad. No. 121, 1997
S. 385-163.....	ad. No. 121, 1997
S. 385-165.....	ad. No. 121, 1997
S. 385-170.....	ad. No. 121, 1997
Link note to s. 385-170.....	rep. No. 41, 2005
Division 387.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-1.....	ad. No. 121, 1997 rep. No. 77, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 387-50.....	ad. No. 121, 1997 rep. No. 77, 2001
Note to s. 387-50.....	ad. No. 91, 1998 rep. No. 77, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 77, 2001
S. 387-55.....	ad. No. 121, 1997 rep. No. 77, 2001
Note 3 to s. 387-55(1) .....	ad. No. 72, 2001 rep. No. 77, 2001
S. 387-60.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-65.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-70.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-75.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-80.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-85.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-90.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-120.....	ad. No. 121, 1997 rep. No. 77, 2001
Note to s. 387-120.....	ad. No. 91, 1998 rep. No. 77, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 77, 2001
S. 387-125.....	ad. No. 121, 1997 rep. No. 77, 2001
Note to s. 387-125(1) .....	ad. No. 91, 1998 rep. No. 77, 2001
Note 3 to s. 387-125(2) .....	ad. No. 72, 2001 rep. No. 77, 2001
S. 387-130.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-135.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-140.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-145.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-150.....	ad. No. 121, 1997 rep. No. 77, 2001
Link note to s. 387-150.....	rep. No. 46, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 387-160.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 387-162.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 387-165.....	ad. No. 46, 1998 rep. No. 77, 2001
Note 3 to s. 387-165(5) .....	ad. No. 72, 2001 rep. No. 77, 2001
S. 387-170.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 387-175.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 387-177.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 387-180.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 387-185.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 387-190.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 387-195.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 387-205.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 387-210.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 387-300.....	ad. No. 121, 1997 rep. No. 77, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 77, 2001
S. 387-305.....	ad. No. 121, 1997 rep. No. 77, 2001
Note 2 to s. 387-305(1) .....	rs. No. 54, 1999 rep. No. 77, 2001
Note 3 to s. 387-305(1) .....	ad. No. 72, 2001 rep. No. 77, 2001
S. 387-310.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-315.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-320.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-350.....	ad. No. 121, 1997 rep. No. 77, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 77, 2001
S. 387-355.....	ad. No. 121, 1997 rep. No. 77, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note 1 to s. 387-355(2) .....	am. No. 54, 1999 rep. No. 77, 2001
Note 3 to s. 387-355(2) .....	ad. No. 72, 2001 rep. No. 77, 2001
S. 387-360.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-365.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-370.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-375.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-380.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-390.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-400.....	ad. No. 121, 1997 rep. No. 77, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 77, 2001
S. 387-405.....	ad. No. 121, 1997 rep. No. 77, 2001
Note to s. 387-405(2) Renumbered Note 1 .....	No. 72, 2001
Note 1 to s. 387-405(2) .....	rep. No. 77, 2001
Note 2 to s. 387-405(2) .....	ad. No. 72, 2001 rep. No. 77, 2001
S. 387-410.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-415.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-420.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-450.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-455.....	ad. No. 121, 1997 rep. No. 77, 2001
Link note to Guide .....	ad. No. 16, 1998 rep. No. 77, 2001
S. 387-460.....	ad. No. 121, 1997 rep. No. 77, 2001
Note to s. 387-460 Renumbered Note 1 .....	No. 72, 2001
Note 1 to s. 387-460.....	rep. No. 77, 2001
Note 2 to s. 387-460.....	ad. No. 72, 2001 rep. No. 77, 2001
S. 387-465.....	ad. No. 121, 1997 rep. No. 77, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 387-470.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-475.....	ad. No. 121, 1997 am. Nos. 164 and 176, 1999 rep. No. 77, 2001
S. 387-480.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-485.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-490.....	ad. No. 121, 1997 am. No. 46, 1998; No. 176, 1999 rep. No. 77, 2001
S. 387-495.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-500.....	ad. No. 121, 1997 rep. No. 77, 2001
S. 387-505.....	ad. No. 121, 1997 am. No. 72, 2001 rep. No. 77, 2001
Link note to s. 387-505.....	ad. No. 91, 1998 rep. No. 77, 2001
Division 388.....	ad. No. 91, 1998 rep. No. 77, 2001
S. 388-50.....	ad. No. 91, 1998 rep. No. 77, 2001
S. 388-55.....	ad. No. 91, 1998 am. No. 69, 1999 rep. No. 77, 2001
S. 388-60.....	ad. No. 91, 1998 am. No. 69, 1999 rep. No. 77, 2001
Link note to s. 388-60.....	ad. No. 16, 1998 rs. No. 46, 1998 rep. No. 77, 2001
<b>Division 392</b>	
Division 392.....	ad. No. 46, 1998
S. 392-1.....	ad. No. 46, 1998
S. 392-5.....	ad. No. 46, 1998 am. No. 94, 1999
Note to s. 392-5(4).....	rs. No. 83, 1999
<b>Subdivision 392-A</b>	
S. 392-10.....	ad. No. 46, 1998
S. 392-15.....	ad. No. 46, 1998 am. No. 15, 2007
S. 392-20.....	ad. No. 46, 1998
S. 392-25.....	ad. No. 46, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 392-B</b>	
S. 392-30.....	ad. No. 46, 1998
Link note to Guide .....	ad. No. 94, 1999 rep. No. 41, 2005
S. 392-35.....	ad. No. 46, 1998 am. No. 83, 1999
Note 3 to s. 392-35(3) .....	rep. No. 83, 1999
Note to s. 392-35(6) .....	am. No. 83, 1999
S. 392-40.....	ad. No. 46, 1998
S. 392-45.....	ad. No. 46, 1998 am. No. 15, 2007
S. 392-50.....	ad. No. 46, 1998
S. 392-55.....	ad. No. 46, 1998
<b>Subdivision 392-C</b>	
S. 392-60.....	ad. No. 46, 1998
S. 392-65.....	ad. No. 46, 1998 am. No. 94, 1999
Link note to Guide .....	ad. No. 94, 1999 rep. No. 41, 2005
S. 392-70.....	ad. No. 46, 1998
S. 392-75.....	ad. No. 46, 1998
S. 392-80.....	ad. No. 46, 1998
S. 392-85.....	ad. No. 46, 1998
S. 392-90.....	ad. No. 46, 1998
<b>Subdivision 392-D</b>	
S. 392-95.....	ad. No. 46, 1998
<b>Division 394</b>	
Division 394.....	ad. No. 79, 2007
S. 394-1.....	ad. No. 79, 2007
S. 394-5.....	ad. No. 79, 2007
S. 394-10.....	ad. No. 79, 2007
S. 394-15.....	ad. No. 79, 2007
S. 394-20.....	ad. No. 79, 2007
S. 394-25.....	ad. No. 79, 2007
S. 394-30.....	ad. No. 79, 2007
S. 394-35.....	ad. No. 79, 2007
S. 394-40.....	ad. No. 79, 2007
S. 394-45.....	ad. No. 79, 2007
<b>Division 396</b>	
Division 396.....	ad. No. 16, 1998
S. 396-5.....	ad. No. 16, 1998
<b>Subdivision 396-A</b>	
S. 396-10.....	ad. No. 16, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Link note to Guide .....	rep. No. 41, 2005
S. 396-15.....	ad. No. 16, 1998 am. No. 58, 2006; No. 97, 2008
S. 396-20.....	ad. No. 16, 1998
S. 396-25.....	ad. No. 16, 1998 am. No. 58, 2006; No. 97, 2008
<b>Subdivision 396-B</b>	
Link note to Guide .....	rep. No. 41, 2005
S. 396-30.....	ad. No. 16, 1998 am. No. 15, 2009
S. 396-35.....	ad. No. 16, 1998 am. No. 58, 2006
S. 396-40.....	ad. No. 16, 1998
<b>Subdivision 396-C</b>	
Link note to Guide .....	rep. No. 41, 2005
S. 396-45.....	ad. No. 16, 1998 am. No. 77, 2001
S. 396-50.....	ad. No. 16, 1998
S. 396-55.....	ad. No. 16, 1998
<b>Subdivision 396-D</b>	
Link note to Guide .....	rep. No. 41, 2005
S. 396-60.....	ad. No. 16, 1998
S. 396-65.....	ad. No. 16, 1998
S. 396-70.....	ad. No. 16, 1998
S. 396-75.....	ad. No. 16, 1998 am. No. 41, 2005; No. 164, 2007
S. 396-80.....	ad. No. 16, 1998
S. 396-85.....	ad. No. 16, 1998 am. No. 164, 2007
S. 396-90.....	ad. No. 16, 1998
<b>Subdivision 396-E</b>	
S. 396-95.....	ad. No. 16, 1998
S. 396-100.....	ad. No. 16, 1998
S. 396-105.....	ad. No. 16, 1998 am. No. 146, 1999
S. 396-110.....	ad. No. 16, 1998
Link note to s. 396-110.....	rep. No. 41, 2005
Division 400.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 400-1.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 400-15.....	ad. No. 46, 1998 rep. No. 77, 2001
Note 3 to s. 400-15(3) .....	ad. No. 72, 2001 rep. No. 77, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 400-20.....	ad. No. 46, 1998 am. No. 176, 1999 rep. No. 77, 2001
S. 400-55.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 400-60.....	ad. No. 46, 1998 rep. No. 77, 2001
S. 400-65.....	ad. No. 46, 1998 am. No. 176, 1999 rep. No. 77, 2001
S. 400-100.....	ad. No. 46, 1998 rep. No. 77, 2001
<b>Division 402</b>	
Division 402.....	ad. No. 42, 2009
S. 402-1.....	ad. No. 42, 2009
<b>Subdivision 402-W</b>	
S. 402-750.....	ad. No. 42, 2009
S. 402-755.....	ad. No. 42, 2009
S. 402-760.....	ad. No. 42, 2009
S. 402-765.....	ad. No. 42, 2009
S. 402-770.....	ad. No. 42, 2009
S. 402-775.....	ad. No. 42, 2009
S. 402-780.....	ad. No. 42, 2009
<b>Division 405</b>	
Division 405.....	ad. No. 46, 1998
S. 405-1.....	ad. No. 46, 1998
S. 405-5.....	ad. No. 46, 1998 am. No. 94, 1999
Note 1 to s. 405-5(1) Renumbered Note.....	No. 83, 1999
Note 2 to s. 405-5(1).....	rep. No. 83, 1999
S. 405-10.....	ad. No. 46, 1998 am. No. 94, 1999
<b>Subdivision 405-A</b>	
S. 405-15.....	ad. No. 46, 1998
Note to s. 405-15(1).....	rep. No. 101, 2006
<b>Subdivision 405-B</b>	
S. 405-20.....	ad. No. 46, 1998
S. 405-25.....	ad. No. 46, 1998 am. No. 58, 2006
S. 405-30.....	ad. No. 46, 1998 am. No. 101, 2006; No. 15, 2007
S. 405-35.....	ad. No. 46, 1998
S. 405-40.....	ad. No. 46, 1998



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 405-C</b>	
S. 405-45.....	ad. No. 46, 1998
Note to s. 405-45.....	rep. No. 101, 2006
S. 405-50.....	ad. No. 46, 1998 am. No. 41, 2005
Note to s. 405-50(1) .....	rep. No. 101, 2006
Note to s. 405-50(3) .....	rep. No. 101, 2006
Note to s. 405-50(5) .....	am. No. 41, 2005
Link note to s. 405-50.....	rs. No. 68, 2002 rep. No. 23, 2005
<b>Division 410</b>	
Division 410.....	ad. No. 23, 2005
S. 410-1.....	ad. No. 23, 2005
S. 410-5.....	ad. No. 23, 2005
<b>Part 3-90</b>	
Part 3-90 .....	ad. No. 68, 2002
<b>Division 700</b>	
S. 700-1.....	ad. No. 68, 2002
S. 700-5.....	ad. No. 68, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 700-10.....	ad. No. 68, 2002
<b>Division 701</b>	
S. 701-1.....	ad. No. 68, 2002 am. No. 143, 2007
S. 701-5.....	ad. No. 68, 2002
Note to s. 701-5	
Renumbered Note 1 .....	No. 117, 2002
Note 2 to s. 701-5.....	ad. No. 117, 2002
Note 3 to s. 701-5.....	ad. No. 147, 2005
Heading to s. 701-10.....	rs. No. 83, 2004
S. 701-10.....	ad. No. 68, 2002 am. No. 83, 2004; No. 58, 2006
Note to s. 701-10(2) .....	ad. No. 83, 2004
S. 701-15.....	ad. No. 68, 2002 am. No. 117, 2002
Note to s. 701-15(3)	
Renumbered Note 1 .....	No. 83, 2004
Note 2 to s. 701-15(3) .....	ad. No. 83, 2004
S. 701-20.....	ad. No. 68, 2002
Note to s. 701-20(4) .....	ad. No. 83, 2004
Heading to s. 701-25(4) .....	am. No. 90, 2002
S. 701-25.....	ad. No. 68, 2002 am. No. 16, 2003
Note to s. 701-25(4) .....	ad. No. 90, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 701-30.....	ad. No. 68, 2002 am. No. 117, 2002; Nos. 16 and 107, 2003
Note to s. 701-30(3) .....	rs. No. 117, 2002
Note to s. 701-30(3A) Renumbered Note 1 .....	No. 147, 2005
Note 1 to s. 701-30(3A) Renumbered Note .....	No. 164, 2007
Note 2 to s. 701-30(3A).....	ad. No. 147, 2005 rep. No. 164, 2007
Heading to s. 701-35(4) .....	am. No. 90, 2002
S. 701-35.....	ad. No. 68, 2002 am. No. 90, 2002
Note to s. 701-35(4) .....	ad. No. 90, 2002
S. 701-40.....	ad. No. 68, 2002 am. No. 117, 2002
Note to s. 701-40(1) .....	ad. No. 117, 2002
S. 701-45.....	ad. No. 68, 2002 am. No. 16, 2003
Note to s. 701-45(4) Renumbered Note 1 .....	No. 83, 2004
Note 2 to s. 701-45(4) .....	ad. No. 83, 2004
S. 701-50.....	ad. No. 68, 2002
Note to s. 701-50(3) .....	ad. No. 83, 2004
S. 701-55.....	ad. No. 68, 2002 am. No. 90, 2002; Nos. 16 and 107, 2003; No. 58, 2006; No. 15, 2009
S. 701-58.....	ad. No. 83, 2004 am. No. 15, 2009
S. 701-60.....	ad. No. 68, 2002 am. No. 83, 2004
Note 1 to s. 701-60.....	ad. No. 83, 2004
Note to s. 701-60..... Renumbered Note 2 .....	ad. No. 16, 2003 No. 83, 2004
S. 701-61.....	ad. No. 15, 2009
S. 701-65.....	ad. No. 68, 2002
S. 701-70.....	ad. No. 68, 2002 am. No. 90, 2002; No. 58, 2006
S. 701-75.....	ad. No. 68, 2002 am. No. 90, 2002; No. 16, 2003; No. 58, 2006
S. 701-80.....	ad. No. 68, 2002 am. No. 90, 2002; No. 107, 2003
S. 701-85.....	ad. No. 68, 2002
Link note to s. 701-85.....	rep. No. 41, 2005
<b>Division 703</b>	
S. 703-1.....	ad. No. 68, 2002
Link note to Guide .....	rep. No. 41, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 703-5.....	ad. No. 68, 2002
Note to s. 703-5(2) .....	ad. No. 117, 2002
S. 703-10.....	ad. No. 68, 2002
S. 703-15.....	ad. No. 68, 2002 am. No. 16, 2003; No. 97, 2008
S. 703-20.....	ad. No. 68, 2002 am. No. 90, 2002; No. 9, 2007
Note to s. 703-20.....	ad. No. 16, 2003
S. 703-25.....	ad. No. 68, 2002 am. No. 41, 2005
S. 703-30.....	ad. No. 68, 2002 am. No. 23, 2005
Note to s. 703-30(2) .....	am. No. 117, 2007
S. 703-33.....	ad. No. 16, 2003
S. 703-35.....	ad. No. 68, 2002 am. No. 56, 2007
S. 703-37.....	ad. No. 117, 2007
S. 703-40.....	ad. No. 68, 2002
S. 703-45.....	ad. No. 68, 2002 rs. No. 16, 2003
S. 703-50.....	ad. No. 68, 2002 am. No. 16, 2003
S. 703-55.....	ad. No. 68, 2002
S. 703-60.....	ad. No. 68, 2002 am. No. 83, 2004
Link note to s. 703-60(3) .....	rep. No. 117, 2002
S. 703-65.....	ad. No. 117, 2002
S. 703-70.....	ad. No. 117, 2002
S. 703-75.....	ad. No. 117, 2002 am. No. 16, 2003; No. 147, 2005
S. 703-80.....	ad. No. 117, 2002
Link note to s. 703-80.....	rep. No. 41, 2005
<b>Division 705</b>	
S. 705-1.....	ad. No. 68, 2002
<b>Subdivision 705-A</b>	
S. 705-5.....	ad. No. 68, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 705-10.....	ad. No. 68, 2002
S. 705-15.....	ad. No. 68, 2002 am. No. 117, 2002; No. 16, 2003
S. 705-20.....	ad. No. 68, 2002
S. 705-25.....	ad. No. 68, 2002 am. No. 164, 2007
Note to s. 705-25(4) .....	am. No. 16, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note to s. 705-25(5) .....	ad. No. 16, 2003
Renumbered Note 1 .....	No. 23, 2005
Note 2 to s. 705-25(5) .....	ad. No. 23, 2005
S. 705-30.....	ad. No. 68, 2002 am. No. 90, 2002; No. 164, 2007; No. 15, 2009
S. 705-35.....	ad. No. 68, 2002
Note 1A to s. 705-35(1).....	ad. No. 67, 2003
Note 2 to s. 705-35(1) .....	am. No. 16, 2003
S. 705-40.....	ad. No. 68, 2002 rs. No. 90, 2002
Note to s. 705-40(2) .....	am. No. 107, 2003
S. 705-45.....	ad. No. 68, 2002 am. No. 90, 2002; No. 107, 2003
S. 705-47.....	ad. No. 83, 2004 am. No. 101, 2006
Note 2 to s. 705-47(2) .....	am. No. 101, 2006
S. 705-50.....	ad. No. 68, 2002 am. No. 90, 2002; No. 23, 2005; No. 101, 2006
Heading to s. 705-55.....	rs. No. 83, 2004
S. 705-55.....	ad. No. 68, 2002 am. No. 83, 2004
S. 705-56.....	ad. No. 23, 2005
S. 705-57.....	ad. No. 117, 2002 am. No. 83, 2004; No. 101, 2006
S. 705-58.....	ad. No. 67, 2003
S. 705-59.....	ad. No. 67, 2003 am. No. 83, 2004
S. 705-60.....	ad. No. 68, 2002 am. No. 117, 2002; No. 16, 2003; No. 23, 2005
Note to s. 705-60.....	ad. No. 16, 2003
Subhead. to s. 705-65(4) .....	ad. No. 16, 2003
S. 705-65.....	ad. No. 68, 2002 am. No. 90, 2002; No. 16, 2003; No. 83, 2004; No. 101, 2006; No. 97, 2008
Note to s. 705-65(1) .....	ad. No. 117, 2002
Note to s. 705-65(1) .....	ad. No. 107, 2003
(2nd occurring)	
S. 705-70.....	ad. No. 68, 2002 am. No. 90, 2002
Note to s. 705-70(1) .....	rep. No. 90, 2002 ad. No. 16, 2003
Subhead. to s. 705-75(3) .....	am. No. 90, 2002 rs. No. 16, 2003
S. 705-75.....	ad. No. 68, 2002 am. No. 90, 2002; No. 16, 2003; No. 97, 2008
S. 705-80.....	ad. No. 68, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 705-85.....	ad. No. 68, 2002 am. No. 117, 2007
Heading to s. 705-90.....	rs. No. 16, 2003
S. 705-90.....	ad. No. 68, 2002 rs. No. 90, 2002 am. No. 117, 2002; No. 16, 2003; Nos. 23 and 41, 2005
Note to s. 705-90(1).....	ad. No. 117, 2002
Note to s. 705-90(7).....	ad. No. 117, 2002
S. 705-93.....	ad. No. 16, 2003 am. No. 101, 2006
S. 705-95.....	ad. No. 68, 2002 am. No. 90, 2002
Note to s. 705-95(b).....	ad. No. 23, 2005
S. 705-100.....	ad. No. 68, 2002 am. No. 90, 2002
S. 705-105.....	ad. No. 68, 2002 am. No. 117, 2002
S. 705-110.....	ad. No. 68, 2002 am. No. 90, 2002; No. 97, 2008
S. 705-115.....	ad. No. 68, 2002 am. No. 90, 2002
Group heading to s. 705-120 ....	rep. No. 90, 2002
S. 705-120.....	ad. No. 68, 2002 rep. No. 90, 2002
S. 705-125.....	ad. No. 68, 2002 am. No. 117, 2002
Link note to s. 705-125.....	rep. No. 90, 2002
<b>Subdivision 705-B</b>	
Subdivision 705-B.....	ad. No. 90, 2002
S. 705-130.....	ad. No. 90, 2002
Link note to Guide.....	rep. No. 41, 2005
S. 705-135.....	ad. No. 90, 2002
S. 705-140.....	ad. No. 90, 2002
S. 705-145.....	ad. No. 90, 2002
S. 705-147.....	ad. No. 16, 2003 am. Nos. 58 and 101, 2006
Heading to s. 705-150.....	rs. No. 16, 2003
Subhead. to s. 705-150(3).....	rs. No. 16, 2003
Subhead. to s. 705-150(4).....	rs. No. 16, 2003
S. 705-150.....	ad. No. 90, 2002 am. No. 16, 2003; Nos. 58 and 101, 2006
Note to s. 705-150(4).....	rs. No. 16, 2003
S. 705-155.....	ad. No. 90, 2002 rs. No. 16, 2003 am. No. 101, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 705-160.....	ad. No. 90, 2002 rs. No. 16, 2003 am. No. 58, 2006
S. 705-163.....	ad. No. 117, 2002 am. No. 101, 2006
S. 705-165.....	ad. No. 90, 2002
Link note to s. 705-165.....	rep. No. 117, 2002
<b>Subdivision 705-C</b>	
Subdivision 705-C.....	ad. No. 117, 2002
S. 705-170.....	ad. No. 117, 2002
Link note to Guide.....	rep. No. 41, 2005
S. 705-175.....	ad. No. 117, 2002
S. 705-180.....	ad. No. 117, 2002
S. 705-185.....	ad. No. 117, 2002
S. 705-190.....	ad. No. 117, 2002 am. No. 101, 2006
S. 705-195.....	ad. No. 117, 2002
S. 705-200.....	ad. No. 117, 2002 am. No. 117, 2007
S. 705-205.....	ad. No. 117, 2002
<b>Subdivision 705-D</b>	
Subdivision 705-D.....	ad. No. 117, 2002
S. 705-210.....	ad. No. 117, 2002
Link note to Guide.....	rep. No. 41, 2005
S. 705-215.....	ad. No. 117, 2002
S. 705-220.....	ad. No. 117, 2002
S. 705-225.....	ad. No. 117, 2002
S. 705-227.....	ad. No. 16, 2003 am. Nos. 58 and 101, 2006
S. 705-230.....	ad. No. 117, 2002 rs. No. 16, 2003
S. 705-235.....	ad. No. 117, 2002 rs. No. 16, 2003 am. No. 58, 2006
S. 705-240.....	ad. No. 117, 2002
S. 705-245.....	ad. No. 117, 2002
Link note to s. 705-245.....	rep. No. 16, 2003
<b>Subdivision 705-E</b>	
Subdivision 705-E.....	ad. No. 16, 2003
S. 705-300.....	ad. No. 16, 2003
Link note to Guide.....	rep. No. 41, 2005
S. 705-305.....	ad. No. 16, 2003
S. 705-310.....	ad. No. 16, 2003
S. 705-315.....	ad. No. 16, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 705-320.....	ad. No. 16, 2003
Link note to s. 705-320.....	rep. No. 41, 2005
<b>Division 707</b>	
<b>Subdivision 707-A</b>	
S. 707-100.....	ad. No. 68, 2002
S. 707-105.....	ad. No. 68, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 707-110.....	ad. No. 68, 2002 am. No. 143, 2007
S. 707-115.....	ad. No. 68, 2002
S. 707-120.....	ad. No. 68, 2002
Note to s. 707-120(3) .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 707-125.....	ad. No. 68, 2002 am. No. 142, 2003; No. 147, 2005
Note to s. 707-125(2) .....	rep. No. 142, 2003 ad. No. 147, 2005 rep. No. 164, 2007
Note to s. 707-125(3) .....	ad. No. 147, 2005 rep. No. 164, 2007
Note to s. 707-125(4) .....	rep. No. 147, 2005
Note 1 to s. 707-125(4) .....	ad. No. 147, 2005
Renumbered Note .....	No. 164, 2007
Note 2 to s. 707-125(4) .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 707-130.....	ad. No. 68, 2002
Note 2 to s. 707-130(1) .....	am. No. 143, 2007
S. 707-135.....	ad. No. 68, 2002
Note to s. 707-135(2) .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 707-140.....	ad. No. 68, 2002
S. 707-145.....	ad. No. 68, 2002
S. 707-150.....	ad. No. 68, 2002
<b>Subdivision 707-B</b>	
S. 707-200.....	ad. No. 68, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 707-205.....	ad. No. 68, 2002 am. No. 83, 2004
Note 1 to s. 707-205(2) .....	am. No. 147, 2005
Note 2 to s. 707-205(2) .....	am. No. 147, 2005
S. 707-210.....	ad. No. 68, 2002 am. No. 117, 2002; No. 16, 2003; No. 147, 2005
Note to s. 707-210(6) .....	rep. No. 164, 2007
<b>Subdivision 707-C</b>	
S. 707-300.....	ad. No. 68, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Link note to Guide .....	rep. No. 41, 2005
S. 707-305.....	ad. No. 68, 2002 am. No. 58, 2006
S. 707-310.....	ad. No. 68, 2002 am. No. 142, 2003; No. 143, 2007; No. 97, 2008; No. 14, 2009
S. 707-315.....	ad. No. 68, 2002 am. No. 117, 2002
S. 707-320.....	ad. No. 68, 2002 am. Nos. 13 and 58, 2006
S. 707-325.....	ad. No. 68, 2002 am. No. 58, 2006; No. 117, 2007
Note to s. 707-325(5) .....	rep. No. 117, 2007
Note 1 to s. 707-325(5) .....	ad. No. 117, 2007
Note 2 to s. 707-325(5) .....	ad. No. 117, 2007
S. 707-330.....	ad. No. 68, 2002 am. No. 58, 2006
S. 707-335.....	ad. No. 68, 2002 am. No. 117, 2002
S. 707-340.....	ad. No. 68, 2002
S. 707-345 .....	ad. No. 68, 2002
<b>Subdivision 707-D</b>	
S. 707-400.....	ad. No. 68, 2002
Link note to s. 707-400.....	rep. No. 41, 2005
S. 707-405.....	ad. No. 68, 2002 rep. No. 16, 2003
S. 707-410.....	ad. No. 117, 2002
<b>Division 709</b>	
<b>Subdivision 709-A</b>	
S. 709-50.....	ad. No. 68, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 709-55.....	ad. No. 68, 2002
S. 709-60.....	ad. No. 68, 2002 am. No. 90, 2002
S. 709-65.....	ad. No. 68, 2002
S. 709-70.....	ad. No. 68, 2002
Note to s. 709-70(2) .....	am. No. 90, 2002
S. 709-75.....	ad. No. 68, 2002
Note to s. 709-75(2) .....	am. No. 90, 2002
Heading to s. 709-80.....	rs. No. 117, 2007
S. 709-80.....	ad. No. 68, 2002 am. No. 117, 2007
Note to s. 709-80(1) .....	rep. No. 117, 2007
Note 1 to s. 709-80(1) .....	ad. No. 117, 2007
Note 2 to s. 709-80(1) .....	ad. No. 117, 2007



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 709-85.....	ad. No. 68, 2002
Link note to s. 709-85.....	rep. No. 16, 2003
S. 709-90.....	ad. No. 16, 2003
Group heading to s. 709-95 .....	ad. No. 16, 2003
S. 709-95.....	ad. No. 16, 2003
S. 709-100.....	ad. No. 16, 2003
<b>Subdivision 709-B</b>	
Subdivision 709-B .....	ad. No. 16, 2003
S. 709-150.....	ad. No. 16, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 709-155.....	ad. No. 16, 2003
S. 709-160.....	ad. No. 16, 2003
S. 709-165.....	ad. No. 16, 2003
S. 709-170.....	ad. No. 16, 2003
S. 709-175.....	ad. No. 16, 2003
<b>Subdivision 709-C</b>	
Subdivision 709-C .....	ad. No. 107, 2003
S. 709-180.....	ad. No. 107, 2003
S. 709-185.....	ad. No. 107, 2003
S. 709-190.....	ad. No. 107, 2003
<b>Subdivision 709-D</b>	
Subdivision 709-D .....	ad. No. 41, 2005
S. 709-200.....	ad. No. 41, 2005
S. 709-205.....	ad. No. 41, 2005
Note to s. 709-205(1) .....	ad. No. 162, 2005
S. 709-210.....	ad. No. 41, 2005
S. 709-215.....	ad. No. 41, 2005 am. No. 162, 2005
Group heading to s. 709-220 ....	ad. No. 162, 2005
S. 709-220.....	ad. No. 162, 2005
<b>Division 711</b>	
S. 711-1.....	ad. No. 68, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 711-5.....	ad. No. 68, 2002 am. No. 117, 2002
S. 711-10.....	ad. No. 68, 2002
S. 711-15.....	ad. No. 68, 2002 am. No. 117, 2002
S. 711-20.....	ad. No. 68, 2002 am. No. 90, 2002
Note to s. 711-20(1) .....	am. No. 90, 2002; No. 16, 2003
S. 711-25.....	ad. No. 68, 2002 am. No. 83, 2004

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 711-30.....	ad. No. 68, 2002 am. No. 23, 2005; No. 14, 2009
S. 711-35.....	ad. No. 68, 2002 am. No. 90, 2002
S. 711-40.....	ad. No. 68, 2002
S. 711-45.....	ad. No. 68, 2002 am. No. 90, 2002; Nos. 23 and 41, 2005; No. 117, 2007
S. 711-50.....	ad. No. 68, 2002 rep. No. 90, 2002
S. 711-55.....	ad. No. 68, 2002
S. 711-60.....	ad. No. 68, 2002 rep. No. 90, 2002
S. 711-65.....	ad. No. 68, 2002 am. No. 117, 2002
S. 711-70.....	ad. No. 68, 2002 am. No. 117, 2002
Link note to s. 711-70.....	rs. Nos. 90 and 117, 2002 rep. No. 41, 2005
<b>Division 713</b>	
Division 713.....	ad. No. 117, 2002
<b>Subdivision 713-A</b>	
S. 713-20.....	ad. No. 117, 2002
Heading to s. 713-25.....	rs. No. 23, 2005
S. 713-25.....	ad. No. 117, 2002 am. No. 23, 2005
S. 713-50.....	ad. No. 117, 2002
Link note to s. 713-50.....	rep. No. 16, 2003
<b>Subdivision 713-C</b>	
Subdivision 713-C.....	ad. No. 83, 2004
S. 713-120.....	ad. No. 83, 2004
Link note to Guide .....	rep. No. 41, 2005
S. 713-125.....	ad. No. 83, 2004
S. 713-130.....	ad. No. 83, 2004
S. 713-135.....	ad. No. 83, 2004
S. 713-140.....	ad. No. 83, 2004
<b>Subdivision 713-E</b>	
Subdivision 713-E .....	ad. No. 67, 2003
S. 713-200.....	ad. No. 67, 2003 am. No. 83, 2004
Link note to Guide .....	rep. No. 41, 2005
S. 713-205.....	ad. No. 67, 2003 am. No. 83, 2004
S. 713-210.....	ad. No. 67, 2003
S. 713-215.....	ad. No. 67, 2003
S. 713-220.....	ad. No. 67, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 713-225.....	ad. No. 67, 2003 am. No. 83, 2004; No. 143, 2007
S. 713-230.....	ad. No. 67, 2003
S. 713-235.....	ad. No. 67, 2003
S. 713-240.....	ad. No. 67, 2003 am. No. 83, 2004
S. 713-245.....	ad. No. 67, 2003
Group heading to s. 713-250 ....	ad. No. 83, 2004
S. 713-250.....	ad. No. 83, 2004
S. 713-255.....	ad. No. 83, 2004
S. 713-260.....	ad. No. 83, 2004
S. 713-265.....	ad. No. 83, 2004
S. 713-270.....	ad. No. 83, 2004
Link note to s. 713-270.....	rep. No. 41, 2005
<b>Subdivision 713-L</b>	
Subdivision 713-L.....	ad. No. 16, 2003
S. 713-500.....	ad. No. 16, 2003
Link note to Guide .....	rep. No. 41, 2005
Group heading to s. 713-505 ....	rs. No. 41, 2005
S. 713-505.....	ad. No. 16, 2003
S. 713-510.....	ad. No. 16, 2003 rs. No. 41, 2005 am. No. 45, 2008
Group heading to s. 713-511 ....	ad. No. 41, 2005
S. 713-511.....	ad. No. 41, 2005
Group heading to s. 713-515 ....	ad. No. 41, 2005
Heading to s. 713-515.....	rs. No. 41, 2005
S. 713-515.....	ad. No. 16, 2003 am. No. 45, 2008
Heading to s. 713-520.....	rs. No. 41, 2005
S. 713-520.....	ad. No. 16, 2003 am. No. 45, 2008
S. 713-525.....	ad. No. 16, 2003 rs. No. 83, 2004; No. 41, 2005
Note to s. 713-525.....	am. No. 45, 2008
Group heading to s. 713-530 ....	ad. No. 41, 2005
S. 713-530.....	ad. No. 16, 2003 am. No. 83, 2004 rs. No. 41, 2005 am. No. 45, 2008
Group heading to s. 713-535 ....	ad. No. 41, 2005
Heading to s. 713-535.....	rs. No. 45, 2008
S. 713-535.....	ad. No. 41, 2005 am. No. 45, 2008
S. 713-540.....	ad. No. 41, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Group heading to s. 713-545 ....	ad. No. 41, 2005
S. 713-545.....	ad. No. 41, 2005 am. No. 143, 2007; No. 45, 2008
S. 713-550.....	ad. No. 41, 2005
Group heading to s. 713-553 ....	ad. No. 41, 2005
S. 713-553.....	ad. No. 41, 2005
S. 713-555.....	ad. No. 41, 2005 am. No. 15, 2007
S. 713-560.....	ad. No. 41, 2005 am. No. 58, 2006
Group heading to s. 713-565 ....	ad. No. 41, 2005
S. 713-565.....	ad. No. 41, 2005
Group heading to s. 713-570 ....	ad. No. 41, 2005
S. 713-570.....	ad. No. 41, 2005 am. No. 45, 2008
Group heading to s. 713-575 ....	ad. No. 41, 2005
S. 713-575.....	ad. No. 41, 2005 am. No. 45, 2008
S. 713-580.....	ad. No. 41, 2005 am. No. 45, 2008
S. 713-585.....	ad. No. 41, 2005
Note to s. 713-585.....	am. No. 45, 2008
<b>Subdivision 713-M</b>	
Subdivision 713-M.....	ad. No. 41, 2005
S. 713-700.....	ad. No. 41, 2005
S. 713-705.....	ad. No. 41, 2005
S. 713-710.....	ad. No. 41, 2005
S. 713-715.....	ad. No. 41, 2005
S. 713-720.....	ad. No. 41, 2005
Link note to s. 713-720.....	rep. No. 41, 2005
<b>Division 715</b>	
Division 715.....	ad. No. 16, 2003
<b>Subdivision 715-A</b>	
S. 715-15.....	ad. No. 16, 2003
Note to s. 715-15(1) Renumbered Note 1 .....	No. 147, 2005
Note 1 to s. 715-15(1) Renumbered Note .....	No. 164, 2007
Note 2 to s. 715-15(1) .....	ad. No. 147, 2005 rep. No. 164, 2007
Link note to s. 715-15.....	rep. No. 41, 2005
S. 715-25.....	ad. No. 16, 2003
S. 715-30.....	ad. No. 16, 2003
S. 715-35.....	ad. No. 16, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Link note to s. 715-35.....	rep. No. 41, 2005
S. 715-50.....	ad. No. 16, 2003
Note to s. 715-50(1) .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 715-55.....	ad. No. 16, 2003
Note to s. 715-55(1) Renumbered Note 1 .....	No. 147, 2005
Note 1 to s. 715-55(1) Renumbered Note .....	No. 164, 2007
Note 2 to s. 715-55(1) .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 715-60.....	ad. No. 16, 2003
Note to s. 715-60(1) Renumbered Note 1 .....	No. 147, 2005
Note 1 to s. 715-60(1) Renumbered Note .....	No. 164, 2007
Note 2 to s. 715-60(1) .....	ad. No. 147, 2005 rep. No. 164, 2007
Link note to s. 715-60.....	rep. No. 41, 2005
S. 715-70.....	ad. No. 16, 2003
Note 1 to s. 715-70(1) .....	am. No. 83, 2004
Note to s. 715-70(2) Renumbered Note 1 .....	No. 147, 2005
Note 1 to s. 715-70(2) Renumbered Note .....	No. 164, 2007
Note 2 to s. 715-70(2) .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 715-75.....	ad. No. 16, 2003
S. 715-80.....	ad. No. 16, 2003
S. 715-85.....	ad. No. 16, 2003
S. 715-90.....	ad. No. 16, 2003 am. No. 142, 2003
S. 715-95.....	ad. No. 16, 2003
Note to s. 715-95(3) .....	rep. No. 147, 2005
Note 1 to s. 715-95(3) .....	ad. No. 147, 2005 Renumbered Note .....
Note 2 to s. 715-95(3) .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 715-100.....	ad. No. 16, 2003
S. 715-105.....	ad. No. 16, 2003
S. 715-110.....	ad. No. 16, 2003
Link note to s. 715-110.....	rep. No. 41, 2005
S. 715-120.....	ad. No. 16, 2003
S. 715-125.....	ad. No. 16, 2003
S. 715-130.....	ad. No. 16, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 715-135.....	ad. No. 16, 2003
Link note to s. 715-135.....	rep. No. 41, 2005
S. 715-145.....	ad. No. 16, 2003
Link note to s. 715-145.....	rep. No. 41, 2005
S. 715-155.....	ad. No. 16, 2003
S. 715-160.....	ad. No. 16, 2003
S. 715-165.....	ad. No. 16, 2003
Link note to s. 715-165.....	rep. No. 41, 2005
S. 715-175.....	ad. No. 16, 2003
S. 715-180.....	ad. No. 16, 2003
S. 715-185.....	ad. No. 16, 2003
<b>Subdivision 715-B</b>	
S. 715-215.....	ad. No. 16, 2003
Link note to s. 715-215.....	rep. No. 41, 2005
S. 715-225.....	ad. No. 16, 2003
Note 1 to s. 715-225(1) .....	am. No. 83, 2004
S. 715-230.....	ad. No. 16, 2003
Link note to s. 715-230.....	rep. No. 41, 2005
S. 715-240.....	ad. No. 16, 2003
S. 715-245.....	ad. No. 16, 2003
S. 715-250.....	ad. No. 16, 2003
S. 715-255.....	ad. No. 16, 2003
S. 715-260.....	ad. No. 16, 2003
Link note to s. 715-260.....	rep. No. 41, 2005
S. 715-270.....	ad. No. 16, 2003 am. No. 58, 2006
<b>Subdivision 715-C</b>	
S. 715-290.....	ad. No. 16, 2003
<b>Subdivision 715-D</b>	
S. 715-310.....	ad. No. 16, 2003
Link note to s. 715-310.....	rep. No. 41, 2005
S. 715-355.....	ad. No. 16, 2003
Note to s. 715-355(3) Renumbered Note 1 .....	No. 147, 2005
Note 1 to s. 715-355(3) Renumbered Note .....	No. 164, 2007
Note 2 to s. 715-355(3) .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 715-360.....	ad. No. 16, 2003
Note 3 to s. 715-360(3) .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 715-365 .....	ad. No. 16, 2003
Link note to s. 715-365.....	rep. No. 41, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 715-F</b>	
Subdivision 715-F .....	ad. No. 15, 2009
S. 715-375.....	ad. No. 15, 2009
S. 715-380.....	ad. No. 15, 2009
S. 715-385.....	ad. No. 15, 2009
<b>Subdivision 715-G</b>	
S. 715-410.....	ad. No. 16, 2003
Link note to s. 715-410.....	rep. No. 41, 2005
S. 715-450.....	ad. No. 16, 2003
<b>Subdivision 715-H</b>	
S. 715-610.....	ad. No. 16, 2003
S. 715-615.....	ad. No. 16, 2003 am. No. 117, 2007
S. 715-620.....	ad. No. 16, 2003
Link note to s. 715-620.....	ad. No. 83, 2004 rep. No. 41, 2005
<b>Subdivision 715-J</b>	
Subdivision 715-J.....	ad. No. 23, 2005
S. 715-660.....	ad. No. 23, 2005 am. No. 15, 2009
S. 715-665.....	ad. No. 23, 2005 am. No. 15, 2009
S. 715-670.....	ad. No. 23, 2005
S. 715-675.....	ad. No. 23, 2005
<b>Subdivision 715-K</b>	
Subdivision 715-K .....	ad. No. 23, 2005
S. 715-700.....	ad. No. 23, 2005
S. 715-705.....	ad. No. 23, 2005
<b>Subdivision 715-U</b>	
Subdivision 715-U .....	ad. No. 147, 2005
S. 715-875.....	ad. No. 147, 2005
S. 715-880.....	ad. No. 147, 2005
<b>Subdivision 715-V</b>	
Subdivision 715-V .....	ad. No. 83, 2004
S. 715-900.....	ad. No. 83, 2004
<b>Subdivision 715-W</b>	
Subdivision 715-W .....	ad. No. 14, 2009
S. 715-910.....	ad. No. 14, 2009
S. 715-915.....	ad. No. 14, 2009
S. 715-920.....	ad. No. 14, 2009
S. 715-925.....	ad. No. 14, 2009
<b>Division 716</b>	
Division 716.....	ad. No. 117, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 716-A</b>	
S. 716-1.....	ad. No. 117, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 716-15.....	ad. No. 117, 2002
S. 716-25.....	ad. No. 117, 2002
Note to s. 716-25(2) .....	am. No. 80, 2007
Link note to s. 716-25.....	rep. No. 41, 2005
S. 716-70.....	ad. No. 117, 2002
S. 716-75.....	ad. No. 117, 2002
S. 716-80.....	ad. No. 117, 2002
S. 716-85.....	ad. No. 117, 2002
S. 716-90.....	ad. No. 117, 2002
S. 716-95.....	ad. No. 117, 2002
S. 716-100.....	ad. No. 117, 2002
Link note to s. 716-100.....	rep. No. 23, 2005
<b>Subdivision 716-E</b>	
Subdivision 716-E .....	ad. No. 23, 2005
S. 716-300.....	ad. No. 23, 2005
<b>Subdivision 716-G</b>	
Subdivision 716-G.....	ad. No. 23, 2005
S. 716-330.....	ad. No. 23, 2005
S. 716-335.....	ad. No. 23, 2005
S. 716-340.....	ad. No. 23, 2005
S. 716-345.....	ad. No. 23, 2005
<b>Subdivision 716-Z</b>	
S. 716-800.....	ad. No. 117, 2002
S. 716-805.....	ad. No. 147, 2005 rep. No. 164, 2007
S. 716-850.....	ad. No. 117, 2002 am. No. 58, 2006
Note to s. 716-850(1) Renumbered Note 1 .....	No. 147, 2005
Note 1 to s. 716-850(1) Renumbered Note .....	No. 164, 2007
Note 2 to s. 716-850(1) .....	ad. No. 147, 2005 rep. No. 164, 2007
S. 716-855.....	ad. No. 107, 2003 am. No. 101, 2006
<b>Division 717</b>	
Division 717.....	ad. No. 90, 2002
<b>Subdivision 717-A</b>	
Subdivision 717-A .....	rs. No. 143, 2007
S. 717-1.....	ad. No. 90, 2002 rs. No. 143, 2007



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Link note to Guide .....	rep. No. 41, 2005
S. 717-5.....	ad. No. 90, 2002 rs. No. 143, 2007
S. 717-10.....	ad. No. 90, 2002 rs. No. 143, 2007
S. 717-15.....	ad. No. 90, 2002 am. No. 83, 2004 rep. No. 143, 2007
S. 717-20.....	ad. No. 90, 2002 rep. No. 143, 2007
Link note to s. 717-20.....	rep. No. 117, 2002
S. 717-22.....	ad. No. 83, 2004 rep. No. 143, 2007
S. 717-28.....	ad. No. 83, 2004 rep. No. 143, 2007
S. 717-30.....	ad. No. 117, 2002 rep. No. 143, 2007
Link note to s. 717-30.....	rep. No. 41, 2005
<b>Subdivision 717-D</b>	
Heading to Subdiv. 717-D .....	rs. No. 16, 2003
S. 717-200.....	ad. No. 90, 2002 am. No. 143, 2007
Link note to Guide .....	rep. No. 41, 2005
S. 717-205.....	ad. No. 90, 2002 am. No. 143, 2007
S. 717-210.....	ad. No. 90, 2002
S. 717-215.....	ad. No. 90, 2002 rep. No. 143, 2007
S. 717-220.....	ad. No. 90, 2002
S. 717-225.....	ad. No. 90, 2002 rep. No. 143, 2007
S. 717-227.....	ad. No. 16, 2003
S. 717-230.....	ad. No. 90, 2002 am. No. 16, 2003; No. 97, 2008
<b>Subdivision 717-E</b>	
Heading to Subdiv. 717-E .....	rs. No. 16, 2003
S. 717-235.....	ad. No. 90, 2002 am. No. 143, 2007
Link note to Guide .....	rep. No. 41, 2005
S. 717-240.....	ad. No. 90, 2002 am. No. 143, 2007
Group heading to s. 717-245 ....	rs. No. 16, 2003
S. 717-245.....	ad. No. 90, 2002
S. 717-250.....	ad. No. 90, 2002 rep. No. 143, 2007
Group heading to s. 717-255 ....	rep. No. 16, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 717-255.....	ad. No. 90, 2002
S. 717-260.....	ad. No. 90, 2002 rep. No. 143, 2007
S. 717-262.....	ad. No. 16, 2003
S. 717-265.....	ad. No. 90, 2002 am. No. 16, 2003; No. 97, 2008
Link note to s. 717-265.....	rep. No. 16, 2003
Subdivision 717-F .....	ad. No. 16, 2003 rep. No. 23, 2005
S. 717-270.....	ad. No. 16, 2003 rep. No. 23, 2005
S. 717-275.....	ad. No. 16, 2003 am. No. 83, 2004 rep. No. 23, 2005
S. 717-280.....	ad. No. 16, 2003 am. No. 83, 2004 rep. No. 23, 2005
S. 717-285.....	ad. No. 16, 2003 am. No. 83, 2004 rep. No. 23, 2005
S. 717-290.....	ad. No. 16, 2003 rep. No. 23, 2005
S. 717-292.....	ad. No. 83, 2004 rep. No. 23, 2005
Subdivision 717-G.....	ad. No. 16, 2003 rep. No. 23, 2005
S. 717-295.....	ad. No. 16, 2003 rep. No. 23, 2005
S. 717-300.....	ad. No. 16, 2003 am. No. 83, 2004 rep. No. 23, 2005
S. 717-305.....	ad. No. 16, 2003 am. No. 83, 2004 rep. No. 23, 2005
S. 717-310.....	ad. No. 16, 2003 am. No. 83, 2004 rep. No. 23, 2005
Note to s. 717-310.....	am. No. 83, 2004 rep. No. 23, 2005
S. 717-315.....	ad. No. 16, 2003 rep. No. 23, 2005
S. 717-320.....	ad. No. 83, 2004 rep. No. 23, 2005
Subdivision 717-J.....	ad. No. 16, 2003 rep. No. 147, 2005
S. 717-500.....	ad. No. 16, 2003 rep. No. 147, 2005
Link note to Guide .....	rep. No. 41, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 717-505.....	ad. No. 16, 2003 rep. No. 147, 2005
S. 717-510.....	ad. No. 16, 2003 am. No. 96, 2004 rep. No. 147, 2005
S. 717-515.....	ad. No. 16, 2003 rep. No. 147, 2005
S. 717-520.....	ad. No. 16, 2003 rep. No. 147, 2005
S. 717-525.....	ad. No. 16, 2003 rep. No. 147, 2005
S. 717-530.....	ad. No. 16, 2003 rep. No. 147, 2005
Link note to s. 717-530.....	rep. No. 41, 2005
<b>Subdivision 717-O</b>	
Subdivision 717-O.....	ad. No. 16, 2003
S. 717-700.....	ad. No. 16, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 717-705.....	ad. No. 16, 2003
S. 717-710.....	ad. No. 16, 2003
<b>Division 719</b>	
Heading to Guide .....	rep. No. 117, 2002
<b>Subdivision 719-A</b>	
Subdivision 719-A .....	ad. No. 16, 2003
S. 719-2.....	ad. No. 16, 2003
<b>Subdivision 719-B</b>	
Heading to Subdiv. 719-B .....	ad. No. 117, 2002
Heading to s. 719-1.....	rep. No. 117, 2002
Heading to s. 719-4.....	ad. No. 117, 2002
S. 719-1.....	ad. No. 68, 2002
Renumbered s. 719-4.....	No. 117, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 719-5.....	ad. No. 68, 2002 am. No. 117, 2002
S. 719-10.....	ad. No. 68, 2002 am. No. 67, 2003; No. 97, 2008
S. 719-15.....	ad. No. 68, 2002
S. 719-20.....	ad. No. 68, 2002 am. No. 97, 2008
S. 719-25.....	ad. No. 68, 2002
S. 719-30.....	ad. No. 68, 2002 am. No. 56, 2007
S. 719-35.....	ad. No. 68, 2002
S. 719-40.....	ad. No. 68, 2002 am. No. 117, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 719-45.....	ad. No. 68, 2002
S. 719-50.....	ad. No. 68, 2002
S. 719-55.....	ad. No. 68, 2002
S. 719-60.....	ad. No. 68, 2002
S. 719-65.....	ad. No. 68, 2002
S. 719-70.....	ad. No. 68, 2002
S. 719-75.....	ad. No. 68, 2002
S. 719-80.....	ad. No. 68, 2002
Link note to s. 719-80.....	rep. No. 117, 2002
S. 719-85.....	ad. No. 117, 2002
S. 719-90.....	ad. No. 117, 2002
S. 719-95.....	ad. No. 117, 2002
<b>Subdivision 719-C</b>	
Subdivision 719-C.....	ad. No. 117, 2002
S. 719-150.....	ad. No. 117, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 719-155.....	ad. No. 117, 2002 rs. No. 16, 2003
S. 719-160.....	ad. No. 117, 2002 am. No. 16, 2003; No. 83, 2004
S. 719-165.....	ad. No. 117, 2002 rs. No. 16, 2003
S. 719-170.....	ad. No. 16, 2003
<b>Subdivision 719-F</b>	
Subdivision 719-F .....	ad. No. 117, 2002
Heading to Guide to .....	ad. No. 16, 2003
Subdiv. 719-F	
S. 719-250.....	ad. No. 16, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 719-255.....	ad. No. 16, 2003
S. 719-260.....	ad. No. 16, 2003 am. No. 147, 2005
Note to s. 719-260(2) .....	am. No. 142, 2003; No. 147, 2005; No. 164, 2007
Note to s. 719-260(3) .....	rep. No. 164, 2007
Note to s. 719-260(4) .....	am. No. 147, 2005
S. 719-265.....	ad. No. 16, 2003
S. 719-270.....	ad. No. 16, 2003
S. 719-275.....	ad. No. 16, 2003
S. 719-280.....	ad. No. 16, 2003
S. 719-285.....	ad. No. 16, 2003
Note 1 to s. 719-285.....	am. No. 147, 2005; No. 164, 2007
Link note to s. 719-285.....	rep. No. 41, 2005
Group heading to s. 719-300 ....	ad. No. 16, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 719-300.....	ad. No. 117, 2002
S. 719-305.....	ad. No. 117, 2002
S. 719-310.....	ad. No. 117, 2002 am. No. 58, 2006
S. 719-315.....	ad. No. 117, 2002
S. 719-320.....	ad. No. 117, 2002
S. 719-325.....	ad. No. 117, 2002
<b>Subdivision 719-H</b>	
Subdivision 719-H.....	ad. No. 16, 2003
S. 719-425.....	ad. No. 16, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 719-430.....	ad. No. 16, 2003
S. 719-435.....	ad. No. 16, 2003
<b>Subdivision 719-I</b>	
Subdivision 719-I.....	ad. No. 162, 2005
S. 719-450.....	ad. No. 162, 2005
S. 719-455.....	ad. No. 162, 2005
S. 719-460.....	ad. No. 162, 2005
S. 719-465.....	ad. No. 162, 2005
<b>Subdivision 719-J</b>	
Subdivision 719-J.....	ad. No. 117, 2002
S. 719-500.....	ad. No. 117, 2002
S. 719-505.....	ad. No. 117, 2002
S. 719-510.....	ad. No. 117, 2002
<b>Subdivision 719-K</b>	
Subdivision 719-K.....	ad. No. 117, 2002
S. 719-550.....	ad. No. 117, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 719-555.....	ad. No. 117, 2002
S. 719-560.....	ad. No. 117, 2002
S. 719-565.....	ad. No. 117, 2002
S. 719-570.....	ad. No. 117, 2002 am. No. 58, 2006
Link note to s. 719-570.....	rs. No. 16, 2003 rep. No. 41, 2005
<b>Subdivision 719-T</b>	
Subdivision 719-T .....	ad. No. 16, 2003
S. 719-700.....	ad. No. 16, 2003
S. 719-705.....	ad. No. 16, 2003
Link note to s. 719-705.....	rep. No. 41, 2005
S. 719-720.....	ad. No. 16, 2003
S. 719-725.....	ad. No. 16, 2003
S. 719-730.....	ad. No. 16, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 719-735.....	ad. No. 16, 2003
Link note to s. 719-735.....	rep. No. 41, 2005
S. 719-755.....	ad. No. 16, 2003
Link note to s. 719-755.....	rep. No. 41, 2005
S. 719-775.....	ad. No. 16, 2003
S. 719-780.....	ad. No. 16, 2003
S. 719-785.....	ad. No. 16, 2003
S. 719-790.....	ad. No. 16, 2003
S. 719-795.....	ad. No. 16, 2003
Link note to s. 719-795.....	rep. No. 41, 2005
Subdivision 719-X .....	ad. No. 16, 2003 rep. No. 147, 2005
S. 719-900.....	ad. No. 16, 2003 rep. No. 147, 2005
S. 719-903.....	ad. No. 83, 2004 am. No. 96, 2004 rep. No. 147, 2005
S. 719-905.....	ad. No. 16, 2003 rep. No. 147, 2005
Link note to s. 719-905.....	rep. No. 41, 2005
<b>Division 721</b>	
S. 721-1.....	ad. No. 68, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 721-5.....	ad. No. 68, 2002
S. 721-10.....	ad. No. 68, 2002 am. No. 16, 2003; No. 83, 2004; No. 75, 2005; No. 80, 2006
S. 721-15.....	ad. No. 68, 2002 am. No. 16, 2003; No. 83, 2004; No. 41, 2005
S. 721-17.....	ad. No. 16, 2003
S. 721-20.....	ad. No. 68, 2002
S. 721-25.....	ad. No. 68, 2002 am. Nos. 20 and 83, 2004
S. 721-30.....	ad. No. 68, 2002 am. No. 16, 2003
S. 721-32.....	ad. No. 16, 2003
S. 721-35 .....	ad. No. 68, 2002
Link note to s. 721-35.....	rep. No. 41, 2005
S. 721-40.....	ad. No. 16, 2003
<b>Part 3-95</b>	
Part 3-95 .....	ad. No. 90, 2002
<b>Division 723</b>	
<b>Subdivision 723-A</b>	
S. 723-1.....	ad. No. 90, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 723-10.....	ad. No. 90, 2002 am. No. 58, 2006
S. 723-15.....	ad. No. 90, 2002 am. No. 58, 2006
S. 723-20.....	ad. No. 90, 2002
S. 723-25.....	ad. No. 90, 2002 am. No. 58, 2006
Link note to s. 723-25.....	rep. No. 41, 2005
S. 723-35.....	ad. No. 90, 2002
S. 723-40.....	ad. No. 90, 2002
Link note to s. 723-40.....	rep. No. 41, 2005
S. 723-50.....	ad. No. 90, 2002
<b>Subdivision 723-B</b>	
S. 723-105.....	ad. No. 90, 2002
S. 723-110.....	ad. No. 90, 2002 am. No. 58, 2006
<b>Division 725</b>	
S. 725-1.....	ad. No. 90, 2002
<b>Subdivision 725-A</b>	
S. 725-45.....	ad. No. 90, 2002 am. No. 58, 2006
S. 725-50.....	ad. No. 90, 2002
S. 725-55.....	ad. No. 90, 2002
Link note to s. 725-55.....	rep. No. 41, 2005
S. 725-65.....	ad. No. 90, 2002 am. No. 58, 2006
S. 725-70.....	ad. No. 90, 2002 am. No. 58, 2006
Link note to s. 725-70.....	rep. No. 41, 2005
S. 725-80.....	ad. No. 90, 2002
S. 725-85.....	ad. No. 90, 2002
S. 725-90.....	ad. No. 90, 2002
S. 725-95.....	ad. No. 90, 2002
<b>Subdivision 725-B</b>	
S. 725-145.....	ad. No. 90, 2002 am. No. 58, 2006
S. 725-150.....	ad. No. 90, 2002 am. No. 58, 2006
S. 725-155.....	ad. No. 90, 2002 am. No. 58, 2006
S. 725-160.....	ad. No. 90, 2002 am. No. 58, 2006
S. 725-165.....	ad. No. 90, 2002 am. No. 58, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 725-C</b>	
S. 725-205.....	ad. No. 90, 2002
S. 725-210.....	ad. No. 90, 2002 am. No. 58, 2006
Link note to s. 725-210.....	rep. No. 41, 2005
S. 725-220.....	ad. No. 90, 2002 am. No. 58, 2006
S. 725-225.....	ad. No. 90, 2002
S. 725-230.....	ad. No. 90, 2002 am. No. 58, 2006
<b>Subdivision 725-D</b>	
S. 725-240.....	ad. No. 90, 2002 am. No. 58, 2006
Note to s. 725-240(1) .....	am. No. 16, 2003
S. 725-245.....	ad. No. 90, 2002
Note to s. 725-245.....	am. No. 16, 2003
S. 725-250.....	ad. No. 90, 2002
S. 725-255.....	ad. No. 90, 2002
<b>Subdivision 725-E</b>	
S. 725-310.....	ad. No. 90, 2002 am. No. 58, 2006
S. 725-315.....	ad. No. 90, 2002
S. 725-320.....	ad. No. 90, 2002 am. No. 58, 2006
S. 725-325.....	ad. No. 90, 2002 am. No. 58, 2006
Link note to s. 725-325.....	rep. No. 41, 2005
S. 725-335.....	ad. No. 90, 2002
S. 725-340.....	ad. No. 90, 2002
<b>Subdivision 725-F</b>	
S. 725-365.....	ad. No. 90, 2002 am. No. 58, 2006
S. 725-370.....	ad. No. 90, 2002 am. No. 58, 2006
S. 725-375.....	ad. No. 90, 2002 am. No. 58, 2006
S. 725-380.....	ad. No. 90, 2002 am. No. 58, 2006
<b>Division 727</b>	
S. 727-1.....	ad. No. 90, 2002
S. 727-5.....	ad. No. 90, 2002
S. 727-10.....	ad. No. 90, 2002
S. 727-15.....	ad. No. 90, 2002 am. No. 80, 2007
Link note to s. 727-15.....	rep. No. 41, 2005



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 727-25.....	ad. No. 90, 2002
<b>Subdivision 727-A</b>	
S. 727-95.....	ad. No. 90, 2002 am. No. 143, 2007
S. 727-100.....	ad. No. 90, 2002
Note 2 to s. 727-100.....	am. No. 80, 2007
S. 727-105.....	ad. No. 90, 2002
S. 727-110.....	ad. No. 90, 2002
S. 727-125.....	ad. No. 90, 2002
<b>Subdivision 727-B</b>	
S. 727-150.....	ad. No. 90, 2002 am. No. 58, 2006
S. 727-155.....	ad. No. 90, 2002 am. No. 58, 2006
S. 727-160.....	ad. No. 90, 2002
S. 727-165.....	ad. No. 90, 2002 am. No. 58, 2006
<b>Subdivision 727-C</b>	
S. 727-200.....	ad. No. 90, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 727-215.....	ad. No. 90, 2002
S. 727-220.....	ad. No. 90, 2002 am. No. 58, 2006
Link note to s. 727-220.....	rep. No. 41, 2005
S. 727-230.....	ad. No. 90, 2002 am. No. 58, 2006
S. 727-235.....	ad. No. 90, 2002 am. No. 58, 2006
S. 727-240.....	ad. No. 90, 2002
S. 727-245.....	ad. No. 90, 2002
S. 727-250.....	ad. No. 90, 2002
Link note to s. 727-250.....	rep. No. 41, 2005
S. 727-260.....	ad. No. 90, 2002 am. No. 58, 2006
<b>Subdivision 727-D</b>	
S. 727-300.....	ad. No. 90, 2002
Link note to s. 727-300.....	rep. No. 41, 2005
S. 727-315.....	ad. No. 90, 2002 am. No. 58, 2006
<b>Subdivision 727-E</b>	
S. 727-350.....	ad. No. 90, 2002
S. 727-355.....	ad. No. 90, 2002 am. No. 16, 2003
S. 727-360.....	ad. No. 90, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 727-365.....	ad. No. 90, 2002
S. 727-370.....	ad. No. 90, 2002
S. 727-375.....	ad. No. 90, 2002
S. 727-400.....	ad. No. 90, 2002
S. 727-405.....	ad. No. 90, 2002
S. 727-410.....	ad. No. 90, 2002
S. 727-415.....	ad. No. 90, 2002
<b>Subdivision 727-F</b>	
S. 727-450.....	ad. No. 90, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 727-455.....	ad. No. 90, 2002
S. 727-460.....	ad. No. 90, 2002
S. 727-465.....	ad. No. 90, 2002 am. No. 58, 2006
Subhead. to s. 727-470(2) .....	rs. No. 80, 2007
S. 727-470.....	ad. No. 90, 2002 am. No. 80, 2007
Link note to s. 727-470.....	rep. No. 41, 2005
S. 727-520.....	ad. No. 90, 2002 am. No. 16, 2003
S. 727-525 .....	ad. No. 90, 2002
Link note to s. 727-525.....	rep. No. 41, 2005
S. 727-530.....	ad. No. 90, 2002
S. 727-550.....	ad. No. 90, 2002
S. 727-555.....	ad. No. 90, 2002
<b>Subdivision 727-G</b>	
S. 727-600.....	ad. No. 90, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 727-610.....	ad. No. 90, 2002
S. 727-615.....	ad. No. 90, 2002 am. No. 58, 2006
S. 727-620.....	ad. No. 90, 2002 am. No. 58, 2006
S. 727-625.....	ad. No. 90, 2002
S. 727-630.....	ad. No. 90, 2002
S. 727-635.....	ad. No. 90, 2002
S. 727-640.....	ad. No. 90, 2002
S. 727-645.....	ad. No. 90, 2002
Link note to s. 727-645.....	rep. No. 41, 2005
S. 727-700.....	ad. No. 90, 2002 am. No. 58, 2006
S. 727-705.....	ad. No. 90, 2002
S. 727-710.....	ad. No. 90, 2002 am. No. 58, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 727-715.....	ad. No. 90, 2002 am. No. 16, 2003; No. 58, 2006
S. 727-720.....	ad. No. 90, 2002 am. No. 58, 2006
S. 727-725 .....	ad. No. 90, 2002
<b>Subdivision 727-H</b>	
S. 727-750.....	ad. No. 90, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 727-755.....	ad. No. 90, 2002
Link note to s. 727-755.....	rep. No. 41, 2005
S. 727-770.....	ad. No. 90, 2002 am. No. 58, 2006
S. 727-775.....	ad. No. 90, 2002 am. No. 58, 2006
S. 727-780.....	ad. No. 90, 2002 am. No. 58, 2006
Link note to s. 727-780.....	rep. No. 41, 2005
S. 727-800.....	ad. No. 90, 2002 am. No. 16, 2003; No. 58, 2006
S. 727-805.....	ad. No. 90, 2002 am. No. 58, 2006
S. 727-810.....	ad. No. 90, 2002 am. No. 58, 2006
Link note to s. 727-810.....	rep. No. 41, 2005
S. 727-830.....	ad. No. 90, 2002 am. No. 58, 2006
S. 727-835.....	ad. No. 90, 2002 am. No. 58, 2006
S. 727-840.....	ad. No. 90, 2002 am. No. 58, 2006
<b>Subdivision 727-K</b>	
S. 727-850.....	ad. No. 90, 2002 am. No. 58, 2006
S. 727-855.....	ad. No. 90, 2002 am. No. 58, 2006
S. 727-860.....	ad. No. 90, 2002
S. 727-865.....	ad. No. 90, 2002
S. 727-870.....	ad. No. 90, 2002
S. 727-875.....	ad. No. 90, 2002
<b>Subdivision 727-L</b>	
S. 727-905.....	ad. No. 90, 2002
S. 727-910.....	ad. No. 90, 2002 am. No. 58, 2006
<b>Chapter 4</b>	
Chapt. 4.....	rs. No. 162, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 4-5</b>	
Part 4-5 .....	rep. No. 178, 1999 ad. No. 162, 2001
Division 750.....	rep. No. 178, 1999
S. 750-1.....	rep. No. 178, 1999
S. 750-5.....	rep. No. 178, 1999
S. 750-10.....	rep. No. 178, 1999
S. 750-15.....	am. No. 85, 1998 rep. No. 178, 1999
S. 750-20.....	rep. No. 178, 1999
Part 4-10 .....	rep. No. 178, 1999
Division 765.....	rep. No. 178, 1999
S. 765-1.....	rep. No. 178, 1999
S. 765-5.....	rep. No. 178, 1999
Division 766.....	rep. No. 178, 1999
S. 766-1.....	rep. No. 178, 1999
S. 766-5.....	rep. No. 178, 1999
Division 767.....	rep. No. 178, 1999
S. 767-1.....	rep. No. 178, 1999
S. 767-5.....	rep. No. 178, 1999
<b>Division 768</b>	
Division 768.....	rep. No. 178, 1999 ad. No. 96, 2004
S. 768-1.....	rep. No. 178, 1999
S. 768-5.....	rep. No. 178, 1999
<b>Subdivision 768-B</b>	
Subdivision 768-B .....	ad. No. 101, 2006
S. 768-100.....	ad. No. 101, 2006
S. 768-105.....	ad. No. 101, 2006
<b>Subdivision 768-G</b>	
Heading to Subdiv. 768-G .....	rs. No. 168, 2006
S. 768-500.....	ad. No. 96, 2004
Link note to Guide .....	rep. No. 41, 2005
Heading to s. 768-505.....	rs. No. 168, 2006
S. 768-505.....	ad. No. 96, 2004 am. No. 168, 2006
S. 768-510.....	ad. No. 96, 2004
S. 768-515.....	ad. No. 96, 2004
S. 768-520.....	ad. No. 96, 2004
S. 768-525.....	ad. No. 96, 2004
S. 768-530.....	ad. No. 96, 2004
S. 768-533.....	ad. No. 143, 2007
S. 768-535.....	ad. No. 96, 2004

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 768-540.....	ad. No. 96, 2004 am. No. 168, 2006
S. 768-545.....	ad. No. 96, 2004 am. No. 58, 2006
S. 768-550.....	ad. No. 96, 2004 am. No. 58, 2006; No. 143, 2007
S. 768-555.....	ad. No. 96, 2004
S. 768-560.....	ad. No. 96, 2004
Link note to s. 768-560.....	rep. No. 41, 2005
Subdivision 768-H.....	ad. No. 21, 2005 rep. No. 168, 2006
S. 768-600.....	ad. No. 21, 2005 rep. No. 168, 2006
S. 768-605.....	ad. No. 21, 2005 rep. No. 168, 2006
S. 768-610.....	ad. No. 21, 2005 rep. No. 168, 2006
S. 768-615.....	ad. No. 21, 2005 rep. No. 168, 2006
<b>Subdivision 768-R</b>	
Subdivision 768-R.....	ad. No. 32, 2006
S. 768-900.....	ad. No. 32, 2006
S. 768-905.....	ad. No. 32, 2006
S. 768-910.....	ad. No. 32, 2006
S. 768-915.....	ad. No. 32, 2006 am. No. 168, 2006
Note to s. 768-915.....	rep. No. 168, 2006
S. 768-920.....	ad. No. 32, 2006 am. No. 168, 2006
Note to s. 768-920(1) Renumbered Note 1 .....	No. 56, 2007
Note 2 to s. 768-920(1) .....	ad. No. 56, 2007
Note to s. 768-920(2) Renumbered Note 1 .....	No. 56, 2007
Note 2 to s. 768-920(2) .....	ad. No. 56, 2007
Note to s. 768-920(4) .....	am. No. 168, 2006
S. 768-925.....	ad. No. 32, 2006
S. 768-930.....	ad. No. 32, 2006
S. 768-935.....	ad. No. 32, 2006
S. 768-940.....	ad. No. 32, 2006
S. 768-945.....	ad. No. 32, 2006
S. 768-950.....	ad. No. 32, 2006 am. No. 168, 2006
S. 768-955.....	ad. No. 32, 2006 am. No. 168, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 768-960.....	ad. No. 32, 2006
S. 768-965.....	ad. No. 32, 2006
S. 768-970.....	ad. No. 32, 2006
S. 768-975.....	ad. No. 32, 2006
S. 768-980.....	ad. No. 32, 2006
<b>Division 770</b>	
Division 770.....	ad. No. 143, 2007
S. 770-1.....	ad. No. 143, 2007
S. 770-5.....	ad. No. 143, 2007
<b>Subdivision 770-A</b>	
S. 770-10.....	ad. No. 143, 2007
S. 770-15.....	ad. No. 143, 2007
Note to s. 770-15(1) .....	ad. No. 97, 2008
<b>Subdivision 770-B</b>	
S. 770-65.....	ad. No. 143, 2007
S. 770-70.....	ad. No. 143, 2007
S. 770-75.....	ad. No. 143, 2007 am. No. 97, 2008
S. 770-80.....	ad. No. 143, 2007
<b>Subdivision 770-C</b>	
S. 770-130.....	ad. No. 143, 2007
S. 770-135.....	ad. No. 143, 2007
S. 770-140.....	ad. No. 143, 2007
<b>Subdivision 770-D</b>	
S. 770-190.....	ad. No. 143, 2007
<b>Division 775</b>	
Division 775.....	ad. No. 133, 2003
S. 775-5.....	ad. No. 133, 2003
<b>Subdivision 775-A</b>	
S. 775-10.....	ad. No. 133, 2003
<b>Subdivision 775-B</b>	
S. 775-15.....	ad. No. 133, 2003
Note to s. 775-15(4) .....	ad. No. 15, 2009
S. 775-20.....	ad. No. 133, 2003
S. 775-25.....	ad. No. 133, 2003
S. 775-30.....	ad. No. 133, 2003
Note to s. 775-30(4) .....	ad. No. 15, 2009
S. 775-35.....	ad. No. 133, 2003
S. 775-40.....	ad. No. 133, 2003
S. 775-45.....	ad. No. 133, 2003 am. No. 58, 2006
S. 775-50.....	ad. No. 133, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 775-55.....	ad. No. 133, 2003
S. 775-60.....	ad. No. 133, 2003
S. 775-65.....	ad. No. 133, 2003
S. 775-70.....	ad. No. 133, 2003
S. 775-75.....	ad. No. 133, 2003
S. 775-80.....	ad. No. 133, 2003
S. 775-85.....	ad. No. 133, 2003
S. 775-90.....	ad. No. 133, 2003
S. 775-95.....	ad. No. 133, 2003
S. 775-100.....	ad. No. 133, 2003
S. 775-105.....	ad. No. 133, 2003
S. 775-110.....	ad. No. 133, 2003
S. 775-115.....	ad. No. 133, 2003
S. 775-120.....	ad. No. 133, 2003
S. 775-125.....	ad. No. 133, 2003
S. 775-130.....	ad. No. 133, 2003
S. 775-135.....	ad. No. 133, 2003
S. 775-140.....	ad. No. 133, 2003
S. 775-145.....	ad. No. 133, 2003
S. 775-150.....	ad. No. 133, 2003
S. 775-155.....	ad. No. 133, 2003
S. 775-160.....	ad. No. 133, 2003
S. 775-165.....	ad. No. 133, 2003
S. 775-170.....	ad. No. 133, 2003 am. No. 15, 2009 rep. No. 15, 2009
S. 775-175.....	ad. No. 133, 2003
<b>Subdivision 775-C</b>	
S. 775-180.....	ad. No. 133, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 775-185.....	ad. No. 133, 2003
S. 775-190.....	ad. No. 133, 2003
S. 775-195.....	ad. No. 133, 2003 am. No. 15, 2009
S. 775-200.....	ad. No. 133, 2003 am. No. 15, 2009
S. 775-205.....	ad. No. 133, 2003
S. 775-210.....	ad. No. 133, 2003
S. 775-215.....	ad. No. 133, 2003
S. 775-220.....	ad. No. 133, 2003
<b>Subdivision 775-D</b>	
S. 775-225.....	ad. No. 133, 2003
Link note to Guide .....	rep. No. 41, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 775-230.....	ad. No. 133, 2003
S. 775-235.....	ad. No. 133, 2003
S. 775-240.....	ad. No. 133, 2003
S. 775-245.....	ad. No. 133, 2003
S. 775-250.....	ad. No. 133, 2003
S. 775-255.....	ad. No. 133, 2003
S. 775-260.....	ad. No. 133, 2003
<b>Subdivision 775-E</b>	
S. 775-265.....	ad. No. 133, 2003
Link note to Guide .....	rep. No. 41, 2005
S. 775-270.....	ad. No. 133, 2003 am. No. 15, 2009
S. 775-275.....	ad. No. 133, 2003
S. 775-280.....	ad. No. 133, 2003
S. 775-285.....	ad. No. 133, 2003
Link note to s. 775-285.....	rep. No. 41, 2005
<b>Subdivision 775-F</b>	
Subdivision 775-F .....	ad. No. 15, 2009
S. 775-290.....	ad. No. 15, 2009
S. 775-295.....	ad. No. 15, 2009
S. 775-300.....	ad. No. 15, 2009
S. 775-305.....	ad. No. 15, 2009
S. 775-310.....	ad. No. 15, 2009
S. 775-315.....	ad. No. 15, 2009
Part 4-30 .....	rep. No. 162, 2001
Division 785.....	rep. No. 162, 2001
S. 785-1 .....	rep. No. 162, 2001
S. 785-5 .....	rep. No. 162, 2001
Division 786.....	rep. No. 11, 1999
S. 786-1 .....	rep. No. 11, 1999
S. 786-5.....	rep. No. 11, 1999
<b>Division 802</b>	
Division 802.....	ad. No. 147, 2005
<b>Subdivision 802-A</b>	
S. 802-5.....	ad. No. 147, 2005
S. 802-10.....	ad. No. 147, 2005
S. 802-15.....	ad. No. 147, 2005
S. 802-17.....	ad. No. 79, 2007
S. 802-20.....	ad. No. 147, 2005
S. 802-25.....	ad. No. 147, 2005
S. 802-30.....	ad. No. 147, 2005 am. No. 97, 2008



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 802-35.....	ad. No. 147, 2005
Heading to s. 802-40.....	rs. No. 143, 2007
S. 802-40.....	ad. No. 147, 2005 am. No. 143, 2007; No. 97, 2008
S. 802-45.....	ad. No. 147, 2005
S. 802-50.....	ad. No. 147, 2005
S. 802-55.....	ad. No. 147, 2005
S. 802-60.....	ad. No. 147, 2005
<b>Division 820</b>	
S. 820-1.....	ad. No. 162, 2001
S. 820-5.....	ad. No. 162, 2001
S. 820-10.....	ad. No. 162, 2001 am. Nos. 53 and 117, 2002; No. 142, 2003; No. 101, 2006
Link note to Guide.....	rep. No. 41, 2005
<b>Subdivision 820-A</b>	
S. 820-30.....	ad. No. 162, 2001
S. 820-32.....	ad. No. 53, 2002
S. 820-35.....	ad. No. 162, 2001
S. 820-37.....	ad. No. 162, 2001 am. No. 53, 2002; No. 143, 2007
S. 820-39.....	ad. No. 142, 2003
Note 1 to s. 820-39(4).....	rs. No. 101, 2006
S. 820-40.....	ad. No. 162, 2001 am. No. 142, 2003; No. 101, 2006
<b>Subdivision 820-B</b>	
S. 820-65.....	ad. No. 162, 2001
Link note to Guide.....	rep. No. 41, 2005
S. 820-85.....	ad. No. 162, 2001 am. No. 53, 2002; No. 142, 2003
Note 4 to s. 820-85(1).....	rs. No. 101, 2006
S. 820-90.....	ad. No. 162, 2001 am. No. 142, 2003
S. 820-95.....	ad. No. 162, 2001 am. No. 53, 2002; No. 142, 2003
S. 820-100.....	ad. No. 162, 2001 am. No. 53, 2002; No. 142, 2003
S. 820-105.....	ad. No. 162, 2001 am. No. 142, 2003
S. 820-110.....	ad. No. 162, 2001
S. 820-115.....	ad. No. 162, 2001 am. No. 53, 2002
Note to s. 820-115.....	ad. No. 142, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 820-120.....	ad. No. 162, 2001 am. No. 53, 2002; No. 142, 2003; No. 58, 2006
<b>Subdivision 820-C</b>	
S. 820-180.....	ad. No. 162, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 820-185.....	ad. No. 162, 2001 am. No. 53, 2002; No. 142, 2003
Note 6 to s. 820-185(1) .....	rs. No. 101, 2006
S. 820-190.....	ad. No. 162, 2001
S. 820-195.....	ad. No. 162, 2001 am. No. 142, 2003
S. 820-200.....	ad. No. 162, 2001 am. No. 142, 2003
S. 820-205.....	ad. No. 162, 2001 am. No. 142, 2003
S. 820-210.....	ad. No. 162, 2001 am. No. 142, 2003
S. 820-215.....	ad. No. 162, 2001 am. No. 142, 2003
S. 820-220.....	ad. No. 162, 2001 am. No. 53, 2002
Note to s. 820-220.....	ad. No. 142, 2003
S. 820-225.....	ad. No. 162, 2001 am. No. 53, 2002; No. 142, 2003; No. 58, 2006
<b>Subdivision 820-D</b>	
S. 820-295.....	ad. No. 162, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 820-300.....	ad. No. 162, 2001 am. No. 142, 2003
Note 4 to s. 820-300(1) .....	rs. No. 101, 2006
S. 820-305.....	ad. No. 162, 2001
S. 820-310.....	ad. No. 162, 2001
S. 820-315.....	ad. No. 162, 2001
S. 820-320.....	ad. No. 162, 2001
S. 820-325.....	ad. No. 162, 2001
Note to s. 820-325.....	ad. No. 142, 2003
S. 820-330.....	ad. No. 162, 2001 am. No. 142, 2003
<b>Subdivision 820-E</b>	
S. 820-390.....	ad. No. 162, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 820-395.....	ad. No. 162, 2001 am. No. 142, 2003
Note 4 to s. 820-395(1) .....	ad. No. 101, 2006
S. 820-400.....	ad. No. 162, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 820-405.....	ad. No. 162, 2001
S. 820-410.....	ad. No. 162, 2001
S. 820-415.....	ad. No. 162, 2001
Note to s. 820-415.....	ad. No. 142, 2003
S. 820-420.....	ad. No. 162, 2001
<b>Subdivision 820-EA</b>	
Subdivision 820-EA.....	ad. No. 142, 2003
S. 820-430.....	ad. No. 142, 2003
S. 820-435.....	ad. No. 142, 2003
S. 820-440.....	ad. No. 142, 2003
Heading to s. 820-445.....	rs. No. 64, 2005; No. 101, 2006
Subhead. to s. 820-445(3) .....	rep. No. 101, 2006
S. 820-445.....	ad. No. 142, 2003 am. No. 64, 2005; No. 101, 2006
Subdivision 820-F .....	rep. No. 101, 2006
S. 820-450.....	ad. No. 162, 2001 rep. No. 101, 2006
Link note to Guide .....	rep. No. 41, 2005
S. 820-455.....	ad. No. 117, 2002 rep. No. 101, 2006
S. 820-456.....	ad. No. 117, 2002 rep. No. 101, 2006
S. 820-457.....	ad. No. 117, 2002 rep. No. 101, 2006
S. 820-458.....	ad. No. 117, 2002 rep. No. 101, 2006
S. 820-460.....	ad. No. 162, 2001 rep. No. 101, 2006
S. 820-465.....	ad. No. 162, 2001 rep. No. 101, 2006
Note to s. 820-465	
Renumbered Note 1 .....	No. 142, 2003 rep. No. 101, 2006
Note 2 to s. 820-465.....	ad. No. 142, 2003 rep. No. 101, 2006
S. 820-470.....	ad. No. 162, 2001 rep. No. 101, 2006
S. 820-500.....	ad. No. 162, 2001 rep. No. 101, 2006
S. 820-505.....	ad. No. 162, 2001 rep. No. 101, 2006
S. 820-510.....	ad. No. 162, 2001 rep. No. 101, 2006
S. 820-515.....	ad. No. 162, 2001 rep. No. 101, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 820-520.....	ad. No. 162, 2001 rep. No. 101, 2006
S. 820-525.....	ad. No. 162, 2001 rep. No. 101, 2006
S. 820-530.....	ad. No. 162, 2001 rep. No. 101, 2006
S. 820-550.....	ad. No. 162, 2001 rep. No. 101, 2006
S. 820-552.....	ad. No. 142, 2003 rep. No. 101, 2006
S. 820-555.....	ad. No. 162, 2001 rep. No. 101, 2006
S. 820-560.....	ad. No. 162, 2001 rep. No. 101, 2006
S. 820-562.....	ad. No. 162, 2001 am. No. 142, 2003 rep. No. 101, 2006
S. 820-565.....	ad. No. 162, 2001 rep. No. 101, 2006
S. 820-570.....	ad. No. 162, 2001 am. No. 21, 2005 rep. No. 101, 2006
S. 820-575.....	ad. No. 162, 2001 rep. No. 101, 2006
<b>Subdivision 820-FA</b>	
Subdivision 820-FA.....	ad. No. 117, 2002
S. 820-579.....	ad. No. 117, 2002
Link note to Guide .....	rep. No. 41, 2005
S. 820-581.....	ad. No. 117, 2002 am. No. 101, 2006
S. 820-583.....	ad. No. 117, 2002
S. 820-584.....	ad. No. 142, 2003
S. 820-585.....	ad. No. 117, 2002 am. No. 164, 2007
S. 820-587.....	ad. No. 117, 2002
S. 820-588.....	ad. No. 164, 2007
S. 820-589.....	ad. No. 117, 2002 am. No. 142, 2003 rs. No. 142, 2003
Note to s. 820-589(3) .....	rep. No. 142, 2003
S. 820-591.....	ad. No. 117, 2002 am. No. 21, 2005 rep. No. 101, 2006
<b>Subdivision 820-FB</b>	
Heading to Subdiv. 820-FB .....	rs. No. 64, 2005
Subdivision 820-FB .....	ad. No. 117, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 820-595.....	ad. No. 117, 2002 rs. No. 64, 2005
Note to s. 820-595.....	am. No. 21, 2005 rep. No. 64, 2005
Link note to Guide .....	rep. No. 41, 2005
Group heading to s. 820-597 ....	rs. No. 64, 2005
S. 820-597.....	ad. No. 117, 2002 rs. No. 64, 2005
S. 820-599.....	ad. No. 117, 2002 am. No. 16, 2003 rs. No. 64, 2005
S. 820-601.....	ad. No. 117, 2002 am. No. 101, 2006
S. 820-603.....	ad. No. 117, 2002 am. No. 64, 2005; No. 101, 2006
Heading to s. 820-605.....	rs. No. 64, 2005
S. 820-605.....	ad. No. 117, 2002 am. No. 64, 2005
Note 1A to s. 820-605 .....	ad. No. 142, 2003
Notes 1, 2 to s. 820-605.....	am. No. 64, 2005
S. 820-607.....	ad. No. 117, 2002 am. No. 64, 2005
S. 820-609.....	ad. No. 117, 2002 rs. No. 64, 2005 am. No. 164, 2007
S. 820-610.....	ad. No. 164, 2007
S. 820-611.....	ad. No. 117, 2002 am. No. 142, 2003; No. 101, 2006
Heading to s. 820-613.....	rs. No. 64, 2005
S. 820-613.....	ad. No. 117, 2002 am. No. 142, 2003; No. 64, 2005
Note to s. 820-613(1) .....	rs. No. 64, 2005
Heading to s. 820-615.....	rs. No. 64, 2005
S. 820-615.....	ad. No. 117, 2002 am. No. 142, 2003; No. 64, 2005
Note to s. 820-615(1) .....	rs. No. 64, 2005
S. 820-617.....	ad. No. 117, 2002 am. Nos. 21 and 41, 2005 rep. No. 101, 2006
<b>Subdivision 820-G</b>	
S. 820-625.....	ad. No. 162, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 820-630.....	ad. No. 162, 2001
S. 820-635.....	ad. No. 162, 2001
S. 820-640.....	ad. No. 162, 2001
S. 820-645.....	ad. No. 162, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 820-675.....	ad. No. 162, 2001
S. 820-680.....	ad. No. 162, 2001 am. No. 142, 2003
Note to s. 820-680(1) .....	ad. No. 145, 2008
Note to s. 820-680(1A).....	ad. No. 145, 2008
Note to s. 820-680(2) .....	ad. No. 142, 2003 rep. No. 145, 2008
Notes 1, 2 to s. 820-680(2) .....	ad. No. 145, 2008
Note to s. 820-680(2B).....	ad. No. 145, 2008
S. 820-682.....	ad. No. 145, 2008
S. 820-683.....	ad. No. 145, 2008
S. 820-684.....	ad. No. 145, 2008
S. 820-685.....	ad. No. 162, 2001
S. 820-690.....	ad. No. 162, 2001 am. No. 145, 2008
<b>Subdivision 820-H</b>	
S. 820-740.....	ad. No. 162, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 820-745.....	ad. No. 162, 2001
S. 820-750.....	ad. No. 162, 2001
S. 820-755.....	ad. No. 162, 2001
S. 820-760.....	ad. No. 162, 2001
S. 820-780.....	ad. No. 162, 2001
S. 820-785.....	ad. No. 162, 2001
S. 820-790.....	ad. No. 162, 2001
S. 820-795.....	ad. No. 162, 2001 am. No. 142, 2003
S. 820-815.....	ad. No. 162, 2001 am. No. 53, 2002
S. 820-820.....	ad. No. 162, 2001 am. No. 53, 2002
S. 820-825.....	ad. No. 162, 2001 am. No. 53, 2002
S. 820-830.....	ad. No. 162, 2001
S. 820-835.....	ad. No. 162, 2001
S. 820-855.....	ad. No. 162, 2001
S. 820-860.....	ad. No. 162, 2001
S. 820-865.....	ad. No. 162, 2001
S. 820-870.....	ad. No. 162, 2001
S. 820-875.....	ad. No. 162, 2001
<b>Subdivision 820-HA</b>	
Subdivision 820-HA.....	ad. No. 53, 2002
S. 820-880.....	ad. No. 53, 2002
Link note to Guide .....	rep. No. 41, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 820-881.....	ad. No. 53, 2002
S. 820-885.....	ad. No. 53, 2002
S. 820-890.....	ad. No. 53, 2002
<b>Subdivision 820-I</b>	
S. 820-900.....	ad. No. 162, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 820-905.....	ad. No. 162, 2001
S. 820-910.....	ad. No. 162, 2001 rs. No. 53, 2002 am. No. 142, 2003
S. 820-915.....	ad. No. 162, 2001 rs. No. 53, 2002
S. 820-920.....	ad. No. 162, 2001 am. No. 53, 2002; No. 142, 2003
<b>Subdivision 820-J</b>	
S. 820-925.....	ad. No. 162, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 820-930.....	ad. No. 162, 2001 am. No. 15, 2009
<b>Subdivision 820-K</b>	
S. 820-940.....	ad. No. 162, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 820-942.....	ad. No. 162, 2001 am. No. 142, 2003
Note to s. 820-942(2) .....	ad. No. 142, 2003
<b>Subdivision 820-KA</b>	
Heading to Subdiv. 820-KA.....	rs. No. 142, 2003
Subdivision 820-KA.....	ad. No. 53, 2002
S. 820-945.....	ad. No. 53, 2002 am. No. 142, 2003
Link note to Guide .....	rep. No. 41, 2005
Heading to s. 820-946.....	rs. No. 142, 2003
S. 820-946.....	ad. No. 53, 2002 am. No. 142, 2003; Nos. 143 and 164, 2007
<b>Subdivision 820-L</b>	
S. 820-950.....	ad. No. 162, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 820-960.....	ad. No. 162, 2001 rs. No. 142, 2003 am. No. 97, 2008
S. 820-965.....	ad. No. 162, 2001
S. 820-980.....	ad. No. 162, 2001 am. No. 53, 2002
S. 820-985.....	ad. No. 142, 2003 am. No. 145, 2008

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 820-990.....	ad. No. 162, 2001
S. 820-995.....	ad. No. 162, 2001
<b>Division 830</b>	
Division 830.....	ad. No. 101, 2004
S. 830-1.....	ad. No. 101, 2004 am. No. 143, 2007
Link note to Guide .....	rep. No. 41, 2005
<b>Subdivision 830-A</b>	
S. 830-5.....	ad. No. 101, 2004
S. 830-10.....	ad. No. 101, 2004 am. No. 58, 2006; No. 143, 2007
S. 830-15.....	ad. No. 101, 2004 am. No. 143, 2007
<b>Subdivision 830-B</b>	
S. 830-20.....	ad. No. 101, 2004
S. 830-25.....	ad. No. 101, 2004
S. 830-30.....	ad. No. 101, 2004
S. 830-35.....	ad. No. 101, 2004
S. 830-40.....	ad. No. 101, 2004
<b>Subdivision 830-C</b>	
S. 830-45.....	ad. No. 101, 2004
S. 830-50.....	ad. No. 101, 2004
S. 830-55.....	ad. No. 101, 2004
S. 830-60.....	ad. No. 101, 2004
S. 830-65.....	ad. No. 101, 2004
S. 830-70.....	ad. No. 101, 2004
S. 830-75.....	ad. No. 101, 2004
<b>Subdivision 830-D</b>	
S. 830-80.....	ad. No. 101, 2004
S. 830-85.....	ad. No. 101, 2004
S. 830-90.....	ad. No. 101, 2004
S. 830-95.....	ad. No. 101, 2004
S. 830-100.....	ad. No. 101, 2004
S. 830-105.....	ad. No. 101, 2004
S. 830-110.....	ad. No. 101, 2004
S. 830-115.....	ad. No. 101, 2004
S. 830-120.....	ad. No. 101, 2004
S. 830-125.....	ad. No. 101, 2004
Link note to s. 830-125.....	rep. No. 41, 2005
<b>Division 840</b>	
Division 840.....	ad. No. 32, 2008
S. 840-1.....	ad. No. 32, 2008
<b>Subdivision 840-M</b>	



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 840-800.....	ad. No. 32, 2008
S. 840-805.....	ad. No. 32, 2008
S. 840-810.....	ad. No. 32, 2008
S. 840-815.....	ad. No. 32, 2008
S. 840-820.....	ad. No. 32, 2008
<b>Division 842</b>	
Division 842.....	ad. No. 101, 2006
<b>Subdivision 842-B</b>	
S. 842-100.....	ad. No. 101, 2006
S. 842-105.....	ad. No. 101, 2006
<b>Division 855</b>	
Division 855.....	ad. No. 168, 2006
S. 855-1.....	ad. No. 168, 2006
<b>Subdivision 855-A</b>	
S. 855-5.....	ad. No. 168, 2006
S. 855-10.....	ad. No. 168, 2006
S. 855-15.....	ad. No. 168, 2006
S. 855-20.....	ad. No. 168, 2006
S. 855-25.....	ad. No. 168, 2006
S. 855-30.....	ad. No. 168, 2006
S. 855-35.....	ad. No. 168, 2006
S. 855-40.....	ad. No. 168, 2006 am. No. 79, 2007
<b>Subdivision 855-B</b>	
S. 855-45.....	ad. No. 168, 2006
S. 855-50.....	ad. No. 168, 2006
S. 855-55.....	ad. No. 168, 2006
<b>Chapter 5</b>	
Link note to Chapt. 5.....	rep. No. 41, 2005
<b>Part 5-30</b>	
Link note to Part 5-30.....	rep. No. 41, 2005
<b>Division 900</b>	
<b>Subdivision 900-A</b>	
S. 900-12.....	rs. No. 178, 1999 am. No. 168, 2001; No. 15, 2007
<b>Subdivision 900-B</b>	
S. 900-15.....	am. No. 174, 1997; No. 72, 2001
Note to s. 900-15(2).....	ad. No. 72, 2001
S. 900-30.....	am. No. 121, 1997; No. 77, 2001; No. 95, 2004; Nos. 58 and 101, 2006
Note to s. 900-30(1).....	rs. No. 179, 1999
Note to s. 900-30(3).....	rs. No. 179, 1999
Note to s. 900-30(5).....	rs. No. 179, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note to s. 900-30(7) Renumbered Note 1 .....	No. 72, 2001
Note 2 to s. 900-30(7) .....	ad. No. 72, 2001
Note 3 to s. 900-30(7) .....	ad. No. 95, 2004
Note to s. 900-45.....	am. No. 179, 1999
<b>Subdivision 900-C</b>	
S. 900-70.....	am. No. 174, 1997; No. 72, 2001
Note to s. 900-70(2) .....	ad. No. 72, 2001
<b>Subdivision 900-D</b>	
S. 900-80.....	am. No. 174, 1997; No. 72, 2001
Note to s. 900-80(2) .....	ad. No. 72, 2001
Note to s. 900-95(3) .....	rs. No. 179, 1999
<b>Subdivision 900-E</b>	
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 900-115.....	am. No. 77, 2001
S. 900-120.....	am. No. 176, 1999 rs. No. 77, 2001
S. 900-125.....	am. No. 77, 2001
Heading to s. 900-135.....	rs. No. 179, 1999
S. 900-135.....	am. No. 179, 1999
Note to s. 900-135(1) .....	am. No. 179, 1999
<b>Subdivision 900-F</b>	
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
<b>Subdivision 900-G</b>	
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
<b>Subdivision 900-I</b>	
Link note to Guide .....	ad. No. 16, 1998 rep. No. 41, 2005
S. 900-220.....	am. No. 77, 2001; No. 101, 2006
Note to s. 900-220(2) .....	am. No. 179, 1999
<b>Part 5-35</b>	
<b>Division 905</b>	
Division 905.....	ad. No. 146, 2001
S. 905-5.....	ad. No. 146, 2001
Link note to s. 905-5.....	rep. No. 41, 2005
<b>Division 909</b>	
Link note to s. 909-1.....	rep. No. 41, 2005
<b>Chapter 6</b>	
<b>Part 6-1</b>	
Link note to Part 6-1 .....	rep. No. 41, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 950</b>	
S. 950-150.....	am. No. 16, 1998
Link note to s. 950-150.....	rep. No. 41, 2005
<b>Division 960</b>	
<b>Subdivision 960-C</b>	
Subdivision 960-C.....	ad. No. 133, 2003
S. 960-49.....	ad. No. 133, 2003
S. 960-50.....	ad. No. 133, 2003 am. No. 67, 2003; No. 58, 2006; No. 164, 2007
S. 960-55.....	ad. No. 133, 2003 am. No. 15, 2009
<b>Subdivision 960-D</b>	
Subdivision 960-D.....	ad. No. 133, 2003
S. 960-56.....	ad. No. 133, 2003
Link note to Guide.....	rep. No. 41, 2005
S. 960-59.....	ad. No. 133, 2003
S. 960-60.....	ad. No. 133, 2003 am. No. 96, 2004; No. 41, 2005; No. 15, 2009
S. 960-61.....	ad. No. 168, 2006
S. 960-65.....	ad. No. 133, 2003 am. No. 96, 2004
S. 960-70.....	ad. No. 133, 2003 am. No. 96, 2004; No. 168, 2006
S. 960-75.....	ad. No. 133, 2003
S. 960-80.....	ad. No. 133, 2003 am. No. 96, 2004; No. 41, 2005; No. 168, 2006
S. 960-85.....	ad. No. 133, 2003
S. 960-90.....	ad. No. 133, 2003 am. No. 96, 2004; No. 41, 2005
<b>Subdivision 960-E</b>	
S. 960-100.....	am. No. 92, 2000; No. 58, 2006; No. 9, 2007
Note to s. 960-100.....	ad. No. 86, 2000
Link note to s. 960-100.....	rep. No. 162, 2001
S. 960-105.....	ad. No. 58, 2006
<b>Subdivision 960-F</b>	
Subdivision 960-F.....	ad. No. 162, 2001
S. 960-115.....	ad. No. 162, 2001
S. 960-120.....	ad. No. 162, 2001 am. No. 97, 2008
<b>Subdivision 960-G</b>	
Subdivision 960-G.....	ad. No. 68, 2002
S. 960-130.....	ad. No. 68, 2002
S. 960-135.....	ad. No. 68, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 960-140.....	ad. No. 90, 2002 am. No. 41, 2005
<b>Subdivision 960-GP</b>	
Subdivision 960-GP .....	ad. No. 168, 2006
S. 960-180.....	ad. No. 168, 2006
S. 960-185.....	ad. No. 168, 2006
S. 960-190.....	ad. No. 168, 2006
S. 960-195.....	ad. No. 168, 2006
<b>Subdivision 960-H</b>	
S. 960-220.....	rs. No. 16, 1998 am. No. 46, 1998
Note to s. 960-220(1) .....	ad. No. 46, 1998
Note to s. 960-220(2) .....	ad. No. 46, 1998
S. 960-225.....	am. No. 46, 1998
S. 960-230.....	am. No. 46, 1998
S. 960-235.....	am. No. 46, 1998
S. 960-240.....	am. No. 46, 1998
S. 960-245.....	am. No. 46, 1998
Link note to s. 960-245.....	rep. No. 46, 1998
<b>Subdivision 960-J</b>	
Subdivision 960-J.....	ad. No. 144, 2008
S. 960-250.....	ad. No. 144, 2008
S. 960-252.....	ad. No. 144, 2008
S. 960-255.....	ad. No. 144, 2008
<b>Subdivision 960-M</b>	
S. 960-260.....	ad. No. 46, 1998
Link note to Guide .....	rep. No. 41, 2005
S. 960-265.....	ad. No. 46, 1998 am. No. 165, 1999; No. 114, 2000; No. 77, 2001; No. 160, 2005; Nos. 9 and 164, 2007; No. 141, 2008
S. 960-270.....	ad. No. 46, 1998 am. No. 9, 2007
S. 960-275.....	ad. No. 46, 1998 am. Nos. 94, 165 and 169, 1999; No. 114, 2000; No. 32, 2006; No. 9, 2007
Note 1 to s. 960-275(2) .....	rs. No. 169, 1999
Note 2 to s. 960-275(2) .....	rs. No. 169, 1999
Note 3 to s. 960-275(2) .....	ad. No. 169, 1999
Note to s. 960-275(3) .....	rep. No. 169, 1999
Note 1 to s. 960-275(3) .....	ad. No. 169, 1999
Note 2 to s. 960-275(3) .....	ad. No. 169, 1999
Subhead. to s. 960-280(2) .....	ad. No. 9, 2007
S. 960-280.....	ad. No. 46, 1998 am. No. 77, 2001; No. 9, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Link note to s. 960-280.....	rs. No. 164, 1999 rep. No. 41, 2005
Subhead. to s. 960-285(4) .....	rep. No. 62, 2009
S. 960-285.....	ad. No. 9, 2007 am. No. 15, 2007; No. 62, 2009
Subdivision 960-Q.....	ad. No. 164, 1999 rep. No. 80, 2007
S. 960-330.....	ad. No. 164, 1999 rep. No. 80, 2007
Link note to Guide .....	rep. No. 41, 2005
S. 960-335.....	ad. No. 164, 1999 rep. No. 80, 2007
S. 960-340.....	ad. No. 164, 1999 rep. No. 80, 2007
S. 960-345.....	ad. No. 164, 1999 am. No. 41, 2005 rep. No. 80, 2007
S. 960-350.....	ad. No. 164, 1999 rep. No. 80, 2007
S. 960-355.....	ad. No. 164, 1999 rep. No. 80, 2007
Link note to s. 960-355.....	rep. No. 41, 2005
Subdivision 960-R .....	ad. No. 177, 1999 rep. No. 101, 2006
S. 960-370.....	ad. No. 177, 1999 rep. No. 101, 2006
Link note to s. 960-370.....	ad. No. 163, 2001 rep. No. 41, 2005
<b>Subdivision 960-S</b>	
Subdivision 960-S .....	ad. No. 58, 2006
S. 960-400.....	ad. No. 58, 2006
S. 960-405.....	ad. No. 58, 2006
S. 960-410.....	ad. No. 58, 2006
<b>Division 974</b>	
Division 974.....	ad. No. 163, 2001
<b>Subdivision 974-A</b>	
S. 974-1 .....	ad. No. 163, 2001
S. 974-5.....	ad. No. 163, 2001
Link note to Guide .....	rep. No. 41, 2005
S. 974-10.....	ad. No. 163, 2001 am. No. 58, 2006; No. 97, 2008
<b>Subdivision 974-B</b>	
S. 974-15.....	ad. No. 163, 2001
S. 974-20.....	ad. No. 163, 2001
S. 974-25.....	ad. No. 163, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 974-30.....	ad. No. 163, 2001
S. 974-35.....	ad. No. 163, 2001
S. 974-40.....	ad. No. 163, 2001
S. 974-45.....	ad. No. 163, 2001
S. 974-50.....	ad. No. 163, 2001
S. 974-55.....	ad. No. 163, 2001
S. 974-60.....	ad. No. 163, 2001
S. 974-65.....	ad. No. 163, 2001
<b>Subdivision 974-C</b>	
S. 974-70.....	ad. No. 163, 2001
Subhead. to s. 974-75(4) .....	am. No. 23, 2005
S. 974-75.....	ad. No. 163, 2001 am. Nos. 23 and 162, 2005; No. 80, 2007
Note to s. 974-75(4) .....	ad. No. 162, 2005
S. 974-80.....	ad. No. 163, 2001
S. 974-85.....	ad. No. 163, 2001
S. 974-90.....	ad. No. 163, 2001
S. 974-95.....	ad. No. 163, 2001
<b>Subdivision 974-D</b>	
S. 974-100.....	ad. No. 163, 2001
S. 974-105.....	ad. No. 163, 2001 am. No. 162, 2005
Subhead. to s. 974-110(1) .....	rs. No. 162, 2005
S. 974-110.....	ad. No. 163, 2001 am. No. 162, 2005; No. 97, 2008
Note 3 to s. 974-110(1) .....	am. No. 162, 2005
Note 3 to s. 974-110(2) .....	am. No. 162, 2005
S. 974-112.....	ad. No. 163, 2001 am. No. 97, 2008
<b>Subdivision 974-E</b>	
S. 974-115.....	ad. No. 163, 2001
S. 974-120.....	ad. No. 163, 2001 am. No. 80, 2006
S. 974-125.....	ad. No. 163, 2001
<b>Subdivision 974-F</b>	
S. 974-130.....	ad. No. 163, 2001 am. No. 164, 2007
S. 974-135.....	ad. No. 163, 2001
S. 974-140.....	ad. No. 163, 2001
S. 974-145.....	ad. No. 163, 2001
S. 974-150.....	ad. No. 163, 2001 am. No. 97, 2008
S. 974-155.....	ad. No. 163, 2001
S. 974-160.....	ad. No. 163, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 974-165.....	ad. No. 163, 2001
<b>Division 975</b>	
<b>Subdivision 975-A</b>	
S. 975-100.....	am. No. 55, 2001 rep. No. 41, 2005
Link note to s. 975-100.....	rep. No. 41, 2005
S. 975-150.....	am. No. 90, 2002
Link note to s. 975-150.....	rep. No. 41, 2005
S. 975-155 .....	ad. No. 23, 2005
S. 975-160.....	ad. No. 23, 2005
<b>Subdivision 975-G</b>	
Subdivision 975-G.....	ad. No. 80, 2006
S. 975-300.....	ad. No. 80, 2006 am. No. 79, 2007
<b>Subdivision 975-W</b>	
Link note to s. 975-505.....	rep. No. 16, 2003
<b>Division 976</b>	
Division 976.....	ad. No. 16, 2003
S. 976-1 .....	ad. No. 16, 2003
S. 976-5.....	ad. No. 16, 2003
S. 976-10.....	ad. No. 16, 2003
S. 976-15.....	ad. No. 16, 2003
Link note to s. 976-15.....	rep. No. 41, 2005
<b>Division 977</b>	
Division 977.....	ad. No. 90, 2002
S. 977-5.....	ad. No. 90, 2002
S. 977-10.....	ad. No. 90, 2002
S. 977-15.....	ad. No. 90, 2002
S. 977-20.....	ad. No. 90, 2002
S. 977-25.....	ad. No. 90, 2002
S. 977-30.....	ad. No. 90, 2002
S. 977-35.....	ad. No. 90, 2002
S. 977-40.....	ad. No. 90, 2002
Link note to s. 977-40.....	rep. No. 41, 2005
S. 977-50.....	ad. No. 90, 2002
S. 977-55.....	ad. No. 90, 2002

**Table of Amendments**

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

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**Provision affected****How affected**

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**Part 6-5****Division 995**

S. 995-1 ..... am. Nos. 56, 95, 121, 147, 174 and 179, 1997; Nos. 16, 17, 41, 46, 47, 63, 102, 108 and 128, 1998; Nos. 11, 39, 44, 54, 60, 93, 94, 146, 156, 164, 165, 169, 176, 177, 178 and 179, 1999; Nos. 44, 58, 66, 79, 86, 89, 90, 91, 92, 114, 144 and 173, 2000; Nos. 55, 72, 73, 77, 78, 89, 114, 162, 163, 167, 168 and 169, 2001; Nos. 15, 27, 32, 48, 53, 57, 2002; No. 68, 2002 (as am. by No. 16, 2003); Nos. 90, 97, 117, 119, 136 and 139, 2002; Nos. 12, 16, 66, 67, 86, 101, 107, 133, 141, 142 and 150, 2003; Nos. 52, 83, 95, 96 and 101, 2004; Nos. 23, 41, 45, 58, 64, 75, 77, 78, 147, 160, 161 and 162, 2005; Nos. 32, 55, 58, 65, 73, 80, 100, 101 and 168, 2006; Nos. 4, 9, 15, 32, 55, 56, 78, 79, 80, 143, 154, 164 and 184, 2007; Nos. 32, 38, 45, 97, 130 and 144, 2008; Nos. 14, 15, 27, 31, 42 and 47, 2009



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**Note 2****Note 2**

Subsection 995-1(1)—Schedule 13 (item 34) of the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002* (No. 90, 2002) provides as follows:

**Schedule 13****34 Subsection 995-1(1) (definition of *surplus*)**

Repeal the definition, substitute:

*surplus:*

- (a) section 205-40 sets out when a \*franking account is in surplus; and
- (b) section 208-125 sets out when an \*exempting account is in surplus.

The proposed amendment was misdescribed and is not incorporated in this compilation.

**Note 3**

Subsection 995-1(1)—Schedule 27 (item 13) of the *New Business Tax System (Consolidation and Other Measures) Act 2003* (No. 16, 2003) provides as follows:

**Schedule 27****13 Subsection 995-1(1) (definition of *surplus*)**

Repeal the definition, substitute:

*surplus:*

- (a) section 205-40 sets out when a \*franking account is in surplus; and
- (b) section 208-125 sets out when an \*exempting account is in surplus; and
- (c) section 210-130 sets out when a \*venture capital sub-account is in surplus.

The proposed amendment was misdescribed and is not incorporated in this compilation.

**Note 4**

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**Note 4**

Subsection 12-5(2)—Schedule 2 (item 1) of the *Tax Laws Amendment (2006 Measures No. 1) Act 2006* (No. 32, 2006) provides as follows:

**Schedule 2**

**1 Subsection 12-5(2) (before table item headed “leases”)**

Insert:

**lease, authority, licence, permit or quota**

expenditure to terminate..... 25-110

The proposed amendment was misdescribed and is not incorporated in this compilation.

**Note 5**

Paragraph 30-37(a)—Schedule 11 (item 3) of the *Tax Laws Amendment (2006 Measures No. 3) Act 2006* (No. 80, 2006) provides as follows:

**Schedule 11**

**3 Paragraph 30-37(a)**

Omit “1948”, substitute “2006”.

Subsection 2(1) (item 10) of the *Tax Laws Amendment (2006 Measures No. 3) Act 2006* provides as follows:

Provision(s)	Commencement	Date/Details
10. Schedule 11, item 3	The later of: (a) immediately after the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of item 42 of Schedule 1 to the <i>Australian Citizenship (Transitional and Consequential) Act 2006</i> .	
	However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	

**Note 6**

The *Australian Citizenship (Transitional and Consequential) Act 2006* was incorrectly cited and the amendment is not incorporated in this compilation.

**Note 6**

Subsection 328-225(3) and paragraph 328-225(4)(b)—Schedule 3 (items 52 and 55) of the *Tax Laws Amendment (Small Business) Act 2007* (No. 80, 2007) provide as follows:

**Schedule 3****52 Subsection 328-225(3) (paragraph (b) of the definition of asset value)**

Omit “while you were not an \*STS taxpayer”, substitute “during an income year for which you were not a \*small business entity or did not choose to use this Subdivision”.

**55 Paragraph 328-225(4)(b)**

Omit “while you were not an \*STS taxpayer”, substitute “during an income year for which you were not a \*small business entity or did not choose to use this Subdivision”.

The proposed amendments were misdescribed and are not incorporated in this compilation.

**Note 7**

*Tax Laws Amendment (2007 Measures No. 5) Act 2007* (No. 164, 2007)

The following amendments commence on 1 July 2010:

**Schedule 10****57 Section 10-5 (table item headed “industrial property”)**

Repeal the item, substitute:

**industrial property**

*see intellectual property and research and development*

**58 Section 12-5 (table item headed “film income”)**

Repeal the item.

**Note 7**

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**59 Section 12-5 (table item headed “industrial property”)**

Repeal the item, substitute:

**industrial property**

see *intellectual property* and *research and development*

**60 Section 12-5 (table item headed “shares”)**

Omit:

film licensed investment companies, deduction for  
subscription for shares in ..... Subdivision 375-H

**61 Section 12-5 (table item headed “tax losses”)**

Omit:

film losses ..... Subdivision 375-G

**62 Section 36-25 (column 3 of table item 3 in the table headed  
“Tax losses of entities generally”)**

Before “Subdivision”, insert “Former”.

**63 At the end of section 36-40**

Add:

(3) A *film loss* is the \*film component (if any) of a \*tax loss.

(4) Your \*tax loss for an income year has a *film component* if your  
\*film deductions for the year exceed the sum of:

- (a) your \*assessable film income for the year; and
- (b) your \*net exempt film income for the year.

The amount of the *film component* is the excess or the tax loss,  
whichever is lesser.

(5) However, if your \*tax loss worked out under a provision listed in  
the table, the *film component* is what that tax loss would have been  
if:

- (a) your \*film deductions for the \*loss year had been your only  
deductions; and
- (b) your \*assessable film income for the loss year had been your  
only assessable income; and
- (c) your \*net exempt film income for the loss year had been your  
only \*net exempt income.

**Note 7**

However, the *film component* cannot exceed the actual tax loss.

<b>Working out film component of tax loss</b>		
<b>Item</b>	<b>Provision</b>	<b>Type of entity</b>
1	165-70	Company—income year when ownership or control changed
2	175-35	Company—deductions that have been used to obtain a tax benefit disallowed
3	268-60 in Schedule 2F to the <i>Income Tax Assessment Act 1936</i>	Trust—income year when ownership or control changed

**64 Paragraph 40-45(5)(a)**

Before “Division”, insert “former”.

**65 Paragraph 40-45(5)(b)**

Before “Division” (first occurring), insert “former”.

**66 Paragraph 165-55(2)(d) (note)**

Before “section 124ZAFA”, insert “former”.

**67 Subsection 170-5(6) (note)**

Repeal the note.

**68 Subsection 175-10(1)**

Before “Subdivision”, insert “former”.

**69 Paragraph 175-15(1)(b)**

Before “Subdivision”, insert “former”.

**70 Subsection 170-105(7) (note)**

Repeal the note.

**71 Division 375**

Repeal the Division.

**Note 7**

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**72 Paragraphs 376-10(2)(a) and (b)**

Before “Division”, insert “former”.

**73 Paragraphs 376-35(3)(a) and (b)**

Before “Division”, insert “former”.

**74 Paragraphs 376-55(4)(a) and (b)**

Before “Division”, insert “former”.

**75 Paragraph 376-55(4)(e)**

Before “Subdivision”, insert “former”.

**76 Subsection 995-1(1) (definition of *assessable film income*)**

Repeal the definition, substitute:

*assessable film income* for an income year is so much of the amount, or the sum of the amounts, to which section 26AG of the *Income Tax Assessment Act 1936* applies in relation to you for the income year as is assessable income.

**77 Subsection 995-1(1) (subparagraphs (d) and (e) of the definition of *capital allowance*)**

Before “Division”, insert “former”.

**78 Subsection 995-1(1) (definition of *dividend*)**

Omit “and section 375-872 of this Act”.

**79 Subsection 995-1(1) (definition of *exempt film income*)**

Repeal the definition, substitute:

*exempt film income* for an income year is so much of the amount, or the sum of the amounts, to which section 26AG of the *Income Tax Assessment Act 1936* applies in relation to you for the income year as is \*exempt income.

**80 Subsection 995-1(1) (definition of *film component*)**

Repeal the definition, substitute:

*film component* has the meaning given by section 36-40.

**81 Subsection 995-1(1) (definition of *film deductions*)**

Repeal the definition, substitute:

*film deductions* for an income year are the following:

- (a) amounts you could deduct for the income year under former section 124ZAF of the *Income Tax Assessment Act 1936*;
- (b) amounts that you could deduct for the income year and to which former section 124ZAO of that Act applied in relation to you for the income year.

**82 Subsection 995-1(1) (definition of *film licensed investment company*)**

Repeal the definition, substitute:

*film licensed investment company* means a company that has been granted a licence to raise concessional capital under the Film Licensed Investment Company Act 2005 (whether or not the licence has ceased to be in force).

**83 Subsection 995-1(1) (definition of *film loss*)**

Repeal the definition, substitute:

*film loss* has the meaning given by section 36-40.

Note: Section 701-30 (rules about where an entity is not a subsidiary member for the whole of an income year) may affect a film loss.

**84 Subsection 995-1(1) (definition of *FLIC concessional capital*)**

Repeal the definition.

**85 Subsection 995-1(1) (definition of *FLIC*)**

Repeal the definition.

**86 Subsection 995-1(1) (definition of *net assessable film income*)**

Repeal the definition, substitute:

*net assessable film income* for an income year is your \*assessable film income for that year reduced by your \*film deductions for that year.

## **Note 8**

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### **87 Subsection 995-1(1) (definition of *net exempt film income*)**

Repeal the definition, substitute:

*net exempt film income* for an income year is your \*exempt film income for that year reduced by:

- (a) any taxes payable in respect of that income in a country or place outside Australia; and
- (b) any expenses (not of a capital nature) so far as you incurred them during that year in deriving that income.

### **88 Subsection 995-1(1) (note to the definition of *tax loss*)**

Repeal the note.

As at 2 July 2009 the amendments are not incorporated in this compilation.

## **Note 8**

*Tax Laws Amendment (2008 Measures No. 2) Act 2008* (No. 38, 2008)

The following amendments commence on 1 July 2012:

## **Schedule 8**

### **12 Subsections 40-1005(1), (2), (3) and (4)**

Repeal the subsections, substitute:

- (1) You can deduct an amount for an income year if:
  - (a) you or another entity incurred capital expenditure that is covered under section 40-1010 in relation to particular trees; and
  - (b) you satisfy a condition in subsection (5) for the trees for at least part of the income year; and
  - (c) you are carrying on a \*business in the income year; and
  - (d) you use the land occupied by the trees for the primary and principal purpose of \*carbon sequestration by the trees (see section 40-1015); and
  - (e) your purposes in using the land occupied by the trees do not include any of the following:
    - (i) felling the trees;
    - (ii) using the trees for \*commercial horticulture; and



- (f) you do not use the land in connection with:
- (i) a \*managed investment scheme; or
  - (ii) a \*forestry managed investment scheme.
- (2) The amount of the deduction is worked out under this formula:

$$\text{Establishment expenditure} \times \frac{\text{Write-off days in income year}}{365} \times \text{Write-off rate}$$

where:

*establishment expenditure* is the amount of expenditure mentioned in subsection (1).

*write-off days in income year* is the number of days in the income year:

- (a) that occur within the period:
  - (i) starting on the first day of the income year in which the trees are established; and
  - (ii) ending 14 years and 105 days after that day; and
- (b) on which you use the land occupied by the trees for the primary and principal purpose of \*carbon sequestration by the trees; and
- (c) on which you satisfy a condition in subsection (5) for the trees.

*write-off rate* is 7%.

- (3) You cannot deduct more in total than the amount of capital expenditure incurred for establishing the trees up to the time at which they are established.

### **13 Paragraph 40-1010(1)(b)**

After “you incur”, insert “or another entity incurs”.

### **14 Paragraph 40-1010(1)(c)**

Omit “you are”, substitute “the entity incurring the expenditure (the *establishing entity*) is”.

### **15 Paragraph 40-1010(1)(d)**

Omit “your”, substitute “the establishing entity’s”.

**Note 8**

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**16 Paragraph 40-1010(1)(e)**

Omit “your”, substitute “the establishing entity’s”.

**17 Paragraph 40-1010(1)(f)**

Omit “you do”, substitute “the establishing entity does”.

**18 Paragraph 40-1010(1)(h)**

Omit “you give”, substitute “the establishing entity gives”.

**19 Paragraph 40-1010(4)(a)**

Repeal the paragraph, substitute:

- (a) if the establishing entity lodges its \*income tax return for the income year within 5 months after the end of the income year—the day the establishing entity lodges that income tax return; or

**20 At the end of Subdivision 40-J**

Add:

**40-1030 Extra deduction for destruction of trees in carbon sink forest**

- (1) You can deduct the amount worked out under subsection (2) for an income year if:
  - (a) you or another entity incurred capital expenditure that is covered under section 40-1010 in relation to particular trees; and
  - (b) you use the land occupied by the trees for the primary and principal purpose of \*carbon sequestration by the trees; and
  - (c) the trees are destroyed during the income year; and
  - (d) you satisfy a condition in subsection 40-1005(5) for the trees just before they are destroyed.
- (2) Work out the amount of the deduction as follows:

*Method statement*

- Step 1. Work out the total of the amounts you could have deducted under this Subdivision in relation to the trees for the period:

<p>(a) starting on the first day of the income year in which the trees are established; and</p> <p>(b) ending when the trees were destroyed;</p> <p>assuming that, during that period, you satisfied a condition in the table in subsection 40-1005(5).</p> <p>Step 2. Subtract from the expenditure that is covered under section 40-1010 in relation to the trees:</p> <p>(a) the result from step 1; and</p> <p>(b) any amount you received (under an insurance policy or otherwise) for the destruction.</p> <p>The remaining amount (if positive) is your deduction under subsection (1).</p>
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- (3) This deduction is in addition to any deduction for the income year under section 40-1005.

#### **40-1035 Getting information if you acquire a carbon sink forest**

- (1) This section applies if:
- (a) you or another entity incurred capital expenditure; and
  - (b) the expenditure is covered under section 40-1010 in relation to particular trees; and
  - (c) you begin to satisfy a condition in the table in subsection 40-1005(5) for the trees.
- (2) You may give the last entity (if any) that satisfied a condition mentioned in subsection 40-1005(5) for the trees a written notice requiring the entity to give you any or all of the following information:
- (a) the amount of the expenditure covered under section 40-1010 in relation to the trees;
  - (b) the income year in which the trees were established.
- (3) The notice must:
- (a) be given within 60 days of your beginning to satisfy the condition mentioned in paragraph (1)(c); and

## Note 8

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- (b) specify a period of at least 60 days within which the information must be given; and
- (c) set out the effect of subsection (4).

Note: Subsections (5), (6) and (7) explain how this subsection operates if the entity to which the notice is to be given is a partnership.

### *Requirement to comply with notice*

- (4) The entity to whom the notice is given must not intentionally refuse or fail to comply with the notice.

Penalty: 10 penalty units.

### *Giving the notice to a partnership*

- (5) If the entity to whom the notice is given is a partnership:
  - (a) you may give it to the partnership by giving it to any of the partners (this does not limit how else you can give it); and
  - (b) the obligation to comply with the notice is imposed on each of the partners (not on the partnership), but may be discharged by any of them.
- (6) A partner must not intentionally refuse or fail to comply with that obligation.

Penalty: 10 penalty units.

- (7) Subsection (6) does not apply if another partner has already complied with that obligation.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7), see subsection 13.3(3) of the *Criminal Code*.

### *Limits on giving a notice*

- (8) Only one notice can be given in relation to the same trees.

As at 2 July 2009 the amendments are not incorporated in this compilation.

**Note 9****Note 9**

*Tax Laws Amendment (2008 Measures No. 6) Act 2009* (No. 14, 2009)

The following amendments commence on 1 July 2011:

**Schedule 5****5 Section 11-15 (table item headed “welfare”)**

Omit:

Income Recovery Subsidy for the North Queensland floods of January and February 2009.....	51-30
Income Recovery Subsidy for the Victorian bushfires of January and February 2009 .....	51-30

**6 Section 51-30 (table items 5.2 and 5.3)**

Repeal the items.

As at 2 July 2009 the amendments are not incorporated in this compilation.

**Note 10**

*Tax Laws Amendment (2009 Measures No. 2) Act 2009* (No. 42, 2009)

The following amendments commence on 1 July 2014:

**Schedule 4****16 Section 13-1 (table item headed “water”)**

Repeal the item.

**17 Section 67-23 (table item 25)**

Repeal the item.

**18 Subdivision 402-W**

Repeal the Subdivision.

**Note 11**

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The following amendments commence on 1 July 2011:

**Schedule 8**

**3 Section 11-55 (table item headed “disasters”)**

Repeal the item.

**4 Section 59-50**

Repeal the section.

As at 2 July 2009 the amendments are not incorporated in this compilation.

**Note 11**

*Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009* (No. 60, 2009)

The following amendments commence on 20 September 2009:

**Schedule 4**

**35 Section 52-10 (table item 22B.1)**

Repeal the item, substitute:

22B.1	<b>Seniors supplement</b>	Exempt	Exempt	Not applicable	Not applicable
22C.1	<b>Quarterly pension supplement</b>	Exempt	Exempt	Not applicable	Not applicable

**36 Section 52-15 (table)**

Repeal the table, substitute:

**Note 11****Supplementary amount of a social security payment**

<b>Item</b>	<b>For this category of social security payment:</b>	<b>the supplementary amount is the total of:</b>
1	Age pension Bereavement allowance Carer payment Sickness allowance Special benefit Special needs age pension Special needs disability support pension Special needs widow B pension Special needs wife pension Widow B pension Wife pension	(a) so much of the payment as is included by way of rent assistance; and (b) so much of the payment as is included by way of remote area allowance; and (c) so much of the payment as is included by way of pharmaceutical allowance; and (d) so much of the payment as is included by way of tax-exempt pension supplement
2	Disability support pension	(a) so much of the payment as is included by way of rent assistance; and (b) so much of the payment as is included by way of remote area allowance; and (c) so much of the payment as is included by way of pharmaceutical allowance; and (d) so much of the payment as is included by way of incentive allowance; and (e) so much of the payment as is included by way of language, literacy and numeracy supplement; and (f) so much of the payment as is included by way of tax-exempt pension supplement

**Note 11****Supplementary amount of a social security payment**

<b>Item</b>	<b>For this category of social security payment:</b>	<b>the <i>supplementary amount</i> is the total of:</b>
3	Newstart allowance Parenting payment (benefit (PP partnered)) Parenting payment (pension (PP single)) Partner allowance Widow allowance Youth allowance	(a) so much of the payment as is included by way of rent assistance; and (b) so much of the payment as is included by way of remote area allowance; and (c) so much of the payment as is included by way of pharmaceutical allowance; and (d) so much of the payment as is included by way of language, literacy and numeracy supplement; and (e) so much of the payment as is included by way of tax-exempt pension supplement
4	Austudy payment	(a) so much of the payment as is included by way of rent assistance; and (b) so much of the payment as is included by way of remote area allowance; and (c) so much of the payment as is included by way of pharmaceutical allowance; and (d) so much of the payment as is included by way of tax-exempt pension supplement

**37 Subsection 52-25(3) (example)**

Omit “rental assistance”, substitute “rent assistance”.

**38 Section 52-40 (table item 22B)**

Repeal the item, substitute:



**Note 11**


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22B	Seniors supplement	Part 2.25B	Not applicable	Not applicable
22C	Quarterly pension supplement	Part 2.25C	Not applicable	Not applicable

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**39 Paragraph 52-70(a)**

Omit “rental assistance”, substitute “rent assistance”.

**40 Paragraph 53-15(a)**

Omit “rental assistance”, substitute “rent assistance”.

As at 2 July 2009 the amendments are not incorporated in this compilation.

**Table A**

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**Table A**

**Application, saving or transitional provisions**

*Taxation Laws Amendment (Private Health Insurance Incentives) Act 1997*  
(No. 56, 1997)

**Schedule 2**

**10 Application**

- (1) The amendments of the *Income Tax Assessment Act 1936* apply to assessments in respect of income for the 1997-98 year of income and all later years of income.
- (2) The amendments of the *Income Tax Assessment Act 1997* apply to assessments in respect of income for the 1997-98 income year and all later income years.

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*Taxation Laws Amendment Act (No. 2) 1997* (No. 95, 1997)

**4 Amendment of income tax assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 3**

**18 Application of amendments**

- (1) The amendment made by item 15 of this Schedule applies in relation to the income year for the loss company in which 1 July 1997 occurs and later income years.
- (2) The amendment made by item 16 of this Schedule applies in relation to the income year for the income company in which 1 July 1997 occurs and later income years.

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**Table A**

- (3) The amendment made by item 17 of this Schedule applies to assessments for the income year in which 1 July 1997 occurs and later income years.

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*Tax Law Improvement Act 1997* (No. 121, 1997)

**4 Application of amendments**

An amendment made by an item in a Schedule (except Schedule 1) applies to assessments for the 1997-98 income year and later income years, unless otherwise indicated in that Schedule.

**Schedule 5**

**24 Application of amendment of subsection 165-60(4)**

The amendment made by item 23 applies for assessments for the 1998-99 income year and later income years.

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*Franchise Fees Windfall Tax (Consequential Amendments) Act 1997*  
(No. 134, 1997)

**4 Application of amendments**

- (2) The amendments of the *Income Tax Assessment Act 1997* apply to the 1997-98 year of income and to all later years of income.

---

*Taxation Laws Amendment Act (No. 3) 1997* (No. 147, 1997)

**4 Amendment of income tax assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Table A**

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**Schedule 6**

**13 Application**

The amendments made by this Part apply in respect of years of income in which proceeds are derived as a result of firearms surrender arrangements.

Note: *Firearms surrender arrangements* has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

**Schedule 15**

**13 Application**

The amendments made by this Part apply to assessments for the 1997/98 income year and later income years.

---

*Taxation Laws Amendment Act (No. 4) 1997* (No. 174, 1997)

**4 Amendment of income tax assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 6**

**23 Application**

- (1) The amendments made by Part 1 of this Schedule apply to assessments for the 1997-98 income year and later income years.

**Schedule 9**

**30 Application**

- (1) The amendments made by Part 1 of this Schedule apply to assessments for the 1997-98 income year and later income years.
-

**Table A***Farm Household Support Amendment (Restart and Exceptional Circumstances) Act 1997 (No. 179, 1997)***Schedule 3****4 References in Acts to exceptional circumstances relief payment also cover drought relief payment**

A reference in the amended FHS Act, or in another Act that is amended by this Act, to exceptional circumstances relief payment paid to a person has effect, after the commencement of this Act, as if it included a reference to drought relief payment paid to a person under the *Farm Household Support Act 1992*.

*Social Security Legislation Amendment (Parenting and Other Measures) Act 1997 (No. 197, 1997)***Schedule 1****343 Saving: new terminology includes old payment types**

- (1) Where a term set out in the second column of the table below is used in the *Income Tax Assessment Act 1997*, the *Income Tax Assessment Act 1936* or the *Income Tax Rates Act 1986*, it is to be interpreted as including a reference to the corresponding term or terms set out in the third column of the table:

<b>Terminology Table</b>		
<b>Item</b>	<b>Term used</b>	<b>Term included</b>
1	parenting payment	parenting allowance sole parent pension
2	pension PP (single)	sole parent pension
3	PP (partnered)	parenting allowance
4	benefit PP (partnered)	benefit parenting allowance
5	non-benefit PP (partnered)	non-benefit parenting allowance

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**Table A**

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- (2) Subitem (1) does not apply in relation to section 159J of the *Income Tax Assessment Act 1936*.

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*Taxation Laws Amendment Act (No. 1) 1998* (No. 16, 1998)

**4 Amendment of income tax assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 3**

**20 Division 396 also applies to certain other infrastructure borrowings**

- (1) Division 396 of the *Income Tax Assessment Act 1997* applies to the following as if they were land transport facilities:
- (a) an infrastructure facility (within the meaning of section 93L of the *Development Allowance Authority Act 1992*) where an application had been made for a certificate under Part 3 of Chapter 3 of that Act on or before 14 February 1997 in respect of borrowings in connection with the facility;
  - (b) an infrastructure facility (within the meaning of section 93L of the *Development Allowance Authority Act 1992*) that is an extension of a an infrastructure facility in respect of which a certificate under Part 3 of Chapter 3 of that Act is in force.
- (2) That Division also applies to facilities that are related facilities (within the meaning of section 93M of the *Development Allowance Authority Act 1992*) in relation to facilities covered by subsection (1) as if they were related facilities to land transport facilities.

**21 Certain projects taken to be approved**

- (1) This item applies to an infrastructure facility or a related facility (within the meaning of section 93L or 93M of the *Development Allowance Authority Act 1992*) if:

**Table A**

- 
- (a) an application had been made for a certificate under Part 3 of Chapter 3 of that Act on or before 14 February 1997 in respect of borrowings in connection with the facility; and
  - (b) a certificate had been issued under that Act in respect of those borrowings but the certificate is not effective because of the operation of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*; and
  - (c) the Minister for Transport and Regional Development determines, by written notice, that this item applies to the facility.
- (2) A determination is to include all of the matters that would be set out if the determination were a decision to approve a borrower and a project under section 396-70 of the *Income Tax Assessment Act 1997*.
  - (3) The income years specified in the determination must not include an income year that starts more than 5 years after the first borrowing is made in respect of the project.
  - (4) The Minister for Transport and Regional Development must not specify in the determination a maximum amount of tax offsets for the project for an income year that would cause the maximum amount referred to in section 396-20 of the *Income Tax Assessment Act 1997* for that income year to be exceeded.
  - (5) If this item applies to an infrastructure facility:
    - (a) Division 396 of the *Income Tax Assessment Act 1997* applies to the facility as if it were a land transport facility; and
    - (b) the Minister for Transport and Regional Development is taken to have made a decision under section 396-70 of the *Income Tax Assessment Act 1997* to approve the borrower and the project specified in the determination.

## **22 Provision of information by Development Allowance Authority**

Section 93ZF of the *Development Allowance Authority Act 1992* applies as if paragraph (d) of that section included a reference to this Part of this Schedule and to Division 396 of the *Income Tax Assessment Act 1997*.

**Table A**

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**Schedule 4**

**2 Application**

The amendment made by item 1 applies for the 1997-98 income year and later income years.

**Schedule 5**

**44 Application**

The amendments made by this Schedule apply to assessments for the 1997-98 income year and later income years.

**Schedule 10**

**19 Application**

The amendments made by this Part apply to assessments for the 1997-98 income year and later income years.

**Schedule 11**

**123 Application**

The amendments made by this Schedule apply to assessments for the 1997-98 income year and later income years.

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*Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998*  
(No. 17, 1998)

**4 Amendment of income tax assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

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**Table A**

*Commonwealth Places (Consequential Amendments) Act 1998*  
(No. 23, 1998)

**4 Application of amendments**

- (2) The amendments of the *Income Tax Assessment Act 1997* apply to the 1997-98 year of income and to all later years of income.

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*Taxation Laws (Technical Amendments) Act 1998* (No. 41, 1998)

**4 Amendment of income tax assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 3**

**7 Application**

- (2) The amendments made by Part 2 apply to assessments for the 1997-98 income year and later income years.

**Schedule 4**

**5 Application**

The amendments made by this Schedule apply to assessments for the 1997-98 income year and later income years.

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*Tax Law Improvement Act (No. 1) 1998* (No. 46, 1998)

**4 Application of amendments**

An amendment made by an item in a Schedule (except an item in Schedule 1 or in Part 1 of any of Schedules 2 to 8) applies to assessments for the 1998-99 income year and later income years, unless otherwise indicated in the Schedule in which the item appears.

**Table A**

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**Schedule 9**

**8 Application**

The amendments made by this Schedule apply to assessments for the 1997-98 income year and later income years.

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*Taxation Laws Amendment Act (No. 3) 1998* (No. 47, 1998)

**4 Amendment of income tax assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 1**

**5 Application**

- (1) The amendments made by items 1 and 3 apply in relation to expenses incurred in the 1997-98 income year.
- (2) The amendments made by items 2 and 4 do not affect the application of the *Income Tax Assessment Act 1997* in relation to expenses incurred in the 1997-98 income year.

**Schedule 3**

**16 Application**

The amendments of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to income derived on or after 1 July 1997.

**Schedule 5**

**4 Application**

The amendments made by this Schedule apply to assessments for the 1997-98 income year and later income years.

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**Schedule 9****14 Application**

The amendments made by this Schedule apply to assessments for the 1998-99 income year and later income years.

**15 Transitional—lower tax offset for the 1998-99 income year**

- (1) For the 1998-99 income year, the rate of tax offset specified in subsections 61-55(2) and 61-65(2) of the *Income Tax Assessment Act 1997* is taken to be 7.5%; not 15%.
- (2) Accordingly, for that income year, the maximum amount of tax offset specified in subsections 61-55(3) and 61-65(3) of that Act is taken to be \$225; not \$450.
- (3) In working out your provisional tax for the 1999-2000 income year under Division 3 of Part VI of the *Income Tax Assessment Act 1936*, work out your tax offset under Subdivision 61-A of the *Income Tax Assessment Act 1997* for the 1998-99 income year disregarding subitems (1) and (2) of this item.

**16 Transitional—provisional tax for the 1998-99 income year**

In working out your provisional tax for the 1998-99 income year under Division 3 of Part VI of the *Income Tax Assessment Act 1936*, it is to be assumed that:

- (a) Subdivision 61-A of the *Income Tax Assessment Act 1997* had applied to your assessment for the 1997-98 income year; and
  - (b) subitems 15(1) and (2) had applied for that income year (as well as the 1998-99 income year); and
  - (c) any tax offset under that Subdivision were worked out for the 1998-99 income year disregarding Steps 2 and 4 of the method statement in subsection 61-55(2) of that Act (which deal with certain superannuation contributions).
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**Table A**

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*Taxation Laws Amendment (Company Law Review) Act 1998* (No. 63, 1998)

**Schedule 6**

**18 Application**

- (1) The amendments made by Part 1 of this Schedule apply to things done after the commencement of this item.
- (2) The amendments made by Part 2 of this Schedule apply to things done after the commencement of this item where the relevant company has shares with no par value.

---

*Taxation Laws Amendment (Landcare and Water Facility Tax Offset) Act 1998*  
(No. 91, 1998)

**Schedule 1**

**19 Application**

The amendments made by this Schedule apply to assessments for the 1997-98 income year and later income years.

---

*Social Security and Veterans' Affairs Legislation Amendment (Budget and Other Measures) Act 1998* (No. 93, 1998)

**Schedule 7**

**45 Saving: new terminology includes old payment types**

Where a term set out in the second column of the table below is used in the *Income Tax Assessment Act 1997*, it is to be interpreted as including a reference to the corresponding term set out in the third column of the table:

**Table A**

<b>Terminology Table</b>		
<b>Item</b>	<b>Term in ITAA 1997</b>	<b>Term included</b>
1	family allowance	family payment
2	family allowance advance	family payment advance

*Primary Industries and Energy Legislation Amendment Act (No. 1) 1998*  
(No. 102, 1998)

## **Schedule 2**

### **11 Application**

Items 3 to 10 (inclusive) apply in relation to the 1997-98 income year and all subsequent income years.

*Taxation Laws Amendment (Private Health Insurance) Act 1998*  
(No. 128, 1998)

## **Schedule 2**

### **16 Application**

The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply to assessments in respect of income for the 1998-99 income year and all later income years.

*Taxation Laws Amendment Act (No. 3) 1999* (No. 11, 1999)

## **Schedule 1**

### **404 Application**

- (1) This item applies to amendments made by items 4, 5, 28, 30, 31, 32, 33, 34, 35, 36, 52, 76, 116, 122, 123, 124, 125, 126, 129, 144, 145, 146, 147, 150, 155, 157, 159, 160, 176, 177, 181, 182, 183, 184, 190, 205, 206, 207, 208, 209, 210, 218, 219, 220, 229, 230, 231, 243, 244, 253,

## **Table A**

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279, 299, 300, 302, 321, 336, 342, 343, 365, 367, 370, 374, 386 and 395.

- (2) The amendments apply in relation to credits and payments to which section 8AAZL of the *Taxation Administration Act 1953* applies.

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*Assistance for Carers Legislation Amendment Act 1999* (No. 13, 1999)

## **Schedule 1**

### **128 Application**

The amendments made by this Part apply to assessments for the 1997-98 income year and later years.

### **133 Application**

The amendments made by this Part apply to assessments for the 1998-99 income year.

### **137 Application**

The amendments made by this Part apply to assessments for the 1999-2000 income year and later years.

## **Schedule 2**

### **63 Application**

The amendments made by this Part apply to assessments for the 1999-2000 income year and later income years.

### **64 Continuation of references to old allowance and benefit**

- (1) The *Income Tax Assessment Act 1997* has effect after the commencement of this Part as if:
- (a) the entry in the table in section 11-15 of that Act, under the heading “**social security or like payments**”, relating to domiciliary nursing care benefit had not been omitted; and
  - (b) the references in item 3A.1 of the table in section 52-10, and item 3A of the table in section 52-40, of that Act to carer allowance included references to child disability allowance within the meaning of the *Social Security Act 1991* as previously in force; and

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**Table A**

(c) item 2 of the table in section 53-10 of the *Income Tax Assessment Act 1997* had not been repealed by this Act and had referred to Part VB of the *National Health Act 1953* as previously in force.

(3) In this item:

*as previously in force* means as in force immediately before the commencement of this Part.

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*Taxation Laws Amendment Act (No. 1) 1999* (No. 16, 1999)

#### **4 Amendment of income tax assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

#### **Schedule 3**

##### **12 Application**

(3) The repeals made by items 9, 10 and 11 apply in relation to expenditure to the extent to which it is incurred in respect of the provision of car parking facilities for a car on a day on or after 1 July 1997.

#### **Schedule 4**

##### **2 Application**

The amendment made by this Schedule applies to assessments for the 1997-98 income year and later income years.

#### **Schedule 7**

##### **14 Application**

(1) The amendments made by this Part apply to assessments for the 1998-99 income year and later income years.

## Table A

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- (2) However, the amendments made by items 12 and 13 do not apply to expenditure incurred before the day on which the Bill that became the *Taxation Laws Amendment Act (No. 1) 1999* was introduced into the House of Representatives.

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*Taxation Laws Amendment (Software Depreciation) Act 1999* (No. 39, 1999)

### 4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

## Schedule 1

### 21 Application

The amendments made by this Schedule apply to expenditure on software after 10 am by legal time in the Australian Capital Territory on 11 May 1998.

### 22 Transitional—projects commenced before 11 May 1998

You can deduct expenditure on software that you incur before 1 July 1999 and that you could otherwise deduct under Subdivision 46-B or 46-D of the *Income Tax Assessment Act 1997* if, at or before 10 am by legal time in the Australian Capital Territory on 11 May 1998:

- (a) you entered into a contract to acquire the software; or
- (b) you commenced the development of the software for your own use; or
- (c) you commissioned another entity to develop the software for your own use;

to the extent that you use, or intend to use, the software for the purpose of producing assessable income.

Note: Under this item you can deduct the expenditure for the year in which you incur it, instead of having to write it off gradually under Subdivision 46-B or 46-D.



**Table A****23 Transitional—backdating software pool to 11 May 1998**

When making a choice under section 46-80 of the *Income Tax Assessment Act 1997* for the first income year beginning after 11 May 1998, you may elect that the choice be treated as also applying to any expenditure on software incurred after 10 am by legal time in the Australian Capital Territory on 11 May 1998 but before that income year begins.

Note 1: You will get section 46-90 deductions for that expenditure one year earlier than any deductions you will get for expenditure incurred in that later income year. This is because the timing of section 46-90 deductions depends on the income year in which you incurred the expenditure (not on when you made the choice).

Note 2: If it were not for this item, the choice could not apply to expenditure incurred before the beginning of the income year in which the choice is made: see paragraph 46-85(b).

**24 Transitional—revoking software pool choice**

- (1) When lodging your return for the second income year beginning after 11 May 1998, you may revoke a previous choice that you made to create a software pool under section 46-80 of the *Income Tax Assessment Act 1997*.
- (2) You may do so whether or not you also made an election under item 23 of this Schedule when you made that choice.
- (3) If you revoke the choice, no expenditure on software for that second income year or any later income year goes into your software pool. But any expenditure from before that second income year remains in your software pool unaffected by the revocation.
- (4) You can never revoke the revocation, or make a fresh choice under section 46-80.

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*Taxation Laws Amendment Act (No. 6) 1999* (No. 54, 1999)

**Schedule 1****36 Application**

The amendments made by this Schedule apply to spectrum licences obtained on or after 11 March 1998.

**Table A**

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**Schedule 2**

**16 Application**

The amendments made by this Schedule apply to assessments for the 1997-98 income year and later income years.

**Schedule 5**

**10 Application of amendments**

The amendments made by this Part apply to assessments for the 1998-99 income year and later income years.

**Schedule 7**

**3 Application of amendments**

The amendments made by this Schedule apply to assessments for the 1998-99 income year and later income years.

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*A New Tax System (Income Tax Laws Amendment) Act 1999* (No. 60, 1999)

**Schedule 2**

**7 Application**

The amendments made by this Part apply to assessments for the 1999-2000 income year and later income years.

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*A New Tax System (Personal Income Tax Cuts) Act 1999* (No. 69, 1999)

**Schedule 3**

**1 Application**

- (1) Subject to subitem (2), the amendments made by this Act (except items 1, 2, 4, 6, 7 and 9 of Schedule 1) apply to assessments for the 2000-2001 income year and later income years.

**Table A**


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*A New Tax System (Closely Held Trusts) Act 1999* (No. 70, 1999)

**Schedule 2****14 Application**

The amendment made by this Part applies to assessments for the income year in which 13 August 1998 occurred, and all later income years.

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*A New Tax System (Family Assistance) (Consequential and Related Matters) Act (No. 2) 1999* (No. 83, 1999)

**Schedule 10****68 Application**

- (1) Subject to this item, the amendments made by this Schedule apply to assessments in relation to the 2000-2001 year of income and later years of income.

**69 Saving provision—Income Tax Assessment Act 1997**

- (1) Despite the amendments of the *Income Tax Assessment Act 1997* made by this Schedule, that Act as in force immediately before the commencement of item 1 of this Schedule continues to apply, in respect of:
- (a) an eligible family payment; or
  - (b) an exceptional circumstances relief payment within the meaning of the *Farm Household Support Act 1992*;
- received during the 2000-2001 year of income or a later year of income, as if those amendments had not been made.
- (2) In this item:
- eligible family payment*** means any of the following payments:
- (a) family allowance;
  - (b) family allowance advance;
  - (c) family tax payment;
  - (d) maternity allowance;
  - (e) maternity immunisation allowance;
  - (f) parenting payment (non-benefit PP (partnered));
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**Table A**

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(g) so much of parenting payment (benefit PP (partnered)) as is included by way of provisional rate of parenting payment up to the maximum basic component of the parenting payment worked out using the method statement in point 1068B-A3; within the meaning of the *Social Security Act 1991* as in force immediately before the commencement of item 1 of this Schedule.

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*Taxation Laws Amendment Act (No. 2) 1999* (No. 93, 1999)

**4 Amendment of income tax assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 1**

**39 Application**

- (1) Subject to this item, the amendments made by this Schedule apply in relation to transactions entered into after 2 July 1998.

**Schedule 3**

**33 Application**

- (1) The amendments made by this Schedule other than items 8, 9, 10 and 11 apply where the transition time or acquisition time, as the case may be, referred to in Division 58 inserted in the *Income Tax Assessment Act 1997* by item 7 is a time on or after 4 August 1997.
- (2) The amendments made by items 8, 9, 10 and 11 apply to assessments for the 1998-99 income year and later income years.

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**Table A**

*Taxation Laws Amendment Act (No. 4) 1999* (No. 94, 1999)

**4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 1**

**30 Application of amendments**

The amendments made by items 8, 10 and 11 apply to gifts made on or after the day on which this Act receives the Royal Assent.

**Schedule 2**

**3 Exemption of grants paid from fund**

Any amount of ordinary income or statutory income that is paid directly to an entity by way of grant to the entity from the Katherine District Business Re-establishment Fund is exempt from tax under the *Income Tax Assessment Act 1997*.

Note: This exemption does not apply to amounts paid to a third party.

**4 Amounts are excluded exempt income**

Income that is exempt under item 3 is excluded exempt income for the purposes of the *Income Tax Assessment Act 1997*.

Note: Subsection 36-20(3) of the *Income Tax Assessment Act 1997* contains the general definition of excluded exempt income.

**6 Application**

This Part applies only in relation to assessments for the 1997-98 income year.

**Schedule 3**

**6 Application**

The repeals made by items 4 and 5 apply to assessments for the 1998-99 income year and later income years.

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**Table A**

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**32 Application**

The amendments made by this Part apply to a public entity if the test time (within the meaning of Division 149 of the *Income Tax Assessment Act 1997*) is on or after 30 June 1999.

**42 Application**

The amendments made by this Part apply to CGT assets so far as they are held on or after 11 March 1999.

**Schedule 5**

**35 Application of amendments**

Subject to item 37, the amendments made by this Schedule apply to assessments for the 1998-99 income year and all later income years.

**36 Transitional—effect of Subdivision 118-F and Division 123 of the *Income Tax Assessment Act 1997***

Subdivision 118-F, and Division 123, of the *Income Tax Assessment Act 1997* apply to a person (with such modifications as are necessary) for the purpose of working out whether the person has a net capital gain for the 1997-98 income year and, if so, the amount of that net capital gain if:

- (a) a CGT event happened in relation to land or a building owned by the person; and
- (b) the CGT event happened after 13 August 1998 and before the start of the person's 1998-99 income year; and
- (c) if the CGT event had happened in the person's 1998-99 income year, the land or building would have been an active asset because of subsection 123-80(2) of the *Income Tax Assessment Act 1997*.

Note: This provision is for taxpayers who have a substituted accounting period and are late balancers and who would not otherwise be able to take advantage of the extension to the definition of *active asset* in section 123-80 of the *Income Tax Assessment Act 1997* made by this Act.

**37 Application of item 36**

Item 36 applies to assessments for the 1997-98 income year.

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**Table A****Schedule 6****73 Application**

The amendments made by this Schedule apply to assessments for the 1998-99 income year and all later income years.

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*Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999* (No. 152, 1999)

**Schedule 4****19 Application**

The amendments made by this Part apply to assessments for the 1999-2000 income year and later income years.

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*New Business Tax System (Capital Allowances) Act 1999* (No. 164, 1999)

**Schedule 1****15 Application of amendments**

- (1) The amendments made by items 1 to 13 apply to a balancing adjustment event happening after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.
- (2) The amendment made by item 14 applies to a CGT event happening after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.
- (3) The amendment made by item 14 also applies to a CGT event happening at or before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999, if:
  - (a) the event is CGT event A1 (disposal of a CGT asset); and
  - (b) the time of the event is when you entered into the contract for the disposal of the CGT asset; and
  - (c) the change of ownership constituting the disposal occurred after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.

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**Table A**

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**Schedule 2**

**23 Application of amendments**

- (1) The amendments made by this Schedule (other than by items 17 and 18) apply to assessments for the income year in which 21 September 1999 occurred and later income years.
- (2) The amendment made by item 17 applies to arrangements entered into after 27 February 1998.
- (3) The amendment made by item 18 applies to debts that are terminated after 27 February 1998.

**Schedule 3**

**14 Application of amendments**

The amendments made by this Schedule apply to plant if:

- (a) you became its owner or quasi-owner under a contract entered into after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999; or
- (b) you constructed it and the construction started after that time; or
- (c) you acquired it in some other way after that time.

**Schedule 4**

**12 Application of amendments**

- (1) The amendments made by this Schedule relating to IRUs apply to expenditure on IRUs incurred after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.
  - (2) The amendments made by this Schedule relating to part disposals of a cable system apply to the granting of IRUs over the system under contracts entered into after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.
  - (3) Those amendments do not apply to an international telecommunications submarine cable system, or an IRU over the system, if the system had been used for telecommunications purposes at or before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.
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**Schedule 5****6 Application of amendments**

The amendments made by this Schedule apply to plant if:

- (a) you became its owner or quasi-owner under a contract entered into after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999; or
- (b) you constructed it and the construction started after that time; or
- (c) you acquired it in some other way after that time.

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*New Business Tax System (Capital Gains) Act 1999* (No. 165, 1999)

**4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 1****61 Application of amendments**

The amendments made by this Schedule apply to assessments for the income year including 21 September 1999 and all later income years, but only for CGT events that happen after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.

Note: The 15-year exemption in Subdivision 152-B of the *Income Tax Assessment Act 1997*, as inserted by this Division, will effectively only apply to CGT events that happen on or after 20 September 2000, since the 15-year exemption is only relevant to CGT assets acquired on or after 20 September 1985.

**62 Transitional—old CGT retirement exemption limit carries over**

If an individual's CGT retirement exemption limit was reduced by one or more amounts under:

- (a) section 118-435 of the *Income Tax Assessment Act 1997*; or
- (b) section 160ZZPZN of the *Income Tax Assessment Act 1936*;

## **Table A**

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or both, then the individual's CGT retirement exemption limit under Subdivision 152-D of that Act (as inserted by this Schedule) is taken to have been reduced by the total of all those amounts at 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.

Note: This could result in the individual's new limit being reduced to nil at that time, if he or she has already used it up under those old provisions.

## **Schedule 2**

### **7 Application of amendments**

The amendments made by this Schedule apply to CGT events happening on or after the day on which this Act receives the Royal Assent.

## **Schedule 3**

### **18 Application of amendments**

The amendments made by this Schedule apply to the issue or allotment of venture capital equity in a resident investment vehicle on or after the day on which this Act receives the Royal Assent.

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*New Business Tax System (Integrity and Other Measures) Act 1999*  
(No. 169, 1999)

## **Schedule 1**

### **18 Application of amendments**

The amendments made by this Schedule apply to assessments for the income year in which 22 February 1999 occurs and later income years.

## **Schedule 2**

### **5 Application of amendments**

The amendments made by this Schedule apply to trigger events that happen on or after 22 February 1999.

**Schedule 3****7 Application of amendments**

The amendments made by this Schedule apply to assessments for the 1999-2000 income year and later income years.

**Schedule 4****19 Application**

- (1) The amendments made by this Schedule apply to CGT events happening on or after 21 October 1999.
- (2) The amendment made by item 2 is to be disregarded for the purposes of any application of section 110-55 of the *Income Tax Assessment Act 1997* as previously in force, or any application of subsection 160ZK(1) of the *Income Tax Assessment Act 1936*, as a result of a CGT event or disposal that occurred before 21 October 1999.
- (3) The amendment made by item 3 is to be disregarded for the purposes of any application of section 110-60 of the *Income Tax Assessment Act 1997* as previously in force, or any application of subsection 160ZK(3) of the *Income Tax Assessment Act 1936*, as a result of a CGT event or disposal that occurred before 21 October 1999.

**Schedule 6****16 Application and saving**

The amendments made by this Schedule, except in so far as they relate to changes in the ownership or control of a company that has an unrealised net loss, apply to net capital losses, tax losses or deductions claimed in a return for a year of income ending after 21 September 1999.

**Schedule 7****12 Application**

- (1) The amendments made by Division 1 of Part 1 and by Part 2 apply in relation to:
  - (a) expenditure incurred by a taxpayer after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999; and

**Table A**

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- (b) the taxpayer's assessments for the year of income including that day and for later years of income.

**Schedule 8**

**10 Application**

The amendments made by this Schedule apply to the calculation of the cost base of a CGT asset for a CGT event occurring after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999.

**Schedule 9**

**14 Application and transitional provisions**

- (1) The amendments of Divisions 100, 102, 104 and 109 of the *Income Tax Assessment Act 1997* made by this Part, and Division 115 of that Act, apply to assessments for the income year including 21 September 1999 and for later income years.
- (2) The amendments of sections 110-25 and 114-5 of the *Income Tax Assessment Act 1997* made by this Part apply to the calculation of a cost base of a CGT asset for a CGT event happening after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999.

**31 Application**

The amendments of the *Income Tax Assessment Act 1997* made by this Division apply to assessments for the income year including 21 September 1999 and later income years.

**33 Application**

The amendment of the *Income Tax Assessment Act 1997* made by this Division applies to assessments for the income year including 21 September 1999 and later income years.

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**Table A**

*A New Tax System (Pay As You Go) Act 1999* (No. 178, 1999)

**4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 2****92 Application of amendments**

The amendments made by this Part apply in relation to amounts that are due to be paid on or after 1 July 1999.

**93 Transitional—pre-1 July 1999 debts**

- (1) This item applies to an amount (including an amount of penalty or interest) that a person owes to the Commonwealth directly under a taxation law (including a law that has been repealed or amended) and that became payable at any time before 1 July 1999, if all or some of the amount (the *unpaid debt*) remains unpaid at the beginning of 1 July 1999.
- (2) The person is liable, and is taken to have been liable, to pay general interest charge on the unpaid debt for each day in the period that:
  - (a) started at the beginning of the day by which the amount was due to be paid; and
  - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
    - (i) the unpaid debt;
    - (ii) general interest charge on any of the unpaid debt.
- (3) The general interest charge is worked out under Division 1 of Part IIA of the *Taxation Administration Act 1953*.
- (4) For the purposes of this item, the *general interest charge rate* for a day before 1 July 1999 is taken to have been 12.72% divided by the number of days in the calendar year that the day was in.

**Table A**

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- (5) If this item results in a person being liable, or being taken to have been liable, to pay both general interest charge and some other penalty or interest in respect of the same debt, the Commissioner must remit either that general interest charge or that other penalty or interest (the Commissioner chooses which).

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*A New Tax System (Tax Administration) Act 1999* (No. 179, 1999)

**Schedule 7**

**18 Application**

- (1) The amendments of Subdivisions 30-A and 30-D of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to gifts made on or after 1 July 2000.
- (2) Section 30-228 of the *Income Tax Assessment Act 1997* applies to gifts made on or after 1 July 2000.
- (3) The amendments of Division 50 of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to ordinary income and statutory income for a period starting on or after 1 July 2000.

**Schedule 8**

**16 Application**

Subdivision 50-A of the *Income Tax Assessment Act 1997* as amended by this Schedule applies in relation to ordinary income and statutory income for a period starting on or after 1 July 2000.

**Schedule 16**

**37 Application**

The amendments made by this Schedule apply to the 2000-2001 year of income and later years of income.

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**Table A**

*Taxation Laws Amendment Act (No. 2) 2000* (No. 58, 2000)

**4 Amendment of income tax assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 2**

**4 Application**

- (2) The amendments made by items 2 and 3 apply to the 1997-98 year of income and later years of income.

**Schedule 4**

**6 Application**

The amendments made by this Schedule apply to losses, outgoings or expenditure incurred in the 1999-2000 income year or a later income year.

**Schedule 5**

**6 Application**

The amendments made by this Schedule apply to losses, outgoings or expenditure incurred in the 1999-2000 income year or a later income year.

**Schedule 6**

**34 Application**

The amendments made by this Schedule apply to gifts made on or after 1 July 1999.

**Table A**

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**Schedule 10**

**17 Application**

- (3) The amendments made by items 12 and 13 apply:
- (a) so far as the amendments affect Subdivision 165-A (including as modified by Subdivision 166-A) of the *Income Tax Assessment Act 1997*—where the loss year mentioned in that Subdivision is the 1996-97 income year or any later income year and the income year mentioned in that Subdivision is the 1997-98 income year or any later income year; and
  - (b) so far as the amendments affect Subdivision 165-B (including as modified by Subdivision 166-B) of the *Income Tax Assessment Act 1997*—where the income year mentioned in that Subdivision is the 1997-98 income year or any later income year; and
  - (c) so far as the amendments affect Subdivision 165-CA of the *Income Tax Assessment Act 1997*—where the earlier income year mentioned in that Subdivision is the 1996-97 income year or any later income year and the current income year mentioned in that Subdivision is the 1998-99 income year or any later income year; and
  - (d) so far as the amendments affect Subdivision 165-CB (including as modified by Subdivision 166-B) of the *Income Tax Assessment Act 1997*—where the income year mentioned in that Subdivision is the 1998-99 income year or any later income year; and
  - (e) so far as the amendments affect Subdivision 165-C (including as modified by Subdivision 166-C) of the *Income Tax Assessment Act 1997*—where the debt mentioned in that Subdivision was incurred in the 1996-97 income year or any later income year and the current year mentioned in that Subdivision is the 1998-99 income year or any later income year.



**Table A**

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- (4) The amendments made by item 14 apply:
- (a) so far as the amendments affect Subdivision 175-A of the *Income Tax Assessment Act 1997*—where the loss year mentioned in that Subdivision is the 1996-97 income year or any later income year and the income year mentioned in that Subdivision is the 1997-98 income year or any later income year; and
  - (b) so far as the amendments affect Subdivision 175-B of the *Income Tax Assessment Act 1997*—where the income year mentioned in that Subdivision is the 1997-98 income year or any later income year; and
  - (c) so far as the amendments affect Subdivision 175-CA of the *Income Tax Assessment Act 1997*—where the earlier income year mentioned in that Subdivision is the 1996-97 income year or any later income year and the income year mentioned in that Subdivision is the 1998-99 income year or any later income year; and
  - (d) so far as the amendments affect Subdivision 175-CB of the *Income Tax Assessment Act 1997*—where the income year mentioned in that Subdivision is the 1998-99 income year or any later income year; and
  - (e) so far as the amendments affect Subdivision 175-C of the *Income Tax Assessment Act 1997*—where the debt mentioned in that Subdivision was incurred in the 1996-97 income year or any later income year and the income year mentioned in that Subdivision is the 1998-99 income year or any later income year.
- (5) Subdivision 180-A of the *Income Tax Assessment Act 1997* as inserted by item 15 of this Schedule applies where:
- (a) the loss year mentioned in paragraph 180-5(2)(a) is the 1996-97 income year or any later income year and the income year for which that paragraph is being applied is the 1997-98 income year or any later income year; or
  - (b) the income year for which subparagraph 180-5(2)(b)(i) is being applied is the 1997-98 income year or any later income year; or
  - (c) the income year for which subparagraph 180-5(2)(b)(ii) is being applied is the 1998-99 income year or any later income year; or
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**Table A**

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- (d) the earlier income year mentioned in paragraph 180-5(2)(c) is the 1996-97 income year or any later income year and the income year for which that paragraph is being applied is the 1998-99 income year or any later income year; or
  - (e) the debt mentioned in paragraph 180-5(2)(d) was incurred in the 1996-97 income year or any later income year and the income year mentioned in that paragraph is the 1998-99 income year or any later income year.
- (6) Subdivision 180-B of the *Income Tax Assessment Act 1997* as inserted by item 15 of this Schedule applies where:
- (a) the loss year mentioned in paragraph 180-15(2)(a) is the 1996-97 income year or any later income year and the income year mentioned in that paragraph is the 1997-98 income year or any later income year; or
  - (b) the income year mentioned in paragraph 180-15(2)(b) is the 1997-98 income year or any later income year; or
  - (c) the earlier income year mentioned in paragraph 180-15(2)(c) is the 1996-97 income year or any later income year and the income year mentioned in that paragraph is the 1998-99 income year or any later income year; or
  - (d) the income year mentioned in paragraph 180-15(2)(d) is the 1998-99 income year or any later income year; or
  - (e) the debt mentioned in paragraph 180-15(2)(e) was incurred in the 1996-97 income year or any later income year and the income year mentioned in that paragraph is the 1998-99 income year or any later income year.

**38 Application**

- (3) The amendments made by items 31 and 37 (so far as the amendments made by those items affect Subdivision 165-A of the *Income Tax Assessment Act 1997*) apply where the loss year mentioned in that Subdivision is the 1996-97 income year or any later income year and the income year mentioned in that Subdivision is the 1997-98 income year or any later income year.
- (4) The amendments made by items 32, 33 and 37 (so far as the amendments made by those items affect Subdivision 165-B of the *Income Tax Assessment Act 1997*) apply where the income year mentioned in that Subdivision is the 1997-98 income year or any later income year.

**Table A**

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- (5) The amendments made by items 31, 32, 33, 34, 35 and 37 (so far as the amendments made by those items affect Subdivision 165-CA of the *Income Tax Assessment Act 1997*) apply where the earlier income year mentioned in that Subdivision is the 1996-97 income year or any later income year and the current year mentioned in that Subdivision is the 1998-99 income year or any later income year.
- (6) The amendments made by items 31, 32, 33, 34, 35 and 37 (so far as the amendments made by those items affect Subdivision 165-CB of the *Income Tax Assessment Act 1997*) apply where the income year mentioned in that Subdivision is the 1998-99 income year or any later income year.
- (7) The amendments made by items 36 and 37 (so far as the amendments made by those items affect Subdivision 165-C of the *Income Tax Assessment Act 1997*) apply where the debt mentioned in that Subdivision was incurred in the 1996-97 income year or any later income year and the current year mentioned in that Subdivision is the 1998-99 income year or any later income year.

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*Taxation Laws Amendment Act (No. 3) 2000* (No. 66, 2000)

**Schedule 3****5 Application of amendment**

The amendment made by item 4 applies to assessments for the 1999-2000 income year and later income years.

**Schedule 4****1 Exemption of grants paid from fund**

Any amount of ordinary income or statutory income that is paid directly to you, by way of grant of assistance for business recovery, from the Cyclones Elaine and Vance Trust Account is exempt from tax under the *Income Tax Assessment Act 1997*.

Note: This exemption does not apply to amounts paid to a third party.

**2 Amounts are excluded exempt income**

Income that is exempt under item 1 is also excluded exempt income for the purposes of the *Income Tax Assessment Act 1997*.

## Table A

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Note: Subsection 36-20(3) of the *Income Tax Assessment Act 1997* contains the general definition of *excluded exempt income*.

### 3 No capital gain to arise as a result of grant

If a CGT event relates to a right to receive a grant of assistance for business recovery from the Cyclones Elaine and Vance Trust Account, you do not make a capital gain under Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997* in respect of that grant.

Example: CGT event C1 (see section 104-20) deals with the loss or destruction of a CGT asset.

### 4 Application

This Schedule applies only in relation to assessments for the 1998-99 and 1999-2000 income years.

## Schedule 5

### 2 Application of amendment

The amendment made by this Schedule applies to a balancing adjustment if the event that necessitates the adjustment happens after 4.00 pm, by legal time in the Australian Capital Territory, on 3 December 1998.

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*Taxation Laws Amendment Act (No. 6) 2000* (No. 76, 2000)

### 4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

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*New Business Tax System (Miscellaneous) Act (No. 1) 2000* (No. 79, 2000)

### 4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

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**Table A****Schedule 1****4 Application of amendments**

- (2) The amendments made by items 2 and 3 apply to unfranked non-portfolio dividends paid to the resident company on or after 1 July 2000.

**Schedule 2****7 Application of amendments**

The amendments made by this Schedule that relate to tax offsets under Part IIIAA of the *Income Tax Assessment Act 1936* apply to offsets that relate to dividends paid on or after 1 July 2000.

**Schedule 6****15 Application of amendments**

- (1) The amendments made by this Schedule, to the extent that they relate to:
- (a) plant whose cost does not exceed \$300; or
  - (b) low-cost plant (plant whose cost is less than \$1,000);
- apply to assessments for the income year in which 1 July 2000 occurs and later income years.
- (2) The amendments made by this Schedule, to the extent that they relate to plant that you can allocate to a low-value pool under subsection 42-455(3) of the *Income Tax Assessment Act 1997*, apply to assessments for the 2000-01 income year and later income years.

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*New Business Tax System (Alienation of Personal Services Income) Act 2000*  
(No. 86, 2000)

**Schedule 1****26 Application**

- (1) The amendments made by this Part of this Schedule apply to assessments for the 2000-2001 income year and later income years.

**Table A**

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- (2) However, the Commissioner may, before 1 July 2000, declare in writing that the amendments made by this Part of this Schedule apply to an assessment that:
- (a) is an assessment for the 2000-2001 income year or the 2001-2002 income year; and
  - (b) relates to a PPS entity that is included in a class of entities specified in the declaration;
- as if the entity were conducting a personal services business and subsection 87-15(3) of the *Income Tax Assessment Act 1997* did not apply. The declaration has effect accordingly.
- (3) An entity is a **PPS entity** for the purposes of paragraph (2)(b) if:
- (a) on or before 13 April 2000, the entity was entitled to make, and had made, a payee declaration to an eligible paying authority under section 221YHB of the *Income Tax Assessment Act 1936*; and
  - (b) the Commissioner had received the payee declaration for the entity from the eligible paying authority before the end of that day; and
  - (c) the declaration was in force at the end of that day.
- (4) In subitem (3), **eligible paying authority** and **payee declaration** have the same meanings as in Division 3A of Part VI of the *Income Tax Assessment Act 1936*.

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*New Business Tax System (Miscellaneous) Act (No. 2) 2000* (No. 89, 2000)

**4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

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**Schedule 1****68 Application**

- (1) The amendments made by items 6 to 17 apply to tax losses, net capital losses or deductions claimed in returns for an income year ending after 11 November 1999.
- (2) The amendments made by items 3 to 5, 20 to 22, 24 to 29, 31 to 33 and 34 to 36 apply to tax losses, net capital losses or deductions claimed in returns for an income year ending after 21 September 1999.
- (3) The amendment made by item 30 applies for the purpose of determining whether a time after 11 November 1999 is a changeover time or alteration time in respect of a company.
- (4) The amendments made by items 37, 39 and 46 to 50, paragraph (aa) inserted by item 43 and paragraph (aa) inserted by item 54, apply where the agreement transferring the relevant tax loss or net capital loss was made on or after 22 February 1999.
- (4A) Paragraph (ab) inserted by item 43 and paragraph (ab) inserted by item 54 apply where the agreement transferring the relevant tax loss or net capital loss was made on or after 13 April 2000.
- (5) The amendments made by items 41, 42, 44, 52, 53 and 55 apply where the agreement transferring the relevant tax loss or net capital loss was made on or after 13 April 2000.
- (6) The amendments made by items 56 to 65 are taken to have applied, or apply, to CGT events happening on or after 21 October 1999.

**Schedule 4****6 Application of amendments**

The amendments made by this Schedule apply to assessments for the income year including 21 September 1999 and all later income years, for CGT events that happen after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.

**Table A**

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**Schedule 5**

**31 Transitional**

If you obtain a roll-over under Subdivision 124-M for a CGT event that happened before the day on which this Act received the Royal Assent, the requirement to inform a replacement entity about the cost base of your original interest must be complied with within 28 days after that day.

**34 Application of amendments**

- (1) Subject to subitem (2), the amendments made by this Schedule apply to CGT events happening on or after 10 December 1999.
- (2) The amendment made by item 9 applies to CGT events happening on or after 13 April 2000.

**Schedule 6**

**2 Application of amendment**

The amendment made by this Schedule applies to assessments for the 1999-2000 income year and later income years.

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*New Business Tax System (Integrity Measures) Act 2000* (No. 90, 2000)

**Schedule 1**

**4 Application of amendments**

The amendments made by this Schedule apply to assessments for the 2000-01 income year and later income years.

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**Table A**


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*A New Tax System (Tax Administration) Act (No. 2) 2000* (No. 91, 2000)

**Schedule 3****18 Application**

The items in Schedule 18 to the *A New Tax System (Tax Administration) Act 1999* that are repealed by item 17 of this Schedule are taken never to have had any effect.

---

*Taxation Laws Amendment Act (No. 4) 2000* (No. 114, 2000)

**4 Amendment of income tax assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 4****82 Application**

- (1) The amendments made by this Schedule (other than by item 45) apply to assessments for the 1998-99 income year and later income years.
- (2) The amendment made by item 45 of this Schedule applies to CGT events happening on or after the day on which this Act receives the Royal Assent.

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*Farm Household Support Amendment Act 2000* (No. 144, 2000)

**Schedule 3****7 Transitional provisions**

- (3) The *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* continue to have effect, after the farm help scheme payment commencement day, in relation to payments of restart income support made in respect of periods before that day, as if the repeals and amendments made by Schedule 2 had not happened.
-

## Table A

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### 8 Definitions

In this Schedule:

**amended FHS Act** means the *Farm Household Support Act 1992* as amended and in force from time to time after the commencement of item 2 of Schedule 1 to the *Farm Household Support Amendment Act 2000*.

**restart income support** has the meaning given by the *Farm Household Support Act 1992* as in force immediately before the farm help scheme payment commencement day.

**restart re-establishment grant** has the meaning given by the *Farm Household Support Act 1992* as in force immediately before the farm help scheme payment commencement day.

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*Taxation Laws Amendment Act (No. 8) 2000* (No. 156, 2000)

### Schedule 6

#### 49 Application

- (3) The amendments made by items 47 and 48 apply to assessments for the 2000-2001 income year and later income years.

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*Taxation Laws Amendment Act (No. 7) 2000* (No. 173, 2000)

#### 4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

### Schedule 3

#### 17 Application of amendments

The amendments made by this Schedule apply to assessments for the income year including 21 September 1999 and all later income years, but only for CGT events that happen after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.

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**Schedule 4****65 Application of amendments**

- (1) The amendments made by this Schedule (except those made by items 2, 6 and 30) apply to assessments for the 1998-99 income year and later income years.
- (3) The amendment made by item 30 applies to things done on or after 1 July 1998.

**Schedule 6****6 Application of amendments**

The amendments of Division 115 of the *Income Tax Assessment Act 1997* made by this Schedule apply to assessments for the income year including 21 September 1999 and for later income years, in relation to CGT events happening after 11.45 am (by legal time in the Australian Capital Territory) on that day.

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*Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001* (No. 10, 2001)

**Schedule 2****94 Saving—old regulations**

- (1) Regulations that were in effect under any Act immediately before the commencement of this item continue to have effect after that time as if members of an arm of the Defence Force who were members of a particular part or component of that arm immediately before the commencement of this item were still members of that part or component after that time, even if that part or component no longer exists.

Example: Assume that, immediately before the commencement of this item, regulations imposed training obligations on members of the Air Force Specialist Reserve. Those obligations would continue to apply to former members of that Reserve after commencement, even though the Air Force Specialist Reserve itself is no longer mentioned in the *Air Force Act 1923* and the members have now become members of the Air Force Reserve.

**Table A**

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- (2) However, regulations that continue in effect under this item do so only to the extent that they are not amended or revoked by later regulations.

**95 Regulations about transitional matters**

- (1) The regulations may make provision in relation to other saving and transitional matters in connection with the amendments made by this Schedule.
- (2) In particular, such regulations may deal with the status, after the commencement of the amendments, of persons who were members of the Defence Force immediately before that time.
- (3) Subitem (2) does not limit the scope of subitem (1).

---

*Taxation Laws Amendment (Changes for Senior Australians) Act 2001*  
(No. 44, 2001)

**Schedule 3**

**2 Application**

The amendment made by this Schedule applies to assessments for the 2000-2001 year of income and later years of income.

---

*Governor-General Legislation Amendment Act 2001* (No. 57, 2001)

**Schedule 2**

**4 Application**

- (1) The repeal and amendments made by this Schedule apply in relation to income derived on or after 29 June 2001 (the *commencing day*).
- (2) However, the repeal and amendments do not apply in relation to income derived on or after the commencing day by a State Governor who held that office immediately before the commencing day.

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**Table A**

*Taxation Laws Amendment Act (No. 1) 2001* (No. 72, 2001)

**Schedule 2**

**108 Amendments related to arrangements treated as sale and loan**

- (1) Division 240 of the *Income Tax Assessment Act 1997* applies to arrangements entered into after 27 February 1998.
- (2) The amendments made by Part 2 of this Schedule (other than by item 35) apply to arrangements entered into after 27 February 1998.
- (3) The amendment made by item 35 of this Schedule applies to assessments for the 1998-99 income year and later income years.

**109 Amendments related to limited recourse debt**

- (1) Division 243 of the *Income Tax Assessment Act 1997* applies to debts that are terminated after 27 February 1998.
- (2) The amendments made by Part 3 of this Schedule (other than by items 83 and 90) apply to debts that are terminated after 27 February 1998.
- (3) The amendments made by items 83 and 90 of this Schedule apply to assessments for the 1998-99 income year and later income years.

**110 Amendments related to property transferred as security**

The amendments made by Part 4 of this Schedule apply to transfers of property where the transaction under which the property was provided, or redeemed, as security was entered into after 27 February 1998.

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*Taxation Laws Amendment Act (No. 3) 2001* (No. 73, 2001)

**Schedule 1**

**62 Application**

- (2) The amendments made by items 56 and 57 apply to assessments for the 2000-2001 income year and later income years.

## Table A

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### Schedule 2

#### 47 Application

The amendments of the *Income Tax Assessment Act 1997* made by this Part apply in respect of the 2001-2002 income year and later income years.

#### 48 Preliminary

- (1) This Part sets out transitional rules for:
  - (a) new categories of payers of \*PAYG instalment for some \*instalment quarters in the 2000-2001 income year; and
  - (b) some existing PAYG instalment payers for some instalment quarters in the 2000-2001 income year; and
  - (c) a method of calculating instalment amounts for some instalment quarters in the 2000-2001 and 2001-2002 income years; and
  - (d) some PAYG instalment payers for some instalment quarters in the 2002 income year.
- (2) In this Part, if there is an asterisk appearing at the start of a term (as in “\*instalment quarters”), the term has the same meaning as in subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

### Schedule 3

#### 19 Application

The amendment of the *Income Tax Assessment Act 1997* made by this Part applies, and is taken to have applied, on or after 1 April 2001.

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*New Business Tax System (Capital Allowances) Act 2001* (No. 76, 2001)

### Schedule 1

#### 2 Application

The amendments made by this Schedule apply to:

- (a) depreciating assets:
  - (i) you start to hold under a contract entered into after 30 June 2001; or

**Table A**

- (ii) you constructed where the construction started after that day; or
- (iii) you start to hold in some other way after that day; and
- (b) expenditure that does not form part of the cost of a depreciating asset incurred after that day.

**Schedule 2****4 Application**

The amendments made by this Schedule apply to assessments for the income year in which 1 July 2000 occurs, and for later income years.

**Schedule 3****3 Application**

The amendments made by this Schedule apply to plant:

- (a) you start to own or be the quasi-owner of under a contract entered into at or after 10 am, by legal time in the Australian Capital Territory, on 9 May 2001; or
- (b) you constructed where the construction started at or after that time; or
- (c) you start to own or be the quasi-owner of in some other way at or after that time.

---

*New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001 (No. 77, 2001)*

**Schedule 2****488 Application**

- (1) Subject to this item, the amendments made by this Schedule apply to:
  - (a) depreciating assets:
    - (i) you start to hold under a contract entered into after 30 June 2001; or
    - (ii) you constructed where the construction started after that day; or
    - (iii) you start to hold in some other way after that day; and

**Table A**

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- (b) expenditure that does not form part of the cost of a depreciating asset incurred after that day.
- (1A) The amendment made by item 194 applies to amounts received on or after 1 July 2001.
- (1B) The amendments made by items 255 to 258 (inclusive) and 260 to 314 (inclusive) apply to CGT events happening on or after 1 July 2001.
- (1C) The amendment made by item 259 applies to balancing adjustment events occurring on or after 1 July 2001.
- (2) The amendment made by item 244 applies where the transition time or acquisition time, as the case may be, referred to in Division 58 inserted in the *Income Tax Assessment Act 1997* by that item is a time on or after 1 July 2001.
- (3) Despite its repeal by item 336 of this Schedule, Division 388 of the former Act continues to apply until the end of the 2002-03 income year.

**Schedule 3**

**6 Application**

The amendments made by this Schedule apply to arrangements entered into on or after 1 July 2001.

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*New Business Tax System (Simplified Tax System) Act 2001* (No. 78, 2001)

**Schedule 1**

**2 Application of amendments**

The amendments made by this Schedule apply to assessments for the first income year starting after 30 June 2001, and for later income years.

**Schedule 2**

**24 Application of amendments**

The amendments made by this Schedule apply to assessments for the first income year starting after 30 June 2001, and for later income years.

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**Table A***Taxation Laws Amendment (Superannuation Contributions) Act 2001*  
(No. 89, 2001)**Schedule 1****11 Application of amendments**

- (1) The amendments made by Parts 1 and 2 of this Schedule apply to contributions made after 4 pm (by legal time in the Australian Capital Territory) on 30 June 2000.

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*New Business Tax System (Debt and Equity) Act 2001* (No. 163, 2001)**Schedule 1****118 Application of amendments***Definitions*

- (1) In this item:  
*CGT amendments* means the amendments made by items 7 to 32 of this Schedule.  
*debt and equity test amendments* means the amendments made by this Schedule (other than the CGT amendments).

*Application of debt and equity test amendments*

- (2) The debt and equity test amendments apply to transactions that take place on or after 1 July 2001. This is so whether the interest in relation to which the transaction takes place was issued before, or is issued on or after, that date. This subitem has effect subject to any election made under subitem (6).

*Application of the CGT amendments*

- (3) The amendments made by items 7 to 11 of this Schedule apply to:  
(a) equity interests issued or allotted; and  
(b) options granted;  
on or after 1 July 2001.

**Table A**

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(4) The amendments made by items 12 to 32 of this Schedule apply to the conversion of a convertible interest, or the exercise of a right, on or after 1 July 2001.

(5) Section 130-40 of the *Income Tax Assessment Act 1997* applies to all convertible notes acquired before 20 September 1985 as if they were convertible interests.

*Application of debt and equity test amendments to interests issued before 1 July 2001*

(6) If an interest was issued before 1 July 2001, the debt and equity test amendments:

- (a) apply only to transactions that take place in relation to the interest on or after 1 July 2004 if the issuer of the interest does not make an election under paragraph (b); and
- (b) apply to transactions that take place in relation to the interest on or after 1 July 2001 if the issuer elects to have this paragraph apply to the interest.

(7) For the purposes of subitem (6), an interest is taken to be issued on or after 1 July 2001 if:

- (a) the interest is issued on or after that date; or
- (b) the interest is issued before that date; and:
  - (i) the terms of the interest are altered on or after that date; or
  - (ii) the interest is rolled over on or after that date; or
  - (iii) the original term of the interest is extended on or after that date.

In applying subparagraph (b)(i), disregard minor alterations that do not affect rights and obligations in relation to the interest.

(9) If paragraph (6)(a) applies to an interest:

- (a) the interest is disregarded for the purposes of paragraph 164-10(1)(b) and subsection 164-15(3) of the *Income Tax Assessment Act 1997*; and
- (b) section 164-15 of the *Income Tax Assessment Act 1997* applies to the interest as if references in paragraph 164-15(3)(b) and subsection 164-15(4) to 1 July 2001 were references to 1 July 2004.

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**Table A**

- (10) An election in relation to an interest is effective for the purposes of paragraph (6)(b) only if:
- (a) the election is lodged with the Commissioner within:
    - (i) 90 days after the day on which this Act receives the Royal Assent; or
    - (ii) such further time as the Commissioner allows; and
  - (b) an election under paragraph (6)(b) is made in relation to all other interests that:
    - (i) were issued by the issuer before 1 July 2001; and
    - (ii) are substantially similar to that interest and in relation to which an election under that subitem can be made; and
  - (c) the election contains the following information:
    - (i) the name of the issuer;
    - (ii) the tax file number of the issuer;
    - (iii) the legal form of the interest;
    - (iv) ASX code or other stock exchange listing code allotted to the issue (if applicable);
    - (v) the date of the issue;
    - (vi) the face value of the issue;
    - (vii) the number of interests of that kind on issue when the election is made;
    - (viii) coupon/dividend rates and terms including contingencies;
    - (ix) maturity details;
    - (x) redemption details and terms including contingencies;
    - (xi) conversion/exercise details.

An election under paragraph (6)(b) cannot be revoked.

- (11) The Commissioner may allow further time under subparagraph (10)(a)(ii) if he or she:
- (a) is satisfied that the issuer would otherwise not have sufficient opportunity to make the election; or
  - (b) otherwise considers it reasonable to do so.
- (12) If:
- (a) paragraph (6)(a) applies to an interest; and
  - (b) on or after 1 July 2001 and before 1 July 2004:
    - (i) the terms of the interest are altered; or

**Table A**

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- (ii) the interest is rolled over; or
- (iii) the original term of the interest is extended;

then:

- (c) the debt and equity test amendments apply to the transactions in relation to the interest that take place after the event referred to in paragraph (b) occurs; and
- (d) subitem (9) applies to the interest as if references in that subitem to 1 July 2004 were references to the time when that event occurs.

In applying subparagraph (b)(i), disregard minor alterations that do not affect rights and obligations in relation to the interest.

- (13) A reference in this item to a *transaction* includes a reference to:
  - (a) making a return; and
  - (b) paying a dividend or unit trust dividend; and
  - (c) making a distribution in relation to a unit trust; and
  - (d) paying, crediting or lending an amount; and
  - (e) making a non-share distribution; and
  - (f) forgiving a debt; and
  - (g) redeeming, cancelling or buying back an interest; and
  - (h) converting an interest.

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*Tax Laws Amendment Act (No. 2) 2001* (No. 167, 2001)

**Schedule 4**

**10 Application**

The amendments of the *Income Tax Assessment Act 1997* made by items 8 and 9 of this Schedule apply to gifts made in the 1997-98 income year and later income years.

**Schedule 7**

**15 Application of amendments**

- (1) Subject to subitem (2), the amendments made by this Schedule apply to conservation covenants entered into on or after 15 June 2000.

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**Table A**

- (2) The amendments made by this Schedule apply to each conservation covenant entered into on or after 1 July 2002 where the covenantor did not receive money, property or other material benefit for entering into the covenant.

**Schedule 8****4 Application**

The amendments made by this Schedule apply to gifts made, or conservation covenants entered into, on or after 1 July 2002.

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*Taxation Laws Amendment Act (No. 5) 2001* (No. 168, 2001)

**4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 1****17 Application**

The amendments of the *Income Tax Assessment Act 1997* made by this Schedule apply to any withholding payments mentioned in those amendments that an individual receives, or is entitled to receive, on or after 1 July 2002.

**Schedule 3****4 Transitional**

- (1) The amount of the non-assessable part referred to in section 104-70 of the *Income Tax Assessment Act 1997* is reduced by a further amount if:
- (a) the trustee of a trust makes a payment to you in respect of your unit or your interest in the trust; and
  - (b) the payment is made on or after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999 and before 1 July 2001; and

## **Table A**

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- (c) you are the trustee of a trust that is not a complying superannuation entity; and
  - (d) a discount capital gain is excluded from the net capital gain of the trust making the payment because of step 3 of the method statement in subsection 102-5(1) of that Act.
- (2) The reduction is so much of the excluded discount capital gain as is reflected in the payment.

### **5 Application**

- (1) The amendments made by this Schedule apply to payments by trustees made on or after 1 July 2001.
- (2) Item 4 applies to payments by trustees made on or after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999 and before 1 July 2001.

### **Schedule 4**

#### **7 Application**

The amendment of table item 6.2.9 in subsection 30-55(2) of the *Income Tax Assessment Act 1997* applies to gifts made after 9 March 2000.

#### **9 Application**

The amendment of table item 7.2.3 in section 30-65 of the *Income Tax Assessment Act 1997* applies to gifts made after 10 January 2001.

#### **16 Application**

The amendment of table item 12.2.2 in subsection 30-100(2) of the *Income Tax Assessment Act 1997* applies to gifts made after 23 July 2000.

### **Schedule 5**

#### **5 Application**

The amendment made by item 4 applies to income derived on or after 1 July 2000.

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**Table A**

*Taxation Laws Amendment Act (No. 6) 2001* (No. 169, 2001)

**Schedule 4**

**15 Application**

The amendments made by this Schedule apply to LIC capital gains made by listed investment companies on or after 1 July 2001.

**Schedule 5**

**9 Application**

The amendments made by this Part apply to things done on or after 15 May 2001.

**Schedule 6**

**19 Application**

- (1) The amendments made by this Schedule (other than items 4A, 4B, 16C to 16J, 16L, 18 and 18A) apply, and are taken to have applied, to assessments for the 2000-2001 income year and later income years.
  - (2) However, a declaration made under subitem 26(2) of Schedule 1 to the *New Business Tax System (Alienation of Personal Services Income) Act 2000* has effect, and is taken to have had effect, in relation to the amendments made by this Schedule in the same way that it has, and had, effect in relation to the amendments made by Part 1 of that Schedule.
  - (2A) The amendments made by items 4A, 4B, 4C and 16M apply to assessments for the 2002-2003 income year and later income years.
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**Table A**

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*Taxation Laws Amendment (Research and Development) Act 2001*  
(No. 170, 2001)

**Schedule 2**

**51 Application**

The amendments made by this Division to the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* apply to assessments for the income year in which 29 January 2001 occurs and for later income years.

**92 Application**

The amendments made by this Division to the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* apply to assessments for the income year in which 1 July 2001 occurs and for later income years.

**Schedule 3**

**19 Application**

- (1) Subject to subitem (2), the amendments made by this Schedule apply to assessments for the first year of income starting after 30 June 2001 and for later years.

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*Taxation Laws Amendment (Superannuation) Act (No. 1) 2002*  
(No. 15, 2002)

**Schedule 1**

**21 Application**

The amendments made by this Schedule apply to payments made on or after 1 July 2002.

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**Table A**

*Taxation Laws Amendment Act (No. 1) 2002* (No. 26, 2002)

**Schedule 1**

**4 Transitional**

- (1) Section 15-45 of the *Income Tax Assessment Act 1997* may apply differently for the manager of an agreement mentioned in section 82KZMG of the *Income Tax Assessment Act 1936* if an entity can first claim a deduction in accordance with section 82KZMG for the 2001-02 or 2002-03 income year for an amount paid under the agreement.
- (2) The manager can choose to include in the manager's assessable income for the income year in which the amount was paid one half of the amount that the manager would otherwise be required to include for that year under section 15-45 of the *Income Tax Assessment Act 1997*, and to include one half of that amount for the following income year.

**9 Application of amendments**

- (1) The amendments made by Part 1 of this Schedule apply to expenditure incurred on or after 2 October 2001 and on or before 30 June 2006.
- (2) The amendments made by Part 2 of this Schedule apply to assessments for the 2000-01 income year and later income years.

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*Taxation Laws Amendment (Film Incentives) Act 2002* (No. 27, 2002)

**Schedule 1**

**12 Application**

The amendments made by this Schedule apply to expenditure incurred at any time (whether before or after the commencement of this Schedule).

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## **Table A**

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*Taxation Laws Amendment (Baby Bonus) Act 2002* (No. 32, 2002)

### **4 Application**

The amendments made by this Act apply to assessments for the 2001-02 income year and later income years.

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*Taxation Laws Amendment (Superannuation) Act (No. 2) 2002* (No. 51, 2002)

### **4 Amendment of assessments**

Section 37 of the *Superannuation Guarantee (Administration) Act 1992* and section 170 of the *Income Tax Assessment Act 1936* do not prevent the amendment of an assessment for the purposes of giving effect to this Act.

## **Schedule 1**

### **202 Application of amendments made by Part 2**

- (2) The amendments made by items 170 to 186 apply in relation to assessments under the *Income Tax Assessment Act 1936* for the 2003-2004 year of income and later years of income.

## **Schedule 3**

### **4 Application of amendments made by Part 1**

The amendments made by Part 1 apply in relation to assessments for the 2002-2003 year of income and later years of income.

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*Taxation Laws Amendment Act (No. 4) 2002* (No. 53, 2002)

### **4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 1****46 Application—amendments of the *Income Tax Assessment Act 1997* and the *Income Tax (Transitional Provisions) Act 1997***

The amendments of the *Income Tax Assessment Act 1997* and the *Income Tax (Transitional Provisions) Act 1997* made by this Schedule apply in relation to an income year that begins on or after 1 July 2001.

**Schedule 2****16 Transitional**

The choice referred to in section 124-865, or subsection 124-870(1), of the *Income Tax Assessment Act 1997* must be made within 12 months after the day on which the *Taxation Laws Amendment Act (No. 4) 2002* received the Royal Assent (the *Assent day*) for a trust restructure that happened on or after 11 November 1999 and before the Assent day.

**17 Application of amendments**

The amendments made by this Schedule apply to CGT events happening on or after 11 November 1999.

**Schedule 4****15 Application**

- (1) The amendments made by items 1 to 9, 13 and 14 apply to a depreciating asset if the start time for the asset occurs on or after 1 July 2002.
- (2) The amendments made by items 10 to 12 apply to a privatised asset held on or after 1 July 2002.

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*Taxation Laws Amendment Act (No. 2) 2002* (No. 57, 2002)

**Schedule 4****4 Application**

- (2) The amendment made by item 3 of this Schedule applies to tax offsets that relate to dividends paid on or after 1 July 2000.

**Table A**

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**8 Application**

The amendments made by items 5 to 7 of this Schedule apply to assessments for income years ending on or after 22 May 2001.

**Schedule 7**

**3 Application**

The amendments made by this Schedule apply to all income years, whether beginning before or after this item commences.

**Schedule 9**

**45 Application—various items in Part 2**

The amendments made by items 10, 13, 14, 21, 25, 26, 33 and 36 apply in relation to gifts made after 30 June 1997.

**Schedule 11**

**5 Application**

The amendments made by this Schedule apply to CGT events happening on or after 10 December 1999.

**Schedule 12**

**22 Application**

The amendment made by item 21 applies to assessments for the 1998-99 income year and later income years.

**24 Application**

The amendment made by item 23 applies to assessments for the 1997-98 income year and later income years.

**86 Application**

An item in a Schedule to an Act that is repealed by an item in this Part is taken never to have had any effect.

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**Table A**

*New Business Tax System (Consolidation) Act (No. 1) 2002* (No. 68, 2002)

**4 Amendment of income tax assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 3****2 Application**

The amendment of section 4-15 of the *Income Tax Assessment Act 1997* made by this Schedule applies to the income year including 1 July 2002 and each later income year.

**19 Application of amendments of Subdivision 104-J**

The amendments of Subdivision 104-J of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to a break-up time happening after 30 June 2002.

**23 Application of amendments of Subdivision 126-B**

- (1) The amendments of Subdivision 126-B of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to a trigger event happening after 30 June 2003, except a trigger event to which subitem (2) applies.
- (2) This subitem and subitem (3) apply to a trigger event if:
  - (a) the originating company or the recipient company involved in the trigger event becomes a member of a consolidated group, or MEC group, on the day (the *consolidation day*) on which that group comes into existence; and
  - (b) the consolidation day either is before 1 July 2003 or is both:
    - (i) the first day of the first income year starting after 30 June 2003 of the group's head company (for a consolidated group) or provisional head company (for a MEC group) on the consolidation day; and
    - (ii) before 1 July 2004; and
  - (c) the originating company was not a member of a consolidated group or MEC group before the consolidation day.

**Table A**

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- (3) The amendments of Subdivision 126-B of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to the trigger event if it happens on or after the consolidation day.

**37 Basic rule about application of amendments of Division 170**

- (1) The amendments of Division 170 of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to a company for each of its:
- (a) income years starting after 30 June 2003; and
  - (b) non-membership periods (if any) under section 701-30 of the *Income Tax Assessment Act 1997* starting after 30 June 2003.
- (2) This item does not apply in relation to a company to which item 38 applies.

**38 Different application for members of certain groups**

- (1) This item applies to a company if:
- (a) the company becomes a member of a consolidated group or MEC group on the day (the *consolidation day*) the group comes into existence; and
  - (b) the consolidation day either is before 1 July 2003 or is both:
    - (i) the first day of the first income year starting after 30 June 2003 of the group's head company (for a consolidated group) or provisional head company (for a MEC group) on the consolidation day; and
    - (ii) before 1 July 2004; and
  - (c) the company was not a member of a consolidated group or MEC group before the consolidation day.
- (2) The amendments of Division 170 of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to the company for each of its:
- (a) income years starting on or after the consolidation day; and
  - (b) non-membership periods (if any) under section 701-30 of the *Income Tax Assessment Act 1997* starting on or after the consolidation day.

**39 Transfer for final income year before amendments apply**

- (1) In this item:
- apportioning day* of a company means:
- (a) if item 37 applies to the company—1 July 2003; or
  - (b) if item 38 applies to the company—the consolidation day.

*Application*

- (2) This item applies to these transfers under Subdivision 170-A or 170-B of the *Income Tax Assessment Act 1997* involving a company:
- (a) a transfer by the company of a loss it made for the income year (the *final year*) just before the first income year for which the amendments of those Subdivisions by this Schedule apply to the company;
  - (b) a transfer to the company for the final year of a loss made for that income year or an earlier income year.

However, this item does not apply to a transfer involving companies that would satisfy either subsections 170-30(3) and (4) or 170-130(3) and (4) of that Act (as amended by this Schedule) if those subsections applied for the final year.

*Object*

- (3) The main object of this item is to ensure that the company can either:
- (a) transfer a loss it makes for the final year only so far as the loss is attributable to so much of the final year as occurs before its apportioning day; or
  - (b) utilise a loss transferred to it to reduce income or gains for the final year only so far as the income or gains are attributable to so much of the final year as occurs before its apportioning day.

*Apportioning limit on transferring company's loss for final year*

- (4) Despite section 170-45 of the *Income Tax Assessment Act 1997*, the amount of a tax loss made for the final year by the company that can be transferred cannot exceed the amount worked out using the formula:

**Table A**

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$$\text{Limit on transferring the tax loss set by subsection 170-45(1) of that Act} \times \frac{\text{Number of days in the company's final year before its apportioning day}}{\text{Number of days in the company's final year}}$$

Note: If the company's final year ends just before its apportioning day, this subitem does not reduce the amount of the tax loss the company can transfer.

(5) Despite section 170-145 of the *Income Tax Assessment Act 1997*, a net capital loss made for the final year by the company:

- (a) can be transferred only if the sum of the capital losses made by the company during the final year before its apportioning day exceeds the sum of the capital gains made by the company during the final year before its apportioning day; and
- (b) cannot be transferred to an extent greater than that excess.

Note: If the company's final year ends just before its apportioning day, this subitem does not reduce the amount of the net capital loss the company can transfer.

*Apportioning limit based on transferee company's income or gains for final year*

(6) Despite section 170-45 of the *Income Tax Assessment Act 1997*, the amount of a tax loss (for the final year or an earlier income year) that can be transferred to the company for the final year cannot exceed the amount worked out using the formula:

$$\text{Limit on transferring the loss set by whichever of subsections 170-45(2) and (3) of that Act applies} \times \frac{\text{Number of days in the company's final year before its apportioning day}}{\text{Number of days in the company's final year}}$$

Note: If the company's final year ends just before its apportioning day, this subitem does not reduce the amount of the tax loss that can be transferred to the company.

(7) Despite section 170-145 of the *Income Tax Assessment Act 1997*, a net capital loss (for the final year or an earlier income year) can be transferred to the company for the final year:

- (a) only if the company would have had a net capital gain for the final year apart from that section had the final year ended on the day before the company's apportioning day; and
- (b) only to the extent to which it could have been transferred consistently with subsection 170-145(6) of that Act if the result of step 1 of the method statement had been the amount



**Table A**

of the company's net capital gain worked out on the basis described in paragraph (a) of this subitem.

Note: If the company's final year ends just before its apportioning day, this subitem does not reduce the amount of the net capital loss that can be transferred to the company.

*Transfer not prevented by transferor joining consolidated group*

- (8) Subsections 170-45(1) and 170-145(1) of the *Income Tax Assessment Act 1997* apply in relation to a transfer from a company (whether or not it is the company mentioned in subitem (4) or (5)) that becomes a member of a consolidated group or MEC group as if the fact that the company becomes such a member does not affect its ability to carry forward losses for the final year or an earlier income year.

*Application to non-membership periods less than a year*

- (9) If, under section 701-30 of the *Income Tax Assessment Act 1997*, the company has a non-membership period that ends just before the company first becomes a subsidiary member of a consolidated group or MEC group, Subdivisions 170-A and 170-B of that Act and subitems (3) to (8) (inclusive) apply in relation to the period as if it were the final year.
- (10) To avoid doubt, section 701-30 of the *Income Tax Assessment Act 1997* does not prevent a company from transferring under Subdivision 170-A or 170-B of that Act (applying as described in subitem (9)) a non-membership period loss described in that section for the non-membership period mentioned in that subitem.

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*New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002 (No. 90, 2002)*

#### **4 Amendment of income tax assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

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**Table A**

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**Schedule 14**

**19 Application**

The amendments made by this Schedule apply to a time at or after 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999.

**Schedule 15**

**13 Saving for former Division 138**

Despite the repeal by item 9, the repealed provisions continue to apply to an act referred to in Division 138 of the *Income Tax Assessment Act 1997* as the trigger event, if the act was done:

- (a) under a scheme entered into before 27 June 2002; or
- (b) on or after 27 June 2002 and before 1 July 2002.

**14 Saving for former Division 139**

Despite the repeal by item 10, the repealed provisions continue to apply to an event or act referred to in Division 139 of the *Income Tax Assessment Act 1997* as the trigger event, if the event happened, or the act was done:

- (a) under a scheme entered into before 27 June 2002; or
- (b) on or after 27 June 2002 and before 1 July 2002.

**15 Saving for former provisions about direct value shifts**

Despite the repeal by item 11, the repealed provisions continue to apply to a scheme, unless Division 725 of the *Income Tax Assessment Act 1997* applies to the scheme.

**Schedule 16**

**54 Transitional**

A company that makes payments in respect of shares in the company under a demerger that happens on or after 1 July 2002 and before this Act receives the Royal Assent can choose to apply section 45B of the *Income Tax Assessment Act 1936* as that section existed before the amendments made by this Act to the demerger rather than that section as amended by this Act if:

- (a) the head entity of the demerger group is a listed public company; and

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**Table A**

- (b) the only CGT events (if any) that happen under the demerger to all original interests in that head entity are CGT event A1, CGT event C2 or CGT event G1.

**55 Application**

The amendments made by this Schedule apply to demergers happening on or after 1 July 2002.

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*Taxation Laws Amendment Act (No. 3) 2002* (No. 97, 2002)

**4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

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*New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002* (No. 117, 2002)

**4 Amendment of income tax assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 2**

**11 Application of certain amendments**

The amendments made by items 1 to 7 apply on and after 1 July 2002.

**Schedule 8**

**6 Application of amendments**

The amendments made by this Schedule to subsections 719-5(4) and 719-40(1) of the *Income Tax Assessment Act 1997* apply in relation to a notice, whether given before, at or after the commencement of this item.

**Table A**

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**Schedule 12**

**12 Application of amendments of Subdivision 170-A**

The amendments of Subdivision 170-A of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to deduction years ending after 1 July 2002.

**22 Application of amendments of Subdivision 170-B**

The amendments of Subdivision 170-B of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to application years ending after 1 July 2002.

**Schedule 17**

**6 Application**

- (1) The amendments of the *Income Tax Assessment Act 1997* made by items 1, 4 and 5 of this Schedule apply to non-share dividends paid after 30 June 2002.
- (2) The amendment of the *Income Tax Assessment Act 1997* made by item 2 of this Schedule applies to franking periods that begin after 30 June 2002.

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*Taxation Laws Amendment Act (No. 5) 2002* (No. 119, 2002)

**4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 1**

**8 Application of amendments**

The amendments of the *Income Tax (Transitional Provisions) Act 1997* and the *Income Tax Assessment Act 1997* made by this Schedule apply to assessments for the 2001-2002 income year.

**Schedule 2****7 Application**

The amendments made by this Schedule apply to amounts paid on or after 23 September 1998.

**Schedule 3****100 Application of amendments**

- (1) The amendments made by items 1 to 39 (inclusive), 50 to 58 (inclusive) and 76 of this Schedule apply to:
    - (a) depreciating assets:
      - (i) you start to hold under a contract entered into after 30 June 2001; or
      - (ii) you constructed where the construction started after that day; or
      - (iii) you start to hold in some other way after that day; and
    - (b) expenditure that does not form part of the cost of a depreciating asset incurred after that day.
  - (2) The amendments made by items 40 to 49 (inclusive) of this Schedule apply to expenditure that does not form part of the cost of a depreciating asset incurred on or after 1 July 2001.
  - (3) The amendments made by items 59 and 60 of this Schedule apply to balancing adjustment events occurring on or after 1 July 2001.
  - (4) The amendments made by items 61 and 64 to 71 (inclusive) of this Schedule apply to CGT events happening on or after 1 July 2001.
  - (5) The amendment made by item 62 of this Schedule applies to assessments for the income year in which 29 January 2001 occurs and later income years.
  - (6) The amendment made by item 63 of this Schedule applies to assessments for the income year in which 1 July 2001 occurs and later income years.
  - (7) The amendment made by item 64 of this Schedule applies to debts that are terminated after 27 February 1998.
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**Table A**

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- (8) The amendments made by items 72, 73, 74, 75, 77 and 78 of this Schedule apply to assessments for the first income year starting after 30 June 2001, and for later income years.

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*Taxation Laws Amendment (Venture Capital) Act 2002* (No. 136, 2002)

**Schedule 1**

**27 Application**

The amendments made by this Schedule apply, and are taken to have applied, to CGT events relating to investments made on or after 1 July 2002.

**Schedule 2**

**28 Application**

The amendments made by this Schedule apply, and are taken to have applied, to the 2002-2003 income year and later income years.

**Schedule 3**

**18 Application**

The amendments made by this Schedule apply, and are taken to have applied, to the 2002-2003 income year and later income years.

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*Taxation Laws Amendment (Structured Settlements and Structured Orders) Act 2002* (No. 139, 2002)

**4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 1****16A Application of amended definitions**

- (1) The amendments made by items 1A and 12A apply to assessments for the 2001-2002 income year and later income years.
- (2) However, the amendments do not apply unless the date of the settlement or order (within the meaning of Division 54 of the *Income Tax Assessment Act 1997*) is 26 September 2001 or a later date.

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*Taxation Laws Amendment Act (No. 1) 2003* (No. 12, 2003)

**Schedule 2****2 Application of amendment**

The amendment of the *Income Tax Assessment Act 1997* made by this Schedule applies to assessments for the 2001-2002 income year and later income years.

**Schedule 3****2 Application**

The amendment made by this Part applies to an assessment for the income year including 1 January 2003 or a later income year.

**6 Application**

The amendments made by this Part apply to an assessment for the income year including 1 January 2003 or a later income year.

**11 Application**

The amendments made by this Part apply to an assessment for the income year including 1 January 2003 or a later income year.

**13 Application**

The definition of *scholarship plan* in subsection 995-1(1) of the *Income Tax Assessment Act 1997* as amended by this Part applies on and after 1 January 2003.

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## **Table A**

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*New Business Tax System (Consolidation and Other Measures) Act 2003*  
(No. 16, 2003)

### **4 Amendment of income tax assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

### **Schedule 9**

#### **21 Application of amendments of subsection 995-1(1)**

The amendments of subsection 995-1(1) of the *Income Tax Assessment Act 1997* made by this Part apply on and after 1 July 2002.

### **Schedule 13**

#### **5 Application of amendment of subsection 995-1(1)**

The amendment of subsection 995-1(1) of the *Income Tax Assessment Act 1997* made by this Schedule applies on and after 1 July 2002.

### **Schedule 24**

#### **23 Application of amendments**

The amendments made by items 20 to 22 apply on and after 1 July 2002.

### **Schedule 26**

#### **8 Application**

The amendments made by this Schedule apply to a time at or after 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999.

### **Schedule 27**

#### **21 Application**

- (1) The amendments made by items 1 and 2 of this Schedule apply to distributions made after 30 June 2002.



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**Table A**

- (2) The amendments made by items 3 to 19 of this Schedule apply to events that occur after 30 June 2002.

**Schedule 28**

**19 Application**

- (1) The amendment made by item 1 of this Schedule applies to distributions made after 30 June 2002.
- (2) The amendment made by item 2 of this Schedule applies where the franking periods to which the notice relates occur after 30 June 2002.
- (3) The amendments made by items 3 to 12 and item 16 of this Schedule apply to income years ending after 30 June 2002.

**Schedule 30**

**2 Application**

The amendments made by this Schedule apply to distributions made after 30 June 2002.

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*Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003 (No. 35, 2003)*

**Schedule 2**

**7 Application provision**

The amendments made by items 5 and 6 of this Schedule apply in relation to assessments in respect of income of the first year of income ending after the commencement of this Schedule and of all later years of income.

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## **Table A**

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*Taxation Laws Amendment Act (No. 2) 2003* (No. 65, 2003)

### **4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

### **Schedule 2**

#### **5 Application**

The amendments of the *Income Tax Assessment Act 1997* made by this Schedule apply to assessments for the 1996-97 income year and assessments for later income years.

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*Taxation Laws Amendment Act (No. 4) 2003* (No. 66, 2003)

### **4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

### **Schedule 2**

#### **17 Application of amendments**

The amendments made by this Schedule apply to assessments for the income year in which 1 July 2001 occurred and later income years.

### **Schedule 3**

#### **140 Application**

- (1) Subject to this item, the amendments made by this Schedule apply to assessments for the 2003-04 income year and later income years.
- (2) The amendment made by item 71 applies to things done on or after 1 July 2000.

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**Table A**

- (3) The amendments made by items 92, 93 and 95 apply to assessments for the 1997-98 income year and later income years.
- (4) The amendments made by items 91 and 94 apply to assessments for the 2000-01 income year and later income years.
- (5) The amendments made by items 41, 42, 43, 44, 45, 126, 127 and 128 apply to amounts derived on or after 1 July 2000.
- (6) The amendments made by items 109 and 110 apply to events that occur on or after 1 July 2002.
- (8) The amendments made by items 70A and 128A apply to an assessment for the income year including 1 January 2003 or a later income year.

**141 Transitional**

- (1) Subparagraphs 207-120(1)(b)(ii) and 207-120(2)(b)(ii) of the *Income Tax Assessment Act 1997* have effect during the period starting on 1 July 2002 and ending just before the start of the 2003-04 income year as if references in those subparagraphs to an amount being non-assessable non-exempt income were references to the amount being neither assessable income nor exempt income.
- (2) Paragraphs 15-60(3)(b) and 320-112(3)(b) of the *Income Tax Assessment Act 1997* have effect during any period starting before the start of the 2003-04 income year as if references in those paragraphs to an amount being non-assessable non-exempt income were references to the amount being neither assessable income nor exempt income.

**Schedule 4****5 Application**

- (1) The amendment made by item 1 of this Schedule applies to tax offsets arising because of events that occur on or after 1 July 2000.
- (2) The amendment made by item 2 of this Schedule applies to tax offsets arising because of events that occur on or after 1 July 2002.
- (3) The amendments made by items 3 and 4 of this Schedule apply to tax offsets arising because of premiums, or amounts in respect of premiums, paid on or after 1 July 2002.

**Table A**

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**Schedule 6**

**3 Application**

The amendments made by this Schedule apply to payments made after the commencement of this Schedule.

**Schedule 7**

**9 Application**

The amendments made by items 6 to 8 of this Schedule apply to CGT events that happen on or after 1 April 2003.

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*Taxation Laws Amendment Act (No. 6) 2003* (No. 67, 2003)

**4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 8**

**3 Application**

Items 1 and 2 of Schedule 15 to the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002* are taken always to have had effect as amended by this Schedule.

**Schedule 10**

**23 Application**

The amendments made by this Division apply to transactions, events and things in relation to which section 960-50 of the *Income Tax Assessment Act 1997* applies, or would apply apart from subsection (10) of that section, because of paragraph 960-55(1)(a) of that Act.

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**Table A**

*Australian Heritage Council (Consequential and Transitional Provisions) Act 2003* (No. 86, 2003)

**Schedule 1**

**5 Application of amendment of section 30-15**

The amendment of section 30-15 of the *Income Tax Assessment Act 1997* applies to gifts made after the commencement of Divisions 1A and 3A of Part 15 of the *Environment Protection and Biodiversity Conservation Act 1999* and Part 5 of the *Australian Heritage Council Act 2003*.

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*Taxation Laws Amendment Act (No. 3) 2003* (No. 101, 2003)

**4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**5 No tax consequences result from AGL's corporate conversion etc.**

- (1) The object of this section is to ensure that no taxation consequences (other than those arising under subsections (9) and (10)) arise in relation to any person as a result of:
  - (a) AGL's corporate conversion; or
  - (b) AGL's registration; or
  - (c) the operation of any provision of the Conversion Act; or
  - (d) any action taken under any provision of the Conversion Act.
- (2) In resolving any ambiguity as to the meaning of this section, an interpretation that is consistent with the object of this section is to be preferred to an interpretation that is not consistent with that object.

**Table A**

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- (3) This section only has effect for the purposes of any Commonwealth laws relating to taxation, including, but not limited to:
- (a) the income tax law; and
  - (b) the GST law; and
  - (c) the fringe benefits tax law; and
  - (d) the *A New Tax System (Australian Business Number) Act 1999*; and
  - (e) the *Taxation Administration Act 1953*; and
  - (f) the *International Tax Agreements Act 1953*; and
  - (g) the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and
  - (h) the *Superannuation Guarantee (Administration) Act 1992*; and
  - (i) the *Superannuation Guarantee Charge Act 1992*.
- (4) AGL, corporatised AGL and registered AGL are taken to be, and to have always been, the same company and the same entity.
- (5) Subsections (6) to (8) do not limit, by implication, any other effects of this section.
- (6) No taxation consequences (other than those arising under subsections (9) and (10)) are taken to have arisen in relation to any person as a result of:
- (a) AGL's corporate conversion; or
  - (b) AGL's registration; or
  - (c) the operation of any provision of the Conversion Act; or
  - (d) any action taken under any provision of the Conversion Act.
- (7) The legal and beneficial ownership of:
- (a) shares in AGL; and
  - (b) interests in shares in AGL;
- are taken not to have altered as a result of AGL's corporate conversion or AGL's registration. However, this subsection does not imply that those shares are not shares in corporatised AGL or registered AGL.

**Table A**

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- (8) Anything done by or to:
- (a) AGL's Secretary; or
  - (b) the estate of AGL's Secretary; or
  - (c) a replacement trustee in respect of the trust created by subclause 4(1)(c) of Schedule 3 to the Conversion Act;
- as a result of the operation of clause 4 of Schedule 3 to the Conversion Act is taken to have been done by or to corporatised AGL or registered AGL, as the case may be.
- (9) Despite any other provision of this section:
- (a) the item 9 of Schedule 2 to the *Taxation Laws Amendment (Company Law Review) Act 1998* that was included in that Act as originally enacted; and
  - (b) the item of Schedule 2 to the *Taxation Laws Amendment (Company Law Review) Act 1998* that was inserted in that Act by item 7 of Schedule 1 to the *Taxation Laws Amendment Act (No. 7) 1999*;
- apply to AGL as if the reference in each of those items of Schedule 2 to the *Taxation Laws Amendment (Company Law Review) Act 1998* to "Schedule 5 to the *Company Law Review Act 1998*" were a reference to "Schedule 4 to the Conversion Act".
- Note: Item 7 of Schedule 1 to the *Taxation Laws Amendment Act (No. 7) 1999* inserted a second item 9 of Schedule 2 to the *Taxation Laws Amendment (Company Law Review) Act 1998* into that Act.
- (10) Despite any other provision of this section, any Commonwealth law that:
- (a) relates to taxation; and
  - (b) has a substantially similar effect to an item of Schedule 2 to the *Taxation Laws Amendment (Company Law Review) Act 1998* mentioned in paragraph (9)(a) or (9)(b); and
  - (c) commences after the commencement of this section;
- is taken to be modified in such a way as to enable it to apply to AGL and to apply to AGL in that modified form.
- (11) In this section:
- AGL** has the same meaning as in the Conversion Act.
- AGL's corporate conversion** means AGL being constituted as a body corporate under the Conversion Act.
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## Table A

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**AGL's registration** means corporatised AGL's registration as a public company limited by shares under Part 5B.1 of the *Corporations Act 2001* in accordance with the Conversion Act.

**AGL's Secretary** means a person who was the Secretary of AGL under AGL's constitution immediately before AGL's corporate conversion.

**Conversion Act** means the *AGL Corporate Conversion Act 2002* of New South Wales.

**corporatised AGL** has the same meaning as in the Conversion Act.

**registered AGL** has the same meaning as in the Conversion Act.

**taxation** means any taxation imposed under a Commonwealth law.

- (12) Other expressions mean the same in this section as in the *Income Tax Assessment Act 1997*.

## Schedule 1

### 22 Application

The amendment made by item 2 applies to gifts made after 30 June 1997.

## Schedule 2

### 12 Application

- (1) The amendments made by items 1, 2, 4, 7, 8, 10 and 11 apply to assessments for the 1998-99 income year and later income years.
- (2) The amendments made by items 3 and 5 apply to shares or rights where the beneficial interest in the share or right was acquired after 5 pm (by legal time in the Australian Capital Territory) on 27 February 2001.
- (3) The amendments made by items 6 and 9 apply to shares or rights acquired (within the meaning of Division 13A of Part III of the *Income Tax Assessment Act 1936*) by you after 5 pm (by legal time in the Australian Capital Territory) on 27 February 2001. Those amendments also apply to shares or rights acquired by you at or before that time if you choose that the amendments apply.



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**Table A**

- (4) A share or right that, under section 139DQ of the *Income Tax Assessment Act 1936*, is treated as if it were a continuation of another share or right for the purposes of Division 13A of Part III of that Act:
- (a) is treated in the same way for the purposes of subitem (3) of this item; and
  - (b) is taken, for the purposes of that subitem, to have been acquired at the time of the last acquisition of the share or right that was not treated as such a continuation for the purposes of that Division.

**Schedule 3**

**6 Application**

The amendments made by this Schedule apply to distributions made on or after 1 July 2002.

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*Taxation Laws Amendment Act (No. 8) 2003* (No. 107, 2003)

**4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 1**

**9 Application**

- (1) The amendments made by Part 1 of this Schedule apply to non-share dividends paid after 30 June 2002.

**Schedule 2**

**40 Application**

The amendments made by this Schedule apply on and after 1 July 2002.

**Table A**

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**Schedule 3**

**2 Application**

The amendment made by this Schedule applies to conservation covenants entered into on or after 1 July 2002.

**Schedule 5**

**3 Application of amendments**

The amendments made by items 1 and 2 apply in relation to gifts made on or after 1 July 2003.

**Schedule 7**

**9 Application**

Subject to the rules on the application of Part 3-6 of the *Income Tax Assessment Act 1997* set out in the *Income Tax (Transitional Provisions) Act 1997*, the amendments made by items 1 to 8 apply to events that occur on or after 1 July 2002.

**18 Application**

The amendments made by items 13 to 17 apply in relation to an entity's assessments for the first income year (within the meaning of section 205-75 of the *Income Tax (Transitional Provisions) Act 1997*) and later income years.

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*Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Act 2003* (No. 111, 2003)

**Schedule 1**

**25 Application of amendments**

The amendments made by Part 1 of this Schedule apply in relation to contributions made to complying superannuation funds and RSAs on or after 1 July 2003.

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**Table A**

*New Business Tax System (Taxation of Financial Arrangements) Act (No. 1)*  
2003 (No. 133, 2003)

**4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 1****17 Application of amendments**

- (2) The amendments of sections 122-25, 122-135 and 126-50 of the *Income Tax Assessment Act 1997* made by this Schedule apply to the disposal or redemption of an exchangeable interest on or after 1 July 2001.

**Schedule 2****9 Application of amendments**

The amendments made by this Schedule apply to the conversion of a convertible interest on or after 1 July 2001.

**Schedule 3****2 Application of amendment**

The amendment made by this Schedule applies to the exercise of a right on or after 1 July 2001.

**Schedule 4****77 Transitional—Division 3B of Part III of the *Income Tax Assessment Act 1936***

- (2) Despite the following amendments:
- (a) the amendment of subsection 20-30(2) of the *Income Tax Assessment Act 1997* by this Schedule;
  - (b) the amendment of subsection 170(10) of the *Income Tax Assessment Act 1936* by this Schedule;

**Table A**

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subsection 20-30(2) of the *Income Tax Assessment Act 1997* and subsection 170(10) of the *Income Tax Assessment Act 1936* continue to apply, in relation to the former Division 3B of Part III of the *Income Tax Assessment Act 1936*, as if those amendments had not been made.

**78 Transitional—sections 20, 102AAX and 391 of the *Income Tax Assessment Act 1936* and sections 103-20 and 376-60 of the *Income Tax Assessment Act 1997***

(1) Despite the repeals of sections 20, 102AAX and 391 of the *Income Tax Assessment Act 1936* and sections 103-20 and 376-60 of the *Income Tax Assessment Act 1997* by this Schedule, those sections continue to apply, in relation to a transaction, event or thing:

- (a) that involves an amount in a foreign currency; and
- (b) to which section 960-50 of the *Income Tax Assessment Act 1997* does not apply;

as if those repeals had not happened.

(2) Despite the following amendments:

- (a) the amendment of section 102AAW of the *Income Tax Assessment Act 1936* by this Schedule;
- (b) the amendment of section 389 of the *Income Tax Assessment Act 1936* by this Schedule;

sections 102AAW and 389 of the *Income Tax Assessment Act 1936* continue to apply, in relation to the former section 20 of the *Income Tax Assessment Act 1936*, as if those amendments had not been made.

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*Taxation Laws Amendment Act (No. 5) 2003* (No. 142, 2003)

**4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 1****1 Application**

The amendments made by this Schedule apply in relation to an income year that begins on or after 1 July 2001.

**Schedule 2****1 Application**

The amendments made by this Schedule (except Part 5) apply in relation to an income year that begins on or after 1 July 2002.

**49 Application**

The amendments made by this Part (except items 50 and 51) do *not* apply for the purposes of working out a capital gain made from a CGT event happening before 1 July 2002.

**51 Application**

Item 31 of Schedule 4 to the *Taxation Laws Amendment Act (No. 7) 2000* is taken always to have had effect as amended by item 50 of this Schedule.

**Schedule 3****15 Application**

The amendments made by this Part apply in relation to an income year that begins on or after 1 July 2003.

**18 Application**

The amendments made by this Part apply in relation to an income year that begins on or after 1 July 2003, and are not intended to affect the interpretation of subsection 820-680(1) as applying in relation to an income year that starts before that day.

**Schedule 7****15 Application**

- (1) The amendments made by this Part apply to assessments for the 1997-98 income year and later income years.

## **Table A**

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- (2) However, an amendment made by this Part affecting a provision does not apply to anything to which the provision did not apply before the amendment.

Example: Section 707-125 of the *Income Tax Assessment Act 1997* applies on and after 1 July 2002. Despite the reference in subitem (1) to the 1997-98 income year, the amendments of that section made by this Part do not apply before 1 July 2002.

## **23 Application**

The amendments made by this Part apply to assessments for the 1998-99 income year and later income years.

## **Schedule 8**

### **24 Application of amendments**

- (2) The amendments made by items 7, 8, 9, 12, 14, 15 and 16 apply in relation to the deduction of a tax loss in the income year including 1 July 2002 and each later income year.
- (3) The amendments made by items 4, 5, 6, 10, 11, 13, 17, 17A, 17B, 18, 19, 20 and 21 apply to the income year including 1 July 2002 and each later income year.

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*Taxation Laws Amendment Act (No. 2) 2004* (No. 20, 2004)

### **4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

## **Schedule 3**

### **6 Application of amendments in items 2, 3 and 4**

The amendments made by items 2, 3 and 4 of this Schedule apply to assessments for the 2000-2001 income year and each subsequent income year.

**Schedule 4**

**9 Application**

The amendments made by this Schedule apply to sugar industry exit grants received on or after 1 February 2003.

**Schedule 7**

**9 Application**

The amendments made by this Schedule apply to balancing adjustment events occurring on or after 1 July 2001.

**Schedule 8**

**14 Application of amendments made by this Schedule**

The amendments made by this Schedule apply on and after 1 July 2002.

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*Family Assistance Legislation Amendment (Extension of Time Limits) Act 2004*  
(No. 33, 2004)

**Schedule 1**

**9 Application**

The amendments made by this Part apply to fees or commission incurred, and in relation to advice provided, either before or after the commencement of this Part.

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*Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004* (No. 52, 2004)

**Schedule 4**

**14 Application of amendments**

- (2) Subject to subitem (3), the amendments made by Part 2 of this Schedule apply to assessments for the 2004-05 income year and later income years.

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**Table A**

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- (3) Subsections 51-32(1) and (4) and 51-33(1) of the *Income Tax Assessment Act 1997*, substituted by item 10 of this Schedule, apply to assessments for the 1996-97 income year and later income years.

**15 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this item for the purposes of giving effect to subsections 51-32(1) and (4) and 51-33(1) of the *Income Tax Assessment Act 1997* substituted by item 10 of this Schedule.

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*Family Assistance Legislation Amendment (More Help for Families—Increased Payments) Act 2004* (No. 59, 2004)

**Schedule 2**

**38 Application of amendment of section 52-150**

The amendment of section 52-150 of the *Income Tax Assessment Act 1997* made by this Division applies to assessments for the 2004-05 income year and later income years.

**42 Application of amendments of Division 61**

The amendments of Division 61 of the *Income Tax Assessment Act 1997* made by this Division apply to assessments for the 2001-02 income year and later income years.

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*Bankruptcy Legislation Amendment Act 2004* (No. 80, 2004)

**Schedule 1**

**212 Transitional—pre-commencement deeds and compositions**

- (1) For the purposes of this item, if a deed of assignment or a deed of arrangement was executed by a debtor and a trustee under Part X of the *Bankruptcy Act 1966* before the commencement of this item, the deed is a *pre-commencement deed*.



**Table A**

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- (2) For the purposes of this item, if a composition was accepted before the commencement of this item by a special resolution of a meeting of creditors under section 204 of the *Bankruptcy Act 1966*, the composition is a ***pre-commencement composition***.
- (3) Despite the repeals and amendments made by Parts 1 and 2 of this Schedule:
- (a) the *Bankruptcy Act 1966* and regulations under that Act; and
  - (b) the Acts amended by Part 2 of this Schedule;
- continue to apply, in relation to:
- (c) a pre-commencement deed; and
  - (d) a pre-commencement composition; and
  - (e) any matter connected with, or arising out of:
    - (i) a pre-commencement deed; or
    - (ii) a pre-commencement composition;
- as if those repeals had not happened and those amendments had not been made.

**213 Transitional—pre-commencement authorities**

- (1) For the purposes of this item, if:
- (a) an authority given by a debtor under section 188 of the *Bankruptcy Act 1966* became effective before the commencement of this item; and
  - (b) as at the commencement of this item, none of the following had happened:
    - (i) the execution by the debtor and the trustee of a deed of assignment under Part X of the *Bankruptcy Act 1966*;
    - (ii) the execution by the debtor and the trustee of a deed of arrangement under Part X of the *Bankruptcy Act 1966*;
    - (iii) the acceptance of a composition by a special resolution of a meeting of the debtor's creditors under section 204 of the *Bankruptcy Act 1966*;
- the authority is a ***pre-commencement authority***.
- (2) Despite the repeals and amendments made by Parts 1 and 2 of this Schedule:
- (a) the *Bankruptcy Act 1966* and regulations under that Act; and
  - (b) the Acts amended by Part 2 of this Schedule;
-

**Table A**

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continue to apply, in relation to:

- (c) a pre-commencement authority; and
- (d) the control of the debtor's property following a pre-commencement authority becoming effective; and
- (e) a meeting of the debtor's creditors called under a pre-commencement authority; and
- (f) whichever of the following is applicable:
  - (i) a deed of assignment executed after the commencement of this item by the debtor and the trustee under Part X of the *Bankruptcy Act 1966* in accordance with a special resolution of such a meeting;
  - (ii) a deed of arrangement executed after the commencement of this item by the debtor and the trustee under Part X of the *Bankruptcy Act 1966* in accordance with a special resolution of such a meeting;
  - (iii) a composition accepted after the commencement of this item by a special resolution of such a meeting; and
- (g) any other matter connected with, or arising out of:
  - (i) a pre-commencement authority; or
  - (ii) a deed of assignment mentioned in subparagraph (f)(i); or
  - (iii) a deed of arrangement mentioned in subparagraph (f)(ii); or
  - (iv) a composition mentioned in subparagraph (f)(iii);

as if those repeals had not happened and those amendments had not been made.

**215 Transitional—regulations**

- (1) The regulations may make provision for matters of a transitional nature arising from the amendments made by Parts 1 and 2 of this Schedule.
  - (2) The Governor-General may make regulations for the purposes of subitem (1).
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*Tax Laws Amendment (2004 Measures No. 2) Act 2004* (No. 83, 2004)

#### **4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

### **Schedule 1**

#### **126 Application**

- (2) The amendments made by items 85 to 94 apply in relation to depreciating assets that, apart from the effect of any of those amendments, a life insurance company:
  - (a) started to hold under a contract entered into after 30 June 2001; or
  - (b) started to construct after that day; or
  - (c) started to hold in some other way after that day.
- (3) The amendments made by items 95 to 99 apply in relation to a consolidated group that comes into existence on or after 1 July 2002.
- (4) The amendment made by item 100 applies to assessments for the 2001-2002 income year and later income years, where the date of the settlement or order (within the meaning of Division 54 of the *Income Tax Assessment Act 1997*) is 26 September 2001 or a later date.
- (5) The amendments made by items 101 to 104 apply to amounts derived by a life insurance company on or after 1 July 2000.
- (8) The amendment made by item 116 applies to any reinsurance commission received or recovered by a life insurance company at any time after the day on which this Act receives the Royal Assent.
- (9) The amendments made by items 117 to 122 apply to the 2003-2004 income year and later income years.
- (10) The amendments made by items 123 and 124 apply to the income year in which 30 June 2002 occurs and later income years.

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**Table A**

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**Schedule 2**

**1 Application**

Except as provided otherwise, the amendments made by this Schedule apply on and after 1 July 2002.

**6 Application**

The amendment made by this Schedule to subsection 124-380(7) of the *Income Tax Assessment Act 1997* applies to choices made after the commencement of this item.

**37 Application**

The amendments made by this Part apply for assessments for the year of income including 1 July 2002 and later years of income.

**53 Application of amendment of subparagraph 717-15(1)(b)(i)**

The amendment of subparagraph 717-15(1)(b)(i) of the *Income Tax Assessment Act 1997* made by this Division applies to consolidated groups that come into existence on or after 1 July 2004.

**64 Application**

The amendments made by this Part apply to assessments for the 1998-99 income year and later income years.

**Schedule 3**

**6 Application**

The amendments made by this Schedule apply to things done on or after 2 December 2003.

**7 Transitional**

- (1) This item applies to a limited partnership:
- (a) that was formed as a legal entity on or after 2 December 2003 and before the day on which this Act received the Royal Assent; and
  - (b) in respect of which an application has been made to the PDF Board for registration as a VCLP or an AFOF under the *Venture Capital Act 2002*; and

**Table A**

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- (c) that could not be registered or conditionally registered as a VCLP or an AFOF before the day on which this Act received the Royal Assent only because it has a legal personality separate from that of its members.
- (2) If the PDF Board decided, before the day on which this Act received the Royal Assent, that it would have registered or conditionally registered a limited partnership to which this item applies as a VCLP or an AFOF under the *Venture Capital Act 2002* had this Act received the Royal Assent before that decision was made:
- (a) the PDF Board is taken to have granted registration or conditional registration of the limited partnership as a VCLP or an AFOF under that Act on the day on which that decision was made; and
  - (b) that registration is taken to have been in force for the purposes of section 13-10 of that Act from that day.

**Schedule 5****2 Application**

The amendment made by this Schedule applies to shares or units acquired under a demerger on or after 1 July 2002.

**Schedule 6****4 Application**

The amendments made by this Schedule apply to amounts paid on or after 1 July 2003.

**Schedule 8****11 Application**

The amendments made by items 9 and 10 apply to gifts made on or after 1 April 2004.

**Schedule 10****43 Application provisions**

- (2) Subject to the rules on the application of Part 3-6 of the *Income Tax Assessment Act 1997* set out in the *Income Tax (Transitional*

## Table A

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*Provisions) Act 1997*, the amendments made by the following items of this Schedule apply to events that occur on or after 1 July 2002:

- (a) items 3 to 23;
  - (b) item 29;
  - (c) item 41.
- (3) The amendments made by items 24 to 28 of this Schedule apply to assessments for the 2003-04 income year and later income years.
- (4) Subject to the rules on the application of Part 3-6 of the *Income Tax Assessment Act 1997* set out in the *Income Tax (Transitional Provisions) Act 1997*, the amendments made by the following items of this Schedule apply in relation to things happening on or after 1 April 2003:
- (a) items 30 to 40;
  - (b) item 42.

### 44 Transitional provision

Subparagraph 207-110(1)(b)(ii) of the *Income Tax Assessment Act 1997* as amended by item 29 of this Schedule has effect during the period starting on 1 July 2002 and ending just before the start of the 2003-04 income year as if the reference in that subparagraph to an amount being non-assessable non-exempt income were a reference to the amount being neither assessable income nor exempt income.

## Schedule 12

### 9 Application

The amendments made by this Part apply to assessments for the 2000-2001 income year and each subsequent income year.

### 16 Application

The amendments made by this Part apply to assessments for the income year after the income year in which this Act receives the Royal Assent and each subsequent income year.

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**Table A**

*Superannuation Laws Amendment (2004 Measures No. 1) Act 2004*  
(No. 92, 2004)

**Schedule 1**

**3 Application of item 2**

The amendment made by item 2 of this Schedule applies to assessments for the 2004-2005 income year and for subsequent income years.

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*Superannuation Laws Amendment (2004 Measures No. 2) Act 2004*  
(No. 93, 2004)

**4 Application of amendments**

- (1) The amendment made by item 3 of Schedule 1 applies to assessments for the 2004-2005 income year and for subsequent income years.

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*Tax Laws Amendment (2004 Measures No. 1) Act 2004* (No. 95, 2004)

**4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 2**

**11 Application**

The amendments made by this Schedule apply to assessments for the 2001-2002 income year and each later income year.

**Table A**

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**Schedule 3**

**7 Application of amendments**

The amendments made by this Schedule apply to CGT events happening after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.

**8 Transitional: general**

- (1) In this item and in item 9:  
*assent day* means the day on which this Act receives the Royal Assent.
- (2) The subsection 152-30(5) of the *Income Tax Assessment Act 1997* inserted by this Schedule applies to assessments for the 1999-2000, 2000-01 and 2001-02 income years as if the reference to any of the 4 income years before the income year for which relief is sought for a CGT event under Division 152 of that Act were a reference to the income year for which that relief is sought.
- (3) The following subitems apply in relation to:
  - (a) a CGT event that happened before the assent day; and
  - (b) an entity who becomes eligible to make a choice under Division 152 of the *Income Tax Assessment Act 1997* in relation to that event because of this Schedule.
- (4) Despite subsection 103-25(1) of the *Income Tax Assessment Act 1997*, any such choice must be made by the entity by the latest of:
  - (a) the day the entity lodges its income tax return for the income year in which the relevant CGT event happened; and
  - (b) 12 months after the assent day; and
  - (c) a later day allowed by the Commissioner of Taxation.
- (5) The period within which the entity must acquire a replacement asset as mentioned in subsection 152-420(1) or (2) of the *Income Tax Assessment Act 1997* ends on the latest of:
  - (a) 2 years after the happening of the last CGT event in the income year for which the entity obtained the small business roll-over; and
  - (b) 12 months after the assent day; and
  - (c) a later day allowed by the Commissioner of Taxation.



**Table A**

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- (6) The period within which a replacement asset the entity acquires must be an active asset as mentioned in subsection 152-420(4) of the *Income Tax Assessment Act 1997* (if it is not an active asset when acquired) ends on the latest of:
- (a) 2 years after the happening of the last CGT event in the income year for which the entity obtained the small business roll-over; and
  - (b) 12 months after the assent day; and
  - (c) a later day allowed by the Commissioner of Taxation.

**9 Transitional: choice**

- (1) This item applies to CGT events that happen no later than the end of the 2003-04 income year.
- (2) Subject to subitem (3), an entity can choose that Division 152 of the *Income Tax Assessment Act 1997* apply to such a CGT event as if the amendments made by this Schedule had not been made.
- (3) However, subsection 152-30(6) inserted by item 4 of this Schedule applies to those CGT events.
- (4) A choice under this item must be made by the latest of:
- (a) the day the entity lodges its income tax return for the income year in which the relevant CGT event happened; and
  - (b) 12 months after the assent day; and
  - (c) a later day allowed by the Commissioner of Taxation.

**Schedule 5****9 Application**

The amendments made by this Schedule apply to CGT events that happen after the end of the day the Bill for this Act was introduced into the Parliament.

**Schedule 7****13 Application of amendments**

The amendments made by this Schedule apply in relation to contributions made on or after 1 July 2004.

**Table A**

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**Schedule 10**

**44 Transitional—GST and FBT endorsements**

- (1) This item applies in relation to an entity if:
  - (a) immediately before 1 July 2005, the entity was endorsed under section 30-120 or section 50-105 of the *Income Tax Assessment Act 1997*; and
  - (b) the entity failed to notify the Commissioner in writing before 1 July 2005 that it chose not to have this item apply to it.
  
- (2) The entity is taken to have made an application to the Commissioner under section 426-15 in Schedule 1 to the *Taxation Administration Act 1953* for whichever of these kinds of endorsement is most appropriate for the entity:
  - (a) endorsement as a charitable institution under subsection 176-1(1) of the *A New Tax System (Goods and Services Tax) Act 1999*;
  - (b) endorsement as a trustee of a charitable fund under subsection 176-5(1) of the *A New Tax System (Goods and Services Tax) Act 1999*.
  
- (3) The entity is taken to have made an application to the Commissioner under section 426-15 in Schedule 1 to the *Taxation Administration Act 1953* for whichever of these kinds of endorsement is most appropriate for the entity:
  - (a) endorsement as a public benevolent institution under subsection 123C(1) of the *Fringe Benefits Tax Assessment Act 1986*;
  - (b) endorsement for the operation of a public benevolent institution under subsection 123C(3) of the *Fringe Benefits Tax Assessment Act 1986*;
  - (c) endorsement as a health promotion charity under subsection 123D(1) of the *Fringe Benefits Tax Assessment Act 1986*;
  - (d) endorsement under subsection 123E(1) of the *Fringe Benefits Tax Assessment Act 1986* as a charitable institution covered by paragraph 65J(1)(baa) of that Act.

**Table A****45 Transitional—acts or things done before commencement under repealed endorsement provisions**

- (1) In this item:  
***repealed provision*** means any of these provisions (as in force immediately before the commencement of this item):
- (a) sections 30-130 to 30-175 of the *Income Tax Assessment Act 1997*;
  - (b) sections 50-115 to 50-160 of that Act.
- (2) This item applies to an act or thing if:
- (a) the act or thing was done before the commencement of this item; and
  - (b) the act or thing was done under, or for the purposes of, a repealed provision.
- (3) The act or thing has effect, after the commencement of this item, as if it had been done under, or for the purposes of, the corresponding provision of the *Taxation Administration Act 1953* (as in force on and after the commencement of this item).

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*New International Tax Arrangements (Participation Exemption and Other Measures) Act 2004* (No. 96, 2004)

**Schedule 1****1 Application**

The amendments made by this Schedule apply in relation to a CGT event happening on or after 1 April 2004.

**Schedule 2****140 Application of amendments**

- (2) Subject to subitem (2A), the amendments made by Parts 2 and 3 of this Schedule apply to things happening after 30 June 2004.
- (3) The amendments made by Parts 4 and 5 of this Schedule apply to income years and statutory accounting periods starting on or after 1 July 2004.

## **Table A**

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*Taxation Laws Amendment Act (No. 1) 2004* (No. 101, 2004)

### **4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act (other than item 38 of Schedule 10, so far as that item provides for the insertion of sections 830-15 and 830-20 into the *Income Tax (Transitional Provisions) Act 1997*).

### **Schedule 1**

#### **4 Application of amendments**

The amendments made by this Schedule apply to assessments for the 2001-2002 income year and later income years.

### **Schedule 3**

#### **72 Transitional—Division 30 of the *Income Tax Assessment Act 1997***

- (1) Despite the amendments made by this Schedule, Division 30 of the *Income Tax Assessment Act 1997* continues to apply, in relation to gifts made before 1 July 2003, as if those amendments had not been made.
- (2) Despite the amendments made by this Schedule, Subdivision 30DE of the *Income Tax Assessment Act 1997* continues to apply, in relation to covenants entered into under Division 31 of that Act before 1 July 2003, as if those amendments had not been made.

### **Schedule 7**

#### **8 Application**

Subject to the rules on the application of Part 3-6 of the *Income Tax Assessment Act 1997* set out in the *Income Tax (Transitional Provisions) Act 1997*, the amendments made by items 1 to 7 apply to events that occur on or after 1 July 2002.

**Schedule 9**

**17 Application of amendments**

The amendments made by this Schedule apply to CGT events happening on or after 11 March 2002.

**Schedule 11**

**143 Application**

The amendment of section 43-55 of the *Income Tax Assessment Act 1997* made by this Part applies in relation to the income year including 1 July 2001 and later income years.

**145 Application**

The amendment of section 208-145 of the *Income Tax Assessment Act 1997* made by this Part applies in relation to income years ending on or after 1 July 2002.

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*Tax Laws Amendment (2004 Measures No. 3) Act 2004* (No. 105, 2004)

**4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 1**

**19 Application**

The amendments made by this Schedule apply, and are taken to have applied, to CGT events relating to investments made on or after 1 July 2002.

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## Table A

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*Tax Laws Amendment (Wine Producer Rebate and Other Measures) Act 2004*  
(No. 129, 2004)

### Schedule 3

#### 25 Application

The amendments made by this Schedule do not apply to a grapevine:

- (a) for which an entity has satisfied a condition in subsection 40-525(3) of the *Income Tax Assessment Act 1997* (as in force immediately before the commencement of this Schedule) before 1 October 2004; and
- (b) that the entity first used in a primary production business for the purpose of producing assessable income before 1 October 2004; and
- (c) for which the entity has deducted or can deduct an amount worked out under section 40-550 of that Act (as so in force).

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*Family and Community Services and Veterans' Affairs Legislation Amendment (2004 Election Commitments) Act 2004* (No. 132, 2004)

### Schedule 2

#### 13 Special payment of seniors concession allowance in December 2004

- (1) In this item:

**1 December test day** means the seniors concession allowance test day that occurs on 1 December 2004.

**Administration Act** means the *Social Security (Administration) Act 1999* as amended by this Schedule and Schedule 1 to this Act.

**seniors concession allowance** means seniors concession allowance under Part 2.25B of the Act.

**seniors concession allowance test day** has the meaning given by subsection 1061UA(3) of the Act.

**social security law** means the social security law (within the meaning of subsection 23(17) of the Act) as amended by this Schedule and Schedule 1 to this Act.

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**Table A**

***the Act*** means the *Social Security Act 1991* as amended by this Schedule and Schedule 1 to this Act.

***transitional day*** means a day in December 2004 (other than 1 December 2004).

***Veterans' Entitlements Act*** means the *Veterans' Entitlements Act 1986* as amended by this Schedule and Schedule 1 to this Act.

- (2) Transitional seniors concession allowance is payable under this item to a person in relation to the transitional day if:
  - (a) seniors concession allowance would be payable to the person under section 1061UA of the Act in relation to the transitional day if that day were a seniors concession allowance test day; and
  - (b) seniors concession allowance was not payable to the person under section 1061UA of the Act in relation to the 1 December test day.
- (3) Transitional seniors concession allowance is payable only once in relation to December 2004.
- (4) If transitional seniors concession allowance is payable to a person in relation to the transitional day, the person is to be paid an instalment of the allowance as soon as is reasonably practicable on or after the transitional day. The amount of the instalment is \$100.
- (5) For the purposes of the social security law, the *Veterans' Entitlements Act* and the *Income Tax Assessment Act 1997*:
  - (a) transitional seniors concession allowance payable under this item in relation to the transitional day is to be treated as if it were seniors concession allowance payable under Part 2.25B of the Act in relation to the 1 December test day; and
  - (b) an instalment of transitional seniors concession allowance paid under this item in relation to the transitional day is to be treated as if it were a payment of an instalment of seniors concession allowance under section 49B of the *Administration Act* in relation to the 1 December test day.
- (6) The Consolidated Revenue Fund is appropriated for the purposes of this item.

**Table A**

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**24 Special payment of seniors concession allowance in December 2004**

(1) In this item:

**1 December test day** means the seniors concession allowance test day that occurs on 1 December 2004.

**seniors concession allowance** means seniors concession allowance under Part VIIAD of the Act.

**seniors concession allowance test day** has the meaning given by section 118P of the Act.

**Social Security Act** means the *Social Security Act 1991* as amended by this Schedule and Schedule 1 to this Act.

**social security law** means the social security law (within the meaning of subsection 23(17) of the Social Security Act) as amended by this Schedule and Schedule 1 to this Act.

**the Act** means the *Veterans' Entitlements Act 1986* as amended by this Schedule and Schedule 1 to this Act.

**transitional day** means a day in December 2004 (other than 1 December 2004).

(2) Transitional seniors concession allowance is payable under this item to a person in relation to the transitional day if:

(a) seniors concession allowance would be payable to the person under section 118PB of the Act in relation to the transitional day if that day had been a seniors concession allowance test day; and

(b) seniors concession allowance was not payable to the person under section 118PB of the Act in relation to the 1 December test day.

(3) Transitional seniors concession allowance is payable only once in relation to December 2004.

(4) If transitional seniors concession allowance is payable to a person in relation to the transitional day, the person is to be paid an instalment of the allowance as soon as is reasonably practicable on or after the transitional day. The amount of the instalment is \$100.



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**Table A**

- (5) For the purposes of the Act, the social security law and the *Income Tax Assessment Act 1997*:
- (a) transitional seniors concession allowance payable under this item in relation to the transitional day is to be treated as if it were seniors concession allowance payable under Part VIIAD of the Act in relation to the 1 December test day; and
  - (b) an instalment of transitional seniors concession allowance paid under this item in relation to the transitional day is to be treated as if it were a payment of an instalment of seniors concession allowance under Part VIIAD of the Act in relation to the 1 December test day.
- (6) The Consolidated Revenue Fund is appropriated for the purposes of this item.

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*Private Health Insurance Incentives Amendment Act 2005* (No. 9, 2005)

**Schedule 1**

**7 Application of amendments**

The amendments made by this Schedule apply to amounts of premium, and amounts in respect of premium, paid or payable in respect of a period beginning on or after 1 April 2005.

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*New International Tax Arrangements (Managed Funds and Other Measures) Act 2005* (No. 21, 2005)

**Schedule 1**

**7 Application**

- (1) The amendments made by items 1 to 3, and 5 and 6, of this Schedule apply to capital gains or capital losses made on or after the day on which this Act receives the Royal Assent.
- (2) The amendment made by item 4 of this Schedule applies to payments made on or after the day on which this Act receives the Royal Assent.

## Table A

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### Schedule 3

#### 47 Application

- (1) The amendments made by Part 1 of this Schedule apply to interest paid on debentures or debt interests issued on or after the day on which this Act receives the Royal Assent (the *Assent day*).

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*Tax Laws Amendment (2004 Measures No. 6) Act 2005* (No. 23, 2005)

#### 4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

### Schedule 1

#### 1 Application

Except as provided otherwise, the amendments made by this Schedule apply on and after 1 July 2002.

#### 19 Application

The amendments of section 165-115ZC of the *Income Tax Assessment Act 1997* made by this Part apply if the alteration time mentioned in that section is after 10 November 1999.

### Schedule 2

#### 14 Application

- (1) The amendments made by items 1 to 6 and 8 to 11 of this Schedule apply to copyright income, and non-copyright income, collected or derived by a copyright collecting society on or after 1 July 2002, unless the society has made an election in accordance with section 410-1 of the *Income Tax (Transitional Provisions) Act 1997*.

Note: If the society has made an election, then from 1 July 2004, the amendments listed above apply to all copyright income, and non-copyright income, collected or derived by the society on or after 1 July 2004.

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**Table A**

- (2) The amendments made by items 7 and 13 of this Schedule apply to payments of copyright income or non-copyright income made by a copyright collecting society in an income year after the income year in which this item commences.

**Schedule 3****111 Application of amendments**

- (1) Subject to the rules on the application of Part 3-6 of the *Income Tax Assessment Act 1997* set out in the *Income Tax (Transitional Provisions) Act 1997*, the amendments made by Part 1 of this Schedule (other than items 5, 6 and 7) apply to events that occur on or after 1 July 2002.
- (2) The amendments made by items 5, 6 and 7 of this Schedule apply to assessments for the 2002-03 year of income and later years of income.
- (3) The amendments made by Part 2 of this Schedule, other than items 26 and 110, apply in relation to events that occur on or after 1 July 2002.

**Schedule 4****2 Application for item 1**

The amendment made by item 1 of this Schedule applies to gifts made on or after 1 April 2004.

**Schedule 6****14 Application**

The amendments made by this Schedule apply to expenditure incurred on or after 1 July 2004.

**Schedule 8****8 Application**

The amendments made by this Schedule apply to declarations by liquidators or administrators made after the day on which this Act receives the Royal Assent.

**Table A**

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**Schedule 10**

**23 Application of amendments**

The amendments made by this Schedule apply to assessments for income years that commence on or after 1 July 2001.

**Schedule 12**

**11 Application**

- (1) The amendments made by this Schedule (except the amendment made by item 9) apply to transfers of life insurance business that take place on or after 1 July 2000.

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*Tax Laws Amendment (2004 Measures No. 7) Act 2005 (No. 41, 2005)*

**4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

**Schedule 1**

**11 Application**

The amendments made by items 1 to 10 apply to assessments for the first income year starting on or after 1 July 2005 and later income years.

**Schedule 2**

**11 Application**

The amendments made by this Schedule apply to assessments for the first income year starting on or after 1 July 2005 and later income years.

**Schedule 3**

**22 Application**

- (1) The amendments made by this Schedule apply, and are taken to have applied, to acquisitions of shares or rights on or after 1 July 2004.

**Table A**

- (2) In this item:  
*acquisition*, of a share or right, has the same meaning as in Division 13A of Part III of the *Income Tax Assessment Act 1936*.

**Schedule 6****1 Application**

The amendments made by this Schedule apply on and after 1 July 2002.

**Schedule 7****20 Application**

The amendments made by this Schedule apply to assessments for the income year following the income year in which this Act receives the Royal Assent and later income years.

**Schedule 11****5 Application**

The amendments made by this Schedule apply to any expenditure incurred in respect of a film (whether before or after this Schedule commences).

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*Social Security Legislation Amendment (One-off Payments for Carers) Act 2005*  
 (No. 55, 2005)

Schedule 3 (item 70) of the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008* (No. 19, 2008) provides as follows:

**Schedule 3****70 Paragraph 1(2)(a) of Schedule 4**

Omit "Parts 2.5B, 2.5C and 2.19B", substitute "Divisions 2 and 3 of Part 2.5A and Division 2 of Part 2.19A".

The proposed amendment was misdescribed and is not incorporated in this compilation.

**Table A**

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**Schedule 2**

**1 Administrative scheme for 2005 one-off payments to carers**

- (1) Subject to this item, the Minister may, by legislative instrument, determine a scheme under which one-off payments may be made to carers in particular circumstances. The Minister may, by legislative instrument, vary or revoke the scheme.
- (2) The circumstances in which the scheme provides for payments must be circumstances:
  - (a) in which the Minister considers that Parts 2.5B, 2.5C and 2.19B of the *Social Security Act 1991* do not produce appropriate results; and
  - (b) occurring in the financial year starting on 1 July 2004.
- (3) Without limiting the generality of subitem (1), the scheme may deal with the following:
  - (a) the circumstances in which payments are to be made;
  - (b) the amount of the payments;
  - (c) what a person has to do to get a payment;
  - (d) administrative matters, such as determination of entitlement and how and when payments will be made.
- (4) Payments under the scheme are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

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*Film Licensed Investment Company (Consequential Provisions) Act 2005*  
(No. 58, 2005)

**Schedule 1**

**17 Savings**

The provisions amended or repealed by this Schedule continue to apply, in relation to a company that was a film licensed investment company under the *Film Licensed Investment Company Act 1998* immediately before the commencement of this Schedule, as if the amendment or repeal had not happened.

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**Table A**

*Tax Laws Amendment (2005 Measures No. 3) Act 2005* (No. 63, 2005)

**Schedule 1**

**23 Application**

The amendments made by this Schedule apply to the income year after the income year in which this Act receives the Royal Assent and each later income year.

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*New International Tax Arrangements (Foreign-owned Branches and Other Measures) Act 2005* (No. 64, 2005)

**Schedule 2**

**11 Application**

- (2) The amendments made by items 6, 7, 8 and 10 apply to things happening on or after 1 July 2004.

**Schedule 3**

**11 Application**

The amendments made by this Part apply in relation to losses for income years starting on or after the commencement of this Part.

**39 Application**

The amendments made by this Part apply in relation to assessments for income years starting on or after the commencement of this Part.

**Schedule 4**

**40 Application—amendments of the *Income Tax Assessment Act 1997***

The amendments made by items 28 to 34 and item 36 of this Schedule apply in relation to CGT events happening on or after the day on which this Act receives the Royal Assent.

**Table A**

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**41 Application—amendment of section 130-90 of the *Income Tax Assessment Act 1997***

The amendment made by item 35 of this Schedule applies in relation to shares or rights to which a beneficiary becomes absolutely entitled on or after the day on which this Act receives the Royal Assent.

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*Social Security Amendment (Extension of Youth Allowance and Austudy Eligibility to New Apprentices) Act 2005* (No. 66, 2005)

**Schedule 2**

**3 Application of amendments**

The amendments made by items 1 and 2 of this Schedule apply in relation to the 2005-2006 income year and to later income years.

---

*Tax Laws Amendment (Improvements to Self Assessment) Act (No. 1) 2005* (No. 75, 2005)

**Schedule 1**

**31 Application**

The amendments made by this Schedule apply to amendments of assessments for the 2004-05 income year and later income years.

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*Tax Laws Amendment (2005 Measures No. 1) Act 2005* (No. 77, 2005)

**Schedule 2**

**3 Application**

The amendments made by this Schedule apply to a depreciating asset if the start time for the asset occurs on or after 1 January 2005.



**Schedule 4****5 Application of items 1 to 4**

The amendments made by items 1 to 4 apply to assessments for the 2004-2005 income year and later income years.

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*Tax Laws Amendment (2005 Measures No. 2) Act 2005* (No. 78, 2005)

**Schedule 1****3 Application**

The amendments made by this Schedule apply to assessments for the income year in which the amendments commence and later income years.

**Schedule 3****5 Application of amendments**

- (1) The amendments made by items 2 and 3 apply in relation to expenditure incurred on or after 12 May 2004.
- (2) Those amendments do not apply to expenditure incurred by an entity to acquire an IRU if:
  - (a) the IRU was acquired by the entity before 12 May 2004; and
  - (b) the entity becomes a member of a consolidated group or MEC group on or after that day; and
  - (c) because of subsection 701-55(2) of the *Income Tax Assessment Act 1997*, the IRU is taken to have been acquired on or after that day.
- (3) However, if:
  - (a) an entity incurs expenditure on or after 12 May 2004 relating to an IRU (the *new right*) granted to the entity on or after that day for a cable system; and
  - (b) before that day, the entity had another IRU (the *earlier right*) to use that cable system;

**Table A**

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then, to the extent (if any) that the new right covers the level of capacity over that cable system that the earlier right covered, the amendments made by items 2 and 3 do not apply to so much of the expenditure as is reasonably attributable to that level of capacity.

**12 Application of amendments**

- (1) The amendments made by this Part apply in relation to expenditure incurred on or after 12 May 2004.
- (2) Those amendments do not apply to expenditure incurred by an entity to acquire a right if:
  - (a) the right was acquired by the entity before 12 May 2004; and
  - (b) the entity becomes a member of a consolidated group or MEC group on or after that day; and
  - (c) because of subsection 701-55(2) of the *Income Tax Assessment Act 1997*, the right is taken to have been acquired on or after that day.

- (3) However, if:
  - (a) an entity incurs expenditure on or after 12 May 2004 relating to telecommunications site access rights (the *new rights*) granted to the entity on or after that day in relation to a facility; and
  - (b) before that day, the entity had other telecommunications site access rights (the *earlier rights*) of the same kind in relation to the same facility; and
  - (c) the earlier rights end before they would ordinarily have ended under the contract under which they were granted;

then, to the extent (if any) that the new rights provide the same ability to share the facility, install the facility or enter or cross the premises as the earlier rights, the amendments made by this Part do not apply to so much of the expenditure as is reasonably attributable to the extent of that ability.

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*Superannuation (Consequential Amendments) Act 2005* (No. 81, 2005)

### Schedule 7

#### 3 CGT roll-over—transfer of PSS Fund assets to pooled superannuation trust

##### *Object*

- (1) The object of this item is to provide for a CGT roll-over so as to facilitate the exercise by the Board of its powers under:
- (a) section 22 of the *Superannuation Act 1990* in relation to the PSS Fund; and
  - (b) section 20 of the *Superannuation Act 2005* in relation to the PSSAP Fund;
- to set up and/or operate a pooled superannuation trust that is used for investing the assets of the PSS Fund and the assets of the PSSAP Fund.

##### *Roll-over*

- (2) There is a roll-over if:
- (a) one or more CGT events happen because the Board ceases to hold all of the CGT assets of the PSS Fund; and
  - (b) because of the cessation, CGT assets (the *identical assets*) that, together, are identical to all the CGT assets of the PSS Fund just before the happening of the CGT events start to be held by the trustee (the *transferee trustee*) of a pooled superannuation trust (whether or not all the identical assets were assets of the PSS Fund just before the CGT events); and
  - (c) the cessation is part of a scheme under which CGT assets of the PSS Fund are replaced with units in the pooled superannuation trust.

Note: The transferee trustee may be the Board—see subsection 960-100(3) of the *Income Tax Assessment Act 1997*.

- (3) A capital gain or capital loss the Board makes from each of the CGT events is disregarded.
- (4) For the transferee trustee, the first element of the cost base of each of the identical assets the transferee trustee holds is the cost base of the corresponding asset for the Board at the time of the relevant CGT event.

## Table A

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- (5) For the transferee trustee, the first element of the reduced cost base of each of the identical assets the transferee trustee holds is the reduced cost base of the corresponding asset for the Board at the time of the relevant CGT event.
- (6) For the purposes of the *Income Tax Assessment Act 1997*, a roll-over covered by this item is taken to be a same-asset roll-over.

### *Interpretation*

- (7) An expression used in this item and in the *Income Tax Assessment Act 1997* has the same meaning in this item as it has in that Act.
- (8) In this item:  
**Board** has the same meaning as in the *Superannuation Act 1990*.

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*Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005*  
(No. 147, 2005)

## Schedule 1

### **169 Application of items relating to companies in liquidation**

- (2) The amendments made by items 73 and 78 of this Schedule (other than section 165-209 of the *Income Tax Assessment Act 1997* as inserted by item 73) apply:
- (a) to any tax loss that is claimed in an income year commencing on or after 1 July 1997; and
  - (b) to any net capital loss that is applied in an income year commencing on or after 1 July 1998; and
  - (c) to any deduction in respect of a bad debt that is claimed in an income year commencing on or after 1 July 1998; and
  - (d) in determining whether any changeover time or alteration time occurs at or after 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999.

### **170 Application of items relating to the continuity of ownership test**

- (1) The amendments made by items 10, 11, 17, 30, 47, 50, 58, 68 to 71, 73, 79, 109, 111, 112, 114, 118, 119, 136, 138, 139, 141 to 151, 153 to 158,

**Table A**

159, 161, 162, 163 and 165 to 168 of this Schedule (other than section 165-208 of the *Income Tax Assessment Act 1997* as inserted by item 73) apply:

- (a) to any tax loss that is incurred in an income year commencing on or after 1 July 2002; and
- (b) to any net capital loss that is made in an income year commencing on or after 1 July 2002; and
- (c) to any deduction in respect of a bad debt that is claimed in an income year commencing on or after 1 July 2002; and
- (d) in determining whether any changeover time or alteration time occurred on or after 1 July 2002.

(2) However, if:

- (a) a tax loss of a company is incurred; or
- (b) a net capital loss of a company is made; or
- (c) a deduction in respect of a bad debt of a company is claimed;  
or
- (d) a changeover time or alteration time in respect of a company occurs;

in an income year that ends before this Act receives the Royal Assent, then the company may choose that the amendments made by the items mentioned in subitem (1) not apply in respect of the loss, deduction or time.

(3) The company must make the choice under subitem (2) on or before the day it lodges its first income tax return after this Act receives the Royal Assent, or before a later day if the Commissioner allows.

(4) The amendments made by items mentioned in subitem (1) also apply to:

- (a) any tax loss of a company:
  - (i) that is incurred in an income year commencing on or before 30 June 2002; and
  - (ii) that could have been deducted, in accordance with Divisions 165 and 166 as in force at that time, in the first income year commencing after 30 June 2002 if the deduction had not been limited by the company's income for that income year; and
- (b) any net capital loss of a company:
  - (i) that is made in an income year commencing on or before 30 June 2002; and

**Table A**

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- (ii) that could have been applied, in accordance with Divisions 165 and 166 as in force at that time, in the first income year commencing after 30 June 2002 if the application of the loss had not been limited by the company's capital gains for that income year.

**171 Application of items relating to alternative test**

- (1) The amendments made by items 16, 29 and 57 of this Schedule apply to:
  - (a) any tax loss that is claimed in an income year ending after 21 September 1999; and
  - (b) any net capital loss that is applied in an income year ending after 21 September 1999; and
  - (c) any deduction in respect of a bad debt that is claimed in an income year ending after 21 September 1999.
- (2) The amendment made by item 46 of this Schedule applies in determining whether a changeover time occurs at or after 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999.
- (3) The amendment made by item 49 of this Schedule applies in determining whether an alteration time occurs at or after 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999.

**172 Application of items relating to the same business test**

- (1) The amendments made by items 19, 60, 74, 76, 133 and 164 of this Schedule (other than sections 165-212D and 165-212E of the *Income Tax Assessment Act 1997* as inserted by item 76) apply in respect of:
  - (a) any tax loss that is incurred in an income year commencing on or after 1 July 2005; and
  - (b) any net capital loss that is made in an income year commencing on or after 1 July 2005; and
  - (c) any deduction in respect of a bad debt that is incurred in an income year commencing on or after 1 July 2005.

*Exceptions*

- (2) However, the amendments made by the items mentioned in subitem (1) do not apply to:
  - (a) a loss that is incurred by a head company in an income year commencing on or after 1 July 2005 because of the operation

**Table A**

of section 707-140 of the *Income Tax Assessment Act 1997* if the loss was actually incurred by the joining entity or another entity in an income year commencing before that date; or

- (b) any tax loss or net capital loss, incurred or made in an income year commencing on or after 1 July 2005, but only to the extent that it would be taken to be a tax loss or net capital loss of the company for an earlier income year under subsection 165-115B(1) or (2) of the *Income Tax Assessment Act 1997* if:
  - (i) the day before the start of that year were a changeover time for the purposes of Subdivision 165-CC of that Act; and
  - (ii) no changeover time actually occurred after that time.

Note: Section 707-140 of the *Income Tax Assessment Act 1997* is about the effect of transferring a loss from a joining entity to a head company of a consolidated group.

**173 Application of item relating to trustees of family trusts**

The amendment made by item 72 of this Schedule applies in accordance with subitem 17(3) of Schedule 10 to the *Taxation Laws Amendment Act (No. 2) 2000*.

**174 Application of amendments relating to MDOs**

Section 165-212D of the *Income Tax Assessment Act 1997* (as inserted by item 76 of this Schedule), and items 152 and 160 of this Schedule, apply in respect of:

- (a) any tax loss that is incurred in an income year (whether before or after the commencement of this item); and
- (b) any net capital loss that is made in an income year (whether before or after the commencement of this item); and
- (c) any deduction in respect of a bad debt that is claimed in an income year (whether before or after the commencement of this item).

**175 Application of amendment relating to entry history rule**

Section 165-212E of the *Income Tax Assessment Act 1997* (as inserted by item 76 of this Schedule) applies on and after 1 July 2002.

**Table A**

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**176 Application of amendment relating to disallowing excluded losses etc. of insolvent companies**

The amendment made by item 103 of this Schedule applies in respect of administrations that begin on or after the day on which this Act receives the Royal Assent.

**Schedule 2**

**26 General application**

The amendments made by Part 1, and items 15, 17 and 18, of this Schedule apply to income years starting on or after 1 July 2005.

**27 Income years starting on 1 July 2005 or after that day and before Royal Assent**

- (1) This item applies to an entity for whom an income year (the *first year*) starts:
  - (a) on 1 July 2005; or
  - (b) after that day and before the day on which this Act receives the Royal Assent.
- (2) The entity can only declare an amount to be conduit foreign income under Subdivision 802-A of the *Income Tax Assessment Act 1997* on or after the day on which this Act receives the Royal Assent.
- (3) An FDA surplus that exists for the entity under Subdivision B of Division 11A of Part III of the *Income Tax Assessment Act 1936* at the end of the day before the day on which this Act receives the Royal Assent has effect as if it were the entity's conduit foreign income under Subdivision 802-A of the *Income Tax Assessment Act 1997*.
- (4) Any FDA credit under section 128TA of the *Income Tax Assessment Act 1936* that arises during the period starting on 1 July 2005 and ending on the day before the day on which this Act receives the Royal Assent cannot also be conduit foreign income.
- (5) Section 802-40 of the *Income Tax Assessment Act 1997*, as inserted by item 1, does not apply to the first year.



**Table A****28 Later starting income years**

- (1) This item applies to an entity for whom an income year (also the *first year*) starts on or after the day on which this Act receives the Royal Assent and before 1 July 2006.
- (2) The amendments made by items 7, 8, 9, 13 and 16, and 19 to 24, of this Schedule apply from the start of the first year.
- (3) An FDA surplus that exists for the entity under Subdivision B of Division 11A of Part III of the *Income Tax Assessment Act 1936* at the start of the first year has effect as if it were the entity's conduit foreign income under Subdivision 802-A of the *Income Tax Assessment Act 1997*.
- (4) Section 802-40 of the *Income Tax Assessment Act 1997*, as inserted by item 1, does not apply to the first year.

**Schedule 3****5 Application**

The amendments made by this Schedule apply to amounts incurred after 29 April 2005.

**Schedule 4****12 Application**

The amendments made by this Schedule apply to copyright in a film acquired on or after 1 July 2004.

**Schedule 5****20 Application**

- (1) The amendments made by this Schedule apply, and are taken to have applied, to acquisitions of shares or rights on or after 1 July 2004.
- (2) In this item:  
*acquisition*, of a share or right:
  - (a) in relation to the application of items 1 to 3, 15, 17 and 18 of this Schedule, has the same meaning as in section 26AAC of the *Income Tax Assessment Act 1936*; or

**Table A**

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- (b) in relation to the application of items 4 to 14, 16 and 19 of this Schedule, has the same meaning as in Division 13A of Part III of the *Income Tax Assessment Act 1936*.

**Schedule 6**

**10 Application**

- (1) The amendments made by items 1, 2, 4, 5 and 9 of this Schedule apply to contributions made on or after 1 January 2006.

**Schedule 7**

**20 Application**

The amendments made by this Schedule apply to payments made on or after the first day of the first quarter after the quarter in which this Act receives the Royal Assent.

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*Tax Laws Amendment (2005 Measures No. 4) Act 2005* (No. 160, 2005)

**Schedule 1**

**14 Application of certain amendments**

- (1) The amendments made by items 1 to 10 of this Schedule apply in relation to assessments for income years that start on or after 1 July 2005.

**Schedule 2**

**12 Application**

The amendment made by item 4 applies in relation to gifts made on or after 20 May 2005.

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**Table A**

*Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005*  
(No. 161, 2005)

**Schedule 2**

**32 Application**

The amendments made by this Schedule apply to things done on or after the later of:

- (a) the day on which this Act receives the Royal Assent; and
- (b) 1 January 2006.

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*Tax Laws Amendment (2005 Measures No. 5) Act 2005* (No. 162, 2005)

**Schedule 2**

**13 Application**

The amendments made by this Schedule apply to production expenditure incurred on and after 1 July 2004.

**Schedule 3**

**33 Application**

The amendments made by this Schedule apply on and after 1 July 2002.

**Schedule 6**

**13 Application of amendments**

- (1) The amendments made by the items in this Part, other than item 6, apply to:
  - (a) schemes entered into on or after 1 July 2005; and
  - (b) schemes entered into before 1 July 2005, in so far as they continue to exist on and after 1 July 2005.
- (2) The amendment made by item 6 applies in accordance with item 118 of Schedule 1 to the *New Business Tax System (Debt and Equity) Act 2001*, as though the amendment were one of the ***debt and equity test amendments*** within the meaning of item 118 of that Schedule.

**Table A**

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**25 Application of amendments made by items 14 to 24**

The amendments made by items 14 to 24 apply in accordance with item 118 of Schedule 1 to the *New Business Tax System (Debt and Equity) Act 2001*, as though those amendments were ***debt and equity test amendments*** within the meaning of item 118 of that Schedule.

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*Tax Laws Amendment (2005 Measures No. 6) Act 2006* (No. 13, 2006)

**Schedule 1**

**2 Application**

The amendment made by this Schedule applies on and after 1 July 2002.

**Schedule 2**

**4 Application**

The amendments made by this Schedule apply in relation to income years commencing on or after 1 July 2000.

**Schedule 3**

**3 Application**

The amendments made by this Schedule apply in relation to assessments for income years that start on or after 1 July 2007.

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*Offshore Petroleum (Repeals and Consequential Amendments) Act 2006*  
(No. 17, 2006)

**Schedule 2**

**42 Application—paragraph 40-865(1)(b) of the *Income Tax Assessment Act 1997***

The amendment of paragraph 40-865(1)(b) of the *Income Tax Assessment Act 1997* made by this Schedule applies in relation to events that occur, and circumstances that arise, after the commencement of this item.

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*Tax Laws Amendment (2006 Measures No. 1) Act 2006* (No. 32, 2006)

## **Schedule 1**

### **40 Application**

- (1) Sections 768-910, 768-945, 768-960, 768-965, 768-970 and 768-975 of the *Income Tax Assessment Act 1997* apply for an income year that begins on or after the start-up day.
- (2) Sections 768-915, 768-920, 768-925, 768-930, 768-935 and 768-940 of the *Income Tax Assessment Act 1997* and items 20 and 21 of this Schedule apply if the relevant CGT event happens on or after the start-up day.
- (3) For the purposes of sections 768-920, 768-925, 768-930, 768-935, 768-940 and 768-945 of the *Income Tax Assessment Act 1997*, items 8, 9 and 10 of this Schedule apply if:
  - (a) the relevant CGT event happens on or after the start-up day; and
  - (b) the relevant matching shares or rights were acquired on or after 1 July 2004.
- (4) Section 768-950 of the *Income Tax Assessment Act 1997* and items 26, 30 and 33 of this Schedule apply to an individual becoming an Australian resident on or after the start-up day.
- (5) Section 768-955 of the *Income Tax Assessment Act 1997* applies to an individual ceasing to be a temporary resident (but remaining an Australian resident) on or after the start-up day.
- (6) For the purposes of section 768-955 of the *Income Tax Assessment Act 1997*, items 8, 9 and 10 of this Schedule apply if:
  - (a) the individual ceases to be a temporary resident (but remains an Australian resident) on or after the start-up day; and
  - (b) the relevant CGT asset is a matching share or right that was acquired on or after 1 July 2004.
- (7) Section 768-980 of the *Income Tax Assessment Act 1997* applies to a payment of interest made on or after the day on which this Act receives the Royal Assent.

## **Table A**

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- (9) In this item:  
*start-up day* means the 1 July next following the day on which this Act receives the Royal Assent.

## **Schedule 2**

### **51 Application**

- (1) The amendments made by Part 1 of this Schedule apply to expenditure incurred on or after 1 July 2005.
- (2) The amendments made by Part 2 of this Schedule apply to CGT events happening on or after 1 July 2005.

## **Schedule 3**

### **17 Application**

The amendments made by this Schedule apply in relation to conduct engaged in on or after the day on which this Act receives the Royal Assent.

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*Family Law Amendment (Shared Parental Responsibility) Act 2006*  
(No. 46, 2006)

## **Schedule 4**

### **129 Definition of *commencement***

In this Part:

*commencement* means the time at which Part 3 of this Schedule commences.

### **138A Application of amendments of the *Income Tax Assessment Act 1997***

The amendments made by items 113A and 113B of this Schedule apply to gifts made on or after commencement.

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**Table A**

*Tax Laws Amendment (2006 Measures No. 2) Act 2006* (No. 58, 2006)

**4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:

- (a) the assessment was made before the commencement of this section; and
- (b) the amendment is made within 4 years after that commencement; and
- (c) the amendment is made for the purpose of giving effect to Schedule 4.

**Schedule 1**

**3 Application**

The amendments made by this Schedule apply in relation to the 2005-2006 income year and later income years.

**Schedule 3**

**7 Application**

The amendments made by this Schedule apply in relation to options exercised on or after 27 May 2005.

**Schedule 4**

**6 Application**

- (1) The amendments made by this Schedule apply in relation to CGT events that happen after 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999.
- (2) The amendments made by this Schedule apply in relation to balancing adjustment events that occur after 30 June 2001.
- (3) Former section 42-293 of the *Income Tax Assessment Act 1997* applies in relation to balancing adjustment events that occurred during the period:
  - (a) starting just after 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999; and

**Table A**

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- (b) ending just before 1 July 2001;  
as if the amendments made by this Schedule to section 40-365 of that Act were made (with any necessary changes) to former section 42-293.
- (4) To avoid doubt:
  - (a) those necessary changes to those amendments include the following:
    - (i) item 1 applies in relation to former paragraph 42-293(2)(c);
    - (ii) references in item 1 to the original asset are taken to be references to the original plant;
    - (iii) item 2 applies in relation to former section 42-293; and
  - (b) a choice under former subsection 42-293(1) may be made after the commencement of this item in relation to those amendments; and
  - (c) the Commissioner may allow, after the commencement of this item, a further period under former subsection 42-293(3) in relation to those amendments.

**Schedule 5**

**3 Application**

The amendments made by items 1 and 2 apply to assessments for the 2004-05 income year and later income years.

**Schedule 7**

**55 Application**

The amendment made by item 54 applies to assessments for the 2006-07 income year and later income years.

**69 Application**

The amendments made by items 62 to 68 apply to assessments for the 2006-07 income year and later income years.

**92 Application**

The amendments made by items 86 to 91 apply to assessments for the 2006-07 income year and later income years.



**Table A**

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*Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (No. 65, 2006)

**Schedule 4**

**12 Application**

The amendments made by this Schedule apply to contributions or gifts made on or after the day on which this Act receives the Royal Assent.

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*Tax Laws Amendment (2006 Measures No. 3) Act 2006* (No. 80, 2006)

**Schedule 1**

**4 Application**

The amendments made by this Schedule apply to the 2005-06, 2006-07 and 2007-08 income years.

**Schedule 2**

**1 Certain Commonwealth payments relating to Cyclones Larry and Monica are non-assessable, non-exempt income**

- (1) Each of the following payments that you receive from the Commonwealth in your 2005-06 or 2006-07 income year is not assessable income and is not exempt income:
- (a) a payment associated with what is known as the Cyclone Larry Business Assistance Fund and made because your business was adversely affected by Cyclone Larry;
  - (b) a payment known as fuel excise relief and connected with your use of fuel to generate electricity for your business while supply of electricity through the grid to your business was disrupted as a result of Cyclone Larry;
  - (c) a payment associated with what is known as the Cyclone Larry Business Assistance Fund, or with what is known as the Cyclones Monica and Larry Business Assistance Fund, and made because your business was adversely affected by flooding due to the combined impacts of Cyclones Monica and Larry.

## **Table A**

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Note: This item does not deal with payments of income support to farmers and small business owners affected by Cyclone Larry or Cyclone Monica that are rebatable benefits under section 160AAA of the *Income Tax Assessment Act 1936*.

(2) A term used in this item and in the *Income Tax Assessment Act 1997* has the same meaning in this item as it has in that Act.

### **Schedule 3**

#### **5 Application**

The amendments made by this Schedule apply to payments received in the 2005-06 income year and later income years.

### **Schedule 4**

#### **14 Application of amendments**

The amendments made by Division 1 apply in relation to transfers made into a company's share capital account after the day on which the Bill for this Act was introduced into the Parliament.

#### **30 Application of amendments**

The amendments made by Divisions 1 and 2 apply for the purpose of determining whether an account is a share capital account when applying a provision of the *Income Tax Assessment Act 1997* or the *Income Tax Assessment Act 1936* in relation to a time that is after the commencement of the amendments, even if the account was in existence before that commencement.

### **Schedule 5**

#### **2 Application**

The amendment made by item 1 of this Schedule applies to assessments for the 2005-06 income year and later income years.

### **Schedule 11**

#### **23 Application of amendments**

The amendments made by this Schedule apply to gifts made on or after 1 July 2006.

**24 Transitional provision for item 7**

If, immediately before the commencement of item 7 of this Schedule, there is a declaration in force by the Treasurer under section 30-85 that a public fund is a relief fund, the declaration is taken to be a declaration that the public fund is a developing country relief fund.

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*International Tax Agreements Amendment Act (No. 1) 2006* (No. 100, 2006)

**Schedule 1****11 Application**

The amendments made by this Schedule apply to claims for assistance in collection of foreign tax debts made after the day on which this Act receives the Royal Assent.

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*Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*  
(No. 101, 2006)

**Schedule 6****1 Application of Schedule 1 and 2 amendments**

Except as mentioned in items 2 and 3, the repeals and amendments made by Schedules 1 and 2 apply:

- (a) so far as they affect assessments—to assessments for the 2006-07 income year and all later income years; and
- (b) otherwise—to acts done or omitted to be done, or states of affairs existing, after the commencement of the repeals and amendments.

**4 Application of Schedule 3 and 4 amendments**

The repeals and amendments made by Schedules 3 and 4 apply:

- (a) so far as they affect assessments—to assessments for the 2007-08 income year and all later income years; and
- (b) otherwise—to acts done or omitted to be done, or states of affairs existing, after the commencement of the amendments.

## Table A

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### 5 Application of Schedule 5 amendments

The repeals and amendments made by Schedule 5 apply to acts done or omitted to be done, or states of affairs existing, after the commencement of the amendments.

### 6 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or
- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

### 7 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example 1: On 31 July 1999, Greg Ltd lodged its annual return under former section 160ARE of the *Income Tax Assessment Act 1936*. The return stated that the company had a credit on its franking account and that no franking deficit tax was payable for the 1998-99 franking year. Under former section 160ARH of that Act, the Commissioner was taken to have made an assessment consistent with the return.

Following an audit undertaken after the repeal of Part IIIAA of that Act, the Commissioner concludes that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year, and had a franking account deficit for that franking year. As a result, the

**Table A**

Commissioner considers that franking deficit tax and a penalty by way of additional tax are payable.

The Commissioner can amend the assessment under former section 160ARN of that Act, because item 7 of this Schedule disregards the repeal of that section for the purposes of making an assessment in relation to the 1998-99 franking year. Item 7 will also disregard the repeal of Division 11 of former Part IIIAA to the extent necessary for the Commissioner to assess Greg Ltd's liability to a penalty by way of additional tax.

Despite the repeal of sections 160ARU and 160ARV, item 9 will ensure that the general interest charge will accrue on the unpaid franking deficit tax and penalty until they are paid.

Item 7 will also preserve Greg Ltd's right, under former section 160ART of that Act, to object against the Commissioner's amended assessment (including the penalty), since the objection is the exercise of a right in relation to a franking year that ended before the repeal of Part IIIAA.

**Example 2:** During the 1997-98 income year, Duffy Property Ltd withheld amounts from its employees' wages as required by former Divisions 1AAA and 2 of Part VI of the *Income Tax Assessment Act 1936*. The company failed to notify the Commissioner of those amounts, and failed to remit them to the Commissioner.

Following an audit undertaken after the repeal of those Divisions, the Commissioner discovers that the withheld amounts have not been remitted. The company's records are incomplete and the Commissioner is unable to completely ascertain the extent of its liability for the withheld amounts. Under section 222AGA of that Act, the Commissioner makes an estimate of the liability.

Item 7 will disregard the repeal of section 220AAZA of that Act (which empowered the Commissioner to recover the amount of the estimate). Even though the estimate is made after the repeal, it relates to amounts withheld before the repeal.

## **8 Saving of provisions about effect of assessments**

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

**Table A**

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**9 Saving of provisions about general interest charge, failure to notify penalty or late reconciliation statement penalty**

If:

- (a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:
  - (i) general interest charge, failure to notify penalty or late reconciliation statement penalty (all within the meaning of the *Income Tax Assessment Act 1936*); or
  - (ii) interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and
- (b) in a particular case, the period in respect of which the charge, penalty or interest is payable (whether under the provision or under the *Taxation Administration Act 1953*) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

**10 Repeals disregarded for the purposes of dependent provisions**

If the operation of a provision (the *subject provision*) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

**11 Schedule does not limit operation of section 8 of the Acts Interpretation Act 1901**

This Schedule does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

**Table A**

*Australian Participants in British Nuclear Tests (Treatment) (Consequential Amendments and Transitional Provisions) Act 2006* (No. 136, 2006)

**Schedule 2****1 Claims made on or after 19 June 2006—eligibility to be provided with treatment**

- (1) If:
- (a) a person made a claim on or after 19 June 2006 but before the commencement of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*; and
  - (b) had the claim been made after that commencement, it would have been a claim made, in accordance with section 6 of that Act, for a determination that he or she is an eligible person (within the meaning of that Act);
- the claim is taken, for the purposes of that Act, to be a claim made under section 8 of that Act for such a determination.
- (2) The Commission may, under section 13 of that Act, approve the provision of treatment that was provided before the claim was made, but must not approve the provision of treatment that was provided before 19 June 2006.

**2 Claims made on or after 19 June 2006—entitlement to travelling expenses**

- (1) If:
- (a) a person made a claim on or after 19 June 2006 but before the commencement of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*; and
  - (b) had the claim been made after that commencement, it would have been a claim made, in accordance with section 6 of that Act, for a determination that he or she is entitled to be paid travelling expenses under Part 3 of that Act;
- the claim is taken, for the purposes of that Act, to be a claim made under section 21 of that Act for such a determination.
- (2) The person can, under Part 3 of that Act, be entitled to be paid travelling expenses in connection with travel that occurred before the claim was

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**Table A**

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made, but not in connection with travel that occurred before 19 June 2006.

**3 Application of amendments to the *Income Tax Assessment Act 1997***

The amendments made by items 5 and 6 of Schedule 1 apply to assessments for the 2006-07 year of income and later years of income.

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*Tax Laws Amendment (2006 Measures No. 4) Act 2006* (No. 168, 2006)

**4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:

- (a) the assessment was made before the commencement of this section; and
- (b) the amendment is made within 4 years after that commencement; and
- (c) the amendment is made for the purpose of giving effect to Schedule 2.

**Schedule 1**

**10 Application**

- (1) The amendment made by item 1 of this Schedule applies to CGT events that happen after the day on which this Act receives the Royal Assent.
- (2) The amendments made by items 2 to 9 of this Schedule apply to CGT events that:
  - (a) are trigger events for the purposes of Subdivision 126-A of the *Income Tax Assessment Act 1997*; and
  - (b) happen after the day on which this Act receives the Royal Assent.



**11 Transitional**

The reference in paragraph 126-5(1)(e) or 126-15(1)(e) of the *Income Tax Assessment Act 1997* to section 13H of the *Family Law Act 1975* includes a reference to section 19D or 19E of that Act as in force immediately before the commencement of item 36 of Schedule 4 to the *Family Law Amendment (Shared Parental Responsibility) Act 2006*.

**Schedule 3****2 Application of amendment made by item 1**

The amendment made by item 1 applies to distributions made on or after 1 April 2003.

**Schedule 4****112 Application of this Schedule**

The amendments made by this Schedule apply to CGT events that happen on or after the commencement of this item.

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*Tax Laws Amendment (Simplified Superannuation) Act 2007* (No. 9, 2007)

**Schedule 1****2 Application**

- (1) The amendment made by this Part of this Schedule applies to the 2007-2008 income year and later years.
  - (2) Despite subitem (1), Division 292 of the *Income Tax Assessment Act 1997* inserted by this Part of this Schedule applies to the 2007-2008 financial year and later years.
- Note: For transitional rules about the application of Division 292 and related provisions in the period from 10 May 2006 to 30 June 2007, see section 292-80 of the *Income Tax (Transitional Provisions) Act 1997*.
- (3) Despite subitem (1), Divisions 301 to 307 of the *Income Tax Assessment Act 1997* inserted by this Part of this Schedule apply on and after 1 July 2007.

**Table A**

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**24 Application**

- (1) The amendments made by this Part of this Schedule apply to the 2007-2008 income year and later years.

**Schedule 2**

**2 Application**

The amendment made by this Part of this Schedule applies on and after 1 July 2007.

**Schedule 5**

**8 Transitional—meaning of *taxation law***

In determining the meaning of *taxation law* in the *Income Tax Assessment Act 1997* before the commencement of this item, the amendments made by this Schedule are to be disregarded.

**36 Application**

- (1) The amendments made by this Schedule apply to the 2007-2008 income year and later years.

**Schedule 10**

**96 Application**

An amendment made by this Schedule applies in relation to another amendment (the *primary amendment*) made by this Act in the same way as the primary amendment applies.

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*Superannuation Legislation Amendment (Simplification) Act 2007*  
(No. 15, 2007)

**4 Repeals disregarded for the purposes of dependent provisions**

If the operation of a provision (the *subject provision*) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the

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repeal is disregarded so far as it affects the operation of the subject provision.

## **Schedule 1**

### **406 Application**

- (1) The amendments made by this Schedule apply to the 2007-2008 income year and later years.
- (2) Despite subitem (1), those amendments apply to the 2007-2008 financial year and later years, to the extent that they relate to Division 292 of the *Income Tax Assessment Act 1997*.
- (3) Despite subitem (1), those amendments apply on and after 1 July 2007, to the extent that they relate to any of the following:
  - (a) Divisions 82 and 83 of the *Income Tax Assessment Act 1997*;
  - (b) Divisions 301 to 307 of that Act.

## **Schedule 2**

### **12 Application**

- (1) The amendments made by items 1 to 9 of this Schedule apply to:
  - (a) individuals who:
    - (i) make the choice referred to in subsection 152-305(1) of the *Income Tax Assessment Act 1997*; or
    - (ii) receive capital proceeds from a CGT event; and
  - (b) companies or trusts that make a payment referred to in section 152-325 of the *Income Tax Assessment Act 1997*;after 30 June 2007, regardless of when the relevant CGT event happened.
- (2) The amendments made by items 10 and 11 of this Schedule apply to CGT events happening in the 2006-07 income year and later income years.

**Table A**

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**Schedule 3**

**66 Application**

- (1) The amendments made to the following Acts by this Schedule apply to the 2007-2008 income year and later years:
  - (a) the *Child Support (Registration and Collection) Act 1988*;  
and
  - (b) the *Income Tax Assessment Act 1997*; and
  - (c) the *Income Tax (Transitional Provisions) Act 1997*; and
  - (d) the *Taxation Administration Act 1953*.
- (2) Despite subitem (1), those amendments apply to the 2007-2008 financial year and later years, to the extent that they relate to Division 292 of the *Income Tax Assessment Act 1997*.
- (3) Despite subitem (1), those amendments apply on and after 1 July 2007, to the extent that they relate to any of the following:
  - (a) Divisions 82 and 83 of the *Income Tax Assessment Act 1997*;
  - (b) Divisions 301 to 307 of that Act.

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*Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007* (No. 32, 2007)

**Schedule 3**

**9A Application of item 9**

The repeal of Subdivision 61-H of the *Income Tax Assessment Act 1997* and the substitution of Subdivision 61-G by this Schedule apply in relation to the 2007-2008 income year and later income years.

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**Table A**

*Tax Laws Amendment (2006 Measures No. 7) Act 2007* (No. 55, 2007)

**Schedule 1**

**68 Application**

- (1) The amendments made by this Schedule (other than the amendment made by item 67) apply to CGT events happening in the 2006-07 income year or later income years.

**Schedule 5**

**2 Application**

The amendment made by this Schedule applies to a depreciating asset if the start time for the asset occurs on or after 1 July 2007.

**Schedule 7**

**5 Application**

The amendments made by this Schedule apply to arrangements, or extensions of arrangements, entered into at or after 9.30 am by legal time in the Australian Capital Territory on 16 April 2003.

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*Tax Laws Amendment (2007 Measures No. 1) Act 2007* (No. 56, 2007)

**Schedule 3**

**39 Application**

- (1) The amendments made by this Schedule apply to acquisitions of stapled securities, and of rights to acquire stapled securities, on or after 1 July 2006.
- (2) In this item:  
*acquisition* has the same meaning as in Division 13A of Part III of the *Income Tax Assessment Act 1936*.

## **Table A**

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*Tax Laws Amendment (2007 Measures No. 2) Act 2007* (No. 78, 2007)

### **4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:

- (a) the assessment was made before the commencement of this section; and
- (b) the amendment is made within 4 years after that commencement; and
- (c) the amendment is made for the purpose of giving effect to Schedule 1.

### **Schedule 1**

#### **7 Application**

The amendments made by this Schedule apply to assessments for the income year in which 1 July 2001 occurred and later income years.

### **Schedule 2**

#### **18 Application**

The amendments made by this Schedule apply to the first income year starting on or after the day on which this Act receives the Royal Assent and later income years.

### **Schedule 4**

#### **10 Application**

The amendments made by this Schedule apply in relation to gifts and contributions made in an income year commencing on or after the day on which this Act receives the Royal Assent.

### **Schedule 6**

#### **10 Application**

The amendments made by this Schedule apply, and are taken to have applied, in relation to contributions made on or after 1 January 2007.

**Schedule 7****15 Transitional**

Subsection 73J(2) of the *Income Tax Assessment Act 1936* has effect for an eligible company, as if the amendment made by item 14 of this Schedule had not been made, during the period:

- (a) starting at the start of the year of income of the company in which 1 July 2005 occurred; and
- (b) ending at the end of the company's year of income in which the day on which this Act receives the Royal Assent occurs.

**16 Application: GST**

For the purposes of subsection 69-5(4) of the *A New Tax System (Goods and Services Tax) Act 1999*, the amendment made by item 14 of this Schedule applies to net amounts for tax periods starting on or after the day on which this Act receives the Royal Assent.

**Schedule 8****85 Application**

The amendments of the *Income Tax Assessment Act 1997* made by this Part apply to assessments for the 2007-2008 year of income and later years of income.

**205 Application**

The amendments of the *Income Tax Assessment Act 1997* made by this Part apply to assessments for the 2007-2008 year of income and later years of income.

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*Tax Laws Amendment (2007 Measures No. 3) Act 2007* (No. 79, 2007)

**Schedule 1****43 Application**

- (1) The amendments made by this Schedule apply to assessments for the income year in which 1 July 2006 occurred and later income years.

## Table A

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- (6) Despite subitem (1), the amendment made by Part 3 of this Schedule applies to franking assessments for the income year in which 1 July 2006 occurred and later income years.

### Schedule 3

#### 3 Application

- (1) The amendments made by this Schedule apply in relation to the 2005-2006 income year and later income years.
- (2) Despite subsection 115-230(5) of the *Income Tax Assessment Act 1997*, a choice under subsection 115-230(3) of that Act may be made no later than 2 years after the commencement of section 115-230 (or a later time allowed by the Commissioner) if the choice is in respect of the 2005-2006 income year.
- (3) Despite subsection 115-230(5) of the *Income Tax Assessment Act 1997*, a choice under subsection 115-230(3) of that Act may be made no later than 2 years after the commencement of section 115-230 (or a later time allowed by the Commissioner) if:
- (a) section 115-230 commences after the end of the 2006-2007 income year; and
  - (b) the choice is in respect of the 2006-2007 income year.

#### 4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:

- (a) the assessment was made before the commencement of this item; and
- (b) an application to amend the assessment is made, in the form approved for the purposes of subsection 170(5), within 2 years of the commencement of this item; and
- (c) the amendment is made for the purpose of giving effect to a choice under subsection 115-230(3) of the *Income Tax Assessment Act 1997*.

### Schedule 4

#### 4 Application

The amendments made by this Schedule apply in relation to the 2007-08 income year and later income years.

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**5 Payments by Commissioner in relation to lump sums paid before 1 July 2007**

To avoid doubt, nothing in any taxation law (within the meaning of the *Income Tax Assessment Act 1997*) prevents the Commissioner of Taxation (on behalf of the Commonwealth) from making an ex-gratia payment in relation to the tax treatment of a superannuation lump sum received in an income year ending before 1 July 2007 if:

- (a) the lump sum is received by a person because of the death of another person; and
- (b) the person who received the lump sum is not a dependant of the deceased person.

**Schedule 6****8 Application**

The amendments made by this Schedule apply in relation to distributions made on or after 1 July 2004.

**Schedule 8****26 Application**

- (1) The amendments made by this Schedule apply to amounts paid by a participant under a forestry managed investment scheme on or after 1 July 2007.
- (2) Despite subitem (1), the amendments do not apply if any other amounts were paid by the participant or any other participant under the scheme before 1 July 2007.
- (3) Despite subitem (1), sections 394-25 and 394-30 of the *Income Tax Assessment Act 1997* apply to CGT events that happen on or after 1 July 2007.

**Schedule 9****30 Application**

- (1) Subject to items 31, 32 and 33 of this Schedule, the amendments made by this Schedule, other than items 13 and 23, apply in relation to income years starting on or after 1 July 2006.

## **Table A**

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- (2) The amendments made by items 13 and 23 of this Schedule apply in relation to income years starting on or after 1 July 2005.

### **34 Transitional provision—application of former subsection 768-605(4) and former section 768-615 of the *Income Tax Assessment Act 1997***

- (1) Former subsection 768-605(4) of the *Income Tax Assessment Act 1997* applies in relation to income years starting on or after 1 July 2006 as if the reference in that subsection to subsection 98A(1) were instead a reference to subsection 98A(1) or (3).
- (2) Former section 768-615 of the *Income Tax Assessment Act 1997* does not apply in relation to income years starting on or after 1 July 2006.

## **Schedule 10**

### **32 Application**

The amendments made by this Schedule apply to the first income year starting on or after the first 1 July after the day on which this Act receives the Royal Assent and later income years.

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*Tax Laws Amendment (Small Business) Act 2007* (No. 80, 2007)

## **Schedule 1**

### **8 Application**

The amendments made by this Schedule apply in relation to the 2007-08 income year and later income years.

## **Schedule 2**

### **67 Application**

- (2) The amendments made by items 61, 62 and 65 of Part 2 of this Schedule apply in relation to the 2007-08 income year and later income years.
- (3) The amendments made by items 63, 64 and 66 of Part 2 of this Schedule apply in relation to the year starting on 1 July 2007 and later years.

**Schedule 3**

**176 Application**

The amendments made by this Schedule apply in relation to the 2007-08 income year and later income years.

**Schedule 4**

**31 Application**

- (1) The amendments made by Part 1 and items 29 and 30 of Part 2 of this Schedule apply to CGT events happening in the 2007-08 income year and later income years.

**Schedule 7**

**2 Application**

The amendment made by this Schedule applies in relation to the income year after the income year in which this Act receives the Royal Assent and each later income year.

**Schedule 8**

**9 Application**

The amendments made by this Schedule apply in relation to the 2007-08 income year and later income years.

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*Social Security Amendment (Apprenticeship Wage Top-Up for Australian Apprentices) Act 2007 (No. 114, 2007)*

**Schedule 1**

**3 Application of amendments**

The amendments made by items 1 and 2 of this Schedule apply to assessments for the 2007-08 income year and later income years.

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## **Table A**

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*Financial Sector Legislation Amendment (Restructures) Act 2007*  
(No. 117, 2007)

### **Schedule 2**

#### **4 Application**

- (1) The amendment made by item 1 of this Schedule applies in relation to CGT events happening on or after 1 July 2007.
- (2) The amendments made by items 2 and 3 of this Schedule apply in relation to restructure instruments that come into force under the *Financial Sector (Business Transfer and Group Restructure) Act 1999* on or after 1 July 2007.

### **Schedule 3**

#### **24 Application**

The amendments made by items 10 to 23 of this Schedule apply in relation to restructure instruments that come into force under the *Financial Sector (Business Transfer and Group Restructure) Act 1999* on or after 1 July 2007.

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*Tax Laws Amendment (2007 Measures No. 4) Act 2007* (No. 143, 2007)

### **Schedule 1**

#### **222 Application**

Subject to items 223 and 224, the amendments made by this Schedule apply in relation to income years, statutory accounting periods and notional accounting periods starting on or after the first 1 July that occurs after the day on which this Act receives the Royal Assent.

#### **223 Application and transitional rules for section 802-40 of the 1997 Act**

- (1) The amendments made by items 179 to 181 apply in relation to income years starting one year later than the first income year (the *transitional year*) covered by item 222.

**Table A**

- (2) Section 802-40 of the *Income Tax Assessment Act 1997* has effect in relation to the transitional year as if section 160AF of the *Income Tax Assessment Act 1936* had not been repealed.

**225 Object**

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or
- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

**226 Making and amending assessments, and doing other things, in relation to past matters**

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

**Example:** For the 2006-07 income year, Smart Investor Pty Ltd, an Australian resident private investment company, has assessable foreign income in the passive income class on which it has paid foreign tax for which it wishes to claim a foreign tax credit. The company also has a tax loss for the year from its Australian investments. When it lodges its tax return for the year it does not elect to claim a deduction for any of the tax loss under section 79DA of the ITAA 1936, because the Australian tax payable on its passive foreign income equals the foreign tax it has paid.

In 2009 the amount of foreign tax payable in respect of some foreign rental income it had included in its return for the 2006-07 year is reduced and Smart Investor receives a refund of the difference in foreign tax. Smart Investor Pty Ltd then applies to be able to make an

## **Table A**

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election under section 79DA, that is, after the *Tax Laws Amendment (2007 Measures No. 4) Act 2007* (which repeals section 79DA) receives Royal Assent. The Commissioner allows Smart Investor to submit an election to claim a deduction for so much of its 2006-07 tax loss as to reduce the amount of Australian tax payable on its 2006-07 assessable foreign income to the revised foreign tax paid, by the end of 2009.

Despite the repeal of section 79DA, item 226 allows the Commissioner to permit an election to be lodged after the return for 2006-07 has been lodged, and to amend Smart Investor's assessment for that year, because these actions relate to a thing done, and periods ending, before the repeal of section 79DA applies.

## **Schedule 2**

### **6 Application of amendments**

The amendments made by this Schedule apply to CGT events happening on or after 14 February 2007.

## **Schedule 5**

### **48 Application**

- (1) The amendments made by this Schedule apply to the 2007-2008 income year and later years.
- (2) Despite subitem (1), the amendments made by items 9 to 16, and 19 to 25, of this Schedule apply on and after 1 July 2007.
- (3) Despite subitem (1), the amendments made by items 7, 8, 26 and 27 of this Schedule apply to notices given by the Commissioner on or after 1 June 2007.

## **Schedule 7**

### **22 Application**

The amendments made by item 21 apply to assessments for the income year including 1 January 2003 and later income years.

### **38 Application**

The amendment made by item 37 applies to assessments for income years commencing on or after 1 July 2000.

*International Trade Integrity Act 2007* (No. 147, 2007)

## **Schedule 2**

### **9 Application**

The amendments of the *Income Tax Assessment Act 1997* made by this Schedule apply to a loss or outgoing incurred on or after the commencement of this Schedule.

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*Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007* (No. 154, 2007)

## **Schedule 1**

### **296 Regulations may prescribe matters**

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) in relation to the amendments or repeals made by this Schedule.

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*Tax Laws Amendment (2007 Measures No. 5) Act 2007* (No. 164, 2007)

### **4 Amendment of assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:

- (a) the assessment was made before the commencement of this section; and
- (b) the amendment is made within 4 years after that commencement; and
- (c) the amendment is made for the purpose of giving effect to Schedule 2.

**Table A**

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**Schedule 1**

**71 Application**

- (1) Subject to subitems (4), (6) and (8), Division 250 applies in relation to a tax preferred use of an asset if, and only if, the tax preferred use:
    - (a) starts on or after 1 July 2007; and
    - (b) does not occur under a legally enforceable arrangement that was entered into before 1 July 2007.
  
  - (2) This subitem applies to an asset that is put to a tax preferred use if:
    - (a) the tax preferred use starts on or after 1 July 2007; and
    - (b) the tax preferred use occurs under a legally enforceable arrangement that was entered into before 1 July 2007; and
    - (c) but for this subitem:
      - (i) section 51AD would apply to the asset in relation to a taxpayer; or
      - (ii) Division 16D would apply to the asset; and
    - (d) you elect to have this subitem apply to the asset.
  
  - (3) An election under paragraph (2)(d) in relation to an asset that is put to a tax preferred use:
    - (a) must be made by the day you lodge your income tax return for the income year in which the tax preferred use starts; and
    - (b) must be made for the whole of the arrangement period for the tax preferred use of the asset; and
    - (c) must extend to all assets that are, or are to be, put to a tax preferred use under the arrangement under which the asset is put to that use; and
    - (d) is irrevocable.
  
  - (4) If subitem (2) applies:
    - (a) section 51AD and Division 16D do not apply to the asset; and
    - (b) Division 250 applies to the tax preferred use of the asset.
  
  - (5) This subitem applies to an asset that is put to a tax preferred use if:
    - (a) the tax preferred use starts on or after 1 July 2007; and
    - (b) the tax preferred use occurs under a legally enforceable arrangement that was entered into before 1 July 2007; and
    - (c) immediately before 1 July 2007:
-



**Table A**

- (i) section 51AD did not apply to the asset in relation to a taxpayer; and
- (ii) Division 16D did not apply to the asset; and
- (d) the arrangement referred to in paragraph (b) is materially altered on or after 1 July 2007; and
- (e) but for this subitem and subitem (6):
  - (i) section 51AD would apply to the asset in relation to a taxpayer immediately after the alteration; or
  - (ii) Division 16D would apply to the asset immediately after the alteration.

For the purposes of applying paragraph (c), assume that the asset was in existence and was being put to the tax preferred use immediately before 1 July 2007.

- (6) If subitem (5) applies:
  - (a) section 51AD and Division 16D do not apply to the asset; and
  - (b) Division 250 applies to the tax preferred use of the asset after the alteration instead.
- (7) This subitem applies to an asset that is put to a tax preferred use if:
  - (a) the tax preferred use started before 1 July 2007; and
  - (b) immediately before 1 July 2007:
    - (i) section 51AD did not apply to the asset in relation to a taxpayer; and
    - (ii) Division 16D did not apply to the asset; and
  - (c) the arrangement under which the tax preferred use of the asset occurs is materially altered on or after 1 July 2007; and
  - (d) but for this subitem and subitem (8):
    - (i) section 51AD would apply to the asset in relation to a taxpayer immediately after the alteration; or
    - (ii) Division 16D would apply to the asset immediately after the alteration.
- (8) If subitem (7) applies:
  - (a) section 51AD and Division 16D do not apply to the asset; and
  - (b) Division 250 applies to the tax preferred use of the asset after the alteration instead.

## Table A

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- (9) For the purposes of applying subparagraphs (5)(c)(ii) and (e)(ii) and (7)(b)(ii) and (d)(ii), disregard the operation of section 159GL of the *Income Tax Assessment Act 1936*.
- (10) For the purposes of applying Division 250 to the tax preferred use of an asset in accordance with subitem (6) or (8), the **arrangement period** for the tax preferred use of the asset is taken to start on the day on which the alteration referred to in paragraph (5)(d) or (7)(c) occurs.
- (11) Section 51AD does not apply to an asset for the income year commencing on 1 July 2007, or a later income year, if:
- (a) the asset is put to a tax preferred use under a legally enforceable arrangement; and
  - (b) the arrangement was entered into before 1 July 2007; and
  - (c) the tax preferred use of the asset starts on or after 1 July 2003 and before 1 July 2007.
- (12) The amendment made by item 69 of this Schedule applies in relation to an income year that begins on or after 1 July 2008.
- (13) In this item:
- arrangement** has the same meaning as in the *Income Tax Assessment Act 1997*.
- asset** includes property (within the meaning of section 51AD and Division 16D).
- Division 16D** means Division 16D of Part III of the *Income Tax Assessment Act 1936*.
- Division 250** means Division 250 of the *Income Tax Assessment Act 1997*.
- section 51AD** means section 51AD of the *Income Tax Assessment Act 1936*.
- tax preferred use** has the same meaning as in the *Income Tax Assessment Act 1997*.

## Schedule 2

### 2 Application

The amendment made by this Schedule applies to income years starting on or after 1 July 2002.

### **Schedule 3**

#### **11 Application**

The amendments made by this Schedule apply to income years starting on or after 1 January 2004.

### **Schedule 4**

#### **7 Application**

The amendments made by this Schedule apply in relation to CGT events that happen on or after 1 July 2007, regardless of when the award, court order or agreement was made.

### **Schedule 5**

#### **3 Application**

The amendments made by this Schedule apply to assessments for the 2006-07 income year and later income years.

### **Schedule 6**

#### **68 Application**

The amendments made by this Schedule apply to:

- (a) any tax loss that is incurred in an income year commencing on or after 1 July 2005; and
- (b) any net capital loss that is made in an income year commencing on or after 1 July 2005; and
- (c) any deduction in respect of a bad debt that is incurred in an income year commencing on or after 1 July 2005.

### **Schedule 7**

#### **14 Application**

The amendments made by this Schedule apply to CGT events that happen in the 2006-2007 income year and later income years.

## **Table A**

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### **Schedule 8**

#### **13 Application**

- (1) The amendments made by items 1 to 5 of this Schedule apply to the 2006-07 year of income and later years of income.
- (2) The amendments made by items 6 to 12 of this Schedule apply to CGT events happening on or after 1 July 2006.

### **Schedule 9**

#### **3 Application**

The amendment of table item 5.2.1 in subsection 30-50(2) of the *Income Tax Assessment Act 1997* made by this Schedule applies to gifts made on or after 1 July 2007.

### **Schedule 10**

#### **91 Application**

- (1) The amendments made by this Schedule, to the extent that they relate to a tax offset under section 376-10 of the *Income Tax Assessment Act 1997*, apply to films commencing principal photography or production of the animated image on or after 8 May 2007.
- (2) The amendments made by this Schedule, to the extent that they relate to a tax offset under section 376-35 of the *Income Tax Assessment Act 1997*, apply to post, digital and visual effects production for a film that commences on or after 1 July 2007.
- (3) The amendments made by this Schedule, to the extent that they relate to a tax offset under section 376-55 of the *Income Tax Assessment Act 1997*, apply to qualifying Australian production expenditure incurred:
  - (a) on or after 1 July 2007; and
  - (b) before 1 July 2007, to the extent that such expenditure is attributable to goods or services provided on or after 1 July 2007.

---

**Table A**

**92 Saving provisions relating to amendment at item 1**

- (1) Despite the repeal and substitution of Division 376 of the *Income Tax Assessment Act 1997* by this Schedule, that Division continues to apply, in relation to films that commenced principal photography or production of the animated image before 8 May 2007, as if that repeal and substitution had not happened.
- (2) Despite the amendment made by item 1 of this Schedule, legislative instruments that:
  - (a) were made under section 376-105 of the *Income Tax Assessment Act 1997*; and
  - (b) were in force immediately before the commencement of that item;continue to have effect, and may be dealt with, in relation to films that commenced principal photography or production of the animated image before 8 May 2007, as if the amendment had not happened.

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*Social Security Legislation Amendment (2007 Budget Measures for Students) Act 2007* (No. 184, 2007)

**Schedule 3**

**10 Application**

The amendments made by this Schedule apply in relation to a payment made on or after 1 January 2008.

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*Tax Laws Amendment (Election Commitments No. 1) Act 2008* (No. 32, 2008)

**Schedule 1**

**58 Application**

The amendments made by this Schedule apply to fund payments made in relation to the first income year starting on or after the first 1 July after the day on which this Act receives the Royal Assent and later income years.

**Table A**

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**Schedule 2**

**3 Application**

The amendments made by this Schedule apply to assessments for the 2007-08 income year and later income years.

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*Tax Laws Amendment (2008 Measures No. 2) Act 2008* (No. 38, 2008)

**Schedule 1**

**19 Application**

The amendments made by this Schedule apply to amounts misappropriated in the 2007-08 income year and later income years.

**Schedule 3**

**3 Application**

The amendments made by this Schedule apply to CGT events happening after the start of the 2006-07 income year.

**Schedule 4**

**5 Application**

The amendments of the *Income Tax Assessment Act 1997* made by items 2 and 4 of this Schedule apply in relation to fellowships and awards received in the 2007-08 income year and later income years.

**Schedule 5**

**4 Application**

The amendments made by this Schedule apply to assessments for the 2007-08 income year and later income years.

**Schedule 7**

**5 Application**

The amendments made by this Schedule apply to payments made on or after 1 July 2007.

**Schedule 8**

**11 Application**

The amendments made by this Part of this Schedule apply to the 2007-08 income year and later income years.

**Schedule 9**

**4 Application**

The amendments made by this Schedule apply in relation to Equine Workers Hardship Wage Supplement Payments received in the 2007-08 income year and later income years.

**Schedule 10**

**5 Application of amendments**

The amendments made by this Schedule apply to tobacco industry exit grants received in the 2006-07 income year and later income years.

**Schedule 12**

**2 Application**

The amendment made by this Schedule applies to assessments for the 2007-08 income year and later income years.

**Schedule 13**

**3 Application**

The amendments made by this Schedule apply to assessments for the 2007-08 income year and later years.

The following provision commences on 1 July 2012:

**Schedule 8**

**21 Application**

The amendments made by this Part of this Schedule apply to the 2012-13 income year and later income years.

**Table A**

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*Veterans' Entitlements Legislation Amendment (2007 Election Commitments)*  
*Act 2008* (No. 48, 2008)

**Schedule 3**

**16 Application**

- (1) The amendments of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to bereavement payments received during the 2008-09 income year and later income years.

---

*Tax Laws Amendment (Budget Measures) Act 2008* (No. 59, 2008)

**Schedule 1**

**9 Application**

The amendment made by item 8 applies:

- (a) to assets acquired after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008, other than assets acquired under a contract entered into at or before that time; and
- (b) to assets acquired at or before that time, but only for assessments for the 2008-09 income year and later years.

**15 Application**

- (1) Subject to subitem (2), the amendment made by item 14 applies in relation to CGT events happening after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008 (the ***Budget time***).
- (2) An entity may choose that the amendment made by item 14 applies to a CGT event that happened:
- (a) after the start of the entity's 1998-99 income year; and
  - (b) before the Budget time.



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**Table A**

**Schedule 2**

**2 Application**

The amendment made by item 1 applies to in-house software that:

- (a) you start to hold under a contract entered into after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008; or
- (b) you developed, where the development started after that time; or
- (c) you start to hold in some other way after that time.

---

*Social Security and Other Legislation Amendment (Employment Entry Payment) Act 2008 (No. 64, 2008)*

**Schedule 1**

**11 Transitional**

- (1) Despite the repeal of table item 10.1 in section 52-10 of the *Income Tax Assessment Act 1997* made by this Schedule, that table item continues to apply on and after the commencement of this item in relation to employment entry payments made before, on or after the commencement of this item.

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*Tax Laws Amendment (2008 Measures No. 3) Act 2008 (No. 91, 2008)*

**Schedule 1**

**9 Application**

The amendments made by this Schedule apply to rights issued on or after 1 July 2001.

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**Table A**

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*First Home Saver Accounts (Further Provisions) Amendment Act 2008*  
(No. 92, 2008)

**Schedule 1**

**26 Application**

The amendments made by this Schedule apply from 1 October 2008.

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*Tax Laws Amendment (2008 Measures No. 4) Act 2008* (No. 97, 2008)

**Schedule 1**

**12 Application**

The amendments made by this Schedule apply in relation to demutualisations occurring on and after 1 July 2007.

**Schedule 3**

**147 Application**

The amendment made by item 146 of this Schedule applies in relation to income years, statutory accounting periods and notional accounting periods starting on or after 1 July 2008.

**155 Application**

The amendment made by item 154 of this Schedule applies in relation to income years, statutory accounting periods and notional accounting periods starting on or after 1 July 2008.

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*Dairy Adjustment Levy Termination Act 2008* (No. 123, 2008)

**Schedule 3**

**2 Application**

The amendment of the *Income Tax Assessment Act 1997* made by this Schedule applies in relation to the 2009-2010 income year and later income years.

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**Table A**

*National Rental Affordability Scheme (Consequential Amendments) Act 2008*  
(No. 130, 2008)

**Schedule 1**

**14 Application**

The amendments made by this Schedule apply to assessments for the 2008-09 income year and later income years.

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*Tax Laws Amendment (Education Refund) Act 2008* (No. 141, 2008)

**Schedule 1**

**10 Application**

The amendments made by this Schedule apply to the 2008-2009 income year and later years.

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*Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008* (No. 144, 2008)

**Schedule 14**

**96 Application of amendments of the *Income Tax Assessment Act 1997***

The amendments of the *Income Tax Assessment Act 1997* made by this Schedule apply:

- (a) in relation to the 2009-2010 income year and later income years; and
- (b) to the extent to which the amendments affect the *Fringe Benefits Tax Assessment Act 1986*—in relation to the FBT year starting on 1 April 2009 and later FBT years.

## **Table A**

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*Tax Laws Amendment (2008 Measures No. 5) Act 2008* (No. 145, 2008)

### **Schedule 2**

#### **9 Application**

The amendments made by this Schedule apply to assessments for each income year starting on or after the commencement of this Schedule.

---

*Nation-building Funds (Consequential Amendments) Act 2008* (No. 155, 2008)

### **Schedule 3**

#### **8 Application—gifts to the Higher Education Endowment Fund**

The amendments of the *Income Tax Assessment Act 1997* made by Schedule 2 apply in relation to gifts made after the commencement of this item.

---

*Household Stimulus Package Act (No. 2) 2009* (No. 4, 2009)

### **Schedule 4**

#### **1 Administrative scheme for household stimulus payments**

- (1) Subject to this item, a Minister administering:
  - (a) the *A New Tax System (Family Assistance) Act 1999*; or
  - (b) the *Social Security Act 1991*; or
  - (c) the *Farm Household Support Act 1992*; or
  - (d) the *Veterans' Entitlements Act 1986*;may, by legislative instrument, determine a scheme under which household stimulus payments may be made to persons in particular circumstances. The Minister may, by legislative instrument, vary or revoke the scheme.
- (2) The circumstances in which the scheme provides for payments must be:
  - (a) circumstances:

**Table A**

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- (i) in which the Minister considers that Part 7 of the *A New Tax System (Family Assistance) Act 1999* or Part 2.18 of the *Social Security Act 1991* does not produce appropriate results; and
    - (ii) that occur in the financial year starting on 1 July 2008; or
  - (b) circumstances:
    - (i) in which the Minister considers that Division 14 of Part 2.13A of the *Social Security Act 1991* does not produce appropriate results; and
    - (ii) that occur in the period starting on 1 July 2008 and ending on the day on which that Division ceases to have effect under section 665ZZE of that Act.
- (3) Without limiting the generality of subitem (1), the scheme may deal with the following:
- (a) the circumstances in which payments are to be made;
  - (b) the amount of the payments;
  - (c) what a person has to do to get a payment;
  - (d) debt recovery;
  - (e) administrative matters, such as determination of entitlement and how and when payments will be made.
- (4) Without limiting the generality of subparagraph (2)(a)(i), circumstances in which the provisions referred to in that subparagraph do not produce appropriate results may include the circumstance of an FTB child (within the meaning of the *A New Tax System (Family Assistance) Act 1999*) aged 19 or 20 on 3 February 2009.
- (5) Payments under the scheme are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.
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## Table A

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*Tax Laws Amendment (2008 Measures No. 6) Act 2009* (No. 14, 2009)

### Schedule 1

#### 6 Application

- (1) The amendments made by this Schedule apply in relation to an arrangement that is or relates to a takeover bid (within the meaning of the *Corporations Act 2001*) if:
  - (a) for an off-market bid (within the meaning of that Act)—step 4 of the table in subsection 633(1) of that Act; or
  - (b) for a market bid (within the meaning of that Act)—step 2 of the table in subsection 635(1) of that Act;is completed after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008.
- (2) The amendments made by this Schedule apply in relation to an arrangement if:
  - (a) a court orders, under subsection 411(1) of the *Corporations Act 2001*, a meeting or meetings of:
    - (i) a company's members; or
    - (ii) one or more classes of a company's members; about the arrangement; and
  - (b) the application for the order was made after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008.
- (3) The amendments made by this Schedule apply in relation to an arrangement if:
  - (a) the arrangement is not, and does not relate to, a takeover bid (within the meaning of the *Corporations Act 2001*); and
  - (b) a court does not order, under subsection 411(1) of the *Corporations Act 2001*, a meeting or meetings of:
    - (i) a company's members; or
    - (ii) one or more classes of a company's members; about the arrangement; and
  - (c) a decision to enter into the arrangement was not made before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008.

**Table A****Schedule 4****17 Application**

The amendment made by item 16 applies to balancing adjustment events happening in the 2008-09 income year or a later income year.

**25 Application**

The amendment made by item 24 applies to CGT events happening after the start of the 2006-07 income year.

**Schedule 5****14 Application of amendments**

- (1) The amendments made by Division 1 of Part 1 of this Schedule apply in relation to the 2008-09 income year.
- (2) The amendments made by Part 2 of this Schedule apply in relation to:
  - (a) the 2008-09 income year; and
  - (b) later income years.

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*Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009*  
(No. 15, 2009)

**Schedule 1****102 Definitions**

In this Part:

***financial arrangement amendments*** means the amendments made by Parts 1 and 2 of this Schedule.

***first applicable income year*** means the first income year for which the financial arrangement amendments apply to you under item 103.

***lodgment date*** means the due date for you to lodge an income tax return.

**Table A**

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**103 Application of financial arrangement amendments  
(income years)**

- (1) Subject to subitem (2), the financial arrangement amendments apply to you for income years commencing on or after 1 July 2010.
- (2) The financial arrangement amendments apply to you for income years commencing on or after 1 July 2009 if you elect to have this subitem apply to you.

Note: For a consolidated group, it is the head entity that would make the election.

- (3) An election under subitem (2) must be made on or before the first lodgment date that occurs on or after the start of your first income year commencing on or after 1 July 2009.

**104 Application of financial arrangement amendments  
(financial arrangements)**

*Future financial arrangements*

- (1) The financial arrangement amendments apply to financial arrangements that you start to have in the first applicable income year or a later income year.

*Existing financial arrangements*

- (2) The financial arrangement amendments apply to all financial arrangements that:
  - (a) you started to have before the start of the first applicable income year; and
  - (b) you have at the start of that income year;only if you elect to have this subitem apply to you.
- (3) The financial arrangement amendments do not apply under subitem (2) to a financial arrangement that arose from a disposal of property (including a disposal of a capital asset, a revenue asset, a depreciating asset or trading stock).
- (4) The financial arrangement amendments do not apply under subitem (2) to a financial arrangement if:
  - (a) the election is made by the head company of a consolidated group or MEC group; and



**Table A**

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- (b) the election specifies that the election is not to apply to financial arrangements in relation to life insurance business carried on by a member of the consolidated group or MEC group; and
    - (c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.
  - (5) An election under subitem (2) must:
    - (a) be made on or before the first lodgment date that occurs on or after the start of the first applicable income year; and
    - (b) be notified to the Commissioner on or before the lodgment date referred to in paragraph (a).
  - (6) If you make an election under subitem (2), treat subsection 230-455(7) of the *Income Tax Assessment Act 1997* as allowing you to make an election under that subsection that applies to:
    - (a) in any case—all of the financial arrangements that you start to have in the income year in which the election is made or a later income year; or
    - (b) if you make the election at the same time as you make the election under subitem (2)—all of your financial arrangements to which the financial arrangements amendments apply.
  - (7) If you make an election under subitem (2), treat section 230-150 of the *Income Tax Assessment Act 1997* as allowing you to make an election under that section that, despite paragraph 230-160(1)(b), applies to a financial arrangement that:
    - (a) you started to have before the start of the first applicable income year; and
    - (b) you have at the start of that income year.
  - (8) An election that you make under Subdivision 230-C, 230-D or 230-F of the *Income Tax Assessment Act 1997* extends to financial arrangements referred to in subitem (2) only if that election is made on or before the first lodgment date that occurs after the start of the first applicable income year.
  - (9) An election that you make under Subdivision 230-E of the *Income Tax Assessment Act 1997* extends to a financial arrangement referred to in subitem (2) only if:
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**Table A**

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- (a) that election is made on or before the first lodgment date that occurs after the start of the first applicable income year; and
  - (b) the requirements of section 230-335 were satisfied in relation to the arrangement at the time the arrangement was created, acquired or applied; and
  - (c) at, or soon after, the time you make the election, you have in place records in relation to the arrangement that satisfy the requirements of section 230-355 and section 230-360 (other than subparagraph 230-360(2)(c)(ii)); and
  - (d) the requirements of section 230-365 have been satisfied at all times since the arrangement was created, acquired or applied for the purpose of hedging a risk in relation to a hedged item.
- (10) To avoid doubt, subsection 230-310(4) does not apply to a financial arrangement that you started to have before the start of the first applicable income year and that you have at the start of that income year.
- (11) To avoid doubt, the election referred to in subitem (8) or (9) applies to the financial arrangements referred to in subitem (2) even though you started to have the arrangements before the election is made.
- (12) If you make an election under subitem (2), balancing adjustments must be made under subitem (13).
- (13) Use the following method statement to make the balancing adjustments under this subitem:

*Balancing adjustment method statement*

Step 1. Work out the total of all the amounts that relate to the financial arrangements and that would have been included in your assessable income if Division 230 of the *Income Tax Assessment Act 1997* had applied to gains and losses from the arrangements from the time when you started to have them: the result is the ***notional assessable amount***.

**Table A**

Step 2.	Work out the total of all the amounts that relate to the financial arrangements and that would have been allowable to you as deductions if that Division had applied to gains and losses from the arrangements from the time when you started to have them: the result is the <b><i>notional deductible amount</i></b> .
Step 3.	Work out the total of all the amounts that relate to the financial arrangements and have been included in your assessable income from the time when you started to have them: the result is the <b><i>actual assessed amount</i></b> .
Step 4.	Work out the total of all the amounts that relate to the financial arrangements and that have been allowable as deductions for you from the time when you started to have them: the result is the <b><i>actual deducted amount</i></b> .
Step 5.	Add the notional assessable amount to the actual deducted amount: the result is the <b><i>step 5 amount</i></b> .
Step 6.	Add the actual assessed amount to the notional deductible amount: the result is the <b><i>step 6 amount</i></b> .
Step 7.	Compare the step 5 amount with the step 6 amount. If the step 5 amount exceeds the step 6 amount, the excess is included in your assessable income as a balancing adjustment. If the step 6 amount exceeds the step 5 amount, the excess is allowable as a deduction as a balancing adjustment. If the step 5 amount and the step 6 amount are equal there is no balancing adjustment.

(14) If:

- (a) an amount is recorded in a deferred tax asset account in accordance with:
  - (i) accounting standard AASB 112 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
  - (ii) if that standard does not apply to the preparation of your financial reports—a comparable accounting standard that applies to the preparation of your financial reports under a foreign law;

**Table A**

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immediately before the start of the first applicable income year; and

- (b) the whole or a part of that amount (the *attributable assessable amount*) is attributable to a financial arrangement referred to in subitem (2); and
- (c) the method of relying on financial reports provided for in Subdivision 230-F applies to take account of a gain or loss you make from the financial arrangement;

the following provisions have effect:

- (d) the financial arrangement is to be disregarded for the purposes of steps 1 to 4 of the method statement in subitem (13); and
- (e) the attributable assessable amount is to be reduced to the extent to which it represents unused tax credits and then grossed up under subitem (16); and
- (f) the step 6 amount is to be increased by the amount obtained under paragraph (e).

(15) If:

- (a) an amount is recorded in a deferred tax liability account in accordance with:
  - (i) accounting standard AASB 112 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
  - (ii) if that standard does not apply to the preparation of your financial reports—a comparable accounting standard that applies to the preparation of your financial reports under a foreign law;

immediately before the start of the first applicable income year; and

- (b) the whole or a part of that amount (the *attributable deductible amount*) is attributable to a financial arrangement referred to in subitem (2); and
- (c) the method of relying on financial reports provided for in Subdivision 230-F applies to take account of a gain or loss you make from the financial arrangement;

the following provisions have effect:

- (d) the financial arrangement is to be disregarded for the purposes of steps 1 to 4 of the method statement in subitem (13);
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**Table A**

- (e) the attributable deductible amount is to be reduced to the extent to which it represents unused tax credits and then grossed up under subitem (16);
- (f) the step 5 amount is to be increased by the amount obtained under paragraph (e).
- (16) An amount is to be grossed up for the purposes of subitems (14) and (15) by multiplying the amount by:

$$\frac{1}{\text{Tax rate taken into account in working out the attributable assessable amount or attributable deductible amount}}$$

- (17) A balancing adjustment under subitem (13) is to be spread evenly over the first applicable income year and the next 3 income years.
- (18) In applying steps 1 and 2 in the method statement in subitem (13) to financial arrangements, assume that any election that extends to the arrangements under subitem (6) had applied to those financial arrangements from the time when you started to have them.
- (19) In applying section 121EH of the *Income Tax Assessment Act 1936*, disregard any balancing adjustment under subitem (13).

### **105 Application of financial arrangement amendments (arrangements that are not financial arrangements)**

- (1) Subject to this item, item 104 applies to arrangements that are not financial arrangements in the same way that it applies to financial arrangements.
- (2) However, the method statement in subitem 104(13) applies to arrangements that are not financial arrangements in accordance with subitem (1) of this item as if:
- (a) the reference in step 1 of that method statement to “Division 230 of the *Income Tax Assessment Act 1997*” were a reference to “Subdivision 775-F of the *Income Tax Assessment Act 1997*”; and
- (b) the reference in step 2 of that method statement to “Division” were a reference to “Subdivision”.

## **Table A**

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### **114 Application**

The amendments made by this Part apply on and after 17 December 2003.

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*Tax Laws Amendment (2009 Measures No. 1) Act 2009* (No. 27, 2009)

### **Schedule 3**

#### **102 Application**

- (1) The amendments made by this Schedule apply in relation to income years starting on or after 1 July 2009.

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*Tax Laws Amendment (2009 Measures No. 2) Act 2009* (No. 42, 2009)

### **Schedule 1**

#### **22 Application**

- (1) Section 306-25 of the *Income Tax Assessment Act 1997* applies in relation to entitlements arising under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* after 17 October 2008.

Note: Division 2AA of Part II of the *Banking Act 1959* commenced on 18 October 2008.

- (2) However, this item does not:
- (a) require a person to do anything the person would have been required by Division 390 in Schedule 1 to the *Taxation Administration Act 1953* to do before the commencement of this item had section 306-25 of the *Income Tax Assessment Act 1997* commenced on 18 October 2008; or
  - (b) make a person liable to a criminal or administrative penalty for an omission occurring before the commencement of this item.

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**Schedule 2****41 Application of amendments made by Part 1**

- (1) The amendments made by Part 1 of this Schedule apply to CGT events (other than CGT events to which subitem (2) applies) happening in the 2007-08 income year and later income years.
- (2) Subitem (1) does not apply in relation to a CGT event (the *excluded event*) if:
  - (a) the excluded event happens in relation to a CGT asset before the day on which the Bill for this Act is introduced into the Parliament; and
  - (b) an entity makes a capital gain from the excluded event; and
  - (c) the basic conditions in Subdivision 152-A of the *Income Tax Assessment Act 1997* (as in force immediately before Part 1 of this Schedule commences) are satisfied for the gain; and
  - (d) the basic conditions would not be satisfied for the gain if:
    - (i) subsection 152-40(1A) of that Act (as in force immediately before Part 1 of this Schedule commences) did not apply to the entity; or
    - (ii) section 152-47 of that Act (as in force immediately after Part 1 of this Schedule commences) applied to the entity.
- (3) The amendments made by Part 1 of this Schedule apply to excluded events happening on or after the day on which the Bill for this Act is introduced into the Parliament.

**42 Application of amendments made by items 25 to 27**

The amendments made by items 25 to 27 of this Schedule apply to CGT events that happen on or after the day on which this Act receives the Royal Assent.

**43 Application of amendments made by items 30 to 32**

The amendments made by items 30 to 32 of this Schedule apply to CGT events happening in the 2006-07 income year and later income years.

**44 Application of amendment made by item 34**

The amendment made by item 34 applies to proceeds received in the 2007-08 income year and later income years.

## Table A

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### 45 Application of amendment made by item 35

The amendment made by item 35 of this Schedule applies to CGT events happening in the 2006-07 income year and later income years.

### 46 Application of amendments made by items 36 to 38

The amendments made by items 36 to 38 of this Schedule apply to payments that are made (whether by a company or trust to comply with section 152-325 of the *Income Tax Assessment Act 1997* or by an interposed entity) on or after the day on which this Act receives the Royal Assent.

### 47 Application of amendment made by item 39

The amendment made by item 39 of this Schedule applies to assessments for the 2007-08 income year and later income years.

### 48 Transitional: choice

- (1) Subitem (2) applies in relation to:
  - (a) a CGT event that happened before the day on which this Act receives the Royal Assent; and
  - (b) an entity who becomes eligible to make a choice under Division 152 of the *Income Tax Assessment Act 1997* in relation to that event because of this Schedule.
- (2) Despite subsection 103-25(1) of the *Income Tax Assessment Act 1997*, any such choice must be made by the entity by the latest of:
  - (a) the day the entity lodges its income tax return for the income year in which the relevant CGT event happened; and
  - (b) 12 months after the day on which this Act receives the Royal Assent; and
  - (c) a later day allowed by the Commissioner of Taxation.

## Schedule 3

### 2 Application

The amendment made by this Schedule applies in relation to a CGT event happening in:

- (a) the 2009-10 income year; or
- (b) a later income year.



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**Schedule 5****15 Application of Part 1 amendments**

The amendments made by Part 1 of this Schedule apply in relation to assessments for:

- (a) the 2007-08 income year; and
- (b) later income years.

**Schedule 8****5 Application of Part 1 amendments**

The amendments made by Part 1 of this Schedule apply in relation to:

- (a) the 2008-09 income year; and
- (b) the 2009-10 income year.

The following provision commences on 1 July 2014:

**Schedule 4****19 Transitional—revoking certificates***Revoking certificates*

- (1) Subject to subitem (3) and despite the repeal of section 402-770 of the *Income Tax Assessment Act 1997* by this Part, that section continues to apply, after the commencement of this Part, to a certificate issued under former section 402-760 of that Act until the end of the period of 10 years starting on the day the certificate was issued.
- (2) For the purposes of subitem (1), a reference in section 402-770 of the *Income Tax Assessment Act 1997* to guidelines made under section 402-780 of that Act is taken, from the commencement of this Part, to be a reference to those guidelines as in force immediately before that commencement.
- (3) Despite the repeal of subsection 402-770(6) of the *Income Tax Assessment Act 1997* by this Part, that subsection continues to apply, after the commencement of this Part, in relation to the revocation of a certificate occurring before or after that commencement.

**Table A**

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*AAT review*

- (4) Despite the repeal of section 402-775 of the *Income Tax Assessment Act 1997* by this Part, that section continues to apply, after the commencement of this Part, in relation to a decision to revoke a certificate made before or after that commencement.

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*Tax Laws Amendment (2009 Measures No. 3) Act 2009* (No. 47, 2009)

**Schedule 4**

**7 Application of amendments**

The amendments made by this Schedule apply in relation to assessments for:

- (a) the 2009-10 income year; and
- (b) later income years.

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*Social Security and Other Legislation Amendment (Australian Apprentices) Act 2009* (No. 52, 2009)

**Schedule 1**

**3 Application of amendments**

The amendments made by items 1 and 2 of this Schedule apply to assessments for the 2009-10 income year and later income years.